From: Dalcher, Debra
Location: RTP-OAQPS-Ex. 6 - Personal Privacy-SPPD/Phone-Line/RTP-OAQPS-BLDG-C
Importance: Normal
Subject: OIAI Discussion - Agenda will be Added
Start Date/Time: Mon 1/8/2018 4:00:00 PM
End Date/Time: Mon 1/8/2018 5:00:00 PM
RevisedOIAImemorandum_1 5 2018 .docx

From: Caparoso, Jennifer
Location: RTP-D201-Max40/RTP-Bldg-D
Importance: Normal
Subject: once in, always in discussion - RCG and PSG
Start Date/Time: Tue 1/9/2018 6:00:00 PM
End Date/Time: Tue 1/9/2018 7:00:00 PM

Call-in number: Ex. 6 - Personal Privacy

To: Wood, Anna[Wood.Anna@epa.gov]
Cc: Santiago, Juan[Santiago.Juan@epa.gov]
Sent: Wed 1/24/2018 4:33:19 PM
Subject: RE: Left you a vm - want to give you an update on once in always in

I will follow up with him after

From: Wood, Anna
Sent: Wednesday, January 24, 2018 11:29 AM
To: Culligan, Kevin <Culligan.Kevin@epa.gov>
Cc: Santiago, Juan <Santiago.Juan@epa.gov>
Subject: RE: Left you a vm - want to give you an update on once in always in

Hi Kevin, I forwarded your email to Juan Santiago—please give Juan a call and we appreciate the coordination!

From: Culligan, Kevin
Sent: Wednesday, January 24, 2018 10:43 AM
To: Wood, Anna <Wood.Anna@epa.gov>
Subject: Left you a vm - want to give you an update on once in always in

Also happy to reach out to one of your group leads or ADs if that makes more sense. Just let me know who to talk to. I'm around most of the day except for a 12:00 briefing with Bill.

From: Lamason, Bill
Location: Kevin to call Bill's office - Ex. 6 - Personal Privacy /D220D - Bill's office
Importance: Normal
Subject: OIAI Analysis - Brainstorming on approaches
Start Date/Time: Wed 1/24/2018 6:30:00 PM
End Date/Time: Wed 1/24/2018 7:00:00 PM

To: Torres, Elineth[Torres.Elineth@epa.gov]; Dalcher, Debra[dalcher.debra@epa.gov]; Lamason, Bill[Lamason.Bill@epa.gov]; French, Chuck[French.Chuck@epa.gov]; McLamb, Marguerite[McLamb.Marguerite@epa.gov]; RTP-OAQPS-Ex. 6 Personal Privacy-SPPD/Phone-Line/RTP-OAQPS-BLDG-C[RTP-OAQPSEx. 6 Personal Privacy-SPPD@epa.gov]; Rodman, Sonja[Rodman.Sonja@epa.gov]; Vetter, Rick[Vetter.Rick@epa.gov]
From: Culligan, Kevin
Sent: Wed 11/1/2017 3:15:23 PM
Subject: Re: Updated options document

From: Torres, Elineth
Sent: Wednesday, November 1, 2017 10:47 AM
To: Dalcher, Debra; Lamason, Bill; Culligan, Kevin; French, Chuck; McLamb, Marguerite; RTP-OAQPS-Ex. 6 - Personal Privacy-SPPD/Phone-Line/RTP-OAQPS-BLDG-C; Rodman, Sonja; Vetter, Rick
Subject: Updated options document

See attached.

Elineth Torres

OAQPS

919-541-4347

-----Original Appointment-----
From: Torres, Elineth
Sent: Tuesday, October 24, 2017 1:24 PM
To: Torres, Elineth; Dalcher, Debra; Lamason, Bill; Culligan, Kevin; French, Chuck; McLamb, Marguerite; RTP-OAQPS-Ex. 6 - Personal Privacy-SPPD/Phone-Line/RTP-OAQPS-BLDG-C; Rodman, Sonja; Vetter, Rick
Subject: OIAI Check-in
When: Wednesday, November 01, 2017 10:00 AM-10:30 AM (UTC-05:00) Eastern Time (US & Canada).
Where: Bill's Office

Call-in number-Ex. 6 - Personal Privacy

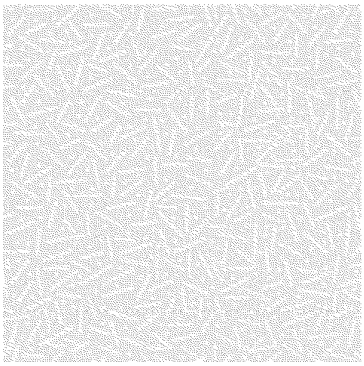
To close the loop on the OIAI options document. Please send any edits to the document prior to

the check-in.

Thanks,

Elineth

To: Vetter, Cheryl[Vetter.Cheryl@epa.gov]
Cc: Lamason, Bill[Lamason.Bill@epa.gov]; Culligan, Kevin[Culligan.Kevin@epa.gov]
From: Dalcher, Debra
Sent: Wed 1/31/2018 2:16:33 PM
Subject: RE: In case you have not heard- OIAI Policy is withdrawn- see memo



Thank you!

From: Vetter, Cheryl
Sent: Wednesday, January 31, 2018 9:13 AM
To: Dalcher, Debra <dalcher.debra@epa.gov>
Cc: Lamason, Bill <Lamason.Bill@epa.gov>; Culligan, Kevin <Culligan.Kevin@epa.gov>
Subject: RE: In case you have not heard- OIAI Policy is withdrawn- see memo

I sent the standing meetings – we don't have agendas for any of these yet. I assume you will be first on the NACAA call, we can ask for you to go first on the other two, if that works best for you.

Cheryl Vetter
U.S. Environmental Protection Agency
OAQPS/AQPD/OPG (C504-03)
Research Triangle Park, NC 27711
Phone (919) 541-4391 Fax (919) 541-5509

Note: Positions or views expressed here do not represent official EPA policy.

From: Dalcher, Debra
Sent: Wednesday, January 31, 2018 7:54 AM
To: Vetter, Cheryl <Vetter.Cheryl@epa.gov>
Cc: Lamason, Bill <Lamason.Bill@epa.gov>; Culligan, Kevin <Culligan.Kevin@epa.gov>
Subject: FW: In case you have not heard- OIAI Policy is withdrawn- see memo

Cheryl,

Can you please forward these meetings to Kevin, Bill, and myself? Thank you, Debra

From: Vetter, Cheryl
Sent: Monday, January 29, 2018 10:02 AM
To: Dalcher, Debra <dalcher.debra@epa.gov>
Subject: RE: In case you have not heard- OIAI Policy is withdrawn- see memo

Yes, I also had it sent to the APMs. They would like you to speak to our permitting calls next Wednesday (staff) and the following Wednesday (managers). And probably the NACAA permitting call on Wednesday the 14th as well.

Cheryl Vetter
U.S. Environmental Protection Agency
OAQPS/AQPD/OPG (C504-03)
Research Triangle Park, NC 27711
Phone (919) 541-4391 Fax (919) 541-5509

Note: Positions or views expressed here do not represent official EPA policy.

From: Dalcher, Debra
Sent: Monday, January 29, 2018 9:16 AM
To: Vetter, Cheryl <Vetter.Cheryl@epa.gov>
Subject: FW: In case you have not heard- OIAI Policy is withdrawn- see memo

Just FYI Cheryl, it looks like the regions are aware.

Debra

From: Lamason, Bill
Sent: Friday, January 26, 2018 9:31 AM
To: Eck, Janet <Eck.Janet@epa.gov>
Cc: Pemberton, Wanda <Pemberton.Wanda@epa.gov>; Dalcher, Debra <dalcher.debra@epa.gov>; Shrager, Brian <Shrager.Brian@epa.gov>
Subject: RE: In case you have not heard- OIAI Policy is withdrawn- see memo

Thanks for sharing. **Ex. 5 - Deliberative Process**

Ex. 5 - Deliberative Process

From: Eck, Janet
Sent: Friday, January 26, 2018 8:46 AM
To: Dalcher, Debra <dalcher.debra@epa.gov>; Lamason, Bill <Lamason.Bill@epa.gov>
Subject: FW: In case you have not heard- OIAI Policy is withdrawn- see memo

Well, the Regions have heard.

From: Dholakia, Umesh
Sent: Friday, January 26, 2018 8:15 AM
To: Pemberton, Wanda <Pemberton.Wanda@epa.gov>; BECKHAM, LISA <BECKHAM.LISA@EPA.GOV>; BANDROWSKI, MIKE <Bandrowski.Mike@epa.gov>; Behan, Frank <Behan.Frank@epa.gov>; Bertram, Gary <Bertram.Gary@epa.gov>; Blais, Gary <Blais.Gary@epa.gov>; Campbell, Jean <Campbell.Jean@epa.gov>; Au, Doreen <Au.Doreen@epa.gov>; Barrett, Richard <barrett.richard@epa.gov>; Baumgart-Getz, Adam <Baumgart-Getz.Adam@epa.gov>; Bird, Patrick <Bird.Patrick@epa.gov>; Blake, Wendy <Blake.Wendy@epa.gov>; Boyce, Kenneth <boyce.kenneth@epa.gov>; Buenning, Hans <Buenning.Hans@epa.gov>; Chappell, Regina <Chappell.Regina@epa.gov>; Chew, Andrew <Chew.Andrew@epa.gov>; Cole, David <Cole.David@epa.gov>; Colon, Toni <Colon.Toni@epa.gov>; Crystal, Roy <crystal.roy@epa.gov>; Damico, Genevieve <damico.genevieve@epa.gov>; Doolan, Stephanie <Doolan.Stephanie@epa.gov>; duke, gerallyn <duke.gerallyn@epa.gov>; Edwards, Chebryll <Edwards.Chebryll@epa.gov>; Eisele, Adam <Eisele.Adam@epa.gov>; Epps-Price, Lena <Epps-Price.Lena@epa.gov>; Frantz, George <Frantz.George@epa.gov>; Fried, Gregory <Fried.Gregory@epa.gov>; Ghaffari, Mozafar <Ghaffari.Mozafar@epa.gov>; Hall, Kristen <hall.kristen@epa.gov>; Igoe, Sheila <Igoe.Sheila@epa.gov>; Kelly, Shaheerah <Kelly.Shaheerah@epa.gov>; Lancey, Susan <lancey.susan@epa.gov>; Leung, Chao <Leung.Chao@epa.gov>; Mckelvey, Laura <Mckelvey.Laura@epa.gov>; McLamb, Marguerite <McLamb.Marguerite@epa.gov>; Mia, Marcia <Mia.Marcia@epa.gov>; Narvaez, Madonna <Narvaez.Madonna@epa.gov>; North, Alexis <North.Alexis@epa.gov>; Olson, Kyle <Olson.Kyle@epa.gov>; Ostrand, Laurie <Ostrand.Laurie@epa.gov>; Page, Lee <Page.Lee@epa.gov>; pandya, perry <pandya.perry@epa.gov>; Payne, Melissa <Payne.Melissa@epa.gov>; Russo, Todd

<Russo.Todd@epa.gov>; Sager, John <Sager.John@epa.gov>; Sieffert, Margaret <Sieffert.Margaret@epa.gov>; Smuts, MaryBeth <Smuts.Marybeth@epa.gov>; Stewart, Kathleen <Stewart.Kathleen@epa.gov>; Throwe, Scott <Throwe.Scott@epa.gov>; Trine, Rae <trine.rae@epa.gov>; Valenziano, Beth <valenziano.beth@epa.gov>; Versace, Paul <Versace.Paul@epa.gov>; Wagner, William <wagner.william@epa.gov>; Ward, Ingrid <Ward.Ingrid@epa.gov>; Webber, Robert <Webber.Robert@epa.gov>; Welton, Patricia <Welton.Patricia@epa.gov>; Werner, Leslye <Werner.Leslye@epa.gov>; Whitlow, Jeff <Whitlow.Jeff@epa.gov>; Wilson, Holly <Wilson.Holly@epa.gov>; Zuco, Arthur <Zuco.Arthur@epa.gov>; Morimoto, Kaoru <Morimoto.Kaoru@epa.gov>; Eck, Janet <Eck.Janet@epa.gov>; Thompson, Fred <Thompson.Fred@epa.gov>; Johnson, Mary <Johnson.Mary@epa.gov>; Ayres, Sara <Ayres.Sara@epa.gov>; Jackson, Scott <Jackson.Scott@epa.gov>; Marcus, Danny <marcus.danny@epa.gov>; Rineheart, Rachel <Rineheart.Rachel@epa.gov>; Darrow, Jennifer <darrow.jennifer@epa.gov>; Aquitania, Manny <Aquitania.Manny@epa.gov>; Wayland, Robertj <Wayland.Robertj@epa.gov>; Schell, Bob <Schell.Bob@epa.gov>; Cozzie, David <Cozzie.David@epa.gov>; Lassiter, Penny <Lassiter.Penny@epa.gov>; Dunkins, Robin <Dunkins.Robin@epa.gov>; Conner, Lisa <Conner.Lisa@epa.gov>; Barnett, Keith <Barnett.Keith@epa.gov>; French, Chuck <French.Chuck@epa.gov>; Fruh, Steve <Fruh.Steve@epa.gov>; Culligan, Kevin <Culligan.Kevin@epa.gov>; Law, Nicole <Law.Nicole@epa.gov>; Kinard, Sherrie <Kinard.Sherrie@epa.gov>; Cain, Alexis <cain.alexis@epa.gov>; Godfrey, Janice <Godfrey.Janice@epa.gov>; Mulrine, Phil <Mulrine.Phil@epa.gov>; Rodman, Sonja <Rodman.Sonja@epa.gov>; Gallagher, Bob <Gallagher.Bob@epa.gov>; Srivastava, Ravi <Srivastava.Ravi@epa.gov>; Noonan, Jenny <Noonan.Jenny@epa.gov>; Brachtl, Megan <Brachtl.Megan@epa.gov>; South, Mia <South.Mia@epa.gov>; Yellin, Patrick <Yellin.Patrick@epa.gov>; Diem, Art <Diem.Art@epa.gov>; Castro, Grecia <Castro.Grecia@epa.gov>; Chow, Alice <chow.alice@epa.gov>; Gross-Davis, CarolAnn <Gross-Davis.CarolAnn@epa.gov>; Torres, Elineth <Torres.Elineth@epa.gov>; Lamason, Bill <Lamason.Bill@epa.gov>; Vasu, Amy <Vasu.Amy@epa.gov>; Fairchild, Susan <Fairchild.Susan@epa.gov>; King, Melanie <King.Melanie@epa.gov>; Lischinsky, Robert <Lischinsky.Robert@epa.gov>; Sanchez, Rafael <Sanchez.Rafael@epa.gov>; Aldridge, Amanda <Aldridge.Amanda@epa.gov>; Warner, Maryann <Warner.Maryann@epa.gov>; Owens, Katharine <Owens.Katharine@epa.gov>; Caparoso, Jennifer <Caparoso.Jennifer@epa.gov>; Shine, Brenda <Shine.Brenda@epa.gov>; Mills, Kathy <Mills.Kathy@epa.gov>; Shrager, Brian <Shrager.Brian@epa.gov>; augustine, bruce <augustine.bruce@epa.gov>; Vazquez, Natalia <Vazquez.Natalia@epa.gov>; Shappley, Ned <Shappley.Ned@epa.gov>; Tong, Stanley <Tong.Stanley@epa.gov>; Strine, Lora <Strine.Lora@epa.gov>; Schulingkamp, Joseph <Schulingkamp.Joseph@epa.gov>; Chen, Eugene <Chen.Eugene@epa.gov>; Maurin, Lawrence <Maurin.Lawrence@epa.gov>; Harvey, Lornette <Harvey.Lornette@epa.gov>; Ackerman, Charmagne <Ackerman.Charmagne@epa.gov>; Eddinger, Jim <Eddinger.Jim@epa.gov>; Willard, Erin <Willard.ErinM@epa.gov>; Storey, Brian <storey.brian@epa.gov>; Smith, Korbin <smith.korbin@epa.gov>; Dickerson, Phil <Dickerson.Phil@epa.gov>; Cortelyou-Lee, Jan <Cortelyou-Lee.Jan@epa.gov>; Costa, Allison <Costa.Allison@epa.gov>; Goehl, Eric <Goehl.Eric@epa.gov>; Lavoie, Tegan <lavoie.tegan@epa.gov>; Aquino, Marcos <Aquino.Marcos@epa.gov>; Maldonado, Zelma <Maldonado.Zelma@epa.gov>; Connolly, Scott <Connolly.Scott@epa.gov>; Vyas, Himanshu <vyas.himanshu@epa.gov>; Garwood, Gerri <Garwood.Gerri@epa.gov>; Johnson, Tanya <Johnson.Tanya@epa.gov>; Whitmore, Scott <Whitmore.Scott@epa.gov>; Li, Ryland (Shengzhi) <Li.Ryland@epa.gov>; Payne, JamesJ <payne.jamesj@epa.gov>; Wright, Rhonda <Wright.Rhonda@epa.gov>
Subject: In case you have not heard- OIAI Policy is withdrawn- see memo

FYI

To: Culligan, Kevin[Culligan.Kevin@epa.gov]
From: Lamason, Bill
Sent: Wed 10/11/2017 7:23:21 PM
Subject: OIAI Options Pager 10_04_17b Working Doc_BL comments.docx
OIAI Options Pager 10_04_17b Working Doc_BL comments.docx

Draft pager we're revising. B

To: Culligan, Kevin[Culligan.Kevin@epa.gov]
From: Lamason, Bill
Sent: Wed 10/11/2017 7:22:28 PM
Subject: Draft 2017 OIAI Memo post Peter feedback 09_05_17_CLEAN.docx
Draft 2017 OIAI Memo post Peter feedback 09_05_17_CLEAN.docx

Kevin, Current draft memo. Bill

To: Lassiter, Penny[Lassiter.Penny@epa.gov]; Lamason, Bill[Lamason.Bill@epa.gov]; Culligan, Kevin[Culligan.Kevin@epa.gov]
Cc: Dalcher, Debra[dalcher.debra@epa.gov]
From: Dalcher, Debra
Sent: Mon 1/22/2018 6:27:38 PM
Subject: Reclassification of Major Sources as Area Sources Under Section 112_Draft_1 22 18_1pm.docx (Request Review by Noon 1/23/18)
Reclassification of Major Sources as Area Sources Under Section 112_Draft_1 22 18_1pm.docx
FRN Notice of Memorandum Availability 1_22_18 1pm.docx

Penny, Bill, Kevin

Attached is the new memo for your review. Ex. 5 - Deliberative Process

Ex. 5 - Deliberative Process

Please let me know if you have any comments/questions.

Ex. 5 - Deliberative Process

Thank you, Debra

To: Culligan, Kevin[Culligan.Kevin@epa.gov]
Cc: Conner, Lisa[Conner.Lisa@epa.gov]; French, Chuck[French.Chuck@epa.gov]; Dalcher, Debra[dalcher.debra@epa.gov]
From: Lamason, Bill
Sent: Tue 12/5/2017 3:49:21 PM
Subject: URGENT - NSR Improvement Projects - summary work plan 12-5-17_BL Markup.docx
NSR Improvement Projects - summary work plan 12-5-17_BL Markup.docx

Kevin, Please look at this draft. **Ex. 5 - Deliberative Process**

Ex. 5 - Deliberative Process

Bill

To: Jordan, Scott[Jordan.Scott@epa.gov]; French, Chuck[French.Chuck@epa.gov]; Lamason, Bill[Lamason.Bill@epa.gov]; Culligan, Kevin[Culligan.Kevin@epa.gov]; McLamb, Marguerite[McLamb.Marguerite@epa.gov]
From: Dalcher, Debra
Sent: Mon 12/4/2017 6:12:55 PM
Subject: OIAI_12.4.17 1PM DD.docx
OIAI_12.4.17 1PM DD.docx

For the meeting at 1:15.

Thank you, Debra

To: Culligan, Kevin[Culligan.Kevin@epa.gov]; Dalcher, Debra[dalcher.debra@epa.gov]; Shrager, Brian[Shrager.Brian@epa.gov]; Lamason, Bill[Lamason.Bill@epa.gov]; McLamb, Marguerite[McLamb.Marguerite@epa.gov]; Jordan, Scott[Jordan.Scott@epa.gov]
Cc: Li, Ryland (Shengzhi)[Li.Ryland@epa.gov]
From: Rodman, Sonja
Sent: Tue 1/30/2018 7:30:47 PM
Subject: RE: EPA "Once In, Always In" HAP Policy

The delegation lists are not up to date. Some regions update the tables. Others do not.

Sonja L. Rodman

Air Toxics, Consumer Protection and Indoor Air Practice Group

(202) 564-4079

CONFIDENTIALITY NOTICE: This message may contain sensitive, privileged information covered by the deliberative process, attorney-client and/or attorney work product privileges. Do not release this message under FOIA without appropriate review. If you are not the intended recipient, or the employee or agent responsible to deliver it to the intended recipient, please contact the sender and delete all copies.

From: Culligan, Kevin
Sent: Tuesday, January 30, 2018 2:28 PM
To: Dalcher, Debra <dalcher.debra@epa.gov>; Shrager, Brian <Shrager.Brian@epa.gov>; Lamason, Bill <Lamason.Bill@epa.gov>; McLamb, Marguerite <McLamb.Marguerite@epa.gov>; Jordan, Scott <Jordan.Scott@epa.gov>
Cc: Rodman, Sonja <Rodman.Sonja@epa.gov>
Subject: RE: EPA "Once In, Always In" HAP Policy

Ex. 5 - Deliberative Process

Ex. 5 - Deliberative Process

From: Dalcher, Debra
Sent: Tuesday, January 30, 2018 2:13 PM
To: Shrager, Brian <Shrager.Brian@epa.gov>; Lamason, Bill <Lamason.Bill@epa.gov>; Culligan, Kevin <Culligan.Kevin@epa.gov>; McLamb, Marguerite <McLamb.Marguerite@epa.gov>; Jordan, Scott <Jordan.Scott@epa.gov>
Cc: Rodman, Sonja <Rodman.Sonja@epa.gov>
Subject: FW: EPA "Once In, Always In" HAP Policy
Importance: High

Can anyone help with this one?

From: Jared Rothstein [mailto:rothsteinj@socma.com]
Sent: Tuesday, January 30, 2018 1:48 PM
To: Torres, Elineth <Torres.Elineth@epa.gov>; Dalcher, Debra <dalcher.debra@epa.gov>
Subject: EPA "Once In, Always In" HAP Policy

Hello Debra and Elineth,

I recently reviewed the U.S. EPA guidance memorandum announcing its withdrawal of its "once in always in" policy for the classification of major sources of hazardous air pollutants under section 112 of the Clean Air Act, and had a couple questions regarding implementation. Do you know which states have the delegated authority to ratify this change in policy? My understanding is that it would only apply to the states that have been delegated by EPA to administer the 112 program. I assume EPA's position is that the states with delegated authority are obliged to follow the new policy if they want to maintain their delegation, because the new memo says clearly that the old policy is not authorized by the statute? Any information you might have regarding state adoption of the policy would be very helpful.

Thank you!

Jared

Jared A. Rothstein | *Senior Manager, Regulatory Affairs*

Society of Chemical Manufacturers & Affiliates (SOCMA)

1400 Crystal Drive | Suite 630 | Arlington, VA 22202

(571) 348-5122 | rothsteinj@socma.com

From: Tsirigotis, Peter
Location: RTP-OAQPS-D210A-SPPD-IO-only/RTP-OAQPS-BLDG-D/Restricted
Importance: Normal
Subject: OIAI Discussion, Call-in: Ex. 6 Personal Privacy
Start Date/Time: Mon 12/4/2017 6:15:00 PM
End Date/Time: Mon 12/4/2017 6:45:00 PM

POC: Bill Lamason

To: Lassiter, Penny[Lassiter.Penny@epa.gov]
Cc: Jordan, Scott[Jordan.Scott@epa.gov]; Culligan, Kevin[Culligan.Kevin@epa.gov]; Dalcher, Debra[dalcher.debra@epa.gov]; Rodman, Sonja[Rodman.Sonja@epa.gov]
From: Lamason, Bill
Sent: Fri 1/19/2018 12:47:45 AM
Subject: Re: Once In Always In - Document for Today's Meeting - Notes on Memo and Rulemaking

Penny,
Thanks for your email. I agree that OMB will likely want to review whatever we do on OIAI.

Ex. 5 - Deliberative Process

Bill

Sent from my iPhone

On Jan 18, 2018, at 5:27 PM, Lassiter, Penny <Lassiter.Penny@epa.gov> wrote:

Ex. 5 - Deliberative Process

Penny Lassiter

Group Leader

Refining and Chemicals Group

SPPD/OAQPS

U.S. Environmental Protection Agency

Mail Code: E143-01

Research Triangle Park, NC 27711

(919) 541-5396

lassiter.penny@epa.gov

From: Jordan, Scott
Sent: Thursday, January 18, 2018 11:20 AM
To: Harlow, David <harlow.david@epa.gov>; Lamason, Bill <Lamason.Bill@epa.gov>; Culligan, Kevin <Culligan.Kevin@epa.gov>; Dalcher, Debra <dalcher.debra@epa.gov>; Rodman, Sonja <Rodman.Sonja@epa.gov>; Lassiter, Penny <Lassiter.Penny@epa.gov>
Subject: Once In Always In - Document for Today's Meeting - Notes on Memo and Rulemaking

To All –

In advance of our meeting today on the Once-In-Always-In policy, I have attached a document that contains notes on the points and issues that I propose we discuss today.

Please note that this is a draft for our discussion, and not a final document for moving forward.

Further, while you are certainly welcome to look at this document in advance of the meeting, its primary purpose is to provide a road-map for our discussion. It is not intended to be a stand-alone document that conveys all of the relevant information.

Scott Jordan

Air and Radiation Law Office

Office of General Counsel

202-564-7508

-----Original Appointment-----
From: Harlow, David
Sent: Friday, January 12, 2018 3:15 PM
To: Harlow, David; Lamason, Bill; Culligan, Kevin; Dalcher, Debra; Jordan, Scott; Rodman, Sonja; Lassiter, Penny
Subject: General Discussion
When: Thursday, January 18, 2018 4:00 PM-4:30 PM (UTC-05:00) Eastern Time (US & Canada).
Where: WJC-N 5415 + Dial In: 202-564-1700; Conference ID: 110-7083; Participant Code: 234-567

To: David Harlow, Bill Lamason, Kevin Culligan, Debra Dalcher, Scott Jordan, Sonja Rodman

From: Dalcher, Debra
Location: Bill's Office, Call in on Ex. 6 - Personal Privacy
Importance: Normal
Subject: Pre-Peter Meeting to Discuss OIAI Memo - re. Implementation Section (OGC outstanding comments); Added 2007 OIAI Proposal for Reference Purposes
Start Date/Time: Mon 12/4/2017 4:00:00 PM
End Date/Time: Mon 12/4/2017 5:00:00 PM
OIAI_12.4.17 0800 DD.DOCX
2007 OIAI FRN proposal.pdf

Meeting to review & discuss outstanding comments/questions from OGC in the implementation Section of the Memo.

Incorporated Scott's minor edits to his comments in the version attached to this meeting notice.

Thank you, Debra

To: Lamason, Bill[Lamason.Bill@epa.gov]; French, Chuck[French.Chuck@epa.gov]; McLamb, Marguerite[McLamb.Marguerite@epa.gov]; Culligan, Kevin[Culligan.Kevin@epa.gov]; Vetter, Rick[Vetter.Rick@epa.gov]; Jordan, Scott[Jordan.Scott@epa.gov]
Cc: Dalcher, Debra[dalcher.debra@epa.gov]
From: Dalcher, Debra
Sent: Mon 12/4/2017 1:43:42 PM
Subject: OIAI_12.4.17 0800 DD.docx
OIAI_12.4.17 0800 DD.docx

Good Morning Everyone,

Attached is the current version of the memo.

Outstanding Issues:

Ex. 5 - Deliberative Process

Please send comments/edits if you have them…. we have an update meeting with Peter today at 1PM.

Thank you, Debra

To: Lamason, Bill[Lamason.Bill@epa.gov]
Cc: French, Chuck[French.Chuck@epa.gov]; Culligan, Kevin[Culligan.Kevin@epa.gov]; Dalcher, Debra[dalcher.debra@epa.gov]; McLamb, Marguerite[McLamb.Marguerite@epa.gov]
From: Dalcher, Debra
Sent: Mon 12/4/2017 1:06:51 PM
Subject: OIAI Options Pager 11_01_17_(Updated for Koerber 11_30_17)-Inc CF edits.docx
OIAI Options Pager 11_01_17_(Updated for Koerber 11_30_17)-Inc CF edits.docx

Updated to reflect Chuck's edits 11 30 17, 5:13 pm. I saved this version to the G drive.

Thanks Chuck, Debra

To: Jordan, Scott[Jordan.Scott@epa.gov]; Lamason, Bill[Lamason.Bill@epa.gov]; Culligan, Kevin[Culligan.Kevin@epa.gov]
From: Dalcher, Debra
Sent: Tue 1/16/2018 4:59:45 PM
Subject: OIAI Action Timeline 011618 DD.xlsx
OIAI Action Timeline 011618 DD.xlsx

Current version of the proposed schedule.

From: Lamason, Bill
Location: D220D/Bill's OFfice, Ex. 6 Personal Privacy
Importance: Normal
Subject: OIAI Economic Analysis Resource Estimates
Start Date/Time: Mon 1/29/2018 6:00:00 PM
End Date/Time: Mon 1/29/2018 7:00:00 PM
Costing analysis options_BL and BLS comments_2.docx

To: French, Chuck[French.Chuck@epa.gov]; Lamason, Bill[Lamason.Bill@epa.gov]
Cc: Culligan, Kevin[Culligan.Kevin@epa.gov]; McLamb, Marguerite[McLamb.Marguerite@epa.gov]; Srivastava, Ravi[Srivastava.Ravi@epa.gov]; Chuck French[french.chuck@gmail.com]
From: Dalcher, Debra
Sent: Fri 12/1/2017 1:25:50 AM
Subject: Re: OIAI%2011.27.2017+SJJ 11.30.17_Clean.docx
OIAI%2011.27.2017+SJJ 11.30.17_Clean-cf-edits (Dalcher, Debra).docx

Thank you Chuck. Debra

From: French, Chuck
Sent: Thursday, November 30, 2017 7:17 PM
To: Dalcher, Debra; Lamason, Bill
Cc: Culligan, Kevin; McLamb, Marguerite; Srivastava, Ravi; Chuck French
Subject: RE: OIAI%2011.27.2017+SJJ 11.30.17_Clean.docx

Hi Debra,

Attached are a few suggested edits. I only reviewed pages 1-4 so far. I may provide additional edits on Monday.

Meanwhile, let me know if you have questions.

Thanks.

Chuck

From: Dalcher, Debra
Sent: Thursday, November 30, 2017 5:12 PM
To: Lamason, Bill <Lamason.Bill@epa.gov>
Cc: Culligan, Kevin <Culligan.Kevin@epa.gov>; French, Chuck <French.Chuck@epa.gov>; McLamb, Marguerite <McLamb.Marguerite@epa.gov>; Srivastava, Ravi <Srivastava.Ravi@epa.gov>; Dalcher, Debra <dalcher.debra@epa.gov>
Subject: OIAI%2011.27.2017+SJJ 11.30.17_Clean.docx

Ex. 5 - Deliberative Process

To: Koerber, Mike[Koerber.Mike@epa.gov]
Cc: French, Chuck[French.Chuck@epa.gov]; Culligan, Kevin[Culligan.Kevin@epa.gov]; Eck, Janet[Eck.Janet@epa.gov]; South, Peter[South.Peter@epa.gov]
From: Lamason, Bill
Sent: Wed 11/15/2017 9:32:43 PM
Subject: RE: OIAI Options Pager
OIAI Options Pager 11_01_17_Sent to Koerber 11_15_17_1630_Clean_NWM.docx

Mike,

I'm resending the OIAI pager with some minor formatting changes, including moving the footnotes to endnotes. Let us know if you have any questions.

Bill

From: Lamason, Bill
Sent: Wednesday, November 15, 2017 10:48 AM
To: Mike Koerber <Koerber.Mike@epa.gov>
Cc: French, Chuck <French.Chuck@epa.gov>; Culligan, Kevin <Culligan.Kevin@epa.gov>; Eck, Janet <Eck.Janet@epa.gov>; Peter South <South.Peter@epa.gov>
Subject: OIAI Options Pager

Mike,

Please see attached the pager for OIAI options. The options were prepared per my phone message. Please let us know if you have any questions. Thanks!

Bill

To: French, Chuck[French.Chuck@epa.gov]; Dalcher, Debra[dalcher.debra@epa.gov]
Cc: Culligan, Kevin[Culligan.Kevin@epa.gov]
From: Lamason, Bill
Sent: Thur 11/30/2017 10:11:42 PM
Subject: RE: OIAI Options Pager 11_01_17_(Updated for Koerber 11_30_17_).docx
OIAI Options Pager 11_01_17_(Updated for Koerber 11_30_17_1640)RLSO.docx

Chuck, I accepted all of your edits and made a couple more. Please see the attached RLSO version for your information. Thanks again for your help! Bill

From: French, Chuck
Sent: Thursday, November 30, 2017 4:38 PM
To: Lamason, Bill <Lamason.Bill@epa.gov>; Dalcher, Debra <dalcher.debra@epa.gov>
Cc: Culligan, Kevin <Culligan.Kevin@epa.gov>; French, Chuck <French.Chuck@epa.gov>
Subject: RE: OIAI Options Pager 11_01_17_(Updated for Koerber 11_30_17_).docx

Attached are a few suggested edits. Let me know if you have questions.

Thanks!

Chuck

From: Lamason, Bill
Sent: Thursday, November 30, 2017 1:54 PM
To: Dalcher, Debra <dalcher.debra@epa.gov>; French, Chuck <French.Chuck@epa.gov>
Cc: Culligan, Kevin <Culligan.Kevin@epa.gov>
Subject: OIAI Options Pager 11_01_17_(Updated for Koerber 11_30_17_).docx

Debra,

Please see attached a clean and RLSO version of the updated OIAI 2-pager. The

change requested by Peter is under approach 3 and I also changed options to approaches as we'll be giving Wehrum an informational briefing.

Let me know if you are okay with this as I plan to send this to Koerber this afternoon.

I will send the draft meeting request(s) separately.

Thanks!

Bill

To: Dalcher, Debra[dalcher.debra@epa.gov]; Lamason, Bill[Lamason.Bill@epa.gov]; Rodman, Sonja[Rodman.Sonja@epa.gov]; Culligan, Kevin[Culligan.Kevin@epa.gov]
From: Jordan, Scott
Sent: Thur 1/25/2018 6:17:16 PM
Subject: OIAI Memo - Final OGC Comments
OIAI.Reclassification of Major Sources as Area Sources Under Section 112 Draft_01 25 2018-Final OGC Comments.1.25.18.docx

Debra and All –

Attached is the memo, with a few additional edits to capture the last OGC comments:

Ex. 5 - Deliberative Process

With these additional edits, this version now incorporates all of OGC's comments.

If you have any questions, please let us know.

Scott Jordan

Air and Radiation Law Office

Office of General Counsel

202-564-7508

To: Lamason, Bill[Lamason.Bill@epa.gov]; Dalcher, Debra[dalcher.debra@epa.gov]; Lassiter, Penny[Lassiter.Penny@epa.gov]; Jordan, Scott[Jordan.Scott@epa.gov]; Culligan, Kevin[Culligan.Kevin@epa.gov]; Rodman, Sonja[Rodman.Sonja@epa.gov]
Cc: Tsirigotis, Peter[Tsirigotis.Peter@epa.gov]; Schwab, Justin[Schwab.Justin@epa.gov]; Gunasekara, Mandy[Gunasekara.Mandy@epa.gov]
From: Harlow, David
Sent: Thur 1/25/2018 3:56:19 PM
Subject: Final version of new paragraph for inclusion on page 4 of the OI/AI memorandum
OIAI insert X.docx

All,

Attached is final version of the paragraph that should be included on page 4 of the OI/IA memorandum, right before the memo's final paragraph. We've received White House sign-off on the language here.

Thank you.

David S. Harlow
Senior Counsel

Immediate Office of the Assistant Administrator
Office of Air and Radiation, USEPA
WJC-N Room 5409K

1200 Pennsylvania Avenue NW
Washington, DC 20460
202-564-1233

Harlow.David@epa.gov

To: Jordan, Scott[Jordan.Scott@epa.gov]; Rodman, Sonja[Rodman.Sonja@epa.gov]; McLamb, Marguerite[McLamb.Marguerite@epa.gov]
Cc: Lamason, Bill[Lamason.Bill@epa.gov]; Culligan, Kevin[Culligan.Kevin@epa.gov]
From: Dalcher, Debra
Sent: Tue 12/19/2017 5:24:07 PM
Subject: Fw: Revised draft of OIAI guidance memorandum
dshRevisedOIAImemorandum.docx

Hi everyone,

The attached document provides Bill Wehrum's input on the OIAI memo. We did not receive a redline strike out version. I will be reviewing my notes from our meeting yesterday and taking a close look at this document tomorrow.

Thank you, Debra

Thank you, Debra

From: Lamason, Bill
Sent: Tuesday, December 19, 2017 10:29 AM
To: Dalcher, Debra
Cc: Culligan, Kevin
Subject: Revised draft of OIAI guidance memorandum

Debra, Attached is the revised OIAI memo. Not a RLSO so we'll have to figure out the changes. Bill

To: Culligan, Kevin[Culligan.Kevin@epa.gov]
From: Lamason, Bill
Sent: Mon 12/18/2017 6:18:06 PM
Subject: OIAI Options 12_18_17.docx
OIAI Options 12_18_17.docx

Kevin, Per your request. Bill

To: Tsirigotis, Peter[Tsirigotis.Peter@epa.gov]
From: Dalcher, Debra
Sent: Fri 12/8/2017 4:17:26 PM
Subject: OIAI Revision Memo_12.8.17.Wehrum Draft.docx
OIAI Revision Memo_12.8.17.Wehrum Draft.docx

Peter,

Here you go.

Please confirm receipt.

Thank you, Debra

To: Culligan, Kevin[Culligan.Kevin@epa.gov]
From: Lamason, Bill
Sent: Mon 12/18/2017 2:42:16 PM
Subject: Once-in, Always-in Policy Revision

Kevin, Per our conversation. Bill

Subject:	Once-in, Always-in Policy Revision
Location:	WJC-N 5400 + Video with OAQPS + Ex. 6 - Personal Privacy Participant Code: Ex. 6 - Personal Privacy
Start:	Mon 12/18/2017 2:00 PM
End:	Mon 12/18/2017 2:45 PM
Recurrence:	(none)
Meeting Status:	Accepted
Organizer:	Wehrum, Bill
Required Attendees:	Gunasekara, Mandy; Harlow, David; Lewis, Josh; Page, Steve; Koerber, Mike; Harnett, Bill; Tsirigotis, Peter; Lamason, Bill; Wood, Anna; Kornylak, Vera S.; Rodman, Sonja; Jordan, Scott; Vetter, Rick; Dalcher, Debra; Woods, Clinton; Noonan, Jenny
Optional Attendees:	Alston, Lala; Johnson, Tanya; McKinney, Voronina; Eck, Janet; Santiago, Juan; Vetter, Cheryl

To: Wehrum, Bill; Mandy Gunasekara (Gunasekara.Mandy@epa.gov); Harlow, David; Lewis, Josh; Page, Steve; Koerber, Mike; Harnett, Bill; Tsirigotis, Peter; Lamason, Bill; Wood, Anna; Kornylak, Vera S.; Rodman, Sonja; Jordan, Scott; Vetter, Rick; Dalcher, Debra; Woods, Clint
Cc: Alston, Lala; Johnson, Tanya; McKinney, Voronina; Eck, Janet

To: Dalcher, Debra[dalcher.debra@epa.gov]; Culligan, Kevin[Culligan.Kevin@epa.gov]; Jordan, Scott[Jordan.Scott@epa.gov]
Cc: Rodman, Sonja[Rodman.Sonja@epa.gov]
From: Lamason, Bill
Sent: Fri 1/26/2018 6:40:07 PM
Subject: OIAI Coordination

Debra, Scott and Kevin,

Some initial thoughts on near term (and beyond) follow up to the Wehrum memo signed yesterday and the rulemakings needed.

Ex. 5 - Deliberative Process

- Other?

To: Culligan, Kevin[Culligan.Kevin@epa.gov]; Jordan, Scott[Jordan.Scott@epa.gov]; Lamason, Bill[Lamason.Bill@epa.gov]
From: Dalcher, Debra
Sent: Thur 1/11/2018 5:21:00 PM
Subject: OIAI Action Timeline 011118 DD.xlsx
OIAI Action Timeline 011118 DD.xlsx

1st Draft

To: Culligan, Kevin[Culligan.Kevin@epa.gov]
From: Lamason, Bill
Sent: Tue 1/9/2018 8:35:51 PM
Subject: FW: Letter to Administrator Pruitt Requesting Withdrawal of Once-In-Always-In Policy
NAM Testimony of Ross Eisenberg 11.15.17.pdf
ATT00001.htm
Barrasso Eisenberg QFR Responses 11.15.2017.pdf
ATT00002.htm
ACA Letter to EPW final.pdf
ATT00003.htm
20180109 Letter from Barrasso and Capito on Once-In-Always-In.pdf
ATT00004.htm

FYI. Per our conversation. b

From: Tsirigotis, Peter
Sent: Tuesday, January 09, 2018 2:11 PM
To: Lamason, Bill <Lamason.Bill@epa.gov>
Subject: Fwd: Letter to Administrator Pruitt Requesting Withdrawal of Once-In-Always-In Policy

FYI

Begin forwarded message:

From: "Harlow, David" <harlow.david@epa.gov>
Date: January 9, 2018 at 2:07:57 PM EST
To: "Tsirigotis, Peter" <Tsirigotis.Peter@epa.gov>, "Woods, Clint" <woods.clint@epa.gov>
Subject: FW: Letter to Administrator Pruitt Requesting Withdrawal of Once-In-Always-In Policy

David S. Harlow
Senior Counsel

Immediate Office of the Assistant Administrator
Office of Air and Radiation, USEPA
WJC-N Room 5409K

1200 Pennsylvania Avenue NW
Washington, DC 20460
202-564-1233

Harlow.David@epa.gov

From: Palich, Christian
Sent: Tuesday, January 9, 2018 12:09 PM
To: Wehrum, Bill <Wehrum.Bill@epa.gov>; Gunasekara, Mandy <Gunasekara.Mandy@epa.gov>; Harlow, David <harlow.david@epa.gov>; Dominguez, Alexander <dominguez.alexander@epa.gov>
Cc: Lyons, Troy <lyons.troy@epa.gov>; Frye, Tony (Robert) <frye.robert@epa.gov>
Subject: FW: Letter to Administrator Pruitt Requesting Withdrawal of Once-In-Always-In Policy

Hi All,

FYI. We just received this letter from Chairman Barrasso and the EPW committee.

Bes Regards,

Christian R. Palich

Deputy Associate Administrator

Office of Congressional & Intergovernmental Affairs

U.S Environmental Protection Agency

O: 202.564.4944

C: 202.306.4656

E: Palich.Christian@epa.gov

From: Horner, Elizabeth (EPW) [mailto:Elizabeth_Horner@epw.senate.gov]
Sent: Tuesday, January 9, 2018 12:06 PM
To: Lyons, Troy <lyons.troy@epa.gov>; Palich, Christian <palich.christian@epa.gov>
Cc: Cone, Travis (Capito) <Travis_Cone@capito.senate.gov>; Russell, Richard (EPW) <Richard_Russell@epw.senate.gov>
Subject: Letter to Administrator Pruitt Requesting Withdrawal of Once-In-Always-In Policy

Christian and Troy,

Attached is an electronic copy of a letter from EPW Chairman Barrasso and EPW Subcommittee on Clean Air and Nuclear Safety Chairman Capito to Administrator Pruitt requesting that he withdraw the so-called "once-in-always-in" policy. Enclosures to the letter are also attached. We are sending a hard copy by mail as well.

We would appreciate if you could please share with the Administrator and any other appropriate staff.

I would be happy to answer any questions about the letter or provide you with more information.

Best,

Elizabeth

Elizabeth L. Horner

Majority Counsel

Senate Committee on Environment and Public Works

Elizabeth_Horner@epw.senate.gov

(202) 224-7841

From: Dalcher, Debra
Location: Ex. 6 - Personal Privacy
Importance: Normal
Subject: FW: General Discussion
Start Date/Time: Wed 1/10/2018 6:00:00 PM
End Date/Time: Wed 1/10/2018 6:30:00 PM

-----Original Appointment-----
From: Dalcher, Debra
Sent: Tuesday, January 09, 2018 12:23 PM
To: Dalcher, Debra; Lamason, Bill; Culligan, Kevin
Subject: General Discussion
When: Wednesday, January 10, 2018 1:00 PM-1:30 PM (UTC-05:00) Eastern Time (US & Canada).
Where: Ex. 6 - Personal Privacy

From: Lamason, Bill
Sent: Tuesday, January 09, 2018 12:18 PM
To: Dalcher, Debra <dalcher.debra@epa.gov>; Culligan, Kevin <Culligan.Kevin@epa.gov>
Subject: General Discussion

Please join this short conversation with David Harlow on OIAI. We're asking about the Ex. 5 - Deliberative Process/Attorney Client and he may ask us about other elements. B

Subject: General Discussion
Location: David will call Bill at Ex. 6 - Personal Privacy

Start: Wed 1/10/2018 1:00 PM
End: Wed 1/10/2018 1:30 PM

Recurrence: (none)

Meeting Status: Accepted

Organizer: Harlow, David
Required Attendees: Lamason, Bill

To: Dalcher, Debra[dalcher.debra@epa.gov]; Culligan, Kevin[Culligan.Kevin@epa.gov]
From: Lamason, Bill
Sent: Tue 1/9/2018 5:17:44 PM
Subject: General Discussion

Please join this short conversation with David Harlow on OIAI. We're asking about the Ex. 5 - Deliberative Process/Attorney Client and he may ask us about other elements. B .

Subject: General Discussion
Location: David will call Bill at Ex. 6 - Personal Privacy

Start: Wed 1/10/2018 1:00 PM
End: Wed 1/10/2018 1:30 PM

Recurrence: (none)

Meeting Status: Accepted

Organizer: Harlow, David
Required Attendees: Lamason, Bill

To: Dalcher, Debra[dalcher.debra@epa.gov]; Culligan, Kevin[Culligan.Kevin@epa.gov]
From: Lamason, Bill
Sent: Tue 1/9/2018 4:42:05 PM
Subject: FW: OIAI Discussion - Seeking further clarification re Ex. 5 - Deliberative Process/Attorney Client

Peter weighed in. Will need to talk ASAP. Also need you and Kevin to join the call with Harlow tomorrow. B

From: Dalcher, Debra
Sent: Tuesday, January 09, 2018 10:55 AM
To: Jordan, Scott <Jordan.Scott@epa.gov>; Culligan, Kevin <Culligan.Kevin@epa.gov>; McLamb, Marguerite <McLamb.Marguerite@epa.gov>
Cc: Lamason, Bill <Lamason.Bill@epa.gov>; Rodman, Sonja <Rodman.Sonja@epa.gov>
Subject: RE: OIAI Discussion - Seeking further clarification re Ex. 5 - Deliberative Process/Attorney Client

All,

Realizing we might need Peter and Sonja to weigh in… Ex. 5 - Deliberative Process/Attorney Client

Ex. 5 - Deliberative Process/Attorney Client

Terms Bill did use:

Ex. 5 - Deliberative Process/Attorney Client

Ex. 5 - Deliberative Process/Attorney Client

Debra

From: Jordan, Scott
Sent: Tuesday, January 09, 2018 10:38 AM
To: Dalcher, Debra <dalcher.debra@epa.gov>; Culligan, Kevin <Culligan.Kevin@epa.gov>; McLamb, Marguerite <McLamb.Marguerite@epa.gov>
Cc: Lamason, Bill <Lamason.Bill@epa.gov>; Rodman, Sonja <Rodman.Sonja@epa.gov>
Subject: OIAI Discussion - Seeking further clarification re "final agency action"

One more clarification on the instructions from Bill and Peter:

Ex. 5 - Deliberative Process/Attorney Client

Scott Jordan

Air and Radiation Law Office

Office of General Counsel

202-564-7508

From: Dalcher, Debra
Sent: Monday, January 8, 2018 2:34 PM
To: Jordan, Scott; Culligan, Kevin; McLamb, Marguerite
Cc: Lamason, Bill; Dalcher, Debra

Ex. 5 - Deliberative Process / Attorney Client

Subject: RE: OIAI Discussion - Open Issues

Ex. 5 - Deliberative Process/Attorney Client

Thank you, Debra

-----Original Appointment-----
From: Dalcher, Debra
Sent: Friday, January 05, 2018 11:20 AM
To: Dalcher, Debra; Jordan, Scott; Culligan, Kevin
Cc: Lamason, Bill; McLamb, Marguerite
Subject: OIAI Discussion - Agenda will be Added / Memo w/SJ Edits Attached
When: Monday, January 08, 2018 11:00 AM-12:00 PM (UTC-05:00) Eastern Time (US & Canada).
Where: RTP-OAQPS-Ex. 6 Personal Privacy SPPD/Phone-Line/RTP-OAQPS-BLDG-C

Agenda

Wehrum Version of Memo

- Discussion on the content of the memo.

Ex. 5 - Deliberative Process/Attorney Client

- Supplemental Proposal

Ex. 5 - Deliberative Process/Attorney Client

To: Dalcher, Debra[dalcher.debra@epa.gov]; Culligan, Kevin[Culligan.Kevin@epa.gov]; McLamb, Marguerite[McLamb.Marguerite@epa.gov]
Cc: Lamason, Bill[Lamason.Bill@epa.gov]; Rodman, Sonja[Rodman.Sonja@epa.gov]
From: Jordan, Scott
Sent: Tue 1/9/2018 3:37:34 PM
Subject: OIAI Discussion - Seeking further clarification Ex. 5 - Deliberative Process/Attorney Client

One more clarification on the instructions from Bill and Peter:

Ex. 5 - Deliberative Process/Attorney Client

Scott Jordan

Air and Radiation Law Office

Office of General Counsel

202-564-7508

From: Dalcher, Debra
Sent: Monday, January 8, 2018 2:34 PM
To: Jordan, Scott; Culligan, Kevin; McLamb, Marguerite
Cc: Lamason, Bill; Dalcher, Debra
Subject: RE: OIAI Discussion - Open Issues (Ex. 5 - Deliberative Process/Attorney Client)

Ex. 5 - Deliberative Process/Attorney Client

Ex. 5 - Deliberative Process/Attorney Client

Thank you, Debra

-----Original Appointment-----
From: Dalcher, Debra
Sent: Friday, January 05, 2018 11:20 AM
To: Dalcher, Debra; Jordan, Scott; Culligan, Kevin
Cc: Lamason, Bill; McLamb, Marguerite
Subject: OIAI Discussion - Agenda will be Added / Memo w/SJ Edits Attached
When: Monday, January 08, 2018 11:00 AM-12:00 PM (UTC-05:00) Eastern Time (US & Canada).
Where: RTP-OAQPS-Ex. 6 Personal Privacy-SPPD/Phone-Line/RTP-OAQPS-BLDG-C

Agenda

Wehrum Version of Memo

- Discussion on the content of the memo.

Ex. 5 - Deliberative Process/Attorney Client

Ex. 5 - Deliberative Process/Attorney Client

- Supplemental Proposal

Ex. 5 - Deliberative Process/Attorney Client

To: Dalcher, Debra[dalcher.debra@epa.gov]; Lamason, Bill[Lamason.Bill@epa.gov]; Culligan, Kevin[Culligan.Kevin@epa.gov]
From: McLamb, Marguerite
Sent: Mon 1/8/2018 4:02:11 PM
Subject: FW: OIAO - Revised Draft Memo following Wehrum Guidance/Revisions - Scott Comments
OIAI.RevisedOIAImemorandum_1 5 2018+ SJJ 1.8.18.docx

Hi-

My calendar is not showing an 11 am call, so I may not have been on the invite. Could you please forward the call-in information to me?

Thanks!
Marguerite

From: Jordan, Scott
Sent: Monday, January 08, 2018 10:23 AM
To: Dalcher, Debra <dalcher.debra@epa.gov>; Culligan, Kevin <Culligan.Kevin@epa.gov>; Lamason, Bill <Lamason.Bill@epa.gov>
Cc: Rodman, Sonja <Rodman.Sonja@epa.gov>; McLamb, Marguerite <McLamb.Marguerite@epa.gov>
Subject: OIAO - Revised Draft Memo following Wehrum Guidance/Revisions - Scott Comments

Debra, Kevin and Bill –

In advance of our call at 11:00, attached are my comments on the latest version of the memo (that incorporated Bill Wehrum's revisions and guidance).

Ex. 5 - Attorney Client /Deliberative Process

Scott Jordan

Air and Radiation Law Office

Office of General Counsel

202-564-7508

To: Dalcher, Debra[dalcher.debra@epa.gov]; Culligan, Kevin[Culligan.Kevin@epa.gov]; Lamason, Bill[Lamason.Bill@epa.gov]
Cc: Rodman, Sonja[Rodman.Sonja@epa.gov]; McLamb, Marguerite[McLamb.Marguerite@epa.gov]
From: Jordan, Scott
Sent: Mon 1/8/2018 3:38:49 PM
Subject: RE: OIAO - Revised Draft Memo following Wehrum Guidance/Revisions - Scott Comments
OIAI.RevisedOIAImemorandum_1 5 2018+ SJJ 1.8.18.docx

FYI – Attached are the same comments on the memo that I sent a little while ago, but this version adds Ex. 5 - Attorney Client /Deliberative Process

Ex. 5 - Attorney Client /Deliberative Process

Scott Jordan

Air and Radiation Law Office

Office of General Counsel

202-564-7508

From: Jordan, Scott
Sent: Monday, January 08, 2018 10:23 AM
To: Dalcher, Debra <dalcher.debra@epa.gov>; Culligan, Kevin <Culligan.Kevin@epa.gov>; Lamason, Bill <Lamason.Bill@epa.gov>
Cc: Rodman, Sonja <Rodman.Sonja@epa.gov>; McLamb, Marguerite <McLamb.Marguerite@epa.gov>
Subject: OIAO - Revised Draft Memo following Wehrum Guidance/Revisions - Scott Comments

Debra, Kevin and Bill –

In advance of our call at 11:00, attached are my comments on the latest version of the memo (that incorporated Bill Wehrum's revisions and guidance).

Ex. 5 - Attorney Client /Deliberative Process

Scott Jordan

Air and Radiation Law Office

Office of General Counsel

202-564-7508

To: Jordan, Scott[Jordan.Scott@epa.gov]
Cc: Culligan, Kevin[Culligan.Kevin@epa.gov]; Lamason, Bill[Lamason.Bill@epa.gov]
From: Dalcher, Debra
Sent: Fri 1/5/2018 6:31:52 PM
Subject: RevisedOIAImemorandum_1 5 2018 .docx
RevisedOIAImemorandum_1 5 2018 .docx

Welcome back Scott,

Here is the current version of the memo. I made a couple of editorial changes this morning (minor).

I sent this out (w/o edits) while you were on leave. We did not receive a redline strikeout from B. Wehrum so this is what we will work from.

Looking forward to catching up on Monday and discussing the next steps based upon our briefing w/BW before the holiday.

Thanks, Debra

To: Culligan, Kevin[Culligan.Kevin@epa.gov]
From: Santiago, Juan
Sent: Thur 1/25/2018 9:18:45 PM
Subject: RE: OIAI Reclassification of Major Sources as Area Sources Under Section 112 _01 25 2018.docx

ok

From: Culligan, Kevin
Sent: Thursday, January 25, 2018 4:18 PM
To: Santiago, Juan <Santiago.Juan@epa.gov>
Subject: RE: OIAI Reclassification of Major Sources as Area Sources Under Section 112 _01 25 2018.docx

Don't share this beyond folks like aAnna yet. Has not been released.

From: Culligan, Kevin
Sent: Thursday, January 25, 2018 3:53 PM
To: Santiago, Juan <Santiago.Juan@epa.gov>
Subject: FW: OIAI Reclassification of Major Sources as Area Sources Under Section 112 _01 25 2018.docx

From: Lamason, Bill
Sent: Thursday, January 25, 2018 3:43 PM
To: Eck, Janet <Eck.Janet@epa.gov>; Mills, Kathy <Mills.Kathy@epa.gov>; Culligan, Kevin <Culligan.Kevin@epa.gov>; Jordan, Scott <Jordan.Scott@epa.gov>; Rodman, Sonja <Rodman.Sonja@epa.gov>
Subject: FW: OIAI Reclassification of Major Sources as Area Sources Under Section 112 _01 25 2018.docx

Signed. Waiting on PACS (OAQPS comms) to post desk statement on web. The embargo lifted. B

From: Lewis, Josh
Sent: Thursday, January 25, 2018 3:37 PM
To: Henigin, Mary <Henigin.Mary@epa.gov>; Iglesias, Amber <Iglesias.Amber@epa.gov>; Koerber, Mike <Koerber.Mike@epa.gov>; Lamason, Bill <Lamason.Bill@epa.gov>; Dalcher, Debra <dalcher.debra@epa.gov>; French, Chuck <French.Chuck@epa.gov>; Lassiter, Penny <Lassiter.Penny@epa.gov>
Subject: RE: OIAI Reclassification of Major Sources as Area Sources Under Section 112 _01 25 2018.docx

Thanks again. Here's the pdf. Isabel also has it so she will be sending to OAQPS comms to coordinate web posting

Josh

From: Henigin, Mary
Sent: Thursday, January 25, 2018 3:17 PM
To: Lewis, Josh <Lewis.Josh@epa.gov>; Iglesias, Amber <Iglesias.Amber@epa.gov>
Subject: Fwd: OIAI Reclassification of Major Sources as Area Sources Under Section 112 _01 25 2018.docx

Josh, It is here.

Amber, thanks much

Thank you

Mary

Begin forwarded message:

From: "South, Peter" <South.Peter@epa.gov>

Date: January 25, 2018 at 3:13:56 PM EST
To: "Eck, Janet" <Eck.Janet@epa.gov>, "Koerber, Mike" <Koerber.Mike@epa.gov>, "Henigin, Mary" <Henigin.Mary@epa.gov>
Cc: "Henigin, Mary" <Henigin.Mary@epa.gov>, "Lamason, Bill" <Lamason.Bill@epa.gov>, "Dalcher, Debra" <dalcher.debra@epa.gov>, "French, Chuck" <French.Chuck@epa.gov>, "Lassiter, Penny" <Lassiter.Penny@epa.gov>
Subject: RE: OIAI Reclassification of Major Sources as Area Sources Under Section 112 _01 25 2018.docx

See final version. No edits to text other than Bill's signature block (just formatting changes).

Thanks.

From: Eck, Janet
Sent: Thursday, January 25, 2018 2:37 PM
To: Koerber, Mike <Koerber.Mike@epa.gov>; South, Peter <South.Peter@epa.gov>
Cc: Henigin, Mary <Henigin.Mary@epa.gov>; Lamason, Bill <Lamason.Bill@epa.gov>; Dalcher, Debra <dalcher.debra@epa.gov>; French, Chuck <French.Chuck@epa.gov>; Lassiter, Penny <Lassiter.Penny@epa.gov>
Subject: OIAI Reclassification of Major Sources as Area Sources Under Section 112 _01 25 2018.docx

Attached is the Once In Always In memo that has been approved by OAR. Please forward for their final review and signature. I will put this document into CMS as #OAR-18-000-3788 for their staff to finalize. We will forward the FR notice as soon as it is approved. Thanks.

To: Eck, Janet[Eck.Janet@epa.gov]; Mills, Kathy[Mills.Kathy@epa.gov]; Culligan, Kevin[Culligan.Kevin@epa.gov]; Jordan, Scott[Jordan.Scott@epa.gov]; Rodman, Sonja[Rodman.Sonja@epa.gov]
From: Lamason, Bill
Sent: Thur 1/25/2018 9:13:20 PM
Subject: RE: OIAI Reclassification of Major Sources as Area Sources Under Section 112 _01 25 2018.docx

Hold. Embargo still on. Waiting on desk statement to be posted. B

From: Lamason, Bill
Sent: Thursday, January 25, 2018 3:42 PM
To: Eck, Janet <Eck.Janet@epa.gov>; Mills, Kathy <Mills.Kathy@epa.gov>; Culligan, Kevin <Culligan.Kevin@epa.gov>; Jordan, Scott <Jordan.Scott@epa.gov>; Rodman, Sonja <Rodman.Sonja@epa.gov>
Subject: FW: OIAI Reclassification of Major Sources as Area Sources Under Section 112 _01 25 2018.docx

Signed. Waiting on PACS (OAQPS comms) to post desk statement on web. The embargo lifted. B

From: Lewis, Josh
Sent: Thursday, January 25, 2018 3:37 PM
To: Henigin, Mary <Henigin.Mary@epa.gov>; Iglesias, Amber <Iglesias.Amber@epa.gov>; Koerber, Mike <Koerber.Mike@epa.gov>; Lamason, Bill <Lamason.Bill@epa.gov>; Dalcher, Debra <dalcher.debra@epa.gov>; French, Chuck <French.Chuck@epa.gov>; Lassiter, Penny <Lassiter.Penny@epa.gov>
Subject: RE: OIAI Reclassification of Major Sources as Area Sources Under Section 112 _01 25 2018.docx

Thanks again. Here's the pdf. Isabel also has it so she will be sending to OAQPS comms to coordinate web posting

Josh

From: Henigin, Mary
Sent: Thursday, January 25, 2018 3:17 PM
To: Lewis, Josh <Lewis.Josh@epa.gov>; Iglesias, Amber <Iglesias.Amber@epa.gov>
Subject: Fwd: OIAI Reclassification of Major Sources as Area Sources Under Section 112 _01 25 2018.docx

Josh, It is here.

Amber, thanks much

Thank you

Mary

Begin forwarded message:

From: "South, Peter" <South.Peter@epa.gov>
Date: January 25, 2018 at 3:13:56 PM EST
To: "Eck, Janet" <Eck.Janet@epa.gov>, "Koerber, Mike" <Koerber.Mike@epa.gov>, "Henigin, Mary" <Henigin.Mary@epa.gov>
Cc: "Henigin, Mary" <Henigin.Mary@epa.gov>, "Lamason, Bill" <Lamason.Bill@epa.gov>, "Dalcher, Debra" <dalcher.debra@epa.gov>, "French, Chuck" <French.Chuck@epa.gov>, "Lassiter, Penny" <Lassiter.Penny@epa.gov>
Subject: RE: OIAI Reclassification of Major Sources as Area Sources Under Section 112 _01 25 2018.docx

See final version. No edits to text other than Bill's signature block (just formatting changes).

Thanks.

From: Eck, Janet
Sent: Thursday, January 25, 2018 2:37 PM
To: Koerber, Mike <Koerber.Mike@epa.gov>; South, Peter <South.Peter@epa.gov>
Cc: Henigin, Mary <Henigin.Mary@epa.gov>; Lamason, Bill <Lamason.Bill@epa.gov>; Dalcher, Debra <dalcher.debra@epa.gov>; French, Chuck <French.Chuck@epa.gov>; Lassiter,

Penny <Lassiter.Penny@epa.gov>
Subject: OIAI Reclassification of Major Sources as Area Sources Under Section 112 _01 25 2018.docx

Attached is the Once In Always In memo that has been approved by OAR. Please forward for their final review and signature. I will put this document into CMS as #OAR-18-000-3788 for their staff to finalize. We will forward the FR notice as soon as it is approved. Thanks.

From: Dalcher, Debra
Location: Call in Ex. 6 - Personal Privacy
Importance: Normal
Subject: OIAI Memo - Supporting Doc Development
Start Date/Time: Wed 12/13/2017 4:30:00 PM
End Date/Time: Wed 12/13/2017 5:00:00 PM

To: Dalcher, Debra[dalcher.debra@epa.gov]; Culligan, Kevin[Culligan.Kevin@epa.gov]
From: Lamason, Bill
Sent: Tue 12/12/2017 1:26:36 PM
Subject: NSR Improvement Projects - summary work plan 12-11-17 Revision1A (SPPD).docx
NSR Improvement Projects - summary work plan 12-11-17 Revision1A (SPPD).docx

Debra and Kevin,

Attached is what I send back to Koerber this morning. Spoke with Peter last night.

Bill

To: Dalcher, Debra[dalcher.debra@epa.gov]; Culligan, Kevin[Culligan.Kevin@epa.gov]
Cc: Tsirigotis, Peter[Tsirigotis.Peter@epa.gov]
From: Lamason, Bill
Sent: Mon 12/11/2017 10:36:49 PM
Subject: NSR Improvement Projects - summary work plan 12-11-17 Revision1A (SPPD).docx
NSR Improvement Projects - summary work plan 12-11-17 Revision1A (SPPD).docx

Kevin and Debra,

Thanks for your help today. I will try to connect with Peter on feedback from Bill W. on the draft memo and timing before sending this to Mike and Juan in the morning.

Bill

To: Culligan, Kevin[Culligan.Kevin@epa.gov]
From: Lamason, Bill
Sent: Mon 12/11/2017 8:38:11 PM
Subject: NSR Improvement Projects - summary work plan 12-11-17 Revision1 (003).docx
NSR Improvement Projects - summary work plan 12-11-17 Revision1 (003).docx

To: Lamason, Bill[Lamason.Bill@epa.gov]; Santiago, Juan[Santiago.Juan@epa.gov]
Cc: Culligan, Kevin[Culligan.Kevin@epa.gov]
From: Koerber, Mike
Sent: Mon 12/11/2017 5:51:45 PM
Subject: RE: Updated paper

Thanks, Bill. We may move this meeting to Monday, Dec 18, if that helps. But, we do want to send up the paper in the next day or so – and expect to include our current best estimates of dates.

Mike

From: Lamason, Bill
Sent: Monday, December 11, 2017 12:39 PM
To: Santiago, Juan <Santiago.Juan@epa.gov>; Koerber, Mike <Koerber.Mike@epa.gov>
Cc: Culligan, Kevin <Culligan.Kevin@epa.gov>
Subject: RE: Updated paper

Juan, Please call me. These dates are not in any document I was involved in sending up for SPPD – the initial draft of this document or the two pager we sent to Bill Wehrum. We are meeting with Bill on 12/20 and it would seem most appropriate for us to meet with Bill first before committing to dates.

Thanks!

Bill

From: Santiago, Juan
Sent: Monday, December 11, 2017 12:15 PM
To: Koerber, Mike <Koerber.Mike@epa.gov>; Lamason, Bill <Lamason.Bill@epa.gov>
Subject: RE: Updated paper

They just came from the paper that SPPD put together on OIAI. By all means, make sure SPPD is fine with them or modify as needed.

Juan

From: Koerber, Mike
Sent: Monday, December 11, 2017 11:37 AM
To: Lamason, Bill <Lamason.Bill@epa.gov>
Cc: Santiago, Juan <Santiago.Juan@epa.gov>
Subject: RE: Updated paper

I'm not sure where Juan got those dates. I assumed they came from SPPD.

Juan – can you clarify?

From: Lamason, Bill
Sent: Monday, December 11, 2017 11:33 AM
To: Koerber, Mike <Koerber.Mike@epa.gov>
Subject: RE: Updated paper

Mike, Looking at this now. Did Peter or someone else from SPPD weigh in on the specific dates under the options?

Bill

From: Koerber, Mike
Sent: Monday, December 11, 2017 10:55 AM
To: Lamason, Bill <Lamason.Bill@epa.gov>; Santiago, Juan <Santiago.Juan@epa.gov>

Cc: Wood, Anna <Wood.Anna@epa.gov>; Tsirigotis, Peter <Tsirigotis.Peter@epa.gov>
Subject: Updated paper

Bill, Juan – Before I send this to OAR, please take a look. (Juan – this is what you sent me, with a bit of clean-up.) Thanks.

Mike

To: Culligan, Kevin[Culligan.Kevin@epa.gov]; French, Chuck[French.Chuck@epa.gov]
From: Lamason, Bill
Sent: Mon 12/11/2017 5:40:28 PM
Subject: FW: Updated paper
NSR Improvement Projects - summary work plan 12-11-17 Revision1.docx

Per our conversations. This is a head scratcher at best.

B

From: Koerber, Mike
Sent: Monday, December 11, 2017 10:55 AM
To: Lamason, Bill <Lamason.Bill@epa.gov>; Santiago, Juan <Santiago.Juan@epa.gov>
Cc: Wood, Anna <Wood.Anna@epa.gov>; Tsirigotis, Peter <Tsirigotis.Peter@epa.gov>
Subject: Updated paper

Bill, Juan – Before I send this to OAR, please take a look. (Juan – this is what you sent me, with a bit of clean-up.) Thanks.

Mike

To: Santiago, Juan[Santiago.Juan@epa.gov]; Koerber, Mike[Koerber.Mike@epa.gov]
Cc: Culligan, Kevin[Culligan.Kevin@epa.gov]
From: Lamason, Bill
Sent: Mon 12/11/2017 5:39:06 PM
Subject: RE: Updated paper

Juan, Please call me. These dates are not in any document I was involved in sending up for SPPD – the initial draft of this document or the two pager we sent to Bill Wehrum. We are meeting with Bill on 12/20 and it would seem most appropriate for us to meet with Bill first before committing to dates.

Thanks!

Bill

From: Santiago, Juan
Sent: Monday, December 11, 2017 12:15 PM
To: Koerber, Mike <Koerber.Mike@epa.gov>; Lamason, Bill <Lamason.Bill@epa.gov>
Subject: RE: Updated paper

They just came from the paper that SPPD put together on OIAI. By all means, make sure SPPD is fine with them or modify as needed.

Juan

From: Koerber, Mike
Sent: Monday, December 11, 2017 11:37 AM
To: Lamason, Bill <Lamason.Bill@epa.gov>
Cc: Santiago, Juan <Santiago.Juan@epa.gov>
Subject: RE: Updated paper

I'm not sure where Juan got those dates. I assumed they came from SPPD.

Juan – can you clarify?

From: Lamason, Bill
Sent: Monday, December 11, 2017 11:33 AM
To: Koerber, Mike <Koerber.Mike@epa.gov>
Subject: RE: Updated paper

Mike, Looking at this now. Did Peter or someone else from SPPD weigh in on the specific dates under the options?

Bill

From: Koerber, Mike
Sent: Monday, December 11, 2017 10:55 AM
To: Lamason, Bill <Lamason.Bill@epa.gov>; Santiago, Juan <Santiago.Juan@epa.gov>
Cc: Wood, Anna <Wood.Anna@epa.gov>; Tsirigotis, Peter <Tsirigotis.Peter@epa.gov>
Subject: Updated paper

Bill, Juan – Before I send this to OAR, please take a look. (Juan – this is what you sent me, with a bit of clean-up.) Thanks.

Mike

To: Jordan, Scott[Jordan.Scott@epa.gov]; Rodman, Sonja[Rodman.Sonja@epa.gov]
Cc: Vetter, Rick[Vetter.Rick@epa.gov]; Lamason, Bill[Lamason.Bill@epa.gov]; Culligan, Kevin[Culligan.Kevin@epa.gov]; McLamb, Marguerite[McLamb.Marguerite@epa.gov]; French, Chuck[French.Chuck@epa.gov]; Dalcher, Debra[dalcher.debra@epa.gov]
From: Dalcher, Debra
Sent: Fri 12/8/2017 4:12:05 PM
Subject: Fw: OIAI Revision Memo_12.8.17.Wehrum Draft.docx
OIAI Revision Memo_12.8.17.Wehrum Draft.docx
OIAI Options Pager 12.8.17 w SJ edits 1100 am.docx

All, attached are the current drafts[12/8/17] of both the Options pager and the Revision memo. The draft memo went to Wehrum via Peter this morning. If you provide any edits to the memo you will need to turn track changes back on. Continue to comment as needed. I will set up a meeting to discuss the RTC like document referenced in the memo early next week.

Best Regards, Debra

Thank you everyone, Debra

From: Dalcher, Debra
Sent: Friday, December 8, 2017 10:55 AM
To: Tsirigotis, Peter
Cc: Thompson, Fred; Lamason, Bill; Goehl, Eric; French, Chuck; Dalcher, Debra; McLamb, Marguerite
Subject: OIAI Revision Memo_12.8.17.Wehrum Draft.docx

Peter,

OGC (Scott Jordan) reviewed the memo this morning. I have incorporated his edits and attached a clean version of our draft document.

You can reach me at Ex. 6 - Personal Privacy if you have any questions upon receipt.

Best Regards, Debra

To: Rodman, Sonja[Rodman.Sonja@epa.gov]; Dalcher, Debra[dalcher.debra@epa.gov]
Cc: Vetter, Rick[Vetter.Rick@epa.gov]; Lamason, Bill[Lamason.Bill@epa.gov]; Culligan, Kevin[Culligan.Kevin@epa.gov]; French, Chuck[French.Chuck@epa.gov]
From: McLamb, Marguerite
Sent: Mon 11/20/2017 11:08:27 PM
Subject: RE: Memo replacing OIAI with proposed 2007 interpretation_11_20_17_3pm.docx

Great. Sonja, I will set up a time to talk in the morning. Thanks, everyone.

****

Marguerite E. McLamb
Policy Advisor
Sector Policies and Programs Division
Office of Air Quality Planning & Standards
U.S. Environmental Protection Agency
Research Triangle Park, NC 27711
Phone: (919) 541-7858
Fax: (919) 541-4991
mclamb.marguerite@epa.gov

From: Rodman, Sonja
Sent: Monday, November 20, 2017 5:54 PM
To: Dalcher, Debra; McLamb, Marguerite
Cc: Vetter, Rick; Lamason, Bill; Culligan, Kevin; French, Chuck
Subject: RE: Memo replacing OIAI with proposed 2007 interpretation_11_20_17_3pm.docx

Thanks everyone, Marguerite give me a call if you'd like to discuss. I have some ideas . . .

Sonja L. Rodman
Air Toxics, Consumer Protection and Indoor Air Practice Group
(202) 564-4079

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From: Dalcher, Debra
Sent: Monday, November 20, 2017 3:22 PM
To: McLamb, Marguerite <McLamb.Marguerite@epa.gov>
Cc: Vetter, Rick <Vetter.Rick@epa.gov>; Lamason, Bill <Lamason.Bill@epa.gov>; Dalcher, Debra <dalcher.debra@epa.gov>; Culligan, Kevin <Culligan.Kevin@epa.gov>; Rodman, Sonja <Rodman.Sonja@epa.gov>; French, Chuck <French.Chuck@epa.gov>
Subject: Memo replacing OIAI with proposed 2007 interpretation_11_20_17_3pm.docx
Importance: High

Marguerite,

Here is the current version of the memo. I have addressed Sonja's comments and left notes to inform your review/reorganization of the memo.

Ex. 5 - Attorney Client /Deliberative Process

Ex. 5 - Attorney Client /Deliberative Process

Rick sent a note that he will be out of the office after noon tomorrow (returning on 11/28) so if we could

get something to him for review that would be helpful. He did say that he is working on the legal section so hopefully he will share that prior to his departure and we can plug that in to inform further work on the memo.

Sonja would like to review after Rick per her email, but maybe we can get some feedback on the revised organization of the memo sooner rather than later.

I have not received the list we discussed from Kevin yet. I will be in the office Tuesday and Wednesday of this week working on the memo and starting review/work on the 2007 proposal comments.

Thank you everyone, Debra

To: Culligan, Kevin[Culligan.Kevin@epa.gov]; McLamb, Marguerite[McLamb.Marguerite@epa.gov]
Cc: Lamason, Bill[Lamason.Bill@epa.gov]; Dalcher, Debra[dalcher.debra@epa.gov]
From: Dalcher, Debra
Sent: Mon 11/20/2017 9:18:09 PM
Subject: Peter's Example Regarding Ex. 5 - Deliberative Process

Kevin, Marguerite

I spoke with Brian Shrager, Jodi Howard, and Nabanita Modak regarding Ex. 5 - Deliberative Process

Ex. 5 - Deliberative Process

Thank you, Debra

Debra S. Dalcher

U.S. EPA

Policy and Strategies Group

Sector Policies and Programs Division, OAQPS

109 T.W. Alexander Drive

Research Triangle Park, NC 27711

Phone: 919-541-2443

To: Culligan, Kevin[Culligan.Kevin@epa.gov]
Cc: Lamason, Bill[Lamason.Bill@epa.gov]
From: Dalcher, Debra
Sent: Mon 11/20/2017 4:25:45 PM
Subject: Memo replacing OIAI with proposed 2007 interpretation_11_20_17_1115.docx
Memo replacing OIAI with proposed 2007 interpretation_11_20_17_1115.docx

For 11:30 meeting Kevin. Debra

To: Culligan, Kevin[Culligan.Kevin@epa.gov]
Cc: French, Chuck[French.Chuck@epa.gov]
From: Lamason, Bill
Sent: Thur 11/16/2017 10:07:55 PM
Subject: FW: Current Version of Revision Memo
Memo replacing OIAI with proposed 2007 interpretation_11_16_17_430.docx

Kevin,

FYI. Please see the attached current draft of the OIAI policy revision memo. OGC is still reviewing and editing the current draft and we also need to do some follow up work in response to the comments we have through today. There will be another version next week but wanted to share this draft for you to read, if you have the opportunity or need.

While we are making progress on the memo, the comment summary and response work is just beginning in earnest. I'll update you next week on our progress on that document. As you may recall, when the Agency was ordered to stop work on moving forward with the 2007 proposal, we apparently had not complete a summary of comments. As a result, there is significant work yet to be done on our response to comments.

Let me know if you have any questions.

Bill

From: Dalcher, Debra
Sent: Thursday, November 16, 2017 4:47 PM
To: Rodman, Sonja <Rodman.Sonja@epa.gov>; Lamason, Bill <Lamason.Bill@epa.gov>
Cc: Torres, Elineth <Torres.Elineth@epa.gov>; Vetter, Rick <Vetter.Rick@epa.gov>; McLamb, Marguerite <McLamb.Marguerite@epa.gov>
Subject: RE: Current Version of Revision Memo

Hi Sonja,

I have addressed some of your comments, but not all. I am out of time for today.

I am attaching my working version for you to work with tomorrow.

We have started categorizing the comments, but have not yet begun summarizing or responding. I will get back to you on a timeline for the RTC on Monday and would like to strategize a little on how we approach that. We have about 300 comments on the proposal (not yet sure how many are substantive).

Tomorrow is my CDO.

Thank you! Debra

From: Rodman, Sonja
Sent: Thursday, November 16, 2017 2:38 PM
To: Dalcher, Debra <dalcher.debra@epa.gov>; Vetter, Rick <Vetter.Rick@epa.gov>; McLamb, Marguerite <McLamb.Marguerite@epa.gov>
Cc: Torres, Elineth <Torres.Elineth@epa.gov>; Lamason, Bill <Lamason.Bill@epa.gov>
Subject: RE: Current Version of Revision Memo

Thanks Debra. I assume the revised version will address our comments and include your new pieces?

Ex. 5 - Attorney Client/ Deliberative Process

Ex. 5 - Attorney Client/ Deliberative Process

Sonja L. Rodman

Air Toxics, Consumer Protection and Indoor Air Practice Group

(202) 564-4079

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From: Dalcher, Debra
Sent: Thursday, November 16, 2017 2:27 PM
To: Vetter, Rick <Vetter.Rick@epa.gov>; McLamb, Marguerite <McLamb.Marguerite@epa.gov>; Rodman, Sonja <Rodman.Sonja@epa.gov>
Cc: Torres, Elineth <Torres.Elineth@epa.gov>; Lamason, Bill <Lamason.Bill@epa.gov>
Subject: RE: Current Version of Revision Memo

Rick,

There is quite a bit that is new. We spent the most time on the Implementation Piece at the end of the memo fleshing that part out. We also spent some time consulting with the permitting folks on the structure for that section to ensure they were on board with how we framed the state program requirements.

Peter has already discussed the OIAI pager and the memo with W. Wehrum so Bill L. thinks Peter will want a draft memo to share before the Holiday next week (possibly).

Bill will send out a revised version of this memo at the end of the day. I am updating now.

Thank you everyone, Debra

From: Vetter, Rick

Sent: Thursday, November 16, 2017 2:15 PM
To: Dalcher, Debra <dalcher.debra@epa.gov>; McLamb, Marguerite <McLamb.Marguerite@epa.gov>; Lamason, Bill <Lamason.Bill@epa.gov>; Rodman, Sonja <Rodman.Sonja@epa.gov>
Cc: Torres, Elineth <Torres.Elineth@epa.gov>
Subject: RE: Current Version of Revision Memo

I apologize, Debra. Looking at it more closely, I realized that you have filled in the blanks toward the end of the memo. I didn't see any text that looked new when I first looked at it.

Rick

Richard H. Vetter

Richard H. Vetter

Attorney Advisor

Air & Radiation Law Office

Office of General Counsel

vetter.rick@epa.gov

919-541-2127

From: Dalcher, Debra
Sent: Thursday, November 16, 2017 1:40 PM
To: Vetter, Rick <Vetter.Rick@epa.gov>; McLamb, Marguerite <McLamb.Marguerite@epa.gov>; Lamason, Bill <Lamason.Bill@epa.gov>; Rodman, Sonja <Rodman.Sonja@epa.gov>
Cc: Torres, Elineth <Torres.Elineth@epa.gov>
Subject: RE: Current Version of Revision Memo

Rick,

This is the current version.

Thank you, Debra

From: Vetter, Rick
Sent: Thursday, November 16, 2017 1:30 PM
To: Dalcher, Debra <dalcher.debra@epa.gov>; McLamb, Marguerite <McLamb.Marguerite@epa.gov>; Lamason, Bill <Lamason.Bill@epa.gov>; Rodman, Sonja <Rodman.Sonja@epa.gov>
Cc: Torres, Elineth <Torres.Elineth@epa.gov>
Subject: RE: Current Version of Revision Memo

Debra,

The attached reflects Sonja's and my comments on the draft attached to your email. I know you have continued to work on the document. Hopefully, the comments won't be superfluous as a result. I am working on a beefed up legal discussion. I'd like to know what facts I have to work with, so I will appreciate it if you will send me a copy of the current iteration. Thanks.

Rick

Richard H. Vetter

Richard H. Vetter

Attorney Advisor

Air & Radiation Law Office

Office of General Counsel

vetter.rick@epa.gov

919-541-2127

From: Dalcher, Debra
Sent: Monday, November 13, 2017 4:09 PM
To: McLamb, Marguerite <McLamb.Marguerite@epa.gov>; Vetter, Rick <Vetter.Rick@epa.gov>; Lamason, Bill <Lamason.Bill@epa.gov>; Rodman, Sonja <Rodman.Sonja@epa.gov>
Cc: Dalcher, Debra <dalcher.debra@epa.gov>; Torres, Elineth <Torres.Elineth@epa.gov>
Subject: Current Version of Revision Memo
Importance: High

As promised during our meeting this morning I am sending out the current working draft of the memo for your review/any comments.

Elineth and I will begin work on this again tomorrow. We would appreciate any feedback you might have on the attached.

Thank you, Debra

Debra S. Dalcher

U.S. EPA

Policy and Strategies Group

Sector Policies and Programs Division, OAQPS

109 T.W. Alexander Drive

Research Triangle Park, NC 27711

Phone: 919-541-2443

To: Culligan, Kevin[Culligan.Kevin@epa.gov]; French, Chuck[French.Chuck@epa.gov]; Conner, Lisa[Conner.Lisa@epa.gov]; Dalcher, Debra[dalcher.debra@epa.gov]
From: Lamason, Bill
Sent: Tue 12/5/2017 6:37:43 PM
Subject: RE: Quick question

Kevin, Thanks. Ex. 5 - Deliberative Process

Ex. 5 - Deliberative Process

Thanks again.

Bill

-----Original Message-----
From: Culligan, Kevin
Sent: Tuesday, December 05, 2017 12:41 PM
To: French, Chuck <French.Chuck@epa.gov>; Lamason, Bill <Lamason.Bill@epa.gov>; Conner, Lisa <Conner.Lisa@epa.gov>; Dalcher, Debra <dalcher.debra@epa.gov>
Subject: RE: Quick question

Ex. 5 - Deliberative Process

-----Original Message-----
From: French, Chuck
Sent: Tuesday, December 05, 2017 12:02 PM
To: Lamason, Bill <Lamason.Bill@epa.gov>; Culligan, Kevin <Culligan.Kevin@epa.gov>; Conner, Lisa <Conner.Lisa@epa.gov>; Dalcher, Debra <dalcher.debra@epa.gov>
Subject: RE: Quick question

Attached are a few suggested edits. Let me know if you have questions.

-----Original Message-----
From: Lamason, Bill
Sent: Tuesday, December 5, 2017 11:52 AM
To: Culligan, Kevin <Culligan.Kevin@epa.gov>; French, Chuck <French.Chuck@epa.gov>; Conner, Lisa <Conner.Lisa@epa.gov>; Dalcher, Debra <dalcher.debra@epa.gov>
Subject: FW: Quick question

FYI. Cleaned version. Bill

-----Original Message-----
From: Koerber, Mike
Sent: Tuesday, December 05, 2017 11:44 AM
To: Lamason, Bill <Lamason.Bill@epa.gov>; South, Peter <South.Peter@epa.gov>
Cc: Wood, Anna <Wood.Anna@epa.gov>; Johnson, Yvonne W <Johnson.Yvonnew@epa.gov>; Tsirigotis, Peter <Tsirigotis.Peter@epa.gov>
Subject: RE: Quick question

Thanks, Bill! I did some clean-up - see attachment.

Mike

-----Original Message-----
From: Lamason, Bill
Sent: Tuesday, December 05, 2017 11:37 AM

To: Koerber, Mike <Koerber.Mike@epa.gov>
Cc: Wood, Anna <Wood.Anna@epa.gov>; Johnson, Yvonne W <Johnson.Yvonnew@epa.gov>; Tsirigotis, Peter <Tsirigotis.Peter@epa.gov>
Subject: RE: Quick question

Mike,

Per your request, please see my markup attached. Let me know if you have any questions.

Bill
-----Original Message-----
From: Koerber, Mike
Sent: Tuesday, December 05, 2017 10:24 AM
To: Lamason, Bill <Lamason.Bill@epa.gov>
Cc: Wood, Anna <Wood.Anna@epa.gov>; Johnson, Yvonne W <Johnson.Yvonnew@epa.gov>; Tsirigotis, Peter <Tsirigotis.Peter@epa.gov>
Subject: FW: Quick question

Bill - No pressure, but we'd like to get this to OAR in advance of a 1:00 pm meeting today.

Mike

-----Original Message-----
From: Wood, Anna
Sent: Tuesday, December 05, 2017 10:12 AM
To: Koerber, Mike <Koerber.Mike@epa.gov>
Cc: Santiago, Juan <Santiago.Juan@epa.gov>; Johnson, Yvonne W <Johnson.Yvonnew@epa.gov>; Rao, Raj <Rao.Raj@epa.gov>
Subject: RE: Quick question

Mike, attached is what we have put together for the NSR discussion. Please let us know if there are any questions.

Bill, please see the attachment and add the once in always in info as you see fit.

Thanks!

-----Original Message-----
From: Koerber, Mike
Sent: Tuesday, December 05, 2017 10:08 AM
To: Wood, Anna <Wood.Anna@epa.gov>
Cc: Santiago, Juan <Santiago.Juan@epa.gov>
Subject: RE: Quick question

Yes, Bill L.

-----Original Message-----
From: Wood, Anna
Sent: Tuesday, December 05, 2017 9:50 AM
To: Koerber, Mike <Koerber.Mike@epa.gov>
Cc: Santiago, Juan <Santiago.Juan@epa.gov>
Subject: Quick question

Who in SPPD do we need to send the pager to in NSR reforms to add to what we have prepared- Bill Lamison? Thx

Sent from my iPhone

To: Jordan, Scott[Jordan.Scott@epa.gov]
Cc: Lamason, Bill[Lamason.Bill@epa.gov]; Culligan, Kevin[Culligan.Kevin@epa.gov]; Rodman, Sonja[Rodman.Sonja@epa.gov]
From: Dalcher, Debra
Sent: Wed 1/24/2018 2:05:23 PM
Subject: RE: OIAO - Possible revision to "Nothing in the structure of the CAA" sentence.

Scott, can I share this with David prior to the discussion today? It would be helpful for him to be looking at this language during the discussion at 09:30 given we all have it.

Thanks, Debra

From: Jordan, Scott
Sent: Wednesday, January 24, 2018 9:01 AM
To: Dalcher, Debra <dalcher.debra@epa.gov>
Cc: Lamason, Bill <Lamason.Bill@epa.gov>; Culligan, Kevin <Culligan.Kevin@epa.gov>; Rodman, Sonja <Rodman.Sonja@epa.gov>
Subject: OIAO - Possible revision to "Nothing in the structure of the CAA" sentence.

In advance of our discussion today, here are possible edits to the sentence that Kevin has flagged and some of the other text in that paragraph:

Ex. 5 - Attorney Client /Deliberative Process

Scott Jordan

Air and Radiation Law Office

Office of General Counsel

202-564-7508

From: Dalcher, Debra
Sent: Monday, January 22, 2018 3:56 PM
To: Jordan, Scott <Jordan.Scott@epa.gov>
Cc: Dalcher, Debra <dalcher.debra@epa.gov>; Lamason, Bill <Lamason.Bill@epa.gov>; Culligan, Kevin <Culligan.Kevin@epa.gov>; Rodman, Sonja <Rodman.Sonja@epa.gov>
Subject: RE: Reclassification of Major Sources as Area Sources Under Section 112_Draft_1 22 18_1pm.docx

Scott,

Ex. 5 - Attorney Client /Deliberative Process

That is the last of Kevin's comments. None from Penny yet.

Thank you, Debra

From: Dalcher, Debra
Sent: Monday, January 22, 2018 3:02 PM
To: Jordan, Scott <Jordan.Scott@epa.gov>
Cc: Dalcher, Debra <dalcher.debra@epa.gov>
Subject: Reclassification of Major Sources as Area Sources Under Section 112_Draft_1 22

18_1pm.docx

Scott, see attached.

Ex. 5 - Attorney Client /Deliberative Process

Debra

JOHN BARRASSO, WYOMING, *CHAIRMAN*

JAMES M. INHOFE, OKLAHOMA
SHELLEY MOORE CAPITO, WEST VIRGINIA
JOHN BOOZMAN, ARKANSAS
ROGER WICKER, MISSISSIPPI
DEB FISCHER, NEBRASKA
JERRY MORAN, KANSAS
MIKE ROUNDS, SOUTH DAKOTA
JONI ERNST, IOWA
DAN SULLIVAN, ALASKA
RICHARD SHELBY, ALABAMA

THOMAS R. CARPER, DELAWARE
BENJAMIN L. CARDIN, MARYLAND
BERNARD SANDERS, VERMONT
SHELDON WHITEHOUSE, RHODE ISLAND
JEFF MERKLEY, OREGON
KIRSTEN GILLIBRAND, NEW YORK
CORY A. BOOKER, NEW JERSEY
EDWARD J. MARKEY, MASSACHUSETTS
TAMMY DUCKWORTH, ILLINOIS
KAMALA D. HARRIS, CALIFORNIA

RICHARD M. RUSSELL, *MAJORITY STAFF DIRECTOR*
GABRIELLE BATKIN, *MINORITY STAFF DIRECTOR*

United States Senate

COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS
WASHINGTON, DC 20510–6175

January 9, 2018

The Honorable Scott Pruitt
Administrator
Environmental Protection Agency
1200 Pennsylvania Avenue NW
Washington, DC 20460

Dear Administrator Pruitt:

We write to request that you rescind a current EPA policy that disincentivizes air emissions reductions. On November 15, 2017, the Committee held a hearing entitled, "Promoting American Leadership in Reducing Air Emissions Through Innovation." In testimony during that hearing, the so-called "once-in-always-in" policy under the Clean Air Act was identified as a policy that discourages emissions reductions.

The 1995 policy requires a source to comply with stringent emissions standards even if the source later lowers its emissions below the "major source" thresholds that triggered the standards in the first place. In the enclosed submissions to the November 15th hearing record, the National Association of Manufacturers and the American Coatings Association (ACA) highlighted the practical effects of the policy. As ACA explains, "resources spent on compliance could be used instead for [research and development], or modernization activities."

EPA can rescind this policy, which was issued under Section 112 of the Clean Air Act, without any legislative changes. As the Chairmen of the Committee and Subcommittee of jurisdiction over the Clean Air Act, we request that you incentivize additional hazardous air pollutant emissions reductions by promptly withdrawing this policy. If you have additional questions about the Committee's hearing that reviewed this issue, please contact Elizabeth Horner of the Committee's staff at 202-224-6176.

Sincerely,

John Barrasso

John Barrasso, M.D.
Chairman

Shelley Moore Capito

Shelley Moore Capito
Chairman
Subcommittee on Clean Air and
Nuclear Safety

Enclosures

PRINTED ON RECYCLED PAPER

AmericanCoatings
ASSOCIATION℠

December 6, 2017

The Honorable John Barrasso, Chair
Committee on Environment and Public Works
U.S. Senate
Washington, DC 20510

The Honorable Thomas Carper, Ranking Member
Committee on Environment and Public Works
U.S. Senate
Washington, DC 20510

RE: Promoting American Leadership in Reducing Air Emissions Through Innovation Hearing, November 15, 2017; Statement of Support on behalf of the American Coatings Association, Inc.

Dear Chairman Barrasso and Ranking Member Carper:

The American Coatings Association (ACA) is pleased to submit this statement of support for the Committee on Environment and Public Works hearing on "Promoting American Leadership in Reducing Air Emissions Through Innovation," and to showcase the efforts of the coatings industry in reducing air emissions.

ACA is a voluntary, non-profit trade association working to advance the needs of the paint and coatings industry and the professionals who work in it. The organization represents paint and coatings manufacturers, raw materials suppliers, distributors, and technical professionals. ACA serves as an advocate and ally for members on legislative, regulatory and judicial issues, and provides a forum for the advancement and promotion of the industry through educational and professional development services. ACA's membership represents over 90% of the total domestic production of paints and coatings in the country.

ACA is eager to highlight the coatings industry's successes in reducing air emissions from our products and our facilities due to aggressive and robust research and development activities. Innovation has driven market demand for environmentally friendly products, which has resulted in significant reductions in both hazardous air pollutants (HAPS) and volatile organic compound (VOC) emissions from production in recent years. At our recent Coatings Industry Policy Summit, ACA sponsored a luncheon for congressional staff to specifically discuss these and other innovations by coatings manufacturers.

The Coatings Industry's Addresses Environmental Issues Proactively

The paint and coatings industry has taken steps for maximum environmental improvements by managing and minimizing toxins and wastes, reducing air emissions, and promoting product and environmental stewardship. Here is a short list of our environmental successes:

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- More than 90% of architectural coatings sales in the United States are now for environmentally preferable water-based paint.
- VOC emissions from architectural coatings have drastically decreased over the last few decades, even while the use of architectural coatings has increased over the same period nationwide. California's South Coast Air Quality Management District estimates that VOCs from architectural coatings in the Los Angeles area — the air basin with the most severe air quality issues in the country — decreased by over 50% between 2008 and 2014.
- The U.S. Environmental Protection Agency's (EPA) Toxic Release Inventory (TRI) indicates releases by the paint and coatings sector decreased by 81% between 1990 and 2014. Toxicity-weighted results for air releases present an even more significant decline, decreasing 94% from 1990. Air toxics — also known as HAPs — decreased by 82% between 1990 and 2014, and toxicity-weighted air toxics releases declined by 94%.
- The paint and coatings industry reduced its total production waste by 48%, from 1995 to 2013, while increasing the percentage of the total waste it recycles by over 81% during that period.
- The paint, coatings, and adhesives manufacturing industry reduced its generation of Resource Conservation and Recovery Act (RCRA) hazardous waste in the United States by over one-third (34.8%) since 2001.
- 97% of all waste solvents from paint and coatings manufacturing facilities are reclaimed for future use.
- The total quantity of electricity purchased and used for heat and power — and as a result, greenhouse gas emissions — from the paint and coatings sector decreased by 17.8 % between 2007 and 2012.

Here are some real examples of how the coatings industry's research and development efforts have resulted in environmental gains, including reductions in air emissions in a variety of market sectors, as well as strides in sustainability.

Architectural Paints

- Many architectural paints — both interior and exterior — are now paint and primer in one product, which allows for a paint-job with fewer coats, translating to greater efficiency and environmental advantages. These combinations are designed to provide a high-quality application that is more durable and lasts longer, thereby reducing the frequency for repainting or multiple applications.

- Emulsion technology used in architectural paints allows for low-VOC, near odorless paints with high-scrub resistance, and come in a variety of finishes, from flat to semi-gloss sheens.

- Certain architectural paints use renewable, bio-based or recycled ingredients, such as recycled plastic and soybean oil, shifting away from organic solvents. Bio-based products are composed of agricultural, forestry, or marine materials. Such innovation has been recognized with the Presidential Green Chemistry Challenge Award.

- Specially formulated low-emitting interior coatings protect the health and comfort of sensitive populations, including children in schools and patients in hospitals.

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Cool Roofs

- Cool roof coatings not only lower buildings' energy consumption and costs, but also overall temperature and stress on the power grid. This effort could help reduce New York City's greenhouse gas emissions 30% by 2030.

- According to the National Resources Defense Council, 'smart roofs' employing cool coatings technology substantially reduce energy costs and curb carbon pollution.

- The U.S. Department of Energy (DOE) estimates that replacing or resurfacing conventional roofing materials with improved reflective elastomeric roof coatings can reduce a commercial building's annual air conditioning energy use by up to 25%.

Aerospace Coatings

New technology in aerospace coatings can minimize drag in the air and eliminate debris build-up, both of which reduce airplane fuel consumption, and thereby, carbon footprint. Such savings have both an economic and environmental impact that cannot be understated: a 1% improvement in fuel efficiency in the aviation industry can lower fuel costs by $700 million a year, according to the International Air Transport Association (IATA). On average, airlines incur about $100 a minute per flight in total operating costs, IATA says. Therefore, even saving just one minute of flight time could reduce total industry operating costs by more than $1 billion a year and significantly reduce environmental emissions.

Automotive and Industrial Coatings

Many additives are made from bio-based molecules, especially those in automotive and industrial paints, and give those waterborne paints a better carbon footprint: they enable faster drying times and provide a smoother finish. When automakers paint cars, they typically pass them through an oven twice to speed the drying process. Such additives make it possible to eliminate one of the baking steps, thus reducing the overall energy consumed. Another benefit: the faster drying time can also increase the number of cars that can be painted during a work shift.

Marine

Special marine coatings called antifouling coatings help reduce the growth of marine organisms on immersed areas of ships, which reduces the ship's energy and fuel consumption. Antifouling coatings carry tremendous eco-efficiency benefits: when applied to tankers, bulk cargo and other vessel types, they can reduce greenhouse gas and other emissions by an average of 9% — no small feat, since shipping counts for an estimated 2-4% of global greenhouse gas emissions.

Communications

Optical fiber coatings make telephone and internet technology possible by protecting the glass fibers that transmit telecommunications signals. Such technology allows an estimated 3.9 million people to telecommute, reducing gasoline consumption by 840 million gallons and CO_2 emissions by almost 14 million tons.

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Obstacle and Barriers to Manufacturing

These stories of innovation and environmental successes are amazing and there are many more examples in the coatings industry. Research and development, and quite frankly, innovation cannot occur without the appropriate regulatory schemes to facilitate these activities. As such, I would like to highlight several legislative and regulatory barriers that make such progress less likely.

Ozone standard

Implementation of the 2015 ozone standard required states to identify whether they are in attainment or in non-attainment by February 2017. Reviewing the ozone standard is a recurring mandate under the Clean Air Act.

EPA's 2015 final rule on the ozone standard is forcing many states that are currently "in attainment" to "non-attainment" status, triggering a requirement to revise their State Implementation Plans and adopt even stricter VOC emission regulations for coatings. This triggering event is being realized as ozone monitors across the country are demonstrating a marked improvement in air quality under the 2008 standard of 0.75 ppm. Indeed, the previous standard of 0.75 ppm was not yet fully implemented.

Cost to the Coatings Industry: EPA's final stringent ozone standards will limit business expansion in nearly every populated region of the United States and impair the ability of U.S. companies to create new jobs. EPA's lowered range adds unnecessary red tape for companies seeking to expand even in areas that can attain those standards. Increased costs associated with restrictive and expensive permit requirements will likely deter companies from siting new facilities in a nonattainment area. ACA shares the practical concerns of manufacturers regarding potential exorbitant costs that this regulation would create for the paint and coatings industry without commensurate benefits to public health or the environment. *A study conducted by the National Association of Manufacturers (NAM) and NERA Economic Consulting, estimated this final rule could cost the economy $140 billion per year, result in 1.4 million fewer jobs, and cost the average household $830 per year in the form of lost consumption — making this the "costliest regulation in history" and threatening manufacturing.*

Recommended Solution: ACA urges a two-step solution to this problem: 1) EPA should revert to the 2008 standard of 0.75 ppm and fully implement this standard so that the forward progress already achieved can be extended without unnecessarily burdening the paint and coatings industry with increased standards and costs for many years to come; and 2) the Clean Air Act should be amended to extend the time for review of the ozone standard to every 10 years. Currently, the law requires a review every five (5) years. Extending the review of the ozone standard to every 10 years will allow for more stability in the marketplace for formulators while still protecting human health and the environment.

Once in, Always in Policy

This "regulation" is a May 16, 1995 EPA memorandum titled, "Potential to Emit (PTE) for MACT Standards – Guidance on Timing Issues," from John Seitz, Director, Office of Air Quality Planning and Standards (OAQPS), to Regional Air Division Directors — commonly known as the "Once in, Always in" memo — and may be found here: https://www.epa.gov/sites/production/files/2015-08/documents/pteguid.pdf.

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A "major source" is defined as a source that has the potential to emit (PTE) hazardous air pollutants (HAP) up to 10 tons per year (tpy) of any single HAP or 25 tpy of any combination of HAPs. Sources below this threshold are considered "area sources."

Under the "once in, always in" policy, a major source may become an area source (i.e., minor source) by limiting its PTE HAP below the major source thresholds by no later than the first compliance deadline listed under the applicable Maximum Achievable Control Technology (MACT) standard (also referred to as National Emission Standards for Hazardous Air Pollutants or NESHAP). However, a source that fails to achieve "area source status" by the first MACT compliance deadline must remain subject to the MACT *even if it subsequently reduces HAP emissions below major source levels at a later date*. In other words, sources will always be subject to the MACT rules, regardless of whether the source is no longer a major source of HAP.

Note that that EPA published a proposed rule on January 3, 2007 to replace the "once-in always in" policy rule - (docket number EPA-HQ-OAR-2004-0094. https://www.epa.gov/ttn/atw/gp/fr03ja07.pdf). However, this rulemaking was never finalized.

The coatings manufacturing industry has substantially reduced the use of HAPs since the 1990s. In fact, many facilities subject to the Miscellaneous Coatings Manufacturing (MCM) and Miscellaneous Organic Chemical Manufacturing MACT (MON) MACTs are now "area source" facilities, but still must comply with the MCM requirements even though they are not major source facilities. While many coatings and resin manufacturing operations could reduce emissions prior to the first compliance date of the MCM and MON, other facilities could not. Facilities that could not reduce their emissions have since installed expensive thermal oxidation units.

This "policy" or "guidance" has been applied by EPA as a "rule," with binding effects on the regulated community, including very burdensome compliance costs. This guidance is outdated and unnecessary and imposes a substantial burden on industry that well exceeds any benefits. Industry resources spent on compliance could be used instead for R&D, or modernization activities. This policy also acts as a disincentive for industry, since facilities have no incentive to voluntarily reduce HAP emissions below major source thresholds.

Cost to the Coatings Industry: Thermal oxidation units require a significant capital investment (millions of dollars per facility) and annual operation and maintenance costs (several hundred thousand dollars per facility per year in fuel cost alone). These units consume large amounts of electricity and natural gas, which results in additional emissions of carbon dioxide, nitrogen oxides and carbon monoxide. *EPA has estimated that installation and operating of air pollution controls for the MCM and MON rules would require an overall energy demand increase of 5.83 trillion BTUs; a total capital expenditure of $184 million; yearly operating costs of nearly $91 million; and an increase in NOx, CO, SOx emissions of 987 tons per year.*

ACA and other organizations have flagged this policy and requested that EPA withdraw or rescind it.

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Committee on Environment and Public Works
Hearing on "Promoting American Leadership in Reducing Air Emissions Through Innovation
November 15, 2017

Thank you for the opportunity to share some of the exciting innovations of coatings manufacturers as well as some of our challenges. Please do not hesitate to have your staff contact me should you have any questions or require additional information and these important topics.

Best regards,

Heidi K. McAuliffe, Esq.
Vice President, Government Affairs

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Senate Environment and Public Works Committee
Hearing entitled, *"Promoting American Leadership in Reducing Air Emissions Through Innovation"*
November 15, 2017
Questions for the Record for Ross Eisenberg

Chairman Barrasso:

1. Mr. Eisenberg, at the hearing, you said that it is time to modernize the Clean Air Act. How do we build trust in Congress that changes to the Clean Air Act could actually result in net environmental gains and emissions reductions? In addition to the provisions governing New Source Review, are there other parts of the Clean Air Act that need to be significantly amended due to implementation challenges or that are simply outdated?

Answer:

As my testimony demonstrated, our environmental indicators are steadily improving. However, they are coming at an ever-increasing cost. Federal environmental regulations—many based on statutes that are decades old—are increasingly rigid, costly and harm our global competitiveness. Several recent regulations threaten to set new records for compliance costs, collectively strapping manufacturers with hundreds of billions of dollars in new regulatory burdens per year. We have lost the critical balance in our federal environmental policies between furthering progress and limiting unnecessary economic impacts. The state of our national economy, the manufacturing sector and the environment are considerably different than they were 20, 30 or 40 years ago. However, we are still operating with policies designed to address the environmental challenges of a previous era. Manufacturers believe it is time to modernize our environmental policies to better reflect and address current issues, technologies and opportunities to ensure a more sustainable future.

The NAM recommends that Congress modernize outdated environmental laws written in the 1960s and 1970s and make them perform better, or require federal agencies to regulate environmental challenges better— or both. As you and Ranking Member Carper both recognized at the hearing, there is a significant amount of trust that needs to be rebuilt in order to accomplish this goal.

I believe the answer to this problem lies, at least in part, in data and transparency. One of the main reasons I used the first ten pages of my testimony to reconstruct the emissions data for manufacturing on a pollutant-by-pollutant basis is to provide an unbiased view of the data for the Committee. I had to construct each of these charts myself because they were not otherwise available on a public forum. I encourage the Committee and the EPA to commit to providing a steady stream of data, both on emissions trends and compliance, to help determine which programs are working and which programs need improvement. You cannot build a case for change unless you have the best available facts to support your position.

Congress should work with the Environmental Protection Agency to audit key programs under the Clean Air Act like NSR, NAAQS, Title V and NESHAPs. The goal should be to mine

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the data and determine if the issues that have been raised are in fact borne out by the data. Congress should also empower the EPA to identify areas the Agency and/or states may not have the best data. For instance, some air permitting programs are done by hand and are not available online.

In addition to NSR, I believe the Committee should examine the NAAQS, NSPS and HAP programs. Not all situations will merit action. However, I do believe there are improvements available to programs like the NAAQS, which have been so successful that many pollutants are approaching background levels and the bulk of the compliance technologies have already been invented. The past two ozone NAAQS revisions have encountered the bizarre situation where even EPA admits that a large portion of the technologies needed for compliance do not exist.

The NAM specifically recommends the following:

- Modify the National Ambient Air Quality Standards (NAAQS) review cycle to more closely align with the pace of implementation of existing standards and consider cost and technological feasibility when conducting NAAQS policy assessments and during implementation.
- Require the Clean Air Scientific Advisory Committee (CASAC) to comply with Section 109(d) of the Clean Air Act and "advise the Administrator of any adverse public health, welfare, social, economic, or energy effects which may result from various strategies for attainment and maintenance" of NAAQS.
- Amend Clean Air Act Section 179B to more clearly provide relief for states that cannot meet federal air quality standards due to contributions from emissions from outside the United States.
- Provide flexibility to NAAQS nonattainment areas so that offset requirements are tied to reasonable and available reduction opportunities, with consideration to reasonable cost thresholds.
- Simplify the New Source Performance Standards (NSPS) process to provide certainty for manufacturers that they are in compliance with the law. NSPS should be set using criteria that ensure optimal cost effectiveness and do not hinder economic growth. EPA should also allow adequate timing to demonstrate compliance once an NSPS is triggered.
- Base any Hazardous Air Pollutant (HAP) regulations on sound scientific data that clearly demonstrate a need to protect public health and consideration of welfare, energy and economic impacts. The EPA's inability to meet arbitrary deadlines should not trigger automatic regulation.

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2. In your written testimony, you mention the "once-in-always-in" policy under the Section 112 program of the Clean Air Act. Can you explain how the current "once-in-always-in" policy works in more detail, and why it discourages emissions reductions at facilities? How would you recommend fixing the problem?

Answer:

"Once-in-Always-In" refers to a policy established by EPA that once a source emits enough above the threshold to become a "major source" subject to a MACT standard, it is *always* subject to the regulatory obligations that accompany a major source, even if it reduces its emissions below the threshold that triggered MACT major source applicability. This is a policy interpretation by EPA and is not mandated by the statute. EPA issued a proposal to eliminate the policy in the mid-2000s, but the policy was never finalized.

MACT requirements are often the most stringent in the Clean Air Act. If a major source is always a major source simply because it was once a major source, then manufacturers face the same regulatory burden regardless of whether they reduce emissions to the major source threshold or to a level substantially below the threshold. Manufacturers will continue to reduce their emissions because it is the right thing to do. That said, NAM believes if EPA were to abandon the once-in-always-in policy and instead allow facilities the benefit of being considered a minor source if they reduce emissions below the major source threshold, we could see even greater reductions of hazardous air pollutants.

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NATIONAL ASSOCIATION OF
Manufacturers

Leading Innovation. Creating Opportunity. Pursuing Progress.

Testimony

of Ross Eisenberg
Vice President
Energy and Resources Policy
National Association of Manufacturers

before the Senate Committee on Environment and Public Works

on "Promoting American Leadership in Reducing Air Emissions Through Innovation"

November 15, 2017

TESTIMONY OF ROSS EISENBERG

BEFORE THE SENATE COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS

Hearing on:
"Promoting American Leadership in Reducing Air Emissions Through Innovation"

NOVEMBER 15, 2017

Good morning, Chairman Barrasso, Ranking Member Carper and members of the Environment and Public Works Committee. My name is Ross Eisenberg, and I am the vice president of energy and resources policy at the National Association of Manufacturers (NAM). The NAM is the nation's largest industrial trade association, representing nearly 14,000 small, medium and large manufacturers in every industrial sector and in all 50 states. I am pleased to represent the NAM and its members and provide testimony on manufacturers' continued commitment to reduce air emissions.

Manufacturers have sharply reduced our impact on the environment through a wide range of innovations, such as increasing energy efficiency, saving and recycling water and implementing successful initiatives to reduce pollution and waste. Through these traditional and innovative measures, manufacturers have helped to usher in a new era of a cleaner and more sustainable environment.

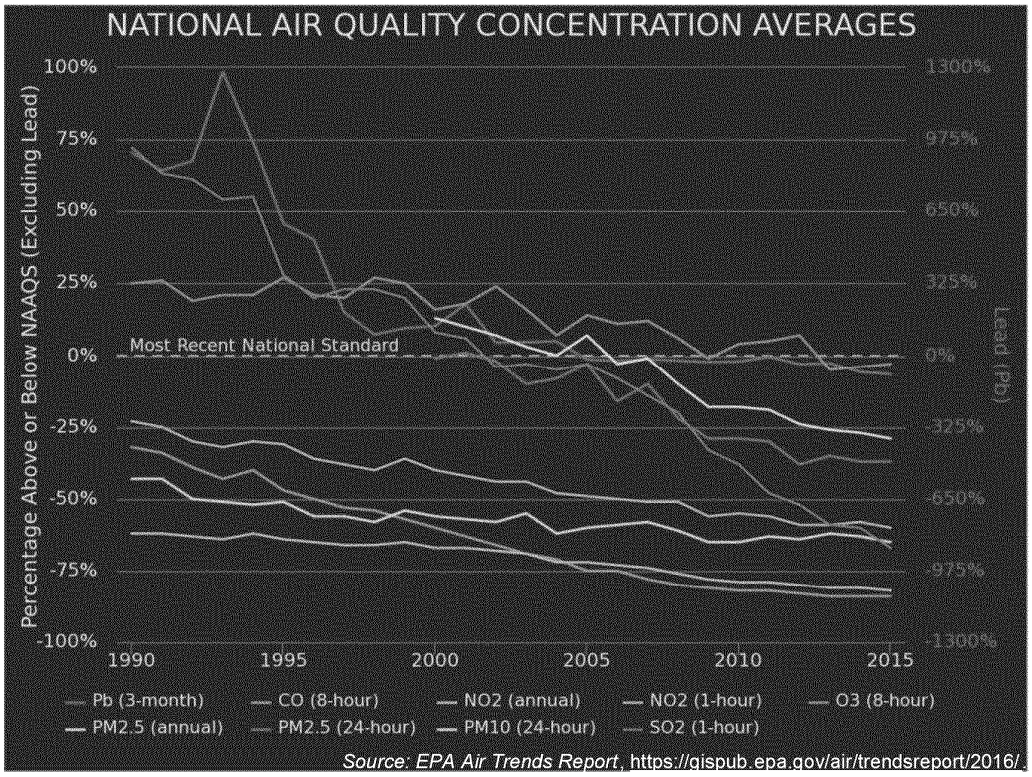
My written statement is broken into three parts. The first reviews air emission trends in the U.S. and the manufacturing sector. The second provides an overview of the technologies and innovative solutions manufacturers have developed to reduce their emissions. The third part identifies barriers that are

preventing manufacturers from doing even more to reduce emissions and increase efficiency.

Part One: U.S. and Manufacturing Sector Air Trends

A. Economy-Wide Emissions

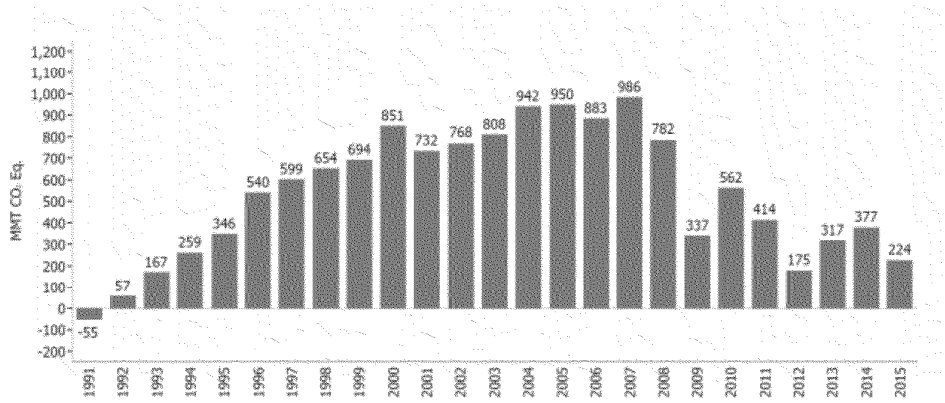
The story of U.S. air pollutant emissions is a positive one. Since 1990, a period spanning four different presidential administrations and 14 different Environmental Protection Agency (EPA) administrators, national pollutant concentrations have dropped dramatically. Carbon monoxide concentrations are down 77 percent; lead 99 percent; nitrogen dioxide 54 percent; ozone 22 percent; coarse particulate matter 39 percent; fine particulate matter 37 percent;



and sulfur dioxide 81 percent.[1]

On greenhouse gases (GHGs), the United States has made greater reductions over the past decade than any other nation on earth.[2] The following chart from the EPA's most recent *Inventory of U.S. Greenhouse Gas Emissions and Sinks* shows the positive trends.

Figure ES-3: Cumulative Change in Annual Gross U.S. Greenhouse Gas Emissions Relative to 1990 (1990=0, MMT CO_2 Eq.)



Source: Inventory of U.S. Greenhouse Gas Emissions and Sinks: 1990-2015

B. Manufacturing Sector Emissions

While it is useful to view the emissions reduction trends of the broader economy, it is worth focusing on the industrial sector's emissions and how they have decreased over time. For virtually every air pollutant regulated by the EPA, the manufacturing sector has made dramatic reductions over the past few decades. Today's manufacturing company is a sleek, technology-driven

[1] U.S. EPA, "Our Nation's Air: Status and Trends Through 2015," *available at* https://gispub.epa.gov/air/trendsreport/2016/.
[2] https://www.forbes.com/sites/rrapier/2016/06/19/the-u-s-leads-all-countries-in-lowering-carbon-dioxide-emissions/#7d6790375f48.

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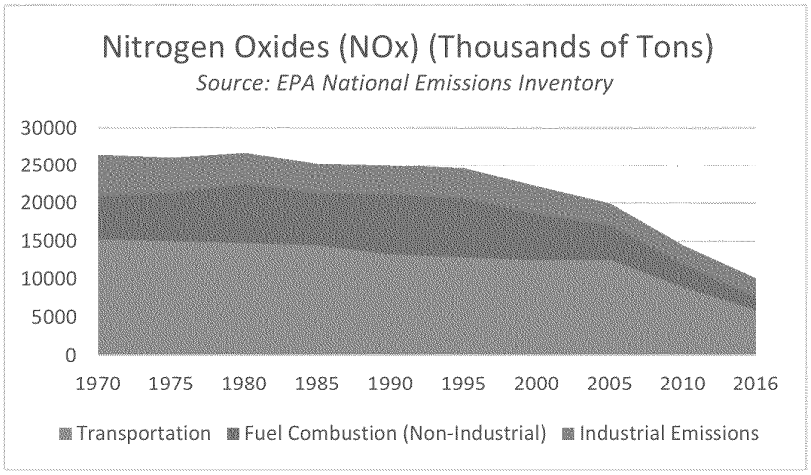
operation that looks nothing like the industrial facilities of the past. With that progress has come a smaller environmental footprint.

Nitrogen Oxides (NOx)

In the case of nitrogen oxides (NOx), a criteria pollutant and the primary precursor of ozone, industrial emissions have dropped by 53 percent since 1970. The vast majority of the decline has come from technologies to reduce NOx emissions at onsite industrial power generation facilities. Industrial NOx emissions have historically represented around 15 to 25 percent of total NOx emissions in the United States.



Carbon Monoxide (CO)

The manufacturing sector's carbon monoxide (CO) emissions have dropped 70 percent since 1970. Most of these reductions have come through improvements to the manufacturing process. The chemical sector has reduced its CO emissions a staggering 96 percent; metals processing has reduced its CO

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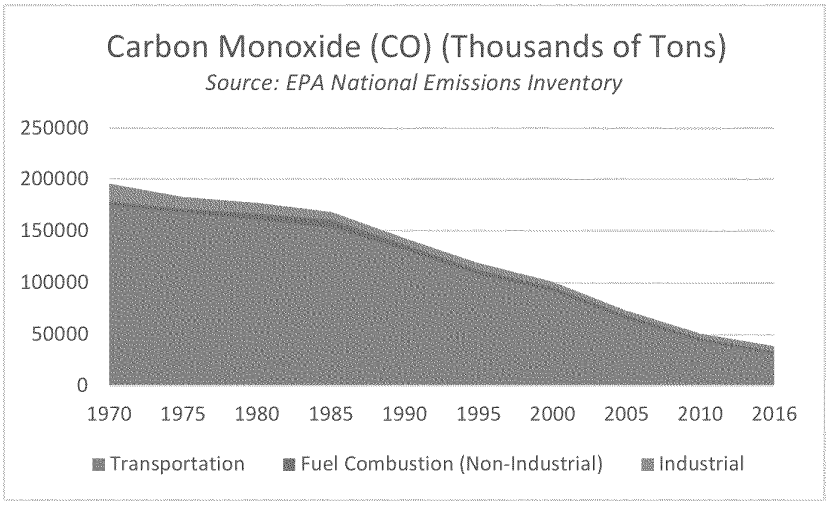
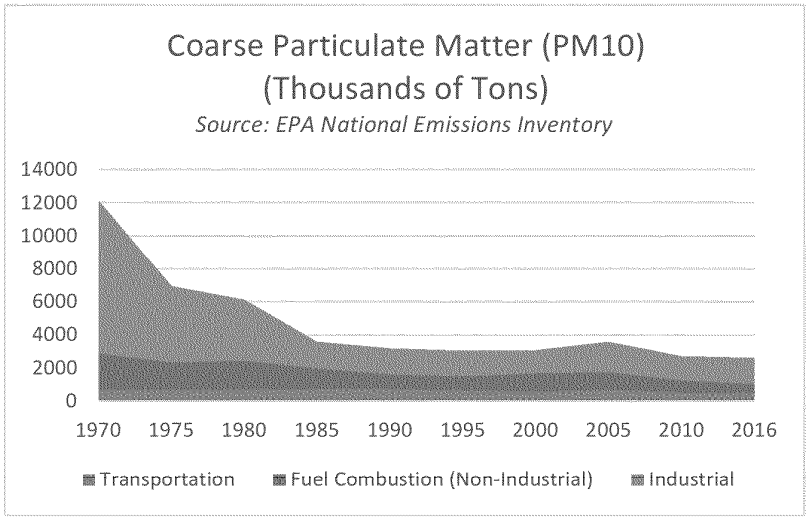
emissions 83 percent; petroleum and related industries have reduced their CO emissions 61 percent; and waste disposal and recycling industries have reduced their CO emissions 70 percent. Overall, manufacturing CO emissions are relatively small compared to overall CO emissions. However, these emissions have also dropped dramatically over time, a 71 percent reduction.



Coarse Particulate Matter (PM10)

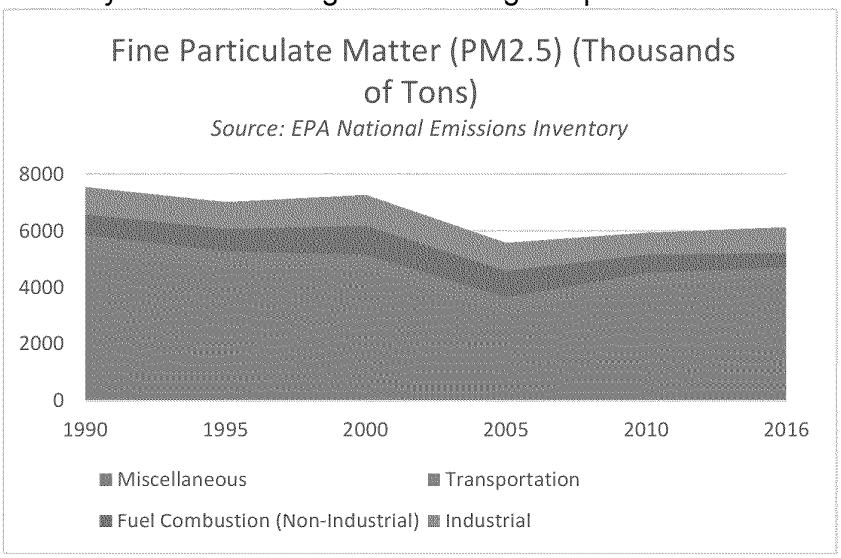
Manufacturers have reduced their emissions of coarse particulate matter, or PM10, by 83 percent since 1970. The vast majority of these reductions have come from changes to the manufacturing process across individual sectors. For instance, chemical manufacturers have reduced their PM10 emissions by 91 percent; metals processing has reduced its PM10



emissions by 96 percent; petroleum and related industries have reduced their PM10 emissions by 87 percent; and waste disposal and recycling industries have reduced their PM10 emissions by 70 percent. It is worth noting that the lion's share of PM10 emissions tracked by the EPA are not from industry, transportation or electricity production; they are what the EPA calls "miscellaneous" PM10, which include wildfires, windblown dust from open lands, wood burning stoves and fireplaces and dust from construction and agriculture. Miscellaneous PM10 represents almost 90 percent of total PM10 in the United States today.

Fine Particulate Matter (PM2.5)

Like PM10, the bulk of the fine particulate emissions measured by the EPA are classified as "miscellaneous," meaning not from industrial, transportation or power generation sources. Overall, total PM2.5 emissions from industrial, transportation and power generation sectors have dropped by 25 percent since 1990, the first year the EPA began measuring this pollutant. The industrial sector has reduced its PM2.5 emissions 6 percent since 1990 and 23 percent since its peak in 1999 and



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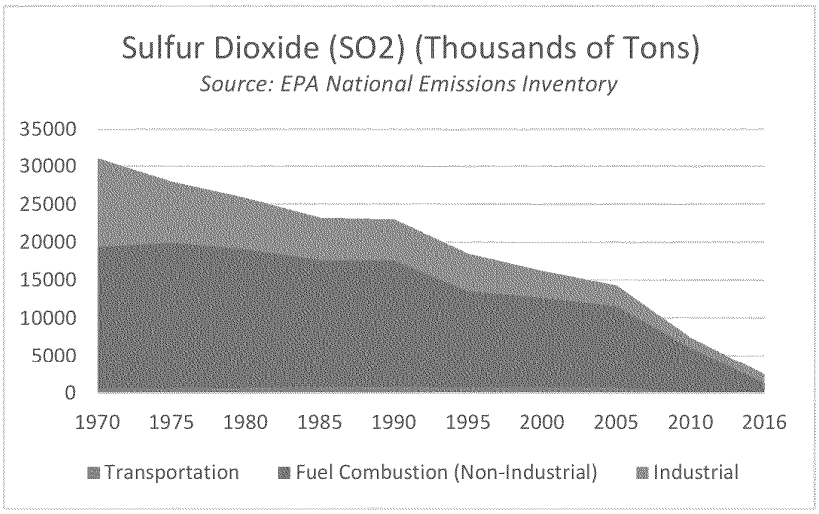
will continue to reduce its emissions significantly as manufacturers take steps to comply with the 2012 Boiler MACT regulation.

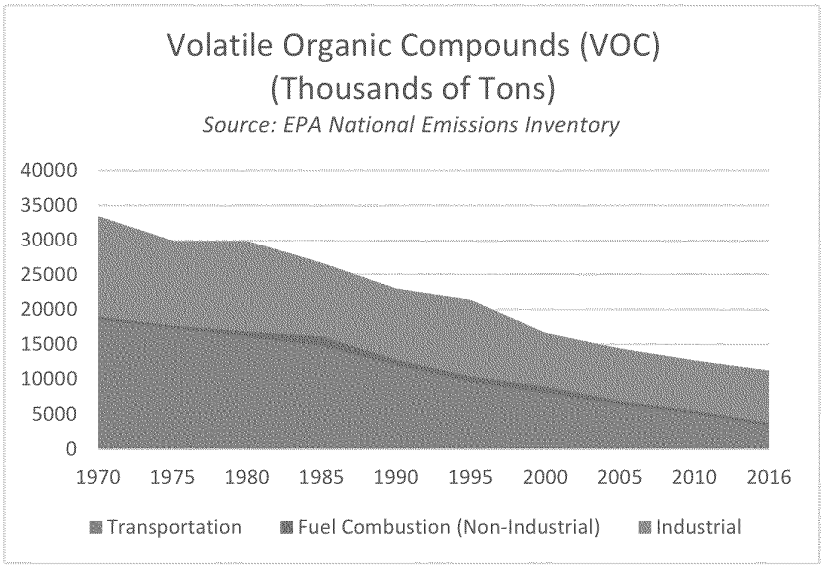
Sulfur Dioxide (SO2)

Sulfur dioxide (SO2) emissions have dropped precipitously over the past four decades. Since 1970, the industrial sector has reduced its SO2 emissions by 90 percent; electric utilities and other fuel combustion sources have reduced their SO2 emissions by 93 percent; and the transportation sector has reduced its SO2 emissions by 91 percent. Within manufacturing specifically, the chemical sector has reduced its SO2 emissions by 80 percent; metals processing has reduced its SO2 emissions by almost 98 percent; petroleum and related industries have reduced their SO2 emissions by 88 percent; and other industrial processes reduced their SO2 emissions by 80 percent. Manufacturers accomplished these dramatic reductions through technologies that allowed them to burn energy with less emissions, as well as technologies that reduced the SO2 emissions in the manufacturing process.



Volatile Organic Compounds (VOCs)

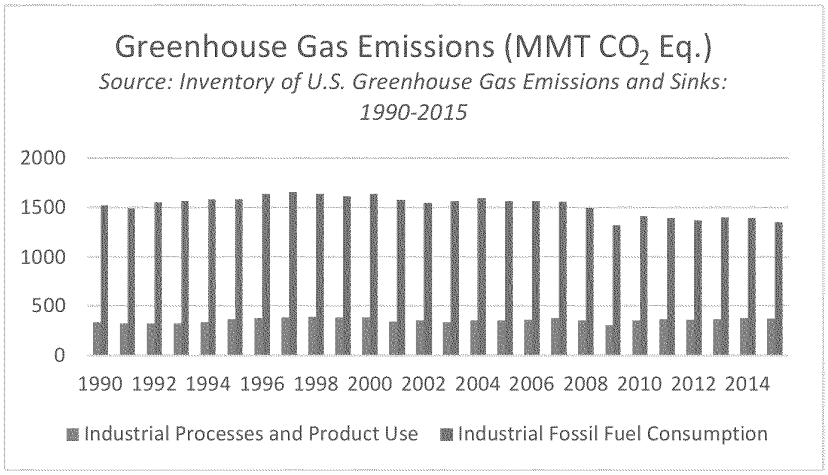
Emissions of volatile organic compounds (VOCs), which mix with NOx to form ground-level ozone, have also been reduced considerably. Since 1970, manufacturers have reduced their VOC emissions by 47 percent; the transportation sector has reduced its VOC emissions by 82 percent; and the power generation fleet has reduced its already-small emissions of VOCs by 26 percent. The vast majority of the manufacturing sector's VOC reductions have come through changes to the manufacturing process; the introduction of new chemicals, feedstocks and technologies; or reformulation of products. For instance, California's South Coast Air Management District reports that VOCs from architectural coatings in the Los Angeles area decreased more than 50 percent between 2008 and 2014.[3]



[3] http://www.paint.org/about-our-industry/environmental-footprint/.

Greenhouse Gases (GHGs)

The manufacturing sector emits greenhouse gases (GHGs) in two ways: during energy production and through industrial processes and product use. The good news is that the industrial sector actually produces *less* emissions than it did in 1990, a considerably different story compared to the broader U.S. economy.[4] Just over the past decade, manufacturers have reduced our GHG emissions by 10 percent while increasing our value to the economy by 19 percent. Many of those reductions have come from improved energy efficiency and changes to the mix of fuels manufacturers use.



Part Two: The Innovations Manufacturers Are Using to Clean Up the Air

The aforementioned charts are not meant to suggest that our environmental problems are over. Despite best-in-class efforts, the United States and the world continue to face serious environmental and sustainability challenges. There are forces far beyond the control of manufacturers in the United States that are driving changes to the global environment. The world's

[4] Inventory of U.S. Greenhouse Gas Emissions and Sinks, 1990-2015, *available at* https://www.epa.gov/sites/production/files/2017-02/documents/2017_complete_report.pdf.

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population is expected to grow from 7.6 billion people today to 9.7 billion by 2050; 795 million people in the world do not have enough food to lead a healthy, active life; 1.3 billion people lack access to electricity; and droughts and other natural disasters threaten many already environmentally and economically stressed parts of the world. Mitigating the impacts of climate change, protecting the air, feeding the world's growing population and ensuring adequate supplies of drinking water are just a few of the significant issues facing current and future generations.

Manufacturers have demonstrated a commitment to protecting the environment through greater sustainability, increased energy efficiency and reducing emissions. We will continue to lead by minimizing environmental footprints, reducing emissions, conserving critical resources, protecting biodiversity, limiting waste and providing safe products and solutions so others in the economy can do the same.

For instance, to control SO2, acid gas and particulate matter emissions, manufacturers develop and install wet scrubbers, dry scrubbers with fabric filters, dry sorbent injection technologies and electrostatic precipitators. These technologies have been effective in controlling emissions on industrial boilers, at cement kilns, petroleum refineries, glassmaking facilities, lime kilns, coke manufacturing, chemical plants, pulp and paper facilities, brickmaking plants, asphalt and ferrous metals plants. Manufacturers have developed cost-effective

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technologies that can remove up to 95 percent of PM, 95 percent of SO2 and 90 percent of acid gases.[5]

To control VOCs, manufacturers develop and install technologies such as ventilation air methane systems, afterburners, regenerative oxidizers, catalytic systems, recuperative oxidizers and absorbers. Controls are deployed over a wide range of industries—including petrochemical, chemical, pharmaceutical, wood products, painting, coating, electronics and oil and gas—and are capable of up to 99 percent VOC destruction.

To control NOx and CO, manufacturers develop and install Selective Non-Catalytic Reduction (SNCR) technologies, catalysts, Low-NOx Burners and Catalytic Reduction technologies. These are used on combustion sources, such as boilers, turbines, engines, process heat, iron and steel, lime kilns, glass and cement. These technologies control for CO up to 99 percent efficiency at more than 1,000 power plants and industrial boilers across the United States and can remove greater than 95 percent of NOx at temperatures ranging from 300˚F to 2,000˚F.

Controlling GHGs is a considerably different task than the conventional pollutants above. There is no ready-made, bolt-on technology solution to reduce GHGs from industrial operations or the products we manufacture. This is forcing manufacturers to get creative to achieve strong GHG reductions. Manufacturers of all shapes and sizes are setting GHG targets to 2020, 2025 and beyond—and

[5] *See, e.g.*, The Institute of Clean Air Companies, Domestic Conventional Pollutants Division and Emissions Management Division, Issue Brief, *available at* http://www.icac.com/?page=DomConvPollutants.

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are often beating them several years early. They are doing this by innovating, taking risks, driving efficiencies, streamlining their processes and relying on internal experts who know their businesses best.

Every manufacturer's operation is unique. That diversity is part of the challenge, but it can also lead to breakthroughs and innovation. We asked our members to send us examples, in their own words, of success stories in deploying environmental solutions at their facilities. Here are their stories.

MGK is a Minneapolis-based manufacturer that develops branded and custom insect control solutions. It recently lowered the VOC load in its aerosol and liquid products by levels between 30 and 70 percent. Some of this was done by shifting from solvent-based formulas to water-based formulas, and some came from lowering the use of hydrocarbon propellants in aerosols. MGK also lowered conventional pollutant emission rates by adding scrubbers to its stacks and reduced its use of methylene chloride by amending its production process to require fewer clean-out events and finding alternate solvents to use in clean-outs.

Gerdau Long Steel North America is in the process of upgrading its steel mill in Rancho Cucamonga, California—the only steel mill in the state—with a $23 million emissions control system that will be used to meet new South Coast Air Quality Management District air emission regulations, which are some of the most stringent in North America. This state-of-the-art environmental control system project took two years to design, and the design process alone cost $2 million. When completed, the system will capture 99.9 percent of contaminants in

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the emissions from the mill, making the Gerdau Rancho Cucamonga steel mill one of the world's greenest.

Xerox has taken strong steps to reduce its environmental footprint. The company has focused on reducing the emissions that originate from the production of imaging supplies, such as toner, photoreceptor drums and belts and fuser rolls. Xerox has managed to reduce emissions through process modification, lower production volumes of legacy products coated using organic solvents and producing components with longer life spans, which results in fewer replacement components produced. The release of materials used in Xerox's worldwide operations is evaluated annually and reported to government agencies under national toxic chemical release reporting regulations, such as the U.S. TRI, the Canadian National Pollution Release Inventory and the European Pollutant Release and Transfer Register. Releases for reporting year 2016 remained unchanged compared to 2015 levels and were 75 percent lower than 2007 levels.

Nucor pioneered a new way of steelmaking when it introduced the mini-mill, an electric arc furnace with a considerably smaller environmental footprint than a traditional blast furnace: per ton of steel, the mini-mill results in a 99.2 percent reduction in particulate matter, an 86 percent reduction in SO2, an 80 percent reduction in NOx, a 91 percent reduction in CO and a 71 percent reduction in VOCs.[6] The company recently introduced the micro-mill, a facility

[6] http://www.nucor.com/responsibility/sustainability/highlights/.

with an even smaller environmental footprint than mini-mills, and it announced this fall that it is seeking to build a new micro-mill in the United States.[7]

At the chemical manufacturer Olin Corporation, employees within manufacturing and engineering, logistics and supply chain are encouraged to conceptualize, develop and execute productivity enhancement projects each year. The top 60 projects that deliver significant productivity gains are then presented by the global project teams to the company's top leadership in a conference setting. Providing an opportunity to leverage ideas, share opportunities and recognize the efforts and achievements of the project teams, the event serves as both a valuable development opportunity for employees and helps build further best practices for productivity and efficient, sustainable manufacturing practices throughout the organization.

Air Products and Chemicals has reduced its hazardous air pollutant (HAP) emissions by 82 percent and SO2 emissions by 60 percent since 2010. The company also develops a wide range of products and technologies that help manufacturers reduce their own emissions. Air Products' Helia® advanced oxidation technology reduces VOC emissions from wastewater treatment plants; it produces hydrogen used in refining to produce cleaner transportation fuels and to power advanced fuel cell vehicles; and its biogas membrane separators purify methane from farm waste, manure and municipal waste and help turn it into energy.[8]

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[7] https://www.prnewswire.com/news-releases/nucor-board-of-directors-approves-steel-bar-micro-mill-project-and-merchant-bar-operations-expansion-300520418.html.
[8] http://www.airproducts.com/~/media/Files/PDF/company/2017-sustainability-report.pdf?la=en.

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Covestro, formerly Bayer MaterialScience, committed to reduce its 2005 carbon dioxide (CO_2) levels by 40 percent by 2020. The company has already beaten that goal and set a new goal to cut CO_2 emissions in half again by 2025. It accomplished this by making numerous production improvements at Covestro facilities across the globe, including a $120 million investment at its largest facility in Baytown, Texas, to improve energy efficiencies, minimize waste and reduce natural resource consumption. Covestro developed a new manufacturing process that allows it to replace petrochemical feedstock with CO_2 and recently opened a new plant that will utilize this technology to make polyurethane foam for mattresses and furniture.

In the fall of 2012, steel manufacturer ArcelorMittal partnered with the federal government to install a 38-megawatt combined heat and power system to utilize previously wasted blast furnace gas (BFG), a by-product of the iron making process, to produce electricity on-site at its Indiana Harbor, Indiana, complex, the largest steelmaking facility in North America. The $63.2 million waste energy recovery system captures approximately 46 billion cubic feet of BFG from the facility's No. 7 blast furnace and uses it to produce steam to generate electricity. The installation lowered the facility's annual energy costs by nearly $20 million and reduced annual CO_2 emissions by 340,000 tons. In addition, the project created approximately 360 manufacturing and construction jobs and helped retain 4,850 employees at the facility by lowering the production costs of steel by $5 per ton.

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BASF's global leadership in emissions reduction technologies for the automotive industry began in the 1960s with the creation of the catalytic converter by scientists working in Iselin and Union, New Jersey. In 2002, BASF's scientists earned an award for their work on the three-way catalyst, a key contributor to cleaner air for billions of people in the United States and around the world. More recently, BASF has continued to move the industry forward with the development of a four-way conversion catalyst that will reduce emissions of PM in addition to CO, NOx and HCl. The three-way catalysts are produced at BASF's Huntsville, Alabama, facility, a site that walks the talk of environmental stewardship and recently celebrated the production of the 400 millionth catalyst. All 650 employees are actively engaged in not only producing sustainable solutions for the automotive industry but also ensuring their own operations are just as sustainable. This summer, they were certified a virtual zero waste to landfill facility, one of only three manufacturing facilities in all of North America that is currently valid to UL Environment's UL 2799 certification. Their overall material management and recycling activities saved more than 35,000 metric tons of CO_{2e} emissions and 1,500 metric tons of non-methane VOCs. Last month, they were awarded the Air Pollution Control Achievement Award by the city of Huntsville for their recent site-wide LED conversion lighting project, which saved more than 1,000,000 kilowatt-hours per year of electricity (a 57 percent reduction) and reduced greenhouse gas emissions by more than 730 metric tons per year.

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Calgon Carbon Corporation is a global leader in innovative solutions, high-quality products and reliable services designed to protect human health and the environment from harmful contaminants in water and air. As a leading manufacturer of activated carbon, with broad capabilities in ultraviolet light disinfection, Calgon Carbon provides purification solutions for drinking water, wastewater, pollution abatement and a variety of industrial and commercial manufacturing processes. One of the company's signature achievements has been the development of activated carbon-based products to control mercury emissions from coal-fired power plants, industrial boilers and cement kilns. Although the status of the regulations was an uncertain and winding road over the past decade, Calgon Carbon proactively invested more than $30 million to develop a better understanding of the issue, new products that delivered necessary mercury capture performance and new production capacity to meet the uncertain future demand. These products are being used by electric utilities to comply with the Mercury and Air Toxics Standard Rule.

Global engine manufacturer Cummins has a long history of setting and exceeding energy and GHG reduction goals at its facilities and operations. At the company's high-horsepower engine plant and technical center in Seymour, Indiana, Cummins made a $5 million investment in advanced energy-efficiency technology called regenerative dynamometers, which convert engine power from test cells to electricity that can be used onsite and exported to the grid. This innovative approach to energy efficiency will help Cummins reduce electricity consumption by 14,000 MWh per year and reduce electricity costs by $1.2 million

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per year. The ability to net-meter this energy and to sell energy back to the grid has allowed Cummins to make this investment worthwhile. Cummins' engine plant in Jamestown, New York, recently showcased its latest initiative, a $47 million block machining line that utilizes on-demand hydraulics, coolant and pneumatics to reduce energy consumption as it produces the company's high-efficiency diesel and natural gas heavy-duty engines. Among other improvements, the plant in recent years has also replaced nearly 3,000 fluorescent lights with advanced LED lighting and a Wi-Fi-enabled control system that can automatically shut the lights off in parts of the plant not in use. National Grid, one of the largest investor-owned energy companies in the world, partnered with Cummins to invest $692,000 into the project as part of an effort to incentivize customers to use energy-efficient lighting, controls, heating and air-conditioning equipment and more. The plant's roof, meanwhile, has a nearly 2MW solar panel installation that on a sunny day will produce more than 20 percent of the facility's electric power needs.

In 2013, ConocoPhillips' Eagle Ford fugitive emissions team began to identify and eliminate equipment emission sources, beginning with leaks from tank thief hatches, wellsite controllers and flares. The team uses infrared camera technology to find emission leaks and follows up to ensure problems are addressed. The program has evolved into a planned preventive maintenance program encompassing all field sites. The fugitive team or a follow-up crew repairs the leaks. Data are recorded in the SAP work order system, and a detailed worksheet documents the emission history and associated work

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performed. Documentation includes confirmation that the observed problems were addressed. A preventive maintenance schedule ensures that every site is inspected at least once a year. This proactive model demonstrating an effective way to manage fugitive emissions has been adopted across the company's Lower 48 business unit. In addition, Eagle Ford Operations has installed automation and centralized alarming to proactively maintain lit flares. All flares are alarmed to register flare-outs and to signal the Eagle Ford Integrated Operations of the Future team of any incident.

Owens Corning has set an aggressive target for reducing its GHG emissions—50 percent below 2010 levels by 2020—and is taking its commitment one step further, reducing the embodied carbon emitted throughout the product lifecycle, including raw material extraction, transportation and manufacture. Just last week, the company announced three new types of insulation made with 100 percent–certified wind energy. These products are intended to give commercial architects and specifiers, builders and even homeowners the option of lower-carbon products to build greener structures.

Energy Transfer Partners (ETP) operates from the position that emission reductions are rooted in building and operating safe, well-maintained and reliable facilities to prevent accidents from happening. ETP has for several years utilized FLIR infrared cameras to survey for natural gas leaks at its natural gas compression stations and treating plants. The program originated as a safety initiative to ensure that hazardous conditions did not exist for employees and has also evolved into an operations reliability program to reduce lost product and

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identify maintenance issues. ETP was surveying for natural gas leaks long before regulations were promulgated by the EPA. ETP also utilizes LIDAR aerial technology to survey pipelines for leaks. This early detection technology can identify very small leaks by measuring vegetation disturbance and/or using hydrocarbon detection. This program prevents larger spills and releases and reduces repair and cleanup costs that are associated with a pipeline failure. Finally, at ETP's King Ranch Gas Processing Plant, ETP's engineering and safety requirements led the company to replace two in-service Light Petroleum Distillate (LPD) tanks with state-of-the-art pressurized tanks. Replacement of the original tanks with new pressurized tanks essentially eliminated all VOC emissions associated with storage of the LPD product—a net reduction of approximately 10 tons per year of VOC.

Johnson Controls has made substantial emissions reductions across its U.S. manufacturing portfolio. A key part of this has been its engagement with the Department of Energy's (DOE) Better Plants program, which helps manufacturers improve the energy efficiency of their operations. The Better Plants program offers a variety of solutions and resources for partners, including materials, tools, webinars and on-site visits to help identify energy savings opportunities. Johnson Controls joined the DOE Better Buildings Better Plants Challenge in 2013, and it set a goal of a 25 percent reduction in energy intensity in 10 years, using a 2009 baseline, for its manufacturing facilities located in the United States. This year, Johnson Controls was recognized by the Better Plants program with two awards: (1) the Better Plants, Better Practice Award for

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establishing a company-wide Energy Hunt program as part of the Johnson Controls Manufacturing System that resulted in a threefold increase in identified energy savings projects; and (2) the Better Plants Goal Achievement Award for achieving its 25 percent energy intensity reduction goal across its U.S. industrial facilities, three years ahead of schedule, with a 26 percent reduction by end of 2016. Johnson Controls has implemented its Energy Hunt program across its U.S. manufacturing locations, including plants in Delaware, Illinois, Kansas, Oklahoma and Oregon.

Illinois Tool Works (ITW), one of the world's leading diversified manufacturers of specialized industrial equipment, consumables and related service businesses, is taking steps to phase out the refrigerants containing high global warming potential (GWP) in the commercial kitchen appliances it manufactures. ITW began its equipment transition early and is ahead of schedule to meet EPA compliance dates, by either using refrigerant alternatives with a lower GWP value or developing products using "natural" refrigerants like propane that have no GWP impact if emitted into the atmosphere.

Schneider Electric, a leader in process efficiency and automation, is driving emissions savings at fifteen of its own U.S. plants, from Smyrna, Tennessee to its headquarters in Massachusetts, reducing the equivalent of 5,788 tons of carbon in 2016.[9] Schneider Electric has a sustainability objective of becoming carbon neutral by 2030. The company developed an Internet-of-Things, cloud-enabled platform called EcoStruxure to make buildings, power

[9] https://www.energy.gov/sites/prod/files/2017/05/f34/Schneider_Electric_EWA_Case_Study_5-12-17.pdf.

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plants, and facilities smarter, improve processes, and save on down time, energy and water costs—a technology solution the company believes will be a useful compliance tool for power plant GHG policies. Schneider Electric recently helped implement enterprise-wide energy management solutions in 43 of Ford Motor Company's U.S. locations, leading to 40 percent energy efficiency savings.

Part Three: Barriers to Innovation and Progress in Reducing Emissions

The stories above, and the hundreds like them across the manufacturing sector, are impressive. However, there remain barriers to accomplishing even more. New Source Review, EPA policy on MACT standards, continuity problems for federal support programs and trade policy all present challenges that prevent manufacturers from making even deeper emissions reductions.

New Source Review

The New Source Review (NSR) program is a federal air permitting program under the Clean Air Act that applies to new facilities or major modifications to facilities. The purpose of NSR, according to the EPA, is to require industrial facilities "to install modern pollution control equipment when they are built or when making a change that increases emissions significantly."[10] In practice, however, NSR often stands in the way of efficiency upgrades and the installation of modern pollution control equipment.

[10] https://www.epa.gov/sites/production/files/2015-12/documents/nsrbasicsfactsheet103106.pdf.

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For instance, if a manufacturer installs selective catalytic reduction technology to reduce NOx emissions, the component will trigger NSR for the entire source, requiring review of *all* emissions. Practically speaking, that means the manufacturer will need 12 to 18 months to obtain NSR permits, tying up investment capital and delaying the economic benefits from expansion projects. The program requires expensive air modeling that frequently delays projects and can cost $100,000 or more to complete. It can lead to citizen suits—not just during NSR but again during renewal of the facility's Title V operating permit—and enforcement actions. And that is assuming the manufacturer actually gets the permit.

EPA rules on netting of emissions under NSR unnecessarily delay, and sometimes prevent, manufacturers from replacing older fossil fuel boilers with newer, environmentally beneficial units. In addition, the EPA has required manufacturers to go through NSR when they replace relatively minor equipment (like a water pump) with a newer model, taking the position that only replacement with the original, inefficient, outdated part qualifies as "routine maintenance" that could avoid onerous permitting regulations.

The desire to avoid NSR can therefore create several perverse incentives: (1) an incentive for manufacturers to operate their plants exactly as they were built and only to replace parts with the exact same part that existed when the plant was built; and (2) an incentive to keep a plant's overall emissions high in order to "save" them for use in a future project. One manufacturer reports that customers have asked it to de-optimize performance in a suite of efficiency

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upgrades in order to avoid triggering NSR. Any rule that results in companies affirmatively taking steps *not* to optimize efficiency puts those companies at a competitive disadvantage.

An NAM member company manufactures gas turbine upgrade technology that could improve the vast majority of in-service gas turbines by 2.6 percent and reduce their total CO_2 emissions per MWh by 6.5 percent; however, many manufacturers are choosing not to install this equipment simply because it triggers NSR. The same can be said for steam turbine upgrades, which would ensure higher grid efficiency, lower emissions and reduced wear and tear that is occurring from a rapidly changing electric grid.

NSR also presents a huge impediment to the installation of more efficient technologies that would ultimately combat climate change. An inability to define what is "routine maintenance" has resulted in NSR Notices of Violation being issued for environmentally beneficial projects like economizer replacement, steam turbine upgrades, feed water heater replacements and similar activities. In comments to the EPA's draft Clean Power Plan, the Utility Air Regulatory Group (UARG) cited *more than 400 instances* in which a regulated entity took on a project to improve the energy efficiency of a power generation unit, only to be targeted by the EPA or citizen suits alleging that it had violated NSR.[11]

This cannot possibly be what Congress intended. In response to recent stakeholder outreach by the Department of Commerce and the EPA on

[11] Comments of the Utility Air Regulatory Group on Carbon Pollution Emission Guidelines for Existing Stationary Sources: Electric Utility Generating Units, Docket ID EPA-HQ-OAR-2013-0602-22768, Attachment A (Dec. 1, 2014).

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regulatory impediments to manufacturing, commenters from aerospace, insulation, pulp and paper, hard rock mining, iron and steel, clean energy power generation, boiler manufacturing and many other sectors raised NSR as a serious regulatory impediment. The NAM urges this committee to work with the EPA to fix NSR so that it functions properly and does not stand in the way of efficiency upgrades or environmentally beneficial projects.

Maximum Available Control Technology (MACT) Once-In-Always-In Policy

The EPA's existing policy is that once a manufacturer is subject to a MACT standard, it will *always* be subject to that MACT standard and the regulatory obligations that go along with it—even if the manufacturer installs pollution control technologies that reduce its emissions below the threshold levels that originally triggered MACT applicability to begin with. Practically speaking, this means once a manufacturers' emissions are below the MACT-required limits, there are very few regulatory reasons why the manufacturer would drive them even lower.

Ups and Downs of Federal Programs and Partnerships

While a competitive market is generally the best way to encourage the development of transformational technologies, the reality is that both the public and private sectors have roles to play. For instance, the government can play a positive role in support of the research and development (R&D) of alternative energy sources or technologies at a pre-commercial stage. There is also an

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important federal role to be played in basic R&D of new high-risk energy efficiency and waste minimization technologies in energy-intensive industries, particularly where private-sector incentives may be inadequate.

Over the past 15 years, Congress has repeatedly enacted and enhanced programs that provide assistance to manufacturers in modernizing their plants and the products they make in them. These programs, with names like ARPA-E, ATVM, DERA, Energy Star, Better Buildings and Better Plants, are all regularly used by manufacturers and contribute to many of the innovations described above. Scores of manufacturers participate in programs such as the EPA's Climate Leaders Program, the DOE's Better Buildings, Better Plants Challenge and the Clean Energy Manufacturing Initiative, and with the help of these programs, these companies have not only met but exceeded their emissions goals. Continuity challenges for these programs, which often become subjects of Congressional scrutiny, can stand in the way of long-term progress for the manufacturers that rely on them.

Environmental Goods Agreement

The world's most pressing environmental problems do not exist solely within our own borders. There is a trillion-dollar market for environmental goods, and manufacturers in the United States make some of the best pollution control technologies on the planet. Unfortunately, many of our trading partners charge tariffs as high as 50 percent on these goods. The NAM has been a longtime supporter of efforts by the U.S. Trade Representative to negotiate an

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Environmental Goods Agreement (EGA). A properly structured EGA would create jobs for U.S. manufacturers, who could then sell their best-in-class pollution control technologies to the rest of the world.

In the EGA talks, the United States, China and 15 other World Trade Organization members are considering a list of more than 350 environmental products that the NAM hopes will form the basis for an ambitious agreement. In particular, NAM members are seeking an EGA that eliminates tariffs on products including air pollution equipment, catalytic incinerators, energy-efficiency materials, environmental monitoring equipment, renewable energy products and equipment, turbines for electrical power generation and water treatment equipment.

The benefits of a robust EGA to manufacturers in the United States are crystal clear: it will boost U.S. manufacturing and our broad environmental goals as a country, supporting jobs and growth throughout the supply chain. It will also be an important catalyst to increased trade and innovation in technologies that will improve the environment, from providing cleaner water to reducing pollution, and support the growth of the manufacturing industries that produce these technologies. In the United States, such technologies are manufactured throughout the country, providing well-paying jobs.

Conclusion

Manufacturers have established a strong record of environmental protection and strive to reduce the environmental footprint of our operations and

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to become more sustainable. The results are already impressive, and they get better with each passing year. However, as my testimony shows, barriers still exist. The NAM hopes it can work with this committee to reduce these barriers and help solve the environmental challenges of current and future generations.

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To: Wood, Anna[Wood.Anna@epa.gov]
Cc: Santiago, Juan[Santiago.Juan@epa.gov]
From: Culligan, Kevin
Sent: Wed 1/24/2018 4:59:42 PM
Subject: RE: Left you a vm - want to give you an update on once in always in

Thanks Anna,

I will call Juan later today.

- Kevin

From: Wood, Anna
Sent: Wednesday, January 24, 2018 11:29 AM
To: Culligan, Kevin <Culligan.Kevin@epa.gov>
Cc: Santiago, Juan <Santiago.Juan@epa.gov>
Subject: RE: Left you a vm - want to give you an update on once in always in

Hi Kevin, I forwarded your email to Juan Santiago—please give Juan a call and we appreciate the coordination!

From: Culligan, Kevin
Sent: Wednesday, January 24, 2018 10:43 AM
To: Wood, Anna <Wood.Anna@epa.gov>
Subject: Left you a vm - want to give you an update on once in always in

Also happy to reach out to one of your group leads or ADs if that makes more sense. Just let me know who to talk to. I'm around most of the day except for a 12:00 briefing with Bill.

To: Dalcher, Debra[dalcher.debra@epa.gov]
From: Eck, Janet
Sent: Thur 1/25/2018 4:35:12 PM
Subject: FR Notice
FRN Notice of Memorandum Availability Draft 01 25 18.docx

To: Dalcher, Debra[dalcher.debra@epa.gov]
From: Vetter, Rick
Sent: Mon 12/4/2017 5:21:51 PM
Subject: OIAI memo insert
OIAI_12.4.17 0800 DD+RHV.DOCX

Debra,

We'll probably tweak it a little as we proceed, but here is an initial cut at

Ex. 5 - Attorney Client /Deliberative Process

Ex. 5 - Attorney Client /Deliberative Process

Rick

Richard H. Vetter

Richard H. Vetter

Attorney Advisor

Air & Radiation Law Office

Office of General Counsel

vetter.rick@epa.gov

919-541-2127

To: Jordan, Scott[Jordan.Scott@epa.gov]; Rodman, Sonja[Rodman.Sonja@epa.gov]
Cc: Eck, Janet[Eck.Janet@epa.gov]; Lamason, Bill[Lamason.Bill@epa.gov]; Dalcher, Debra[dalcher.debra@epa.gov]
From: Dalcher, Debra
Sent: Thur 1/25/2018 4:34:49 PM
Subject: Reclassification of Major Sources as Area Sources Under Section 112 Draft_01 25 2018.docx
Reclassification of Major Sources as Area Sources Under Section 112 Draft_01 25 2018.docx

Scott and Sonja,

Sonja, Scott told me he would be in a meeting until 1200 so I am requesting you please review this final version and validate that I have incorporated all of the changes that were floating around this morning. I incorporated everything I had and also what came from our front office (editorial).

Please send me back a final version so I can update the FR Notice for Peter's signature.

Thank you very much, Debra

To: Dalcher, Debra[dalcher.debra@epa.gov]
From: Eck, Janet
Sent: Thur 1/25/2018 4:20:40 PM
Subject: Memorandum
Reclassification of Major Sources as Area Sources Under Section 112 Draft_01 25 2018.docx

To: Dalcher, Debra[dalcher.debra@epa.gov]
Cc: Lamason, Bill[Lamason.Bill@epa.gov]
From: Dalcher, Debra
Sent: Mon 1/22/2018 11:41:42 AM
Subject: FRN OIAI Guidance Memorandum 1_19_18+SJJ 1.19.18 DD.docx
FRN OIAI Guidance Memorandum 1_19_18+SJJ 1.19.18 DD.docx

Draft FR Notice already reviewed by Scott. We will need to make final changes when the memo is final.

Debra

To: Lassiter, Penny[Lassiter.Penny@epa.gov]
Cc: Dalcher, Debra[dalcher.debra@epa.gov]
From: Lamason, Bill
Sent: Thur 1/18/2018 5:08:01 PM
Subject: OIAI.RevisedOIAImemorandum_1 5 2018+ SJJ 1.8.18 (003).docx
OIAI.RevisedOIAImemorandum_1 5 2018+ SJJ 1.8.18 (003).docx

Penny,

Good talking with you! Per our conversation, please see the attached draft OIAI memo. Copying Debra so she knows you have this version and to let her know to share the markup we expect from OGC late tomorrow or early next week after the Harlow meeting today. Meant to add that we're managing expectations up the line telling folks we hope/plan to have a final memo for their initial review early next week.

Bill

To: Dalcher, Debra[dalcher.debra@epa.gov]
Cc: Rodman, Sonja[Rodman.Sonja@epa.gov]
From: Jordan, Scott
Sent: Thur 1/18/2018 4:28:18 PM
Subject: OIAI - Scott Comments on OIAI Memo (Subject to Today's Meeting)
OIAI.Notes on Memo and Rulemaking.Draft for Discussion.1.18.18.11am.Sent to Meeting Participants.docx
OIAI.Revised OIAI memorandum.SJJ.1.18.18.Sent to OAQPS.docx

Debra –

Attached is the OIAI memo with my comments and suggested edits. Note that these comments and edits may be revised significantly following our meeting today. But, if the outcome of our meeting today is to move forward on the approach contemplated in my notes (see other attached document, which I sent to you a few minutes ago), then these comments will cover that approach.

My suggestion is that this draft not be widely distributed until after we see what happens in today's meeting, but I wanted to provide this to respond to your questions about how the memo would need to change, and what additional work would be needed, to get this finalized if OAR management decides to follow the approach that I have discussed with you.

Scott Jordan

Air and Radiation Law Office

Office of General Counsel

202-564-7508

To: Dalcher, Debra[dalcher.debra@epa.gov]
From: Torres, Elineth
Sent: Wed 11/1/2017 11:55:46 AM
Subject: docket exported file OIAI
Export doket file_EPA-HQ-OAR-2004-0094.xlsx

Debra,

This is the information you get when you export the docket file from regulations.gov.

The attached example is for OIAI.

Elineth Torres

OAQPS

919-541-4347

To: Torres, Elineth[Torres.Elineth@epa.gov]
Cc: Dalcher, Debra[dalcher.debra@epa.gov]; Schaefer, John[Schaefer.John@epa.gov]
From: Lamason, Bill
Sent: Tue 9/12/2017 9:10:28 PM
Subject: FW: EO 13771 Budget Exercise
SPPD UPDATED EO 13771 Worksheet 8.30.2017 locked.xlsx

Elineth,

Good news and bad news. We don't need to include OIAI as it is not scheduled to be final in 2018. nPB is on the list – so we need a characterization for that action – take a look at the guidance and let's discuss. Janet is out tomorrow but we need to get our input to her by COB Thursday. Thanks!

Bill

From: Eck, Janet
Sent: Monday, September 11, 2017 10:51 AM
To: Spells, Charlene <Spells.Charlene@epa.gov>; Barnett, Keith <Barnett.Keith@epa.gov>; Caparoso, Jennifer <Caparoso.Jennifer@epa.gov>; Cozzie, David <Cozzie.David@epa.gov>; Dunkins, Robin <Dunkins.Robin@epa.gov>; Fruh, Steve <Fruh.Steve@epa.gov>; Lamason, Bill <Lamason.Bill@epa.gov>; Lassiter, Penny <Lassiter.Penny@epa.gov>; Schell, Bob <Schell.Bob@epa.gov>
Cc: Conner, Lisa <Conner.Lisa@epa.gov>; Culligan, Kevin <Culligan.Kevin@epa.gov>; French, Chuck <French.Chuck@epa.gov>; McLamb, Marguerite <McLamb.Marguerite@epa.gov>; Pemberton, Wanda <Pemberton.Wanda@epa.gov>; Srivastava, Ravi <Srivastava.Ravi@epa.gov>; Thompson, Fred <Thompson.Fred@epa.gov>
Subject: EO 13771 Budget Exercise

Under direction from OMB regarding development of regulatory budgets, the attached spreadsheet contains a list of our actions that are expected to be finalized through the end of 2018. In this exercise, OP is requesting cost savings information for actions that are part of EO 13771, explaining everything that will save $ or cost $ through 2018. Where necessary, please provide another document that provides details on calculations. The information will be used to inform the 2-for-1 regulatory swap. Please include any actions that I may have missed in the listing. This information is needed by COB Thursday, 9/14. Thanks.

Agenda for AFPM-EPA Meeting

Nov. 2, 2017, 10 AM - Noon

EPA/RTP C-300A

1. Introductions – 5 min.

2. AFPM's Prioritized List of NSR Reform Items – 15 min.

3. White Paper Discussion on Project Aggregation – 30 min.

4. White Paper Discussion on Project Netting – 30 min.

5. Discussion on Other Regulatory Reform Topics (per EPA Oct. 25 Report) – 20 min. *(10 minutes AQPD topics and SPPD to join at 11:30 for last two topics)*
    a. Ozone NAAQS - *AQPD*
    b. Status of SSM SIP Call - *AQPD*
    c. "Once-in Always-in" MACT Policy - *SPPD*
    d. Smart Sectors Program – Inclusion of petroleum refining? – *SPPD*

6. Shifting EPA Jurisdiction over Regulatory Interpretations and Applicability Determinations from the EPA Regional Offices and the OECA to OAQPS – 20 min. *(AQPD/SPPD)*

JOHN BARRASSO, WYOMING, CHAIRMAN

JAMES M. INHOFE, OKLAHOMA
SHELLEY MOORE CAPITO, WEST VIRGINIA
JOHN BOOZMAN, ARKANSAS
ROGER WICKER, MISSISSIPPI
DEB FISCHER, NEBRASKA
JERRY MORAN, KANSAS
MIKE ROUNDS, SOUTH DAKOTA
JONI ERNST, IOWA
DAN SULLIVAN, ALASKA
RICHARD SHELBY, ALABAMA

THOMAS R. CARPER, DELAWARE
BENJAMIN L. CARDIN, MARYLAND
BERNARD SANDERS, VERMONT
SHELDON WHITEHOUSE, RHODE ISLAND
JEFF MERKLEY, OREGON
KIRSTEN GILLIBRAND, NEW YORK
CORY A. BOOKER, NEW JERSEY
EDWARD J. MARKEY, MASSACHUSETTS
TAMMY DUCKWORTH, ILLINOIS
KAMALA D. HARRIS, CALIFORNIA

RICHARD M. RUSSELL, MAJORITY STAFF DIRECTOR
GABRIELLE BATKIN, MINORITY STAFF DIRECTOR

United States Senate

COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS
WASHINGTON, DC 20510-6175

January 9, 2018

The Honorable Scott Pruitt
Administrator
Environmental Protection Agency
1200 Pennsylvania Avenue NW
Washington, DC 20460

Dear Administrator Pruitt:

We write to request that you rescind a current EPA policy that disincentivizes air emissions reductions. On November 15, 2017, the Committee held a hearing entitled, "Promoting American Leadership in Reducing Air Emissions Through Innovation." In testimony during that hearing, the so-called "once-in-always-in" policy under the Clean Air Act was identified as a policy that discourages emissions reductions.

The 1995 policy requires a source to comply with stringent emissions standards even if the source later lowers its emissions below the "major source" thresholds that triggered the standards in the first place. In the enclosed submissions to the November 15th hearing record, the National Association of Manufacturers and the American Coatings Association (ACA) highlighted the practical effects of the policy. As ACA explains, "resources spent on compliance could be used instead for [research and development], or modernization activities."

EPA can rescind this policy, which was issued under Section 112 of the Clean Air Act, without any legislative changes. As the Chairmen of the Committee and Subcommittee of jurisdiction over the Clean Air Act, we request that you incentivize additional hazardous air pollutant emissions reductions by promptly withdrawing this policy. If you have additional questions about the Committee's hearing that reviewed this issue, please contact Elizabeth Horner of the Committee's staff at 202-224-6176.

Sincerely,

John Barrasso

John Barrasso, M.D.
Chairman

Shelley Moore Capito

Shelley Moore Capito
Chairman
Subcommittee on Clean Air and
Nuclear Safety

Enclosures

PRINTED ON RECYCLED PAPER

To: FDMS[FDMS@epa.gov]
Cc: Dalcher, Debra[dalcher.debra@epa.gov]
From: Torres, Elineth
Sent: Wed 11/1/2017 11:49:56 AM
Subject: FDMS User Account Change Request
OIAI Docket Bulk Download Request 11_1_17.docx

See attached request.

Thanks.

Elineth Torres

OAQPS

919-541-4347

To: Dalcher, Debra[dalcher.debra@epa.gov]
From: McLamb, Marguerite
Sent: Thur 11/30/2017 3:26:46 PM
Subject: Re: OIAI Memo

Sounds good! I will call you.

On Nov 30, 2017, at 10:26 AM, Dalcher, Debra <dalcher.debra@epa.gov> wrote:

Marguerite, I am working from home. Please call me at Ex. 6 - Personal Privacy

---

From: McLamb, Marguerite
Sent: Thursday, November 30, 2017 10:25:19 AM
To: Lamason, Bill
Cc: Dalcher, Debra
Subject: Re: OIAI Memo

Debra, let's talk after the 10:30 staff meeting ends. I will find you.

On Nov 30, 2017, at 10:21 AM, Lamason, Bill <Lamason.Bill@epa.gov> wrote:

Can you and Debra talk? I'm tied up until Noon with meetings/tasks.
Thanks! Bill

From: McLamb, Marguerite
Sent: Thursday, November 30, 2017 10:18 AM
To: Lamason, Bill <Lamason.Bill@epa.gov>
Cc: Dalcher, Debra <dalcher.debra@epa.gov>
Subject: Re: OIAI Memo

Hi, Bill,

I have heard from OGC this morning and have comments from Scott Jordan. I will share those shortly. We can talk about this if you'd like this morning.

Best, Marguerite

On Nov 29, 2017, at 3:31 PM, Lamason, Bill <Lamason.Bill@epa.gov> wrote:

Marguerite,

Thanks for the update. Can we see the current version? It would help me prepare some talking points for Peter. On timing, let's chat in the morning when you are in before Kevin calls me. I'll wait to set the meeting with Peter until Kevin and I touch base. Thanks again!

Bill

From: McLamb, Marguerite
Sent: Wednesday, November 29, 2017 3:28 PM
To: Lamason, Bill <Lamason.Bill@epa.gov>
Cc: Dalcher, Debra <dalcher.debra@epa.gov>
Subject: Re: OIAI Memo

Hi, Bill,

OGC has the memo from me and is reviewing and adding to it. I talked to Sonja yesterday, and she is having Rick and Scott work on it while she is out, and she'll weigh in on it early next week. She knows our timeframe. We can talk in the morning if you'd like.

Best,

Marguerite

On Nov 29, 2017, at 2:49 PM, Lamason, Bill <Lamason.Bill@epa.gov> wrote:

Marguerite,

Hope you are well. I left you a voicemail on your desk phone. Just checking on where we are on your (and OGC's) review of the OIAI memo. I need to schedule time with Peter for next week to

prep for a discussion with the AA and would like to update Peter on the latest version of the memo and potential timing/direction for moving forward. Let me know when you have a moment. Thanks!

Bill

To: Ashley, Jackie[Ashley.Jackie@epa.gov]; Mills, Kathy[Mills.Kathy@epa.gov]; Dalcher, Debra[dalcher.debra@epa.gov]
From: Lamason, Bill
Sent: Thur 1/25/2018 4:13:36 PM
Subject: RE: Draft Comms Plan for Today's Memo - Please Review ASAP

The OAR IO may want to add a paragraph to the summary similar to this. Check with OAR comms.

Ex. 5 - Deliberative Process

I'd follow OAR lead. Bill

From: Ashley, Jackie
Sent: Thursday, January 25, 2018 10:59 AM
To: Lamason, Bill <Lamason.Bill@epa.gov>; Mills, Kathy <Mills.Kathy@epa.gov>; Dalcher, Debra <dalcher.debra@epa.gov>
Subject: RE: Draft Comms Plan for Today's Memo - Please Review ASAP

Ex. 5 - Deliberative Process

Ex. 5 - Deliberative Process

Jackie Ashley - US EPA - Office of Air Quality Planning and Standards - 919-541-7664 – ashley.jackie@epa.gov

From: Lamason, Bill
Sent: Thursday, January 25, 2018 10:57 AM
To: Ashley, Jackie <Ashley.Jackie@epa.gov>; Mills, Kathy <Mills.Kathy@epa.gov>; Dalcher, Debra <dalcher.debra@epa.gov>
Subject: RE: Draft Comms Plan for Today's Memo - Please Review ASAP

Looking at but multitasking with OAR on the memo. B

From: Ashley, Jackie
Sent: Thursday, January 25, 2018 10:51 AM
To: Cortelyou-Lee, Jan <Cortelyou-Lee.Jan@epa.gov>; Mills, Kathy <Mills.Kathy@epa.gov>; Dalcher, Debra <dalcher.debra@epa.gov>; Lamason, Bill <Lamason.Bill@epa.gov>; DeLuca, Isabel <DeLuca.Isabel@epa.gov>; Koerber, Mike <Koerber.Mike@epa.gov>
Subject: RE: Draft Comms Plan for Today's Memo - Please Review ASAP

Bill, Debra, KB –

Just checking on where you are in review.

Jackie Ashley - US EPA - Office of Air Quality Planning and Standards - 919-541-7664 – ashley.jackie@epa.gov

From: Cortelyou-Lee, Jan
Sent: Thursday, January 25, 2018 10:02 AM
To: Mills, Kathy <Mills.Kathy@epa.gov>; Dalcher, Debra <dalcher.debra@epa.gov>; Lamason, Bill <Lamason.Bill@epa.gov>; Ashley, Jackie <Ashley.Jackie@epa.gov>; DeLuca, Isabel <DeLuca.Isabel@epa.gov>; Koerber, Mike <Koerber.Mike@epa.gov>
Subject: FW: Draft Comms Plan for Today's Memo - Please Review ASAP

Folks – Ex. 6 - Personal Privacy Jackie will cover this for the rest of the day. Please send her your comments.

Jackie – this version includes a few comments in tracked changes from Mike.

Jan Cortelyou-Lee

US Environmental Protection Agency

Office of Air Quality Planning and Standards

MD-C404-03

109 TW Alexander Drive

Research Triangle Park, NC 27709

Desk: 919-541-5393

Cell: 919-368-5734

From: Koerber, Mike
Sent: Thursday, January 25, 2018 8:56 AM
To: Cortelyou-Lee, Jan <Cortelyou-Lee.Jan@epa.gov>; Dalcher, Debra <dalcher.debra@epa.gov>; Lamason, Bill <Lamason.Bill@epa.gov>
Cc: Mills, Kathy <Mills.Kathy@epa.gov>
Subject: RE: Draft Comms Plan for Today's Memo - Please Review ASAP

Minor edits attached

From: Cortelyou-Lee, Jan
Sent: Thursday, January 25, 2018 8:42 AM
To: Dalcher, Debra <dalcher.debra@epa.gov>; Lamason, Bill <Lamason.Bill@epa.gov>; Koerber, Mike <Koerber.Mike@epa.gov>
Cc: Mills, Kathy <Mills.Kathy@epa.gov>
Subject: Draft Comms Plan for Today's Memo - Please Review ASAP

This include KBs QAs (with some minor adjustments) and additional pieces I think we need.

Debra will you share with OGC?

I understand the plan is signature around 2 and posting to the web – distribution at 3ish with a press release. If I get a draft of that to share, I will. OAR would like to share this doc for press release fodder ASAP.

I will get something mocked up for the web with the ITG folks soon.

Jan Cortelyou-Lee

US Environmental Protection Agency

Office of Air Quality Planning and Standards

MD-C404-03

109 TW Alexander Drive

Research Triangle Park, NC 27709

Desk: 919-541-5393

Cell: 919-368-5734

To: Lamason, Bill[Lamason.Bill@epa.gov]
Cc: Dalcher, Debra[dalcher.debra@epa.gov]
From: Lassiter, Penny
Sent: Tue 1/23/2018 7:48:15 PM
Subject: Re: Checking on Memo that needs to go up to DC

Bill,
Has Kevin reviewed it?

Sent from my iPhone

On Jan 23, 2018, at 2:26 PM, Lamason, Bill <Lamason.Bill@epa.gov> wrote:

Penny,

Just checking if you will have comments on the OIAI memo or announcement notice or if we should proceed to send to David. Ideally we would like to get him the "almost final" version memo this evening or early tomorrow (Debra arrives at 6:30 am). Let us know.

I am copying Debra on the chance you respond later this evening and Debra can follow up appropriately.

Thanks!

Bill

To: Eck, Janet[Eck.Janet@epa.gov]
Cc: Dalcher, Debra[dalcher.debra@epa.gov]
From: Dalcher, Debra
Sent: Wed 1/24/2018 9:03:26 PM
Subject: Reclassification of Major Sources as Area Sources Under Section 112 of the CAA_Action Memo 01 24 18 DD.docx
Reclassification of Major Sources as Area Sources Under Section 112 of the CAA_Action Memo 01 24 18 DD.docx

Blue folder draft.

To: Jordan, Scott[Jordan.Scott@epa.gov]
Cc: Dalcher, Debra[dalcher.debra@epa.gov]; Lamason, Bill[Lamason.Bill@epa.gov]
From: Dalcher, Debra
Sent: Fri 1/19/2018 8:40:38 PM
Subject: Addressed Sonja's Comments w/1 exception
OIAI.Revised OIAI memorandum.SJJ+DD.1.18.18+SJJ + DD 1.19.18_SLR DD 330pm.docx

Scott,

Ex. 5 - Attorney Client /Deliberative Process

Thank you, Debra

From: Jordan, Scott
Sent: Friday, January 19, 2018 3:06 PM
To: Dalcher, Debra
Subject: Fw: just a couple minor comments

Debra - Here is the document with Sonja's comments. (Sorry for the delay in forwarding this. Her email appeared in my mailbox just a couple of minutes ago.)

I took a quick look at Sonja's comments, and they are minor. We can talk on Monday if you have any questions.

I will be signing off for today shortly **Ex. 6 - Personal Privacy**

Scott Jordan

Air and Radiation Law Office

Office of General Counsel

202-564-7508

From: Rodman, Sonja
Sent: Friday, January 19, 2018 1:42 PM
To: Jordan, Scott
Subject: just a couple minor comments

Ex. 5 - Attorney Client

Sonja L. Rodman

Air Toxics, Consumer Protection and Indoor Air Practice Group

(202) 564-4079

CONFIDENTIALITY NOTICE: This message may contain sensitive, privileged information covered by the deliberative process, attorney-client and/or attorney work product privileges. Do not release this message under FOIA without appropriate review. If you are not the intended recipient, or the employee or agent responsible to deliver it to the intended recipient, please contact the sender and delete all copies.

To: Torres, Elineth[Torres.Elineth@epa.gov]
Cc: Dalcher, Debra[dalcher.debra@epa.gov]
From: Lamason, Bill
Sent: Tue 9/12/2017 6:44:51 PM
Subject: RE: Draft schedule OIAI

Thanks. My one-on-one was moved to 9/19 and Peter is in DC next couple of days. Will bring up schedule then. B

From: Torres, Elineth
Sent: Tuesday, September 12, 2017 10:25 AM
To: Lamason, Bill <Lamason.Bill@epa.gov>
Cc: Dalcher, Debra <dalcher.debra@epa.gov>
Subject: Draft schedule OIAI

Bill and Debra,

Ex. 5 - Deliberative Process

Please let me know your comments/edits.

Thanks,

Elineth Torres

OAQPS

919-541-4347

To: Dalcher, Debra[dalcher.debra@epa.gov]
From: Jordan, Scott
Sent: Thur 1/18/2018 2:37:13 PM
Subject: OIAI - Briefing Memo for This Afternoon

Debra –

I am scheduled to talk to Sonja this morning, and hoping that after that call I will be able to send my briefing memo to you and all other participants listed on our 4:00 call.

Scott Jordan

Air and Radiation Law Office

Office of General Counsel

202-564-7508

To: Lassiter, Penny[Lassiter.Penny@epa.gov]; Barnett, Keith[Barnett.Keith@epa.gov]
Cc: Dalcher, Debra[dalcher.debra@epa.gov]; Lamason, Bill[Lamason.Bill@epa.gov]
From: Dalcher, Debra
Sent: Mon 12/4/2017 1:06:55 PM
Subject: Revised OIAI Examples 12 3 17.docx
Revised OIAI Examples 12 3 17.docx

Penny, Keith

Attached are the current examples included in the OIAI memo. Please let me know if you would recommend any changes and confirm that the information provided is an accurate representation.

We are reviewing the memo with Peter later this morning.

Thank you, Debra

To: Torres, Elineth[Torres.Elineth@epa.gov]; Dalcher, Debra[dalcher.debra@epa.gov]
From: Jared Rothstein
Sent: Tue 1/30/2018 6:48:29 PM
Subject: EPA "Once In, Always In" HAP Policy

Hello Debra and Elineth,

I recently reviewed the U.S. EPA guidance memorandum announcing its withdrawal of its "once in always in" policy for the classification of major sources of hazardous air pollutants under section 112 of the Clean Air Act, and had a couple questions regarding implementation. Do you know which states have the delegated authority to ratify this change in policy? My understanding is that it would only apply to the states that have been delegated by EPA to administer the 112 program. I assume EPA's position is that the states with delegated authority are obliged to follow the new policy if they want to maintain their delegation, because the new memo says clearly that the old policy is not authorized by the statute? Any information you might have regarding state adoption of the policy would be very helpful.

Thank you!

Jared

Jared A. Rothstein | *Senior Manager, Regulatory Affairs*

Society of Chemical Manufacturers & Affiliates (SOCMA)

1400 Crystal Drive | Suite 630 | Arlington, VA 22202

(571) 348-5122 | rothsteinj@socma.com

To: McLamb, Marguerite[McLamb.Marguerite@epa.gov]; Dalcher, Debra[dalcher.debra@epa.gov]
Cc: Torres, Elineth[Torres.Elineth@epa.gov]
From: Lamason, Bill
Sent: Wed 11/8/2017 8:59:12 PM
Subject: RE: Memo replacing OIAI with proposed 2007 interpretation_11_6_17 MM (002).docx

Thanks Marguerite! I will set something up for Monday to check in if you are available. I'll also include Kevin. Bill

-----Original Message-----
From: McLamb, Marguerite
Sent: Wednesday, November 08, 2017 3:30 PM
To: Dalcher, Debra <dalcher.debra@epa.gov>
Cc: Lamason, Bill <Lamason.Bill@epa.gov>; Torres, Elineth <Torres.Elineth@epa.gov>
Subject: RE: Memo replacing OIAI with proposed 2007 interpretation_11_6_17 MM (002).docx

Hi, Debra,
That is the sense of timing I understood and what I told her, subject to any changes related to/by Bill. I'll confirm that timing and share this version with her as well as the information you provided.
Best,
Marguerite

****
Marguerite E. McLamb
Policy Advisor
Sector Policies and Programs Division
Office of Air Quality Planning & Standards U.S. Environmental Protection Agency Research Triangle Park, NC 27711
Phone: (919) 541-7858
Fax: (919) 541-4991
mclamb.marguerite@epa.gov

From: Dalcher, Debra
Sent: Wednesday, November 8, 2017 3:15 PM
To: McLamb, Marguerite
Cc: Lamason, Bill; Torres, Elineth; Dalcher, Debra
Subject: RE: Memo replacing OIAI with proposed 2007 interpretation_11_6_17 MM (002).docx

Marguerite,

Thank you for the update. Ex. 5 - Deliberative Process
Ex. 5 - Deliberative Process
Ex. 5 - Deliberative Process I am attaching another version of the memo for your review. You can provide this version to Sonja. Bill's sense of timing is that we need to have a draft memo by the middle of next week. It is important to note that some of the comments received on the 2007 proposal will require a legal response. I will working on the RTC document, but will need assistance with that part.

Thank you, Debra

-----Original Message-----
From: McLamb, Marguerite
Sent: Wednesday, November 08, 2017 3:04 PM
To: Dalcher, Debra <dalcher.debra@epa.gov>
Cc: Lamason, Bill <Lamason.Bill@epa.gov>; Torres, Elineth <Torres.Elineth@epa.gov>

Subject: RE: Memo replacing OIAI with proposed 2007 interpretation_11_6_17 MM (002).docx

Hi, all,
I sent the draft memo and explained the current approach to Sonja. She had not yet read the memo.

Ex. 5 - Attorney Client / Deliberative Process

I'm glad to discuss this more if you'd like; I'll be in the office tomorrow morning.
Best,
Marguerite

****
Marguerite E. McLamb
Policy Advisor
Sector Policies and Programs Division
Office of Air Quality Planning & Standards U.S. Environmental Protection Agency Research Triangle Park, NC 27711
Phone: (919) 541-7858
Fax: (919) 541-4991
mclamb.marguerite@epa.gov

From: Dalcher, Debra
Sent: Wednesday, November 8, 2017 2:51 PM
To: McLamb, Marguerite
Cc: Lamason, Bill; Torres, Elineth
Subject: RE: Memo replacing OIAI with proposed 2007 interpretation_11_6_17 MM (002).docx

Marguerite,

Could you give us an overview of what you discussed with Sonja regarding OIAI and the way forward re. OGC's role.

Thank you, Debra

-----Original Message-----
From: McLamb, Marguerite
Sent: Wednesday, November 08, 2017 10:27 AM
To: Dalcher, Debra <dalcher.debra@epa.gov>
Cc: Lamason, Bill <Lamason.Bill@epa.gov>; Torres, Elineth <Torres.Elineth@epa.gov>
Subject: RE: Memo replacing OIAI with proposed 2007 interpretation_11_6_17 MM (002).docx

Thank you, Debra.

****
Marguerite E. McLamb
Policy Advisor
Sector Policies and Programs Division
Office of Air Quality Planning & Standards U.S. Environmental Protection Agency Research Triangle

Park, NC 27711
Phone: (919) 541-7858
Fax: (919) 541-4991
mclamb.marguerite@epa.gov

From: Dalcher, Debra
Sent: Wednesday, November 8, 2017 10:18 AM
To: McLamb, Marguerite
Cc: Lamason, Bill; Torres, Elineth; Dalcher, Debra
Subject: Memo replacing OIAI with proposed 2007 interpretation_11_6_17 MM (002).docx

Thank you Marguerite.

Please let me know if she has any suggestions/thoughts.

Debra

To: Lamason, Bill[Lamason.Bill@epa.gov]
Cc: Dalcher, Debra[dalcher.debra@epa.gov]
From: McLamb, Marguerite
Sent: Thur 11/30/2017 3:25:19 PM
Subject: Re: OIAI Memo

Debra, let's talk after the 10:30 staff meeting ends. I will find you.

On Nov 30, 2017, at 10:21 AM, Lamason, Bill <Lamason.Bill@epa.gov> wrote:

Can you and Debra talk? I'm tied up until Noon with meetings/tasks. Thanks!
Bill

From: McLamb, Marguerite
Sent: Thursday, November 30, 2017 10:18 AM
To: Lamason, Bill <Lamason.Bill@epa.gov>
Cc: Dalcher, Debra <dalcher.debra@epa.gov>
Subject: Re: OIAI Memo

Hi, Bill,

I have heard from OGC this morning and have comments from Scott Jordan. I will share those shortly. We can talk about this if you'd like this morning.

Best, Marguerite

On Nov 29, 2017, at 3:31 PM, Lamason, Bill <Lamason.Bill@epa.gov> wrote:

Marguerite,

Thanks for the update. Can we see the current version? It would help me prepare some talking points for Peter. On timing, let's chat in the morning when you are in before Kevin calls me. I'll wait to set the meeting with Peter until Kevin and I touch base. Thanks again!

Bill

From: McLamb, Marguerite
Sent: Wednesday, November 29, 2017 3:28 PM
To: Lamason, Bill <Lamason.Bill@epa.gov>
Cc: Dalcher, Debra <dalcher.debra@epa.gov>
Subject: Re: OIAI Memo

Hi, Bill,

OGC has the memo from me and is reviewing and adding to it. I talked to Sonja yesterday, and she is having Rick and Scott work on it while she is out, and she'll weigh in on it early next week. She knows our timeframe. We can talk in the morning if you'd like.

Best,

Marguerite

On Nov 29, 2017, at 2:49 PM, Lamason, Bill <Lamason.Bill@epa.gov> wrote:

Marguerite,

Hope you are well. I left you a voicemail on your desk phone. Just checking on where we are on your (and OGC's) review of the OIAI memo. I need to schedule time with Peter for next week to prep for a discussion with the AA and would like to update Peter on the latest version of the memo and potential timing/direction for moving forward. Let me know when you have a moment. Thanks!

Bill

To: Dalcher, Debra[dalcher.debra@epa.gov]
From: Dalcher, Debra
Sent: Mon 12/4/2017 1:06:53 PM
Subject: OIAI%2011.27.2017+SJJ 11.30.17_Clean.docx
OIAI%2011.27.2017+SJJ 11.30.17_Clean.docx

With Scott Jordan's edits.

To: Dalcher, Debra[dalcher.debra@epa.gov]
From: Lamason, Bill
Sent: Tue 1/23/2018 3:43:46 PM
Subject: Reclassification of Major Sources as Area Sources Under Section 112_Draft_1 22 18_1pm_BLcomments.docx
Reclassification of Major Sources as Area Sources Under Section 112_Draft_1 22 18_1pm_BLcomments.docx

Debra, Some comments – a few different observations from Kevin's. Bill

To: Dalcher, Debra[dalcher.debra@epa.gov]
From: Jordan, Scott
Sent: Fri 1/19/2018 8:29:59 PM
Subject: OIAI - Draft FR Notice with Scott Comments
FRN OIAI Guidance Memorandum 1_19_18+SJJ 1.19.18.docx

Two thoughts:

Ex. 5 - Attorney Client

Ex. 5 - Deliberative Process

Scott Jordan

Air and Radiation Law Office

Office of General Counsel

202-564-7508

From: Dalcher, Debra
Sent: Friday, January 19, 2018 2:58 PM
To: Jordan, Scott
Cc: Dalcher, Debra
Subject: Draft FR Notice

1st draft. I sent this a few minutes ago and didn't get my copy so I am resending. Thank you, Debra

To: Dalcher, Debra[dalcher.debra@epa.gov]
From: Goehl, Eric
Sent: Fri 12/8/2017 4:44:26 PM
Subject: FW: OIAI Revision Memo_12.8.17.Wehrum Draft.docx

I assume you got this email and know that Peter received the memo.

Have a good weekend.

From: Tsirigotis, Peter
Sent: Friday, December 08, 2017 11:06 AM
To: Dalcher, Debra <dalcher.debra@epa.gov>
Cc: Thompson, Fred <Thompson.Fred@epa.gov>; Lamason, Bill <Lamason.Bill@epa.gov>; Goehl, Eric <Goehl.Eric@epa.gov>; French, Chuck <French.Chuck@epa.gov>; McLamb, Marguerite <McLamb.Marguerite@epa.gov>
Subject: Re: OIAI Revision Memo_12.8.17.Wehrum Draft.docx

Thank you for the very quick turnaround Debra and Scott. I'll share any thoughts/edits with you Monday. We are trying to have the bill briefing next week.

On Dec 8, 2017, at 10:55 AM, Dalcher, Debra <dalcher.debra@epa.gov> wrote:

Peter,

OGC (Scott Jordan) reviewed the memo this morning. I have incorporated his edits and attached a clean version of our draft document.

You can reach me at Ex. 6 - Personal Privacy if you have any questions upon receipt.

Best Regards, Debra

<OIAI Revision Memo_12.8.17.Wehrum Draft.docx>

To: Pemberton, Wanda[Pemberton.Wanda@epa.gov]; Lamason, Bill[Lamason.Bill@epa.gov]
Cc: Dalcher, Debra[dalcher.debra@epa.gov]
From: Dalcher, Debra
Sent: Tue 1/30/2018 6:46:44 PM
Subject: RE: OIAI - Customer Query FW: Form submission from: Stationary Sources of Air Pollution Contact Us About Stationary Sources of Air Pollution form

Wanda,

We are meeting with AQPD tomorrow to discuss communication and responses to questions/general queries.

For right now I will be keeping track and referring the permitting ones to AQPD. Debra

-----Original Message-----
From: Pemberton, Wanda
Sent: Tuesday, January 30, 2018 1:44 PM
To: Dalcher, Debra <dalcher.debra@epa.gov>; Lamason, Bill <Lamason.Bill@epa.gov>
Subject: OIAI - Customer Query FW: Form submission from: Stationary Sources of Air Pollution Contact Us About Stationary Sources of Air Pollution form

Hi Guys,

How would you like me to handle OIAI queries? Typically I refer compliance questions to the Regions, but since this is a recent shift I'm not sure is they are ready to begin fielding this type of question. Please advise.

Thanks. Wanda P.

****
Wanda H. Pemberton, MBA | Program Development Specialist | Sector Policies & Programs Division | Immediate Office I Mail Code D205-02 | Office of Air Quality Planning & Standards | U.S. Environmental Protection Agency | Research Triangle Park, NC 27711 | Phone: 919-541-0829 | Fax: 919-541-4991 | Email: pemberton.wanda@epa.gov

“Nobody cares how much you know, until they know how much you care.” – Theodore Roosevelt

-----Original Message-----
From: drupal_admin@epa.gov [mailto:drupal_admin@epa.gov] On Behalf Of James Frea <> via EPA
Sent: Tuesday, January 30, 2018 1:27 PM
To: Pemberton, Wanda <Pemberton.Wanda@epa.gov>
Subject: Form submission from: Stationary Sources of Air Pollution Contact Us About Stationary Sources of Air Pollution form

Submitted on 01/30/2018 1:26PM
Submitted values are:

Name: James Frea
Email Address:
Comments: Dear EPA, I just read your statement on repeal of the "once in, always in" rule. So, if I read your statement correctly, if a company emits radiation into the air from 9 PM until 10 PM every night, I'm only a "major source" of radiation from 9-10 PM?

To: Cortelyou-Lee, Jan[Cortelyou-Lee.Jan@epa.gov]; Dalcher, Debra[dalcher.debra@epa.gov]
From: Lamason, Bill
Sent: Wed 1/24/2018 8:24:38 PM
Subject: RE: Examples as Requested

Jan, I'm responding for Debra as she's pulling together the blue folder.

Ex. 5 - Deliberative Process

Ex. 5 - Deliberative Process

Let us know if you have any questions.

Bill

From: Cortelyou-Lee, Jan
Sent: Wednesday, January 24, 2018 3:04 PM
To: Dalcher, Debra <dalcher.debra@epa.gov>
Cc: Lamason, Bill <Lamason.Bill@epa.gov>
Subject: RE: Examples as Requested

Thanks Debra

When we talk about modifying regulatory text – is that in the general provisions?

Jan Cortelyou-Lee

US Environmental Protection Agency

Office of Air Quality Planning and Standards

MD-C404-03

109 TW Alexander Drive

Research Triangle Park, NC 27709

Desk: 919-541-5393

Cell: 919-368-5734

From: Dalcher, Debra
Sent: Wednesday, January 24, 2018 12:08 PM
To: Cortelyou-Lee, Jan <Cortelyou-Lee.Jan@epa.gov>
Cc: Lamason, Bill <Lamason.Bill@epa.gov>
Subject: Examples as Requested

Thanks Jan. If you need anything else, please don't hesitate to reach out.

Debra

Ex. 5 - Deliberative Process

Ex. 5 - Deliberative Process

Debra S. Dalcher

U.S. EPA

Policy and Strategies Group

Sector Policies and Programs Division, OAQPS

109 T.W. Alexander Drive

Research Triangle Park, NC 27711

Phone: 919-541-2443

To: Dalcher, Debra[dalcher.debra@epa.gov]
From: Lamason, Bill
Sent: Tue 1/23/2018 2:50:01 PM
Subject: RE: OIAI - Edits to address Kevin point re non-112 requirements

Debra, Thanks. Ex. 5 - Deliberative Process

Ex. 5 - Deliberative Process

Ex. 5 - Deliberative Process Thanks! B

From: Dalcher, Debra
Sent: Monday, January 22, 2018 3:54 PM
To: Lamason, Bill <Lamason.Bill@epa.gov>
Subject: FW: OIAI - Edits to address Kevin point re non-112 requirements

Just FYI. Debra

From: Culligan, Kevin
Sent: Monday, January 22, 2018 3:13 PM
To: Jordan, Scott <Jordan.Scott@epa.gov>; Dalcher, Debra <dalcher.debra@epa.gov>
Cc: Rodman, Sonja <Rodman.Sonja@epa.gov>
Subject: RE: OIAI - Edits to address Kevin point re non-112 requirements

I like Scott's edit.

From: Jordan, Scott
Sent: Monday, January 22, 2018 3:11 PM
To: Dalcher, Debra <dalcher.debra@epa.gov>
Cc: Rodman, Sonja <Rodman.Sonja@epa.gov>; Culligan, Kevin <Culligan.Kevin@epa.gov>
Subject: OIAI - Edits to address Kevin point re non-112 requirements

Ex. 5 - Attorney Client

Ex. 5 - Attorney Client

Scott Jordan

Air and Radiation Law Office

Office of General Counsel

202-564-7508

From: Dalcher, Debra
Sent: Monday, January 22, 2018 3:02 PM
To: Jordan, Scott <Jordan.Scott@epa.gov>
Cc: Dalcher, Debra <dalcher.debra@epa.gov>
Subject: Reclassification of Major Sources as Area Sources Under Section 112_Draft_1 22 18_1pm.docx

Scott, see attached.

Ex. 5 - Attorney-Client/Deliberative Process

Ex. 5 - Attorney Client / Deliberative Process

Debra

To: Dalcher, Debra[dalcher.debra@epa.gov]
Cc: Jordan, Scott[Jordan.Scott@epa.gov]
From: Rodman, Sonja
Sent: Fri 12/8/2017 4:30:26 PM
Subject: RE: oiai

Ex. 5 - Attorney Client

Sonja L. Rodman

Air Toxics, Consumer Protection and Indoor Air Practice Group

(202) 564-4079

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From: Dalcher, Debra
Sent: Friday, December 08, 2017 11:25 AM
To: Rodman, Sonja <Rodman.Sonja@epa.gov>
Cc: Jordan, Scott <Jordan.Scott@epa.gov>
Subject: Re: oiai

Just noted that your edits are on the pager. I will get those incorporated now. That is not moving until Monday. Sorry, it's been a crazy morning. Debra

---

From: Rodman, Sonja
Sent: Friday, December 8, 2017 11:16:25 AM
To: Dalcher, Debra
Cc: Jordan, Scott
Subject: FW: oiai

A few edits from me. I don't intend to read the memo again until we have some guidance from

Wehrum

Sonja L. Rodman

Air Toxics, Consumer Protection and Indoor Air Practice Group

(202) 564-4079

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To: McLamb, Marguerite[McLamb.Marguerite@epa.gov]
Cc: Dalcher, Debra[dalcher.debra@epa.gov]
From: Lamason, Bill
Sent: Thur 11/30/2017 3:21:42 PM
Subject: RE: OIAI Memo

Can you and Debra talk? I'm tied up until Noon with meetings/tasks. Thanks! Bill

From: McLamb, Marguerite
Sent: Thursday, November 30, 2017 10:18 AM
To: Lamason, Bill <Lamason.Bill@epa.gov>
Cc: Dalcher, Debra <dalcher.debra@epa.gov>
Subject: Re: OIAI Memo

Hi, Bill,

I have heard from OGC this morning and have comments from Scott Jordan. I will share those shortly. We can talk about this if you'd like this morning.

Best, Marguerite

On Nov 29, 2017, at 3:31 PM, Lamason, Bill <Lamason.Bill@epa.gov> wrote:

Marguerite,

Thanks for the update. Can we see the current version? It would help me prepare some talking points for Peter. On timing, let's chat in the morning when you are in before Kevin calls me. I'll wait to set the meeting with Peter until Kevin and I touch base. Thanks again!

Bill

From: McLamb, Marguerite
Sent: Wednesday, November 29, 2017 3:28 PM

To: Lamason, Bill <Lamason.Bill@epa.gov>
Cc: Dalcher, Debra <dalcher.debra@epa.gov>
Subject: Re: OIAI Memo

Hi, Bill,

OGC has the memo from me and is reviewing and adding to it. I talked to Sonja yesterday, and she is having Rick and Scott work on it while she is out, and she'll weigh in on it early next week. She knows our timeframe. We can talk in the morning if you'd like.

Best,

Marguerite

On Nov 29, 2017, at 2:49 PM, Lamason, Bill <Lamason.Bill@epa.gov> wrote:

> Marguerite,
>
> Hope you are well. I left you a voicemail on your desk phone. Just checking on where we are on your (and OGC's) review of the OIAI memo. I need to schedule time with Peter for next week to prep for a discussion with the AA and would like to update Peter on the latest version of the memo and potential timing/direction for moving forward. Let me know when you have a moment. Thanks!
>
> Bill

To: Rodman, Sonja[Rodman.Sonja@epa.gov]
Cc: Jordan, Scott[Jordan.Scott@epa.gov]; Dalcher, Debra[dalcher.debra@epa.gov]
From: Lamason, Bill
Sent: Thur 1/25/2018 3:21:36 PM
Subject: Re: Once-In-Always-In Guidance Memorandum

I do expect the memo to be stable except for one possible added paragraph. Just can't promise other changes won't be offered. B

Sent from my iPhone

On Jan 25, 2018, at 9:59 AM, Rodman, Sonja <Rodman.Sonja@epa.gov> wrote:

That sounds like a good plan. Thanks Scott. By "current version" I assume you mean a version that includes all edits we suggested this am, the edits Debra got from "upstairs" and the edits from Bill.

Sonja L. Rodman

Air Toxics, Consumer Protection and Indoor Air Practice Group

(202) 564-4079

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From: Jordan, Scott
Sent: Thursday, January 25, 2018 9:56 AM
To: Rodman, Sonja <Rodman.Sonja@epa.gov>; Lamason, Bill <Lamason.Bill@epa.gov>; Dalcher, Debra <dalcher.debra@epa.gov>
Subject: RE: Once-In-Always-In Guidance Memorandum

One question: Who has "the pen" at this point?

I think we would be wise to work out a process to make sure that these minor edits from all our respective reviews over the next couple of hours actually get into the document that Bill Wehrum signs.

My suggestion is that (1) you send us the current version that you have, (2) we will do one final review and make sure it has all of the edits that we have identified, and (3) we will get a version back to you with OGC final signoff.

Also, can you check in with David Harlow to make sure that either (1) he is not making edits at this point, or (2) we incorporate any changes he is making into the final version (or make sure that our futher edits are going into his final version, if he has the pen).

Scott Jordan

Air and Radiation Law Office

Office of General Counsel

202-564-7508

From: Rodman, Sonja
Sent: Thursday, January 25, 2018 9:52 AM
To: Lamason, Bill <Lamason.Bill@epa.gov>; Dalcher, Debra <dalcher.debra@epa.gov>
Cc: Jordan, Scott <Jordan.Scott@epa.gov>
Subject: RE: Once-In-Always-In Guidance Memorandum

Ex. 5 - Attorney Client

With all this back and forth would you mind sending the most recent draft with all the edits incorporated.

We're waiting for a final green light from Justin, but he's usually pretty quick.

Sonja L. Rodman

Air Toxics, Consumer Protection and Indoor Air Practice Group

(202) 564-4079

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From: Lamason, Bill
Sent: Thursday, January 25, 2018 9:45 AM
To: Rodman, Sonja <Rodman.Sonja@epa.gov>; Dalcher, Debra <dalcher.debra@epa.gov>
Cc: Jordan, Scott <Jordan.Scott@epa.gov>
Subject: RE: Once-In-Always-In Guidance Memorandum

All – a couple more minor edits Meanwhile, a couple of nits related to memorandum that, if you all haven't yet caught, should be corrected. Both are on page 4.

Ex. 5 - Deliberative Process

Ex. 5 - Deliberative Process

Ex. 5 - Deliberative Process

Any timing on final OGC edits? Thanks! B

Ex. 5 - Deliberative Process

Ex. 5 - Deliberative Process

Ex. 5 - Deliberative Process

From: Rodman, Sonja
Sent: Thursday, January 25, 2018 9:00 AM
To: Lamason, Bill <Lamason.Bill@epa.gov>; Dalcher, Debra <dalcher.debra@epa.gov>
Cc: Jordan, Scott <Jordan.Scott@epa.gov>
Subject: Once-In-Always-In Guidance Memorandum

Bill & Debra, Here is a version that incorporates Justin's comments and suggested edits (as modified by us). We still need to circle with Justin on a couple of comments that we have not yet incorporated so this isn't the final/final version of his comments but I wanted to get

it to you sooner rather than later in case there is anything you think we need to discuss. Thanks! – Sonja

Sonja L. Rodman

Air Toxics, Consumer Protection and Indoor Air Practice Group

(202) 564-4079

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To: Dalcher, Debra[dalcher.debra@epa.gov]
From: Eck, Janet
Sent: Tue 1/23/2018 2:13:36 PM
Subject: OIAI Comments
Reclassification of Major Sources as Area Sources Under Section 112_Draft_1 22 18_1pm.docx
FRN Notice of Memorandum Availability 1_22_18 1pm (002).docx

Hi Debra, My comments. Thanks.

To: Eck, Janet[Eck.Janet@epa.gov]; Lamason, Bill[Lamason.Bill@epa.gov]; Dalcher, Debra[dalcher.debra@epa.gov]
From: Dalcher, Debra
Sent: Fri 1/19/2018 8:24:37 PM
Subject: Re: Schedule for OAQPS Projects/Work

That is fine. I think the memo will move to OAR around Wednesday or Thursday next week. We were told yesterday we need a FR Notice so I am trying to get that drafted and reviewed by OGC now. Just something extra to do.

Ex. 5 - Deliberative Process

Ex. 5 - Deliberative Process

Thanks again. Debra

From: Eck, Janet
Sent: Friday, January 19, 2018 3:06:17 PM
To: Dalcher, Debra; Lamason, Bill
Subject: RE: Schedule for OAQPS Projects/Work

Debra, I would like to put the OIAI memo into Tracker for a possible signature date of 1/31. Is it ok to do so and can you give me a short 2-3 line abstract to go w/it. Also, what is your target date to OAR for review? Thanks.

From: Dalcher, Debra
Sent: Friday, January 19, 2018 2:27 PM
To: Eck, Janet <Eck.Janet@epa.gov>; Lamason, Bill <Lamason.Bill@epa.gov>; Dalcher, Debra <dalcher.debra@epa.gov>
Subject: Re: Schedule for OAQPS Projects/Work

Late January is correct for signature on the OIAI memorandum.

Thank you for the reminder Janet. Debra

From: Eck, Janet
Sent: Friday, January 19, 2018 2:21:13 PM
To: Hutson, Nick; Fruh, Steve; Dalcher, Debra; Lamason, Bill
Subject: FW: Schedule for OAQPS Projects/Work

Reminder that your input is needed today. Thanks.

From: Eck, Janet
Sent: Tuesday, January 16, 2018 6:47 PM
To: Swanson, Nicholas <Swanson.Nicholas@epa.gov>; Fellner, Christian <Fellner.Christian@epa.gov>; Hutson, Nick <Hutson.Nick@epa.gov>; Fruh, Steve <Fruh.Steve@epa.gov>; Parker, Barrett <Parker.Barrett@epa.gov>; Srivastava, Ravi <Srivastava.Ravi@epa.gov>; Witt, Jon <Witt.Jon@epa.gov>; Thompson, Lisa <Thompson.Lisa@epa.gov>; Cozzie, David <Cozzie.David@epa.gov>; Dalcher, Debra <dalcher.debra@epa.gov>; Lamason, Bill <Lamason.Bill@epa.gov>
Cc: French, Chuck <French.Chuck@epa.gov>
Subject: FW: Schedule for OAQPS Projects/Work

Attached is a summary of upcoming dates concerning our major projects provided by Mike Koerber for OAR. He would like our feedback by COB next Monday. I have filled in or corrected some information, but need your input as well to finalize. Please review and send me your updates by COB Friday. Projects include CPP, MATS, Methane and Once In Always In. Thanks for your help.

From: Koerber, Mike
Sent: Tuesday, January 16, 2018 12:09 PM
To: Eck, Janet <Eck.Janet@epa.gov>; French, Chuck <French.Chuck@epa.gov>; Johnson, Yvonne W <Johnson.Yvonnew@epa.gov>; Long, Pam <Long.Pam@epa.gov>; Santiago, Juan <Santiago.Juan@epa.gov>; Keating, Martha <keating.martha@epa.gov>; Scavo, Kimber <Scavo.Kimber@epa.gov>; Henigin, Mary <Henigin.Mary@epa.gov>
Cc: Wood, Anna <Wood.Anna@epa.gov>; Sasser, Erika <Sasser.Erika@epa.gov>; South, Peter <South.Peter@epa.gov>
Subject: Schedule for OAQPS Projects/Work

I'm putting together a summary for OAR of upcoming dates/deadlines for our 5 major projects (as identified by OAR) and other "must do" work. A draft table is attached. Please add/modify any key dates/deadlines, including early guidance, options selection, delivery to OMB, and signature. (Let me know if there are other key milestones that OAR should be aware of for your projects.)

I'd like to get this to OAR next week, so please provide feedback by next Monday (Jan 22), COB. Thanks and let me know if you have any questions.

Mike

To: Dalcher, Debra[dalcher.debra@epa.gov]
From: Jordan, Scott
Sent: Thur 1/18/2018 11:50:40 AM
Subject: OIAI Memo - Current Draft?

Debra –

Can you send me the current draft OAIA memo that you have? I want to start doing some edits on it today, and want to be sure that I am adding my suggested edits to the most current draft.

Thanks,

Scott Jordan

Air and Radiation Law Office

Office of General Counsel

202-564-7508

To: Dalcher, Debra[dalcher.debra@epa.gov]
From: Shrager, Brian
Sent: Thur 12/7/2017 3:28:25 PM
Subject: OIAI Revision Memo_12.7.17 DD BLS.docx
OIAI Revision Memo_12.7.17 DD BLS.docx

To: Lamason, Bill[Lamason.Bill@epa.gov]
Cc: Dalcher, Debra[dalcher.debra@epa.gov]
From: McLamb, Marguerite
Sent: Thur 11/30/2017 3:21:21 PM
Subject: Fwd: first cut at revising OIAI memo - Scott's comments
OIAI%2011.27.2017+SJJ 11.30.17.docx
ATT00001.htm

Begin forwarded message:

From: "Jordan, Scott" <Jordan.Scott@epa.gov>
Date: November 30, 2017 at 8:42:41 AM EST
To: "Rodman, Sonja" <Rodman.Sonja@epa.gov>, "Vetter, Rick" <Vetter.Rick@epa.gov>
Cc: "Versace, Paul" <Versace.Paul@epa.gov>, "McLamb, Marguerite" <McLamb.Marguerite@epa.gov>
Subject: Re: first cut at revising OIAI memo - Scott's comments

Ex. 5 - Attorney Client

Ex. 5 - Attorney Client

Ex. 5 - Attorney Client

Ex. 5 - Attorney Client

Scott Jordan

Air and Radiation Law Office

Office of General Counsel

202-564-7508

From: Rodman, Sonja
Sent: Tuesday, November 28, 2017 5:16 PM
To: Vetter, Rick; Jordan, Scott
Cc: Versace, Paul
Subject: FW: first cut at revising OIAI memo

Rick & Scott, First, I apologize for (1) not finding time to sit down with the two of you today and let

Ex. 6 - Personal Privacy

and (2) not finding time to look at this. It is my understanding that Peter would like to get a "polished draft" of this to the Administrator next week. The goal of providing a draft will NOT be to present something for signature, but instead to present an example of what we might be able to do and get general guidance on direction.

Ex. 5 - Attorney Client

Ex. 5 - Attorney Client

Ex. 5 - Attorney Client

So sorry to drop this and run.

Thanks! - Sonja

Sonja L. Rodman
Air Toxics, Consumer Protection and Indoor Air Practice Group
(202) 564-4079

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To: Rodman, Sonja[Rodman.Sonja@epa.gov]
Cc: Jordan, Scott[Jordan.Scott@epa.gov]; Dalcher, Debra[dalcher.debra@epa.gov]
From: Lamason, Bill
Sent: Thur 1/25/2018 3:18:23 PM
Subject: Re: Once-In-Always-In Guidance Memorandum

To be clear the "upstairs" are not from the "top floor". Waiting in those still.

Sent from my iPhone

On Jan 25, 2018, at 9:59 AM, Rodman, Sonja <Rodman.Sonja@epa.gov> wrote:

That sounds like a good plan. Thanks Scott. By "current version" I assume you mean a version that includes all edits we suggested this am, the edits Debra got from "upstairs" and the edits from Bill.

Sonja L. Rodman

Air Toxics, Consumer Protection and Indoor Air Practice Group

(202) 564-4079

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From: Jordan, Scott
Sent: Thursday, January 25, 2018 9:56 AM
To: Rodman, Sonja <Rodman.Sonja@epa.gov>; Lamason, Bill <Lamason.Bill@epa.gov>; Dalcher, Debra <dalcher.debra@epa.gov>
Subject: RE: Once-In-Always-In Guidance Memorandum

One question: Who has "the pen" at this point?

I think we would be wise to work out a process to make sure that these minor edits from all our respective reviews over the next couple of hours actually get into the document that Bill Wehrum signs.

My suggestion is that (1) you send us the current version that you have, (2) we will do one final review and make sure it has all of the edits that we have identified, and (3) we will get a version back to you with OGC final signoff.

Also, can you check in with David Harlow to make sure that either (1) he is not making edits at this point, or (2) we incorporate any changes he is making into the final version (or make sure that our futher edits are going into his final version, if he has the pen).

Scott Jordan

Air and Radiation Law Office

Office of General Counsel

202-564-7508

From: Rodman, Sonja
Sent: Thursday, January 25, 2018 9:52 AM
To: Lamason, Bill <Lamason.Bill@epa.gov>; Dalcher, Debra <dalcher.debra@epa.gov>
Cc: Jordan, Scott <Jordan.Scott@epa.gov>
Subject: RE: Once-In-Always-In Guidance Memorandum

Ex. 5 - Attorney Client

With all this back and forth would you mind sending the most recent draft with all the edits incorporated.

We're waiting for a final green light from Justin, but he's usually pretty quick.

Sonja L. Rodman

Air Toxics, Consumer Protection and Indoor Air Practice Group

(202) 564-4079

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From: Lamason, Bill
Sent: Thursday, January 25, 2018 9:45 AM
To: Rodman, Sonja <Rodman.Sonja@epa.gov>; Dalcher, Debra <dalcher.debra@epa.gov>
Cc: Jordan, Scott <Jordan.Scott@epa.gov>
Subject: RE: Once-In-Always-In Guidance Memorandum

Ex. 5 - Deliberative Process

Ex. 5 - Deliberative Process

Ex. 5 - Deliberative Process

Any timing on final OGC edits? Thanks! B

.

Ex. 5 - Deliberative Process

Ex. 5 - Deliberative Process

Ex. 5 - Deliberative Process

From: Rodman, Sonja
Sent: Thursday, January 25, 2018 9:00 AM
To: Lamason, Bill <Lamason.Bill@epa.gov>; Dalcher, Debra <dalcher.debra@epa.gov>
Cc: Jordan, Scott <Jordan.Scott@epa.gov>
Subject: Once-In-Always-In Guidance Memorandum

Bill & Debra, Here is a version that incorporates Justin's comments and suggested edits (as modified by us). We still need to circle with Justin on a couple of comments that we have not yet incorporated so this isn't the final/final version of his comments but I wanted to get it to you sooner rather than later in case there is anything you think we need to discuss.

Thanks! – Sonja

Sonja L. Rodman

Air Toxics, Consumer Protection and Indoor Air Practice Group

(202) 564-4079

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To: Dalcher, Debra[dalcher.debra@epa.gov]
From: Jordan, Scott
Sent: Fri 1/19/2018 8:06:47 PM
Subject: Fw: just a couple minor comments
OIAI.Revised OIAI memorandum.SJJ+DD.1.18.18+SJJ + DD 1.19.18_SLR.docx

Debra - Here is the document with Sonja's comments. (Sorry for the delay in forwarding this. Her email appeared in my mailbox just a couple of minutes ago.)

I took a quick look at Sonja's comments, and they are minor. We can talk on Monday if you have any questions.

I will be signing off for today shortly to go to a Ex. 6 - Personal Privacy

Scott Jordan

Air and Radiation Law Office

Office of General Counsel

202-564-7508

From: Rodman, Sonja
Sent: Friday, January 19, 2018 1:42 PM
To: Jordan, Scott
Subject: just a couple minor comments

Ex. 5 - Attorney Client

Sonja L. Rodman

Air Toxics, Consumer Protection and Indoor Air Practice Group

(202) 564-4079

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To: Dalcher, Debra[dalcher.debra@epa.gov]
Cc: Lamason, Bill[Lamason.Bill@epa.gov]; Schaefer, John[Schaefer.John@epa.gov]
From: Srivastava, Ravi
Sent: Tue 11/14/2017 9:11:04 PM
Subject: RE: Path OIAI - key phrases

Debra,

They are already on G: drive. Please find them at: G:\USER\SHARE__PSG\Once In Always In\Ravi_OIAI\ images_scans_wp. This folder has 34 images & scans + 1 Word Perfect (WP) file. Since I have already converted the WP file to MS Word docx, you don't need to process the WP file manually.

Ravi

From: Dalcher, Debra
Sent: Tuesday, November 14, 2017 1:45 PM
To: Srivastava, Ravi <Srivastava.Ravi@epa.gov>
Cc: Lamason, Bill <Lamason.Bill@epa.gov>; Schaefer, John <Schaefer.John@epa.gov>
Subject: RE: Path OIAI - key phrases

Ravi, if you have segregated the files we cannot search using ESAS, can you please save them in your OIAI file on the G drive please.

I will need to review them manually.

Thank you, Debra

From: Srivastava, Ravi
Sent: Tuesday, November 14, 2017 1:28 PM

To: Dalcher, Debra <dalcher.debra@epa.gov>
Cc: Lamason, Bill <Lamason.Bill@epa.gov>; Schaefer, John <Schaefer.John@epa.gov>
Subject: RE: Path OIAI - key phrases

Thanks. I will develop stopword candidates and finalize them with you and Bill, before running the list below.

From: Dalcher, Debra
Sent: Tuesday, November 14, 2017 1:00 PM
To: Srivastava, Ravi <Srivastava.Ravi@epa.gov>; Lamason, Bill <Lamason.Bill@epa.gov>
Cc: Schaefer, John <Schaefer.John@epa.gov>
Subject: RE: Path OIAI - key phrases

Key phrases I plan to use:

Temporal condition

Backsliding

Title V

Flexibility

Emission reductions

General provisions

Source classification

Burden

MACT-level control

incentive

permit requirements

monitoring, recordkeeping and reporting requirements

practically enforceable

control equipment

pollution prevention

residual risk

OIAI

solicit comment

statutory definitions

112(a)

attaining area source status

control devices

level of emission reduction

pte limits

maintain area source status

permitting authorities

emission reduction maintenance

area source standards

compliance time-frame

immediate compliance rule

compliance extension

once in always in

major source

From: Srivastava, Ravi

Sent: Tuesday, November 14, 2017 12:37 PM
To: Lamason, Bill <Lamason.Bill@epa.gov>; Dalcher, Debra <dalcher.debra@epa.gov>
Subject: RE: Path OIAI

Bill and Debra,

The folder at G:\USER\SHARE__PSG\Once In Always In\Ravi_OIAI contains the following 3 folders:

EPA-HQ-OAR-2004-0094 2017-11-06 11-25-58_docs – 329 comments with several images and scans

images_scans_wp – 34 images & scans + 1 Word Perfect (WP) file; I had to convert the WP file to docx.

recoverable_docs - 295 items that can be parsed in ESAS (I have verified this)

I will now proceed to process the 295 items in "recoverable_docs" using ESAS. I will begin by fine tuning the stopwords in consultation with you. Then I can make about 20 runs with ESAS, with each run processing about 15 docs. Of course, I can save the results of each run. These runs will be expedited if several of us divide this work amongst us.

Let me know how you want to proceed.

Ravi

From: Lamason, Bill
Sent: Tuesday, November 14, 2017 9:28 AM
To: Srivastava, Ravi <Srivastava.Ravi@epa.gov>
Subject: Path OIAI

G:\USER\SHARE_PSG\Once In Always In\Elineth Torres_ OIAI\OIAI\2007 OIAI proposal and comments

To: Dalcher, Debra[dalcher.debra@epa.gov]
From: Lamason, Bill
Sent: Wed 1/17/2018 1:25:13 PM
Subject: RE: Schedule for OAQPS Projects/Work

I think we wait until our meetings with OGC and David Harlow to decide. The OIAI memo signature is on the table for end of January. That may have to change. B

From: Dalcher, Debra
Sent: Wednesday, January 17, 2018 8:03 AM
To: Lamason, Bill <Lamason.Bill@epa.gov>
Subject: Fw: Schedule for OAQPS Projects/Work

What do we want to put on here for OIAI memo?

From: Eck, Janet
Sent: Tuesday, January 16, 2018 6:46 PM
To: Swanson, Nicholas; Fellner, Christian; Hutson, Nick; Fruh, Steve; Parker, Barrett; Srivastava, Ravi; Witt, Jon; Thompson, Lisa; Cozzie, David; Dalcher, Debra; Lamason, Bill
Cc: French, Chuck
Subject: FW: Schedule for OAQPS Projects/Work

Attached is a summary of upcoming dates concerning our major projects provided by Mike Koerber for OAR. He would like our feedback by COB next Monday. I have filled in or corrected some information, but need your input as well to finalize. Please review and send me your updates by COB Friday. Projects include CPP, MATS, Methane and Once In Always In. Thanks for your help.

From: Koerber, Mike
Sent: Tuesday, January 16, 2018 12:09 PM
To: Eck, Janet <Eck.Janet@epa.gov>; French, Chuck <French.Chuck@epa.gov>; Johnson, Yvonne W <Johnson.Yvonnew@epa.gov>; Long, Pam <Long.Pam@epa.gov>; Santiago, Juan <Santiago.Juan@epa.gov>; Keating, Martha <keating.martha@epa.gov>; Scavo, Kimber <Scavo.Kimber@epa.gov>; Henigin, Mary

<Henigin.Mary@epa.gov>
Cc: Wood, Anna <Wood.Anna@epa.gov>; Sasser, Erika <Sasser.Erika@epa.gov>; South, Peter <South.Peter@epa.gov>
Subject: Schedule for OAQPS Projects/Work

I'm putting together a summary for OAR of upcoming dates/deadlines for our 5 major projects (as identified by OAR) and other "must do" work. A draft table is attached. Please add/modify any key dates/deadlines, including early guidance, options selection, delivery to OMB, and signature. (Let me know if there are other key milestones that OAR should be aware of for your projects.)

I'd like to get this to OAR next week, so please provide feedback by next Monday (Jan 22), COB. Thanks and let me know if you have any questions.

Mike

To: Lamason, Bill[Lamason.Bill@epa.gov]
Cc: Dalcher, Debra[dalcher.debra@epa.gov]
From: McLamb, Marguerite
Sent: Thur 11/30/2017 3:17:38 PM
Subject: Re: OIAI Memo

Hi, Bill,

I have heard from OGC this morning and have comments from Scott Jordan. I will share those shortly. We can talk about this if you'd like this morning.

Best, Marguerite

On Nov 29, 2017, at 3:31 PM, Lamason, Bill <Lamason.Bill@epa.gov> wrote:

Marguerite,

Thanks for the update. Can we see the current version? It would help me prepare some talking points for Peter. On timing, let's chat in the morning when you are in before Kevin calls me. I'll wait to set the meeting with Peter until Kevin and I touch base. Thanks again!

Bill

From: McLamb, Marguerite
Sent: Wednesday, November 29, 2017 3:28 PM
To: Lamason, Bill <Lamason.Bill@epa.gov>
Cc: Dalcher, Debra <dalcher.debra@epa.gov>
Subject: Re: OIAI Memo

Hi, Bill,

OGC has the memo from me and is reviewing and adding to it. I talked to Sonja yesterday, and she is having Rick and Scott work on it while she is out, and she'll weigh in on it early next week. She knows our timeframe. We can talk in the morning if you'd like.

Best,

Marguerite

On Nov 29, 2017, at 2:49 PM, Lamason, Bill <Lamason.Bill@epa.gov> wrote:

Marguerite,

Hope you are well. I left you a voicemail on your desk phone. Just checking on where we are on your (and OGC's) review of the OIAI memo. I need to schedule time with Peter for next week to prep for a discussion with the AA and would like to update Peter on the latest version of the memo and potential timing/direction for moving forward. Let me know when you have a moment. Thanks!

Bill

To: Dalcher, Debra[dalcher.debra@epa.gov]
From: French, Chuck
Sent: Tue 11/21/2017 1:55:31 PM
Subject: RE: Peter's Example Regarding

Ex. 5 - Deliberative Process

Thanks!

From: Dalcher, Debra
Sent: Tuesday, November 21, 2017 7:19 AM
To: French, Chuck <French.Chuck@epa.gov>
Subject: FW: Peter's Example Regarding

Ex. 5 - Deliberative Process

Just FYI

From: Dalcher, Debra
Sent: Monday, November 20, 2017 4:18 PM
To: Culligan, Kevin <Culligan.Kevin@epa.gov>; McLamb, Marguerite <McLamb.Marguerite@epa.gov>
Cc: Lamason, Bill <Lamason.Bill@epa.gov>; Dalcher, Debra <dalcher.debra@epa.gov>
Subject: Peter's Example Regarding

Ex. 5 - Deliberative Process

Kevin, Marguerite

Ex. 5 - Deliberative Process

Ex. 5 - Deliberative Process

Thank you, Debra

Debra S. Dalcher

U.S. EPA

Policy and Strategies Group

Sector Policies and Programs Division, OAQPS

109 T.W. Alexander Drive

Research Triangle Park, NC 27711

Phone: 919-541-2443

To: Eck, Janet[Eck.Janet@epa.gov]
Cc: Dalcher, Debra[dalcher.debra@epa.gov]
From: Dalcher, Debra
Sent: Wed 1/24/2018 7:42:16 PM
Subject: FRN Notice of Memorandum Availability 01 24 18_DD.docx
FRN Notice of Memorandum Availability 01 24 18_DD.docx

Final blue folder draft.

To: Rodman, Sonja[Rodman.Sonja@epa.gov]; Lamason, Bill[Lamason.Bill@epa.gov]; Dalcher, Debra[dalcher.debra@epa.gov]
From: Jordan, Scott
Sent: Thur 1/25/2018 3:14:26 PM
Subject: RE: Once-In-Always-In Guidance Memorandum

Yes. My expectation is that what Debra sends me will be up to date with all of that, but I will review what Debra sends me next to make sure that what OAR has is up to date – in particular, up to date with all of the internal OGC emails that are circulating this morning.

Scott Jordan

Air and Radiation Law Office

Office of General Counsel

202-564-7508

From: Rodman, Sonja
Sent: Thursday, January 25, 2018 10:00 AM
To: Jordan, Scott <Jordan.Scott@epa.gov>; Lamason, Bill <Lamason.Bill@epa.gov>; Dalcher, Debra <dalcher.debra@epa.gov>
Subject: RE: Once-In-Always-In Guidance Memorandum

That sounds like a good plan. Thanks Scott. By "current version" I assume you mean a version that includes all edits we suggested this am, the edits Debra got from "upstairs" and the edits from Bill.

Sonja L. Rodman

Air Toxics, Consumer Protection and Indoor Air Practice Group

(202) 564-4079

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From: Jordan, Scott
Sent: Thursday, January 25, 2018 9:56 AM
To: Rodman, Sonja <Rodman.Sonja@epa.gov>; Lamason, Bill <Lamason.Bill@epa.gov>; Dalcher, Debra <dalcher.debra@epa.gov>
Subject: RE: Once-In-Always-In Guidance Memorandum

One question: Who has "the pen" at this point?

I think we would be wise to work out a process to make sure that these minor edits from all our respective reviews over the next couple of hours actually get into the document that Bill Wehrum signs.

My suggestion is that (1) you send us the current version that you have, (2) we will do one final review and make sure it has all of the edits that we have identified, and (3) we will get a version back to you with OGC final signoff.

Also, can you check in with David Harlow to make sure that either (1) he is not making edits at this point, or (2) we incorporate any changes he is making into the final version (or make sure that our futher edits are going into his final version, if he has the pen).

Scott Jordan

Air and Radiation Law Office

Office of General Counsel

202-564-7508

From: Rodman, Sonja

Sent: Thursday, January 25, 2018 9:52 AM
To: Lamason, Bill <Lamason.Bill@epa.gov>; Dalcher, Debra <dalcher.debra@epa.gov>
Cc: Jordan, Scott <Jordan.Scott@epa.gov>
Subject: RE: Once-In-Always-In Guidance Memorandum

Ex. 5 - Attorney Client

With all this back and forth would you mind sending the most recent draft with all the edits incorporated.

We're waiting for a final green light from Justin, but he's usually pretty quick.

Sonja L. Rodman

Air Toxics, Consumer Protection and Indoor Air Practice Group

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From: Lamason, Bill
Sent: Thursday, January 25, 2018 9:45 AM
To: Rodman, Sonja <Rodman.Sonja@epa.gov>; Dalcher, Debra <dalcher.debra@epa.gov>
Cc: Jordan, Scott <Jordan.Scott@epa.gov>

Subject: RE: Once-In-Always-In Guidance Memorandum

Ex. 5 - Deliberative Process

Ex. 5 - Deliberative Process

Ex. 5 - Deliberative Process

Any timing on final OGC edits? Thanks! B

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Ex. 5 - Deliberative Process

Ex. 5 - Deliberative Process

Ex. 5 - Deliberative Process

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Sent: Thursday, January 25, 2018 9:00 AM
To: Lamason, Bill <Lamason.Bill@epa.gov>; Dalcher, Debra <dalcher.debra@epa.gov>
Cc: Jordan, Scott <Jordan.Scott@epa.gov>
Subject: Once-In-Always-In Guidance Memorandum

Bill & Debra, Here is a version that incorporates Justin's comments and suggested edits (as modified by us). We still need to circle with Justin on a couple of comments that we have not yet incorporated so this isn't the final/final version of his comments but I wanted to get it to you sooner rather than later in case there is anything you think we need to discuss. Thanks! – Sonja

Sonja L. Rodman

Air Toxics, Consumer Protection and Indoor Air Practice Group

(202) 564-4079

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To: Dalcher, Debra[dalcher.debra@epa.gov]; Lamason, Bill[Lamason.Bill@epa.gov]
From: Eck, Janet
Sent: Fri 1/19/2018 8:06:17 PM
Subject: RE: Schedule for OAQPS Projects/Work

Debra, I would like to put the OIAI memo into Tracker for a possible signature date of 1/31. Is it ok to do so and can you give me a short 2-3 line abstract to go w/it. Also, what is your target date to OAR for review? Thanks.

From: Dalcher, Debra
Sent: Friday, January 19, 2018 2:27 PM
To: Eck, Janet <Eck.Janet@epa.gov>; Lamason, Bill <Lamason.Bill@epa.gov>; Dalcher, Debra <dalcher.debra@epa.gov>
Subject: Re: Schedule for OAQPS Projects/Work

Late January is correct for signature on the OIAI memorandum.

Thank you for the reminder Janet. Debra

From: Eck, Janet
Sent: Friday, January 19, 2018 2:21:13 PM
To: Hutson, Nick; Fruh, Steve; Dalcher, Debra; Lamason, Bill
Subject: FW: Schedule for OAQPS Projects/Work

Reminder that your input is needed today. Thanks.

From: Eck, Janet
Sent: Tuesday, January 16, 2018 6:47 PM
To: Swanson, Nicholas <Swanson.Nicholas@epa.gov>; Fellner, Christian <Fellner.Christian@epa.gov>; Hutson, Nick <Hutson.Nick@epa.gov>; Fruh, Steve <Fruh.Steve@epa.gov>; Parker, Barrett <Parker.Barrett@epa.gov>; Srivastava, Ravi <Srivastava.Ravi@epa.gov>; Witt, Jon <Witt.Jon@epa.gov>; Thompson, Lisa <Thompson.Lisa@epa.gov>; Cozzie, David <Cozzie.David@epa.gov>; Dalcher, Debra <dalcher.debra@epa.gov>; Lamason, Bill <Lamason.Bill@epa.gov>
Cc: French, Chuck <French.Chuck@epa.gov>
Subject: FW: Schedule for OAQPS Projects/Work

Attached is a summary of upcoming dates concerning our major projects provided by Mike Koerber for OAR. He would like our feedback by COB next Monday. I have filled in or corrected some information, but need your input as well to finalize. Please review and send me your updates by COB Friday. Projects include CPP, MATS, Methane and Once In Always In. Thanks for your help.

From: Koerber, Mike
Sent: Tuesday, January 16, 2018 12:09 PM
To: Eck, Janet <Eck.Janet@epa.gov>; French, Chuck <French.Chuck@epa.gov>; Johnson, Yvonne W <Johnson.Yvonnew@epa.gov>; Long, Pam <Long.Pam@epa.gov>; Santiago, Juan <Santiago.Juan@epa.gov>; Keating, Martha <keating.martha@epa.gov>; Scavo, Kimber <Scavo.Kimber@epa.gov>; Henigin, Mary <Henigin.Mary@epa.gov>
Cc: Wood, Anna <Wood.Anna@epa.gov>; Sasser, Erika <Sasser.Erika@epa.gov>; South, Peter <South.Peter@epa.gov>
Subject: Schedule for OAQPS Projects/Work

I'm putting together a summary for OAR of upcoming dates/deadlines for our 5 major projects (as identified by OAR) and other "must do" work. A draft table is attached. Please add/modify any key dates/deadlines, including early guidance, options selection, delivery to OMB, and signature. (Let me know if there are other key milestones that OAR should be aware of for your projects.)

I'd like to get this to OAR next week, so please provide feedback by next Monday (Jan 22), COB. Thanks and let me know if you have any questions.

Mike

To: Dalcher, Debra[dalcher.debra@epa.gov]
From: Dunkins, Robin
Sent: Tue 11/21/2017 1:09:30 PM
Subject: Re: OIAI - Coating Sector Examples

Debra, I have a couple of examples I will forward shortly

Robin Dunkins, Group Leader
Natural Resources Group
OAR/OAQPS/SPPD Mail Code E143-03
U.S. Environmental Protection Agency
Research Triangle Park, NC 27711
919-541-5335 office
919-605-1178 cell
dunkins.robin@epa.gov

On Nov 21, 2017, at 7:41 AM, Dalcher, Debra <dalcher.debra@epa.gov> wrote:

<image001.gif>
Keith,

Ex. 5 - Deliberative Process

Thank you, Debra

From: Barnett, Keith
Sent: Monday, November 20, 2017 7:11 PM
To: Dalcher, Debra <dalcher.debra@epa.gov>; Dunkins, Robin <Dunkins.Robin@epa.gov>
Cc: Lamason, Bill <Lamason.Bill@epa.gov>; Shrager, Brian <Shrager.Brian@epa.gov>; Hirtz, Paula <Hirtz.Paula@epa.gov>; Whitfield, Kaye <Whitfield.Kaye@epa.gov>
Subject: RE: OIAI - Coating Sector Examples

Ex. 5 - Deliberative Process

Keith Barnett

Minerals and Manufacturing Group Leader

919-541-5605

From: Dalcher, Debra
Sent: Monday, November 20, 2017 10:39 AM
To: Barnett, Keith <Barnett.Keith@epa.gov>; Dunkins, Robin <Dunkins.Robin@epa.gov>
Cc: Lamason, Bill <Lamason.Bill@epa.gov>; Shrager, Brian <Shrager.Brian@epa.gov>
Subject: OIAI - Coating Sector Examples
Importance: High

Ex. 5 - Deliberative Process

Ex. 5 - Attorney Client

Ex. 5 - Deliberative Process

Thank you, Debra

Debra S. Dalcher

U.S. EPA

Policy and Strategies Group

Sector Policies and Programs Division, OAQPS

109 T.W. Alexander Drive

Research Triangle Park, NC 27711

Phone: 919-541-2443

To: Dalcher, Debra[dalcher.debra@epa.gov]
From: Lamason, Bill
Sent: Thur 11/30/2017 3:15:08 PM
Subject: RE: OIAI with Peter

This would be a check in. So OGC and Marguerite would have to answer why there is no memo.

B

From: Dalcher, Debra
Sent: Thursday, November 30, 2017 10:12 AM
To: Lamason, Bill <Lamason.Bill@epa.gov>
Subject: Re: OIAI with Peter

We don't even have the memo ???

From: Lamason, Bill
Sent: Thursday, November 30, 2017 10:11:26 AM
To: Dalcher, Debra
Subject: FW: OIAI with Peter

Debra, FYI. Some chance we may meet with Peter tomorrow afternoon. Bill

From: Lamason, Bill
Sent: Thursday, November 30, 2017 10:10 AM
To: Johnson, Tanya <Johnson.Tanya@epa.gov>
Subject: RE: OIAI with Peter

Tanya,

Thanks. I can asked Debra to come in for a meeting with Peter – she is willing to do so. Ex. 6 - Personal Privacy Ex. 6 - Personal Privacy Ex. 6 - Personal Privacy I'm only available in the afternoon. Let us know if he wants to try for tomorrow afternoon without OGC.

Bill

From: Johnson, Tanya
Sent: Thursday, November 30, 2017 10:05 AM
To: Lamason, Bill <Lamason.Bill@epa.gov>
Subject: RE: OIAI with Peter

Bill,

Peter told me to schedule this for tomorrow, but it looks like Debra, Sonja and Scott are out tomorrow. I will let Peter know this.

TJ

From: Lamason, Bill
Sent: Wednesday, November 29, 2017 3:48 PM
To: Johnson, Tanya <Johnson.Tanya@epa.gov>
Cc: Culligan, Kevin <Culligan.Kevin@epa.gov>; Dalcher, Debra <dalcher.debra@epa.gov>; French, Chuck <French.Chuck@epa.gov>; McLamb, Marguerite <McLamb.Marguerite@epa.gov>
Subject: OIAI with Peter

Tanya,

We need 30-45 minutes with Peter on OIAI next week before he travels to DC on Wednesday. Noticed his calendar is filling up so thought I'd better get us penciled in. The attendees would be the folks on this email and some folks from OGC – Sonya, Rick and Scott Jordan. We can schedule this tomorrow but wanted to "get in line" for meetings next week given Peter's calendar.

Thanks!

Bill

To: Dalcher, Debra[dalcher.debra@epa.gov]
From: Eck, Janet
Sent: Fri 1/19/2018 8:02:11 PM
Subject: RE: Schedule for OAQPS Projects/Work

Thanks Debra.

From: Dalcher, Debra
Sent: Friday, January 19, 2018 2:27 PM
To: Eck, Janet <Eck.Janet@epa.gov>; Lamason, Bill <Lamason.Bill@epa.gov>; Dalcher, Debra <dalcher.debra@epa.gov>
Subject: Re: Schedule for OAQPS Projects/Work

Late January is correct for signature on the OIAI memorandum.

Thank you for the reminder Janet. Debra

From: Eck, Janet
Sent: Friday, January 19, 2018 2:21:13 PM
To: Hutson, Nick; Fruh, Steve; Dalcher, Debra; Lamason, Bill
Subject: FW: Schedule for OAQPS Projects/Work

Reminder that your input is needed today. Thanks.

From: Eck, Janet
Sent: Tuesday, January 16, 2018 6:47 PM
To: Swanson, Nicholas <Swanson.Nicholas@epa.gov>; Fellner, Christian <Fellner.Christian@epa.gov>; Hutson, Nick <Hutson.Nick@epa.gov>; Fruh, Steve <Fruh.Steve@epa.gov>; Parker, Barrett <Parker.Barrett@epa.gov>; Srivastava, Ravi <Srivastava.Ravi@epa.gov>; Witt, Jon <Witt.Jon@epa.gov>; Thompson, Lisa <Thompson.Lisa@epa.gov>; Cozzie, David <Cozzie.David@epa.gov>; Dalcher, Debra <dalcher.debra@epa.gov>; Lamason, Bill <Lamason.Bill@epa.gov>
Cc: French, Chuck <French.Chuck@epa.gov>
Subject: FW: Schedule for OAQPS Projects/Work

Attached is a summary of upcoming dates concerning our major projects provided by Mike Koerber for OAR. He would like our feedback by COB next Monday. I have filled in or corrected some information, but need your input as well to finalize. Please review and send me your updates by COB Friday. Projects include CPP, MATS, Methane and Once In Always In. Thanks for your help.

From: Koerber, Mike
Sent: Tuesday, January 16, 2018 12:09 PM
To: Eck, Janet <Eck.Janet@epa.gov>; French, Chuck <French.Chuck@epa.gov>; Johnson, Yvonne W <Johnson.Yvonnew@epa.gov>; Long, Pam <Long.Pam@epa.gov>; Santiago, Juan <Santiago.Juan@epa.gov>; Keating, Martha <keating.martha@epa.gov>; Scavo, Kimber <Scavo.Kimber@epa.gov>; Henigin, Mary <Henigin.Mary@epa.gov>
Cc: Wood, Anna <Wood.Anna@epa.gov>; Sasser, Erika <Sasser.Erika@epa.gov>; South, Peter <South.Peter@epa.gov>
Subject: Schedule for OAQPS Projects/Work

I'm putting together a summary for OAR of upcoming dates/deadlines for our 5 major projects (as identified by OAR) and other "must do" work. A draft table is attached. Please add/modify any key dates/deadlines, including early guidance, options selection, delivery to OMB, and signature. (Let me know if there are other key milestones that OAR should be aware of for your projects.)

I'd like to get this to OAR next week, so please provide feedback by next Monday (Jan 22), COB. Thanks and let me know if you have any questions.

Mike

To: Dalcher, Debra[dalcher.debra@epa.gov]
From: Torres, Elineth
Sent: Tue 11/14/2017 6:35:56 PM
Subject: see updated memo
Memo replacing OIAI with proposed 2007 interpretation_11_14_17 ET.docx

Debra,

Take a look at this version and let me know your thoughts. See edits to the title, first paragraph and to the guidance.

Elineth Torres

OAQPS

919-541-4347

From: Dalcher, Debra
Sent: Tuesday, November 14, 2017 1:24 PM
To: Torres, Elineth <Torres.Elineth@epa.gov>
Subject: Specific issues with facilities.docx

Might be informative.

To: Eck, Janet[Eck.Janet@epa.gov]
Cc: Dalcher, Debra[dalcher.debra@epa.gov]
From: Dalcher, Debra
Sent: Wed 1/24/2018 7:37:07 PM
Subject: Reclassification of Major Sources as Area Sources Under Section 112_Final Draft 01 24 2018_DD.docx
Reclassification of Major Sources as Area Sources Under Section 112_Final Draft 01 24 2018_DD.docx

Final Blue Folder Draft

To: Dalcher, Debra[dalcher.debra@epa.gov]
From: McLamb, Marguerite
Sent: Mon 12/4/2017 12:56:42 PM
Subject: OIAI legal text additions
OIAI 12.3.2017 .docx

Debra,
Language from Perez is added on page 3 of the attached document (the version that Chuck commented on at the end of last week).
Best,
Marguerite

****

Marguerite E. McLamb
Policy Advisor
Sector Policies and Programs Division
Office of Air Quality Planning & Standards
U.S. Environmental Protection Agency
Research Triangle Park, NC 27711
Phone: (919) 541-7858
Fax: (919) 541-4991
mclamb.marguerite@epa.gov

To: Jordan, Scott[Jordan.Scott@epa.gov]
Cc: Dalcher, Debra[dalcher.debra@epa.gov]
From: Dalcher, Debra
Sent: Fri 1/19/2018 7:58:14 PM
Subject: Draft FR Notice
FRN OIAI Guidance Memorandum 1_19_18.docx

1st draft. I sent this a few minutes ago and didn't get my copy so I am resending. Thank you, Debra

To: Dalcher, Debra[dalcher.debra@epa.gov]
From: Lamason, Bill
Sent: Thur 11/30/2017 3:13:35 PM
Subject: RE: Staff meetings NC on x4332

Debra,

Thanks for letting me know. Ex. 6 - Personal Privacy
Ex. 6 - Personal Privacy

Bill

From: Dalcher, Debra
Sent: Thursday, November 30, 2017 9:43 AM
To: Lamason, Bill <Lamason.Bill@epa.gov>
Subject: Re: Staff meetings NC on x4332

Had difficulty getting on the network. Ex. 6 - Personal Privacy I am continuing to work on the OIAI comments. I have the ESAS results saved to my hard drive.

As we discussed on the telephone this morning I will continue categorizing OIAI comments Ex. 6 - Personal Privacy I also have some deliverables from ICF to review. I am continuing to develop project closeout documentation for MOSAIC's development so it can fairly easily passed on if we have funding in the future to continue development of the system. Lastly, I need to review ICF and CGI invoices that include the work they are doing for FFFRO and AQPD today.

Thanks, Debra

From: Lamason, Bill
Sent: Thursday, November 30, 2017 9:11:00 AM
To: Dalcher, Debra
Subject: Staff meetings NC on x4332

Sent from my iPhone

To: Dalcher, Debra[dalcher.debra@epa.gov]
Cc: Lamason, Bill[Lamason.Bill@epa.gov]; Castro, Grecia[Castro.Grecia@epa.gov]; Santiago, Juan[Santiago.Juan@epa.gov]
From: Vetter, Cheryl
Sent: Tue 1/16/2018 8:56:35 PM
Subject: RE: Once in always in

Thanks!

Cheryl Vetter
U.S. Environmental Protection Agency
OAQPS/AQPD/OPG (C504-03)
Research Triangle Park, NC 27711
Phone (919) 541-4391 Fax (919) 541-5509

Note: Positions or views expressed here do not represent official EPA policy.

From: Dalcher, Debra
Sent: Tuesday, January 16, 2018 3:56 PM
To: Vetter, Cheryl <Vetter.Cheryl@epa.gov>
Cc: Lamason, Bill <Lamason.Bill@epa.gov>; Castro, Grecia <Castro.Grecia@epa.gov>; Santiago, Juan <Santiago.Juan@epa.gov>
Subject: RE: Once in always in

Hi Cheryl,

We don't have a final memo yet. There are a number of discussions going on associated with the OIAI strategy going forward (to include finalizing a rulemaking) that will inform how the final version of the memo is written. I will keep you posted on our progress and share a copy when I feel comfortable that it is not going to change.

Debra

From: Vetter, Cheryl
Sent: Tuesday, January 16, 2018 3:35 PM

To: Dalcher, Debra <dalcher.debra@epa.gov>
Cc: Lamason, Bill <Lamason.Bill@epa.gov>; Castro, Grecia <Castro.Grecia@epa.gov>; Santiago, Juan <Santiago.Juan@epa.gov>
Subject: Once in always in

I just saw an update that showed the Once-in-Always-in guidance coming at the end of this month. Could we get a copy to preview, as there will be permitting questions coming our way once it is out there? Thanks.

Cheryl Vetter
U.S. Environmental Protection Agency
OAQPS/AQPD/OPG (C504-03)
Research Triangle Park, NC 27711
Phone (919) 541-4391 Fax (919) 541-5509

Note: Positions or views expressed here do not represent official EPA policy.

To: Dalcher, Debra[dalcher.debra@epa.gov]
Cc: Thompson, Fred[Thompson.Fred@epa.gov]; Lamason, Bill[Lamason.Bill@epa.gov]; Goehl, Eric[Goehl.Eric@epa.gov]; French, Chuck[French.Chuck@epa.gov]; McLamb, Marguerite[McLamb.Marguerite@epa.gov]
From: Tsirigotis, Peter
Sent: Fri 12/8/2017 4:06:07 PM
Subject: Re: OIAI Revision Memo_12.8.17.Wehrum Draft.docx

Thank you for the very quick turnaround Debra and Scott. I'll share any thoughts/edits with you Monday. We are trying to have the bill briefing next week.

On Dec 8, 2017, at 10:55 AM, Dalcher, Debra <dalcher.debra@epa.gov> wrote:

Peter,

OGC (Scott Jordan) reviewed the memo this morning. I have incorporated his edits and attached a clean version of our draft document.

You can reach me at Ex. 6 - Personal Privacy if you have any questions upon receipt.

Best Regards, Debra

<OIAI Revision Memo_12.8.17.Wehrum Draft.docx>

To: Vetter, Cheryl[Vetter.Cheryl@epa.gov]
Cc: Lamason, Bill[Lamason.Bill@epa.gov]; Castro, Grecia[Castro.Grecia@epa.gov]; Santiago, Juan[Santiago.Juan@epa.gov]
From: Dalcher, Debra
Sent: Tue 1/16/2018 8:55:50 PM
Subject: RE: Once in always in

Hi Cheryl,

We don't have a final memo yet. There are a number of discussions going on associated with the OIAI strategy going forward (to include finalizing a rulemaking) that will inform how the final version of the memo is written. I will keep you posted on our progress and share a copy when I feel comfortable that it is not going to change.

Debra

From: Vetter, Cheryl
Sent: Tuesday, January 16, 2018 3:35 PM
To: Dalcher, Debra <dalcher.debra@epa.gov>
Cc: Lamason, Bill <Lamason.Bill@epa.gov>; Castro, Grecia <Castro.Grecia@epa.gov>; Santiago, Juan <Santiago.Juan@epa.gov>
Subject: Once in always in

I just saw an update that showed the Once-in-Always-in guidance coming at the end of this month. Could we get a copy to preview, as there will be permitting questions coming our way once it is out there? Thanks.

Cheryl Vetter
U.S. Environmental Protection Agency
OAQPS/AQPD/OPG (C504-03)
Research Triangle Park, NC 27711
Phone (919) 541-4391 Fax (919) 541-5509

Note: Positions or views expressed here do not represent official EPA policy.

To: Eck, Janet[Eck.Janet@epa.gov]
Cc: Dalcher, Debra[dalcher.debra@epa.gov]
From: Dalcher, Debra
Sent: Wed 1/24/2018 7:22:33 PM
Subject: Emailing: Notices Signed by OAR (NODAetc) ChkLstOct17.doc, OIAI Guidance Memo Notice RoutingSlip.docx, Reclassification of Major Sources as Area Sources Under Section 112 of the CAA_Action Information 01 24 18.docx, Reclassification of Major Sources as Ar
Notices Signed by OAR (NODAetc) ChkLstOct17.doc
OIAI Guidance Memo Notice RoutingSlip.docx
Reclassification of Major Sources as Area Sources Under Section 112 of the CAA_Action Information 01 24 18.docx
Reclassification of Major Sources as Area Sources Under Section 112 of the CAA_Post it Note.docx
Reclassification of Major Sources as Area Sources Under Section 112_BF Final Draft 01 24 2018.docx
Notices Signed by OAR (NODAetc) ChkLstOct17 - Copy.doc

For your review.

Thank you, Debra

Your message is ready to be sent with the following file or link attachments:

Notices Signed by OAR (NODAetc) ChkLstOct17.doc
OIAI Guidance Memo Notice RoutingSlip.docx
Reclassification of Major Sources as Area Sources Under Section 112 of the CAA_Action Information 01 24 18.docx
Reclassification of Major Sources as Area Sources Under Section 112 of the CAA_Post it Note.docx
Reclassification of Major Sources as Area Sources Under Section 112_BF Final Draft 01 24 2018.docx
Notices Signed by OAR (NODAetc) ChkLstOct17 - Copy.doc

Note: To protect against computer viruses, e-mail programs may prevent sending or receiving certain types of file attachments. Check your e-mail security settings to determine how attachments are handled.

To: Tsirigotis, Peter[Tsirigotis.Peter@epa.gov]
Cc: Thompson, Fred[Thompson.Fred@epa.gov]; Lamason, Bill[Lamason.Bill@epa.gov]; Goehl, Eric[Goehl.Eric@epa.gov]; French, Chuck[French.Chuck@epa.gov]; Dalcher, Debra[dalcher.debra@epa.gov]; McLamb, Marguerite[McLamb.Marguerite@epa.gov]
From: Dalcher, Debra
Sent: Fri 12/8/2017 3:55:31 PM
Subject: OIAI Revision Memo_12.8.17.Wehrum Draft.docx
OIAI Revision Memo_12.8.17.Wehrum Draft.docx

Peter,

OGC (Scott Jordan) reviewed the memo this morning. I have incorporated his edits and attached a clean version of our draft document.

You can reach me at Ex. 6 - Personal Privacy if you have any questions upon receipt.

Best Regards, Debra

To: Weatherhead, Darryl[Weatherhead.Darryl@epa.gov]; Dalcher, Debra[dalcher.debra@epa.gov]
Cc: Lamason, Bill[Lamason.Bill@epa.gov]
From: Shrager, Brian
Sent: Fri 1/19/2018 7:35:01 PM
Subject: RE: RIA for OIAI Rule Package (either supplemental or new proposal)

Once in Always In...the policy which will be rescinded.

From: Weatherhead, Darryl
Sent: Friday, January 19, 2018 2:02 PM
To: Dalcher, Debra <dalcher.debra@epa.gov>; Shrager, Brian <Shrager.Brian@epa.gov>
Cc: Lamason, Bill <Lamason.Bill@epa.gov>
Subject: RE: RIA for OIAI Rule Package (either supplemental or new proposal)

Hi Debra,

Sorry, I'm coming into this one cold and need a bit more background. What is OIAI?

From: Dalcher, Debra
Sent: Friday, January 19, 2018 10:54 AM
To: Shrager, Brian <Shrager.Brian@epa.gov>
Cc: Lamason, Bill <Lamason.Bill@epa.gov>; Weatherhead, Darryl <Weatherhead.Darryl@epa.gov>
Subject: Re: RIA for OIAI Rule Package (either supplemental or new proposal)

Thank you. Debra

From: Shrager, Brian
Sent: Friday, January 19, 2018 10:51:12 AM
To: Dalcher, Debra
Cc: Lamason, Bill; Weatherhead, Darryl
Subject: RE: RIA for OIAI Rule Package (either supplemental or new proposal)

This is a question that requires some discussion with Darryl Weatherhead along with all of the group leaders. **Ex. 5 - Deliberative Process**

Ex. 5 - Deliberative Process

Brian

From: Dalcher, Debra
Sent: Friday, January 19, 2018 9:59 AM
To: Shrager, Brian <Shrager.Brian@epa.gov>
Cc: Dalcher, Debra <dalcher.debra@epa.gov>; Lamason, Bill <Lamason.Bill@epa.gov>
Subject: RIA for OIAI Rule Package (either supplemental or new proposal)

Good Morning Brian,

Ex. 5 - Deliberative Process

To: Lamason, Bill[Lamason.Bill@epa.gov]; Dalcher, Debra[dalcher.debra@epa.gov]
Cc: Jordan, Scott[Jordan.Scott@epa.gov]
From: Rodman, Sonja
Sent: Thur 1/25/2018 2:51:36 PM
Subject: RE: Once-In-Always-In Guidance Memorandum

Ex. 5 - Attorney Client

With all this back and forth would you mind sending the most recent draft with all the edits incorporated.

We're waiting for a final green light from Justin, but he's usually pretty quick.

Sonja L. Rodman

Air Toxics, Consumer Protection and Indoor Air Practice Group

(202) 564-4079

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From: Lamason, Bill
Sent: Thursday, January 25, 2018 9:45 AM
To: Rodman, Sonja <Rodman.Sonja@epa.gov>; Dalcher, Debra <dalcher.debra@epa.gov>
Cc: Jordan, Scott <Jordan.Scott@epa.gov>
Subject: RE: Once-In-Always-In Guidance Memorandum

Ex. 5 - Deliberative Process

Ex. 5 - Deliberative Process

Ex. 5 - Deliberative Process

Any timing on final OGC edits? Thanks! B

.

Ex. 5 - Deliberative Process

Ex. 5 - Deliberative Process

Ex. 5 - Deliberative Process

From: Rodman, Sonja

Sent: Thursday, January 25, 2018 9:00 AM
To: Lamason, Bill <Lamason.Bill@epa.gov>; Dalcher, Debra <dalcher.debra@epa.gov>
Cc: Jordan, Scott <Jordan.Scott@epa.gov>
Subject: Once-In-Always-In Guidance Memorandum

Bill & Debra, Here is a version that incorporates Justin's comments and suggested edits (as modified by us). We still need to circle with Justin on a couple of comments that we have not yet incorporated so this isn't the final/final version of his comments but I wanted to get it to you sooner rather than later in case there is anything you think we need to discuss. Thanks! – Sonja

Sonja L. Rodman

Air Toxics, Consumer Protection and Indoor Air Practice Group

(202) 564-4079

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To: Dalcher, Debra[dalcher.debra@epa.gov]
From: Eck, Janet
Sent: Wed 1/24/2018 7:12:51 PM
Subject: RE: Emailing: FRN Notice of Memorandum Availability BF 1 24 18.docx, Reclassification of Major Sources as Area Sources Under Section 112_BF Final Draft 01 24 2018.docx
FRN Notice of Memorandum Availability BF je 1 24 18.docx
Reclassification of Major Sources as Area Sources Under Section 112_BF je Final Draft 01 24 2018.docx

Small edits. Thanks.

-----Original Message-----
From: Dalcher, Debra
Sent: Wednesday, January 24, 2018 1:04 PM
To: Eck, Janet <Eck.Janet@epa.gov>
Cc: Dalcher, Debra <dalcher.debra@epa.gov>
Subject: Emailing: FRN Notice of Memorandum Availability BF 1 24 18.docx, Reclassification of Major Sources as Area Sources Under Section 112_BF Final Draft 01 24 2018.docx

Your message is ready to be sent with the following file or link attachments:

FRN Notice of Memorandum Availability BF 1 24 18.docx Reclassification of Major Sources as Area Sources Under Section 112_BF Final Draft 01 24 2018.docx

For your review Janet. Bill is not in his office to ask him about the docket.

Thank you, Debra

Note: To protect against computer viruses, e-mail programs may prevent sending or receiving certain types of file attachments. Check your e-mail security settings to determine how attachments are handled.

To: Dalcher, Debra[dalcher.debra@epa.gov]
Cc: Lamason, Bill[Lamason.Bill@epa.gov]
From: Godfrey, Janice
Sent: Fri 12/1/2017 5:54:36 PM
Subject: OIAI
Commenters 2007.docx

Hi Debra,

Bill says you may want help with OIAI comments from 2007. I assume you have seen the short summary I did back in May. It lists the commenters, docket numbers, and has a few bullets for the substantive comments. Let me know if you need additional help. I have time.

Janice

Janice Godfrey

Environmental Engineer
EPA, Office of Air Quality Planning and Standards
Policy and Strategies Group
Research Triangle Park, NC 27711
(919) 541-3391

To: Dalcher, Debra[dalcher.debra@epa.gov]; Cortelyou-Lee, Jan[Cortelyou-Lee.Jan@epa.gov]
From: Lamason, Bill
Sent: Wed 1/24/2018 6:22:42 PM
Subject: RE: Examples as Requested

Thanks Debra! Ex. 5 - Deliberative Process

Ex. 5 - Deliberative Process

Ex. 5 - Deliberative Process I may try to look through them later this afternoon. Bill

From: Dalcher, Debra
Sent: Wednesday, January 24, 2018 12:08 PM
To: Cortelyou-Lee, Jan <Cortelyou-Lee.Jan@epa.gov>
Cc: Lamason, Bill <Lamason.Bill@epa.gov>
Subject: Examples as Requested

Thanks Jan. If you need anything else, please don't hesitate to reach out.

Debra

Ex. 5 - Deliberative Process

Ex. 5 - Deliberative Process

Ex. 5 - Deliberative Process

Debra S. Dalcher

U.S. EPA

Policy and Strategies Group

Sector Policies and Programs Division, OAQPS

109 T.W. Alexander Drive

Research Triangle Park, NC 27711

Phone: 919-541-2443

To: Rodman, Sonja[Rodman.Sonja@epa.gov]; Dalcher, Debra[dalcher.debra@epa.gov]
Cc: Lamason, Bill[Lamason.Bill@epa.gov]
From: Jordan, Scott
Sent: Thur 1/25/2018 2:43:42 PM
Subject: RE: OIAI.Memo. Reclassification of Major Sources as Area Sources Under Section 112_2018_01_24_Draft_Justin OGC 1.25.18.docx

Ex. 5 - Attorney Client

Scott Jordan

Air and Radiation Law Office

Office of General Counsel

202-564-7508

From: Rodman, Sonja
Sent: Thursday, January 25, 2018 9:18 AM
To: Dalcher, Debra <dalcher.debra@epa.gov>; Jordan, Scott <Jordan.Scott@epa.gov>
Cc: Lamason, Bill <Lamason.Bill@epa.gov>
Subject: RE: OIAI.Memo. Reclassification of Major Sources as Area Sources Under Section 112_2018_01_24_Draft_Justin OGC 1.25.18.docx

Ex. 5 - Attorney Client

Sonja L. Rodman

Air Toxics, Consumer Protection and Indoor Air Practice Group

(202) 564-4079

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From: Dalcher, Debra
Sent: Thursday, January 25, 2018 9:16 AM
To: Rodman, Sonja <Rodman.Sonja@epa.gov>; Jordan, Scott <Jordan.Scott@epa.gov>
Cc: Lamason, Bill <Lamason.Bill@epa.gov>
Subject: OIAI.Memo. Reclassification of Major Sources as Area Sources Under Section 112_2018_01_24_Draft_Justin OGC 1.25.18.docx

Hi Sonja, Scott

A couple of comments for your consideration.

Debra

To: Eck, Janet[Eck.Janet@epa.gov]
Cc: Dalcher, Debra[dalcher.debra@epa.gov]
From: Dalcher, Debra
Sent: Wed 1/24/2018 6:04:28 PM
Subject: Emailing: FRN Notice of Memorandum Availability BF 1 24 18.docx, Reclassification of Major Sources as Area Sources Under Section 112_BF Final Draft 01 24 2018.docx
FRN Notice of Memorandum Availability BF 1 24 18.docx
Reclassification of Major Sources as Area Sources Under Section 112_BF Final Draft 01 24 2018.docx

Your message is ready to be sent with the following file or link attachments:

FRN Notice of Memorandum Availability BF 1 24 18.docx
Reclassification of Major Sources as Area Sources Under Section 112_BF Final Draft 01 24 2018.docx

For your review Janet. Bill is not in his office to ask him about the docket.

Thank you, Debra

Note: To protect against computer viruses, e-mail programs may prevent sending or receiving certain types of file attachments. Check your e-mail security settings to determine how attachments are handled.

To: Lamason, Bill[Lamason.Bill@epa.gov]; Dalcher, Debra[dalcher.debra@epa.gov]
From: Noonan, Jenny
Sent: Mon 1/29/2018 9:53:24 PM
Subject: RE: Web question about OIAI

Thanks!

-----Original Message-----
From: Lamason, Bill
Sent: Monday, January 29, 2018 4:45 PM
To: Noonan, Jenny <Noonan.Jenny@epa.gov>; Dalcher, Debra <dalcher.debra@epa.gov>
Subject: RE: Web question about OIAI

Jenny, Steve Fruh's group has been in touch with Mr. Zane as the Quad Z rule is in his group. I'll forward the last email I was copied on between Pete South and Steve. B

-----Original Message-----
From: Noonan, Jenny
Sent: Monday, January 29, 2018 4:40 PM
To: Dalcher, Debra <dalcher.debra@epa.gov>
Cc: Lamason, Bill <Lamason.Bill@epa.gov>
Subject: Web question about OIAI

Debra --

Since we have something to say about this policy, would you mind drafting an email to Mr. Kane?

Thanks,
Jenny

-----Original Message-----
From: drupal_admin@epa.gov [mailto:drupal_admin@epa.gov]
Sent: Thursday, December 21, 2017 12:15 PM
To: cleanairact <cleanairact@epa.gov>
Subject: Form submission from: Clean Air Act Overview Contact Us About the Clean Air Act form

Submitted on 12/21/2017 12:14PM
Submitted values are:

Name: Alan Kane
Email Address: alanjkane@comcast.net
Comments: I would like a contact for someone within the OAR to discuss revising or rescinding the NESHAP ZZZZ "Once In Always In" policy. This policy was instituted in 1995. With the evolution of better controls devices facilities that elect to purchase, install and maintain these controls such that the facility will operate at levels below a major source using a federally enforceable limit should be able to opt out of NESHAP ZZZZ applicability.

To: McLamb, Marguerite[McLamb.Marguerite@epa.gov]
Cc: Lamason, Bill[Lamason.Bill@epa.gov]; Torres, Elineth[Torres.Elineth@epa.gov]; Dalcher, Debra[dalcher.debra@epa.gov]
From: Dalcher, Debra
Sent: Wed 11/8/2017 8:15:27 PM
Subject: RE: Memo replacing OIAI with proposed 2007 interpretation_11_6_17 MM (002).docx
Memo replacing OIAI with proposed 2007 interpretation_11_8_17 DD.docx

Marguerite,

Thank you for the update. Ex. 5 - Deliberative Process
Ex. 5 - Deliberative Process
Ex. 5 - Deliberative Process I am attaching another version of the memo for your review. You can provide this version to Sonja. Bill's sense of timing is that we need to have a draft memo by the middle of next week. It is important to note that some of the comments received on the 2007 proposal will require a legal response. I will working on the RTC document, but will need assistance with that part.

Thank you, Debra

-----Original Message-----
From: McLamb, Marguerite
Sent: Wednesday, November 08, 2017 3:04 PM
To: Dalcher, Debra <dalcher.debra@epa.gov>
Cc: Lamason, Bill <Lamason.Bill@epa.gov>; Torres, Elineth <Torres.Elineth@epa.gov>
Subject: RE: Memo replacing OIAI with proposed 2007 interpretation_11_6_17 MM (002).docx

Hi, all,
I sent the draft memo and explained the current approach to Sonja. She had not yet read the memo.

Ex. 5 - Deliberative Process

I'm glad to discuss this more if you'd like; I'll be in the office tomorrow morning.
Best,
Marguerite

****
Marguerite E. McLamb
Policy Advisor
Sector Policies and Programs Division
Office of Air Quality Planning & Standards U.S. Environmental Protection Agency Research Triangle Park, NC 27711
Phone: (919) 541-7858
Fax: (919) 541-4991
mclamb.marguerite@epa.gov

From: Dalcher, Debra
Sent: Wednesday, November 8, 2017 2:51 PM

To: McLamb, Marguerite
Cc: Lamason, Bill; Torres, Elineth
Subject: RE: Memo replacing OIAI with proposed 2007 interpretation_11_6_17 MM (002).docx

Marguerite,

Could you give us an overview of what you discussed with Sonja regarding OIAI and the way forward re. OGC's role.

Thank you, Debra

-----Original Message-----
From: McLamb, Marguerite
Sent: Wednesday, November 08, 2017 10:27 AM
To: Dalcher, Debra <dalcher.debra@epa.gov>
Cc: Lamason, Bill <Lamason.Bill@epa.gov>; Torres, Elineth <Torres.Elineth@epa.gov>
Subject: RE: Memo replacing OIAI with proposed 2007 interpretation_11_6_17 MM (002).docx

Thank you, Debra.

****
Marguerite E. McLamb
Policy Advisor
Sector Policies and Programs Division
Office of Air Quality Planning & Standards U.S. Environmental Protection Agency Research Triangle Park, NC 27711
Phone: (919) 541-7858
Fax: (919) 541-4991
mclamb.marguerite@epa.gov

From: Dalcher, Debra
Sent: Wednesday, November 8, 2017 10:18 AM
To: McLamb, Marguerite
Cc: Lamason, Bill; Torres, Elineth; Dalcher, Debra
Subject: Memo replacing OIAI with proposed 2007 interpretation_11_6_17 MM (002).docx

Thank you Marguerite.

Please let me know if she has any suggestions/thoughts.

Debra

To: Weatherhead, Darryl[Weatherhead.Darryl@epa.gov]
Cc: Dalcher, Debra[dalcher.debra@epa.gov]
From: Dalcher, Debra
Sent: Fri 1/19/2018 7:20:24 PM
Subject: Re: RIA for OIAI Rule Package (either supplemental or new proposal)
OIAI.Revised OIAI memorandum.SJJ+DD.1.18.18+SJJ + DD 1.19.18.docx

Darryl,

This is the draft under review by OGC right now. **Ex. 5 - Deliberative Process**
Ex. 5 - Deliberative Process
Ex. 5 - Deliberative Process

Ex. 5 - Deliberative Process

Thank you, Debra

From: Weatherhead, Darryl
Sent: Friday, January 19, 2018 2:01 PM
To: Dalcher, Debra; Shrager, Brian
Cc: Lamason, Bill
Subject: RE: RIA for OIAI Rule Package (either supplemental or new proposal)

Hi Debra,

Sorry, I'm coming into this one cold and need a bit more background. What is OIAI?

From: Dalcher, Debra
Sent: Friday, January 19, 2018 10:54 AM
To: Shrager, Brian <Shrager.Brian@epa.gov>
Cc: Lamason, Bill <Lamason.Bill@epa.gov>; Weatherhead, Darryl <Weatherhead.Darryl@epa.gov>

Subject: Re: RIA for OIAI Rule Package (either supplemental or new proposal)

Thank you. Debra

From: Shrager, Brian
Sent: Friday, January 19, 2018 10:51:12 AM
To: Dalcher, Debra
Cc: Lamason, Bill; Weatherhead, Darryl
Subject: RE: RIA for OIAI Rule Package (either supplemental or new proposal)

Ex. 5 - Deliberative Process

Short answer is that this seems like a 6 month process to me. I'm guessing that we'll be told to get it done in a month or two?

Brian

From: Dalcher, Debra
Sent: Friday, January 19, 2018 9:59 AM
To: Shrager, Brian <Shrager.Brian@epa.gov>
Cc: Dalcher, Debra <dalcher.debra@epa.gov>; Lamason, Bill <Lamason.Bill@epa.gov>
Subject: RIA for OIAI Rule Package (either supplemental or new proposal)

Good Morning Brian,

Ex. 5 - Deliberative Process

Thank you, Debra

To: Dalcher, Debra[dalcher.debra@epa.gov]
From: Lamason, Bill
Sent: Thur 11/30/2017 9:37:42 PM
Subject: RE: OIAI Questions week of 12_04_17_v2a.docx

Debra, Thanks. This can wait until we hear from Koerber on the pager and meeting requests. Bill

From: Dalcher, Debra
Sent: Thursday, November 30, 2017 4:36 PM
To: Lamason, Bill <Lamason.Bill@epa.gov>
Cc: Dalcher, Debra <dalcher.debra@epa.gov>
Subject: OIAI Questions week of 12_04_17_v2a.docx

A few comments for your consideration.

-

MEMORANDUM

SUBJECT: Guidance Memorandum, "Reclassification of Major Sources as Area Sources Under Section 112 of the Clean Air Act" (Tier 3; SAN 4908; RIN 2060-AM75) – **ACTION MEMORANDUM**

FROM: Penny Lassiter, Acting Division Director,
Sector Policies and Programs Division

TO: Panagiotis E. Tsirigotis, Director,
Office of Air Quality Planning and Standards.

PURPOSE
Attached for your signature is a *Federal Register* notice announcing the issuance of Guidance Memorandum, "Reclassification of Major Sources as Area Sources Under Section 112 of the Clean Air Act".

DEADLINE
The memorandum is expected to be signed by January 26, 2018. After updating the *Federal Register* notice to reflect the date of signature of the memorandum and the location of the memorandum on the web, the notice can be signed.

Ex. 5 - Deliberative Process

"Internal Document Only; Do Not Cite, Quote or Release"

Ex. 5 - Deliberative Process

Ex. 5 - Deliberative Process

INTERNAL DEVELOPMENT AND REVIEW PROCESS
The guidance memorandum and the notice were prepared and coordinated with OGC and OAR management. All internal comments have been considered and changes, where appropriate, have been incorporated. OGC has reviewed and concurred on this action.

OMB TRANSACTION
No OMB review was required as this is a guidance memorandum.

IMPACTS
Increases in emission are not expected, but we do anticipate a reduction in regulatory burden for the regulated community.

STAKEHOLDER INVOLVEMENT
Since EPA published the 1995 Seitz Memorandum we have received comments on the Once In, Always In policy. We received comments on the policy through the 2007 proposal; Executive Order 13777, titled "Enforcing the Regulatory Reform Agenda" (February 24, 2017); the Presidential Memorandum on Streamlining Permitting and Reducing Regulatory Burdens for Domestic Manufacturing (January 24, 2017); and, Executive Order 13783, titled "Promoting Energy Independence and Economic Growth."

PEER REVIEW
There were no major influential or highly influential products supporting the attached action as defined by the EPA's *Peer Review Handbook*.

RECOMMENDATION
I recommend that you sign the attached *Federal Register* notice when the guidance memorandum has been signed by William Wehrum.

Attachment

"Internal Document Only; Do Not Cite, Quote or Release"

The following groups commented on the 2007 proposal. Comment summaries are included for the more substantive comments. If there are other groups you want comment summaries for, let me know.

Valerie Ughetta, Director of Stationary Sources, Alliance of Automobile Manufacturers

EPA-HQ-OAR-2004-0094-0129

B. Z. Karachiwala, Director, Environmental Public Health Division, Harris County Public Health & Environmental Services (HCPHES)

EPA-HQ-OAR-2004-0094-0127

Amy Blankenbiller, Director, Environmental Programs, American Foundry Society (AFS)

EPA-HQ-OAR-2004-0094-0146

C. Richard Titus, Executive Vice President, Kitchen Cabinet Manufacturers Association (KCMA)

EPA-HQ-OAR-2004-0094-0169

H. Chuck Cooper, Global Air Quality Engineer, Ashland Inc.

EPA-HQ-OAR-2004-0094-0145

John Fudala, Vice President, Plating Division, Douglas Corporation

EPA-HQ-OAR-2004-0094-0110

Lee B. Zeugin, The Utility Air Regulatory Group (UARG)

EPA-HQ-OAR-2004-0094-0136

- **Must be addressed through a rulemaking**
- **EPA's "once-in, always-in" policy adds a temporal condition to source classification that is not found in the CAA**
- **Supports an "immediate compliance" requirement in those cases where a source switches from being classified as a major source to being classified as an area source and then switches back again.**

Scott Thomas, Corporate Director, Environmental Affairs, the Sherwin-Williams Company

EPA-HQ-OAR-2004-0094-0156

Jeffrey A. Knight, Pillsbury Winthrop Shaw Pittman LLP on Behalf of a Coalition of Eight Trade Associations

EPA-HQ-OAR-2004-0094-0126

Chad S. Whiteman, Deputy Director, Institute of Clean Air Companies (ICAC)

EPA-HQ-OAR-2004-0094-0172

- **Support increased accountability through record keeping and reporting requirements**
- **Emissions control technology performance can be altered to increase emissions by changing the operating parameters, neglecting to perform necessary maintenance, or bypassing the technology**
- **Sources that are exempted from Title V permitting under the proposed rule, will be more likely to increase their emissions due to a change in their production process without obtaining proper permits**

James M. Quinn, Carestream Health

EPA-HQ-OAR-2004-0094-0137

Jerome F. Sechser, Director, Directorate of Public Works, Department of the Army, Installation Management Command, Headquarters, United States Army Garrison Rock Island Arsenal

EPA-HQ-OAR-2004-0094-0161

Robert J. Morehouse, Downstream and Chemical SH&E, ExxonMobil Refining & Supply Company

EPA-HQ-OAR-2004-0094-0125

- **The proposed rule appropriately reduces the burden on small sources, maintains environmental protection, and encourages pollution prevention.**
- **The proposed rule will reduce regulatory costs and encourage emission reductions at several ExxonMobil facilities.**
- **EPA should clarify that only a Title V minor permit modification is necessary to remove MACT provisions from Title V permits for sources that become area sources.**
- **The proposed rule is supported by the language in the Clean Air Act**

William Guerry, Jr., Counsel, Kelley Drye Collier Shannon, LLP on behalf of the American Iron and Steel Institute (AISI)

EPA-HQ-OAR-2004-0094-0155

- **Many facilities have substantially reduced their HAP emissions through compliance with MACT and by voluntarily updating technology and process efficiency. Those AISI member companies have no incentive to decrease their HAP emissions further.**
- **Once a facility has made capital investments to create reductions of their HAP emissions, it is unlikely they would reverse those changes simply because they may be permitted to do so.**
- **The CAA distinguishes between major and area sources of HAPs, but is silent regarding a facility's ability to switch from major to area.**

Jeff Gunnulfsen, Senior Manager, Government Relations, The Synthetic Organic Chemical Manufacturers Association (SOCMA)

EPA-HQ-OAR-2004-0094-0132

- **With the ongoing development of area source standards and other regulatory and permitting developments, any value that the policy arguably might have had at its issuance has long since expired.**
- **Guidance does not have the force and effect of a rule – it did not undergo notice and comment and it was explicitly designated an interim policy.**
- **The proposed rule would grant proper recognition to valuable P2 activities.**
- **EPA should extend the proposed rule to cover all Title V emissions, including CAPs.**
- **Most add-on controls (such as thermal oxidation units) cannot be "turned down".**

Bernard Paul, Eli Lilly and Company

EPA-HQ-OAR-2004-0094-0122

Peter Weaver, Independent Liquid Terminals Association

EPA-HQ-OAR-2004-0094-0131

Melanie Little, Director of Environmental, Health, Safety, and Security, Magellan, Midstream Partners, LLP

EPA-HQ-OAR-2004-0094-0139

Andrew Ginsburg, Air Quality Division Administrator, Oregon Department of Environmental Quality

EPA-HQ-OAR-2004-0094-0142

- 2007 proposal does not provide an incentive for pollution prevention as did the 2003 proposal
- 2007 proposal allows for switching back and forth, which would be an administrative burden for states.
- Sources will reduce costs by operating control technologies, such as thermal oxidizers, only as much as is needed to stay below the threshold. HAP content of coatings is also easily manipulated.
- If the proposed amendments are adopted, the major source threshold will become the de facto MACT standard, not "the average emission limitation achieved by the best performing twelve percent of existing sources" as Congress mandated.

David C. Foerter, Executive Director, Institute of Clean Air Companies (ICAC)

EPA-HQ-OAR-2004-0094-0118

- Emissions control equipment performance is adjustable and requires maintenance in order to sustain performance. Examples are given for several types of control devices.
- For each of the MACT rules, EPA provided detailed technical and cost analysis supporting the development of the emissions control levels and environmental benefits associated with the emission reductions. As the rule affects every major source MACT rule, EPA has the obligation to provide technical explanations of the presumption that there will be no emissions increases or weakening of the standards due to the proposed rule.
- The proposal discourages emissions control manufacturers from developing new technologies that are more cost effective to operate, provide greater operational flexibility to end users, and greater emissions reduction capabilities.
- Proposal will result in a reduced the universe of sources used to establish the MACT standards floor.

John A. Paul, Administrator, Regional Air Pollution Control Agency of Dayton, Ohio (RAPCA)

EPA-HQ-OAR-2004-0094-0115

- Every MACT source currently operating in compliance at a level below the thresholds would be allowed to increase emissions up to the thresholds.
- Requirements of a major source MACT standard, such as monitoring, record keeping, and reporting requirements, would be lessened for sources choosing the thresholds and moving to the area source MACT standard, and removed for sources where there is no area source MACT standard at all.
- An alternative to EPA's proposal is to include a provision which allows a source to choose to maintain emissions levels below the threshold limit and opt out of an applicable major source MACT standard only if that choice results in a decrease in actual emissions.
- There is no assurance that control equipment will be maintained or that other rules will not be weakened.
- With regard to pollution prevention measures, we recommend that EPA provide incentives for those sources willing to totally eliminate the use of HAPs.

Rusty Camp, Environmental Manager, Wellborn Cabinet, Inc.

EPA-HQ-OAR-2004-0094-0085

Valerie Ughetta, Director of Stationary Sources, Alliance of Automobile Manufacturers

EPA-HQ-OAR-2004-0094-0163

- **Support for proposal, but must clarify that the PTE is a limit for the entire facility.**
- **If a source is switching from area source back to major, and the major source standard has changed in some way, then additional time should be given for compliance.**
- **Sources that switch to area source status should only be considered for purposes of residual risk if EPA determines to set a residual risk standard for area sources in that source category or considered area sources when setting the MACT standard for the major sources in the source category.**
- **Conforming amendments are needed for All MACT Standards.**

John D. Walke, Director, Clean Air Program, National Resources Defense Council (NRDC)

EPA-HQ-OAR-2004-0094-0151

- **The proposal fundamentally contravenes the carefully crafted Congressional authorities in CAA section 112 meant to ensure that industrial HAP emitters would achieve the maximum degree of reduction in emissions.**
- **The EPA is not required to conduct a residual risk review analysis for area sources not required to meet MACT standards. These area sources would be subject to less stringent GACT standards.**
- **Section 112 clearly indicates that all sources covered by a MACT standard after its effective date may not operate by exceeding the emissions standard.**

William H. Lewis, Morgan, Lewis & Bockius LLP on behalf of Clean Air Implementation Project and American Chemistry Council (ACC)

EPA-HQ-OAR-2004-0094-0162

- **Support EPA's proposal and, indeed, believe that EPA is compelled under the Clean Air Act and its own regulations to authorize any source whose potential to emit HAPs does not exceed major source thresholds to not be subject to NESHAP requirements applicable to HAP major sources.**
- **Support EPA's adoption of the "immediate compliance" provisions under which a major source that becomes an area source and reverts to major source status, and a major source that becomes an area source.**

James B. Tessier, Environmental Engineer, Flexcon Company, Inc

EPA-HQ-OAR-2004-0094-0164

John L. Wittenborn, Counsel, Kelley Drye Collier Shannon, LLP on behalf of the Steel Manufacturers Association (SMA) and The Specialty Steel Industry of North America (SSINA)

EPA-HQ-OAR-2004-0094-0160

- **There will be an environmental benefit because industries will be willing to control HAP below 10/25.**
- **Backsliding will be unlikely because**
    1. **Emissions limitations enforced by a federally-enforceable permit**
    2. **Sources will be regulated as area sources**
    3. **In most cases, facilities could achieve even further HAP reductions through technology improvements**
- **Section 112 distinguishes between major and area sources, but is silent regarding switching.**

Air Permitting Forum (APF) and American Petroleum Institute (API)

EPA-HQ-OAR-2004-0094-0124

- **Because EPA's 1995 Policy was inconsistent with the Clean Air Act, EPA is now appropriately proposing that the Act neither imposed nor contemplated a temporal limitation on the sources' ability to achieve area source status.**
- **The proposed rule encourages pollution prevention. Lists examples.**
- **The proposed rule will reduce needless recordkeeping and reporting burdens on sources and the corresponding review burdens for permitting authorities.**
- **Support the immediate compliance rule proposed for sources that revert from area source back to major source status, provided appropriate exceptions are made in the final rule.**
- **The Final Rule should recognize that requirements in regulations in addition to permit limits can enable a source to become "minor" for purposes of MACT applicability and EPA should not require any synthetic minor permits to be federally enforceable.**

Steven B. Hellem, Executive Director, Corporate Environmental Enforcement Council (CEEC)

EPA-HQ-OAR-2004-0094-0083

Daniel K. Youhas, Manager, Government Affairs, Shipbuilders Council of America (SCA)

EPA-HQ-OAR-2004-0094-0158

Marcia Y. Kinter, Vice President-Government & Business Information, Specialty Graphic Imaging Association on behalf of The Graphic Arts Coalition (GAC)

EPA-HQ-OAR-2004-0094-0141

Rich Raiders, Environment and Sustainable Development Department, Arkema Inc

EPA-HQ-OAR-2004-0094-0113

Catherine Fitzsimons, Chief, Air Quality Bureau, Iowa Department of Natural Resources (DNR)

EPA-HQ-OAR-2004-0094-0119

- **Supports proposal with following exceptions**
    1. **If a facilities actual HAP emissions exceeded the 10/25 threshold at any time since the applicable MACT compliance date, the facility should continue to be considered a major source and should not be allowed to later limit out of the applicable MACT standard.**
    2. **If the facility was subject to a MACT standard due to its actual HAP emissions, installed the required controls, and those controls reduced emissions below the major source thresholds, the facility should be considered a major source, and should not be allowed to later limit out of the applicable MACT standard.**
- **Gave an example of a facility that came in for permits 2 months after compliance date of WWWW, with a calculated HAP PTE of 78 tons. However their emissions only ended up being 1.4 tons. Therefore IDNR made the decision that this facility's very low emissions did not justify adhering to OIAI policy, and IDNR subsequently wrote construction permits with synthetic minor limits.**

Bryan L. Brendle, Director, Energy and Resources Policy, National Association of Manufacturers (NAM)

EPA-HQ-OAR-2004-0094-0170

- **EPA's OIAI policy provides no flexibility and gives no credit for technological changes or advancements that may result in reduced HAP emissions.**
- **As applied, OIAI results in "permanent" major source classification that leads to an illogical outcome by applying major source MACT standards to sources regardless of their operational ability to emit HAP above thresholds for major sources.**
- **There is a general consensus that the OIAI policy stifles voluntary pollution abatement efforts and other technological innovations that actually reduce HAP emissions.**
- **Support immediate compliance if switching between major and area or back to major with a few exceptions.**

Robert D. Bessette, President, Council of Industrial Boiler Owners (CIBO)

EPA-HQ-OAR-2004-0094-0133

- **EPA's proposed amendments are consistent with the Clean Air Act.**
- **Facilities are not likely to backslide from MACT levels of control to just below the major source MACT thresholds.**
  - **To maintain its area source status, the facility would generally operate controls in the most efficient manner possible to maintain a comfortable compliance margin under the 10/25 TPY PTE HAP limits.**
  - **Many MACT sources are required to control VOC or PM emissions in order to meet other Clean Air Act requirements.**
- **Proposed amendments will provide incentives for facilities to reduce emissions. EPA's current OIAI policy provides little incentive to reduce emissions.**
- **For the most part, going from being a major source of HAP to a minor source requires the company to make changes well beyond the requirements of the MACT.**
- **EPA should not require sources to cap HAP emissions at levels below the major source thresholds in order to avoid MACT applicability.**
- **A major source that becomes an area source by limiting its PTE must meet all applicable area source requirements promulgated under this part within 30 days following receipt of the permit containing the PTE limits.**

Leslie Sue Ritts, Counsel National Environmental Development Association's Clean Air Project (NEDA/CAP)

EPA-HQ-OAR-2004-0094-0143

Laurel L. Kroack, Chief, Bureau of Air, Illinois Environmental Protection Agency (Illinois USEPA)

EPA-HQ-OAR-2004-0094-0130

- **Without a once in, always in policy, facilities could "backslide" from MACT control levels by obtaining potential-to-emit limits, escaping applicability of the MACT standards.**
- **A few of the area source standards recently promulgated apply only to sources located in urban areas. If some of the remaining area source standards to be promulgated also apply only to sources located in urban areas, it then means that some synthetic minors located in rural areas that were previously subject to MACT requirements will not be subject to any standard.**
- **If EPA collects data from only major sources, the proposed amendments would mean that data used in future technical reviews and residual risk analyses may not adequately reflect the risk to human health and the environment posed by sources as major sources taking potential to emit limits to become a synthetic minor.**

Todd J. Biewen, Manager, Air Assessment and Environmental Data Management Section, Environmental Analysis and Outcomes Division, Minnesota Pollution Control Agency (MPCA)

EPA-HQ-OAR-2004-0094-0128

- **We support efforts that facilitate a major source of hazardous air pollutants (HAPS), when adopting pollution prevention measures, to be relieved of ongoing compliance with an applicable NESHAP.**
- **However, we believe this proposal relies far too heavily on already-stretched state resources to be an effective substitute permitting program for sources potentially subject to NESHAPs.**
- **The proposal should be significantly modified to codify within the rule the minimum requirements that state permits must meet to properly limit HAP PTE.**
- **It is not the cessation of the use of control equipment that is the problem; it is the real increase in HAPs during the time when the facility is emitting HAPs with acute effects above health based thresholds. The lack of control then also leads to episodes of nuisance odors associated with periods where the pollution control equipment is not operational.**
- **The proposal places far too much reliance on an individual state's discretion on how to write permit conditions that properly limit HAPs potential to emit and on how to determine compliance with such a limitation.**
- **A source should comply immediately if it becomes major again, since the operators will have known about the change in the NESHAP prior to deciding to increase the source's emissions again.**

John Schweitzer, Senior Director of Government Affairs, American Composites Manufacturers Associations

EPA-HQ-OAR-2004-0094-0086

Jerome Sechser, Director, Directorate of Public Works, Rock Island Arsenal, U.S. Army

EPA-HQ-OAR-2004-0094-0153

Glenn Shankle, Executive Director, Texas Commission on Environmental Quality (TCEQ)

EPA-HQ-OAR-2004-0094-0079

- **Supports 2006 proposal.**
- **The final rule should specify that the source remain subject to the major source standards until compliant with the area source standards.**
- **When a source becomes major (again) due to emission increases from physical and operational facility changes, it immediately comply with the MACT standard.**
- **Case-by-case reviews are a resource drain and TCEQ opposes case-by-case extensions to the**

immediate compliance rule.

Pamela A. Lacey, Senior Managing Counsel, American Gas Association (AGA)

EPA-HQ-OAR-2004-0094-0152

Cindy McComas, Chair and Jeffrey Burke, Executive Director, National Pollution Prevention Roundtable (NPPR)

EPA-HQ-OAR-2004-0094-0120

Debra J. Jezouit, Megan Heuberger, Baker Botts, LLP on behalf of Frank Rambo, Class of '85 Regulatory Response Group

EPA-HQ-OAR-2004-0094-0148

Pamela F. Faggert, Vice President and Chief Environmental Officer, Dominion

EPA-HQ-OAR-2004-0094-0121

Michael W. Stroben, Environment, Health & Safety Policy Director, Duke Energy Corporation

EPA-HQ-OAR-2004-0094-0135

David J. Shaw, Director, Division of Air Resources, New York State Department of Environmental Conservation (NYSDEC)

EPA-HQ-OAR-2004-0094-0123

Bob Dinneen, President and CEO, Renewable Fuels Association (RFA)

EPA-HQ-OAR-2004-0094-0149

- **The proposed rule would solve numerous implementation problems created by the 1995 policy.**
- **The proposed rule would provide companies with the incentive to implement pollution prevention.**

David F. Darling, Director, Environmental Affairs and Jim Sell, Senior Counsel, Government Affairs, National Paint and Coatings Association (NPCA)

EPA-HQ-OAR-2004-0094-0159

James E. Sydnor, Director, Division of Air Quality, Virginia Department of Environmental Quality (VADEQ)

EPA-HQ-OAR-2004-0094-0116

- **VADEQ believes that the proposed amendments provide a more level playing field for facilities in the same source category.**
- **Facilities that have taken PTE limitations to attain area source status and then want to switch back to major source status must immediately meet the major MACT standards, and vice versa.**
- **VADEQ does not support a permitting strategy that would allow a facility to frequently switch between major and synthetic minor status.**
- **VADEQ strongly concurs with EPA's stance on not allowing a source to use its new area source status as a defense to MACT violations that occurred while the source was a major source.**

Jean-Cyril Walker, Keller and Heckman LLP on behalf of Frank Borrelli, Technical Director, The Vinyl Institute (VI)

EPA-HQ-OAR-2004-0094-0154

Frederick G. Fedri, Corporate HES Air Quality Specialist, Occidental Chemical Corporation (OCC)

EPA-HQ-OAR-2004-0094-0084

Cindy McComas, Director, Minnesota Technical Assistance Program (MnTAP)

EPA-HQ-OAR-2004-0094-0109

Thomas K. Fidler, Deputy Secretary, The Pennsylvania Department of Environmental Protection (PADEP)

EPA-HQ-OAR-2004-0094-0144

- **The proposed rule would be detrimental to the environment and undermines the intent of the MACT program, which is to control HAP emissions from major sources to the maximum extent possible.**
- **EPA should finalize its May 15, 2003 Pollution Prevention Rule.**

Bryan L. Brendle, Director, Energy and Resources Policy, The National Association of Manufacturers (NAM)

EPA-HQ-OAR-2004-0094-0138

- **The proposed rule applies the plain meaning principle to relevant sections of the Clean Air Act and includes a comprehensive rationale to the definition of "Major Source."**
- **The proposed rule will more effectively reduce HAP emissions by promoting innovation and reducing regulatory compliance burdens.**
- **The NAM supports the EPA's "Immediate Compliance" proposals for sources changing between major and area source status.**
- **The EPA should clarify that regulators will consider changes in source classification as a mitigating factor in penalty assessments.**

Lisa Beal, Director, Environment and Construction Policy, Interstate Natural Gas Association of America (INGAA)

EPA-HQ-OAR-2004-0094-0077

John D. Walke, Director, Clean Air Program, Natural Resources Defense Council (NRDC)

EPA-HQ-OAR-2004-0094-0068

- **Would proposal have the effect to allow sources to meet the *higher* of the MACT standard or the 10/25 ton threshold?**
- **Dose the EPA have any quantitative analyses or other factual information to support the proposition that any increases would likely be offset by reductions?**
- **Request was made for numerous documents showing proposals effects.**

Pat Madden, Plant Manager, Kentucky Cabinet Corp. (Corporation)

EPA-HQ-OAR-2004-0094-0104

James C. Colman, Assistant Commissioner, Bureau of Waste Prevention, Commonwealth of Massachusetts, Executive Office of Energy & Environmental Affairs, Department of Environmental Protection

EPA-HQ-OAR-2004-0094-0167

- **MassDEP recommends that EPA amend the General Provisions to allow an owner/operator of a source that has not had actual emissions exceeding the major source threshold after the first substantive compliance date the opportunity to restrict its potential emissions to less than the major source threshold and no longer be subject to a MACT standard as a major source.**

- **For sources where actual emissions have exceeded the major source threshold since the first substantive compliance date, MassDEP feels a reasonable approach is to allow them to implement Pollution Prevention (P2) measures as proposed in the May 15, 2003 Federal Register notice, as the means of restricting their emissions to below major.**

Joe S. Wright, REM, CPEA, Manager, Environmental Health & Safety, Grandview Products Company, Inc.

EPA-HQ-OAR-2004-0094-0090

Kevin G. Hooper, AICP, Zoning Administrator, West Valley City, Utah

EPA-HQ-OAR-2004-0094-0063

Greg Stoner, President, MasterBrand Cabinets, Inc.

EPA-HQ-OAR-2004-0094-0105

William C. Herz, Vice President, Scientific Programs, The Fertilizer Institute (TFI)

EPA-HQ-OAR-2004-0094-0101

James Vince Hodshire, President, Mastercraft Industries, Inc.

EPA-HQ-OAR-2004-0094-0087

Thomas W. Easterly, Commissioner, Indiana Department of Environmental Management (IDEM)

EPA-HQ-OAR-2004-0094-0070

- **Indiana agrees with others that have stated that the OIAI policy produces a disincentive for a source to reduce HAP emissions.**
- **Indiana supports the P2 proposal and encourages USEPA to finalize it, but the P2 proposal would only address a small number of sources and not encourage other emission reduction measures.**
- **Indiana agrees that USEPA should require immediate compliance for sources moving from major source status to minor source status.**
- **Indiana agrees that in most cases, the source should be able to comply immediately when the source has already been subject to the major source MACT standard.**
- **If USEPA chooses to allow for case-by-case extensions, the final rule should require that the compliance extension request be included in the permit application to establish PTE limits.**
- **Indiana supports the proposed language that would not allow a source to avoid the results of**

enforcement action by changing the source's status.

- **USEPA may have to make additional changes to individual subparts beyond the proposal depending on the final rule. This is especially true if USEPA would specify a time period to come into compliance that is shorter than what is allowed in the current NESHAPs. For example, in 40 CFR 63.7495 (the Boiler MACT) an area source that increases the PTE to above major source thresholds has up to three years to comply.**

Deborah L. Chapin, Eastman Kodak Company-Rochester HSE Services

EPA-HQ-OAR-2004-0094-0098

John D. Walke, Natural Resources Defense Council (NRDC)

EPA-HQ-OAR-2004-0094-0060

- **In order to provide an adequate rulemaking record, the preamble should clearly articulate why EPA no longer believed that the OIAI policy flows naturally from the statute.**
- **The proposal, as written, would be detrimental to the environment and undermine the intent of the MACT program.**
- **EPA should not enact a policy allowing facilities to qualify out of the MACT standards until a strong area source toxics program is in place.**
- **Grace periods introduce the possibility that a source is major for most of its live, but may never have to comply with the MACT.**
- **It is unclear how EPA envisions this proposal will address residual risk.**
- **Any violations should be resolved before allowing permit revision to facilitate area source status.**
- **EPA should clarify minimum requirements to be met by the source.**
- **Preamble should provide detail regarding mechanisms.**
- **Preamble should state what type of monitoring is acceptable for demonstrating compliance with synthetic minor limits.**
- **EPA should be notified when a major source becomes an area source.**
- **EPA should consider finalizing pollution prevention amendments.**

Jason A. Dagle, Environmental Administrator, Wood-Mode, Inc

EPA-HQ-OAR-2004-0094-0091

Elizabeth Basil, Air Toxics Section, Manager, Bureau of Air Quality, South Carolina Department of Health and Environmental Control (DHEC)

EPA-HQ-OAR-2004-0094-0166

- **MACT, the General Provisions amendments can ensure minimal actual HAP emission increases**

take place. EPA made clear in "Once In Always In" that emission reductions achieved by complying with a MACT standard should be " . . .permanent, and that the health and environmental protection provided by MACT standards is not undermined ." We strongly agree with this statement.

- **It has been the South Carolina's experience that control devices can be operated at many levels of efficiency depending on the manner of operation.**
- **South Carolina suggests adding the following constraint to the final regulation. Facilities taking permit limits to be released from MACT without using a P2 approach should be required to maintain their controls at the MACT compliant efficiency level.**
- **However, the control device monitoring requirements need not be as stringent as MACT; new monitoring requirements will be outlined in the individual permit.**
- **The final regulation should contain the options from the proposed May 2003 "P2" regulation. These options should be expanded to the major source itself, not just the affected source.**

Krishna Parameswaran, Director, Environmental Affairs & Compliance Assurance, Asarco, LLC

EPA-HQ-OAR-2004-0094-0076

Denny McGeough, Environmental Compliance Coordinator, Bertch Cabinet Mfg., Inc.

EPA-HQ-OAR-2004-0094-0088

Boyd Hedin, COO, Crystal Cabinet Works, Inc.

EPA-HQ-OAR-2004-0094-0096

Andrew C. Lawrence, Director, Office of Nuclear Safety and Environment, Office of Health, Safety and Security, Department of Energy

EPA-HQ-OAR-2004-0094-0080

- **We agree with EPA's assessment that this role will provide an incentive for major sources to reduce hazardous air pollutant (HAP) emissions by allowing a major source of HAPs to become an area source.**

Kenneth E. Evans, Manager, Air Programs, Phelps Dodge

EPA-HQ-OAR-2004-0094-0092

Mary Scalco, Senior Vice President, International Fabricare Institute

EPA-HQ-OAR-2004-0094-0165

Patrick R. Corsi, President, The Corsi Group

EPA-HQ-OAR-2004-0094-0094

Tim Wellborn, CEO/Owner, Wellborn Forest

EPA-HQ-OAR-2004-0094-0100

Robert P. Strieter, Vice President, Environment, Health & Safety, The Aluminum Association, Inc.

EPA-HQ-OAR-2004-0094-0066

Jerry Campbell, Director, Air Management Division, Environmental Protection Commission of Hillsborough County

EPA-HQ-OAR-2004-0094-0067

Curtis Roth, ES&H Program Manager, Kansas City Plant (KCP), National Nuclear Security Administration (NNSA)

EPA-HQ-OAR-2004-0094-0069

Allen Stegman, Director of Safety and Environmental Affairs, Valspar Corporation

EPA-HQ-OAR-2004-0094-0089

Don Windeler, Manager, Environmental Engineering, Severstal North America, Inc

EPA-HQ-OAR-2004-0094-0078

John Earl, Environmental Manager, Canyou Creek Cabinet Company

EPA-HQ-OAR-2004-0094-0097

Geoff Cullen, Director, Government Relations, Can Manufacturers Institute (CMI)

EPA-HQ-OAR-2004-0094-0073

Sherry Burt-Kested, Chairman, Air Quality Subcommittee, Arizona Mining Association (AMA)

EPA-HQ-OAR-2004-0094-0081

Brad J. Overmoe, President, Red Hanger Cleaners

EPA-HQ-OAR-2004-0094-0059

Paul E. Gerbec, Environmental Engineering Specialist, 3M Environmental Operations, 3M Environmental Health and Safety Operations, 3M Company

EPA-HQ-OAR-2004-0094-0095

Ram Singhal, Director, Regulatory and Government Relations, Flexible Packaging Association (FPA)

EPA-HQ-OAR-2004-0094-0099

Dennis Cornish, Director, Environmental Services, Silgan Containers Manufacturing Corporation

EPA-HQ-OAR-2004-0094-0093

Donald R. Schregardus, Deputy Assistant Secretary of the Navy (Environment), Clean Air Act Services Steering Committee (CAASSC)

EPA-HQ-OAR-2004-0094-0072

Robert P. Strieter, Vice President, Environment, Health & Safety, The Aluminum Association, Inc.

EPA-HQ-OAR-2004-0094-0065

Dan Nickey, Chair, National Steering Committee, Small Business Environmental Assistance

EPA-HQ-OAR-2004-0094-0064

Richard J. Carleski, Supervisor, Office of Compliance Assistance and Pollution Prevention, State of Ohio Environmental Protection Agency (OhioEPA)

EPA-HQ-OAR-2004-0094-0168

- **Many small businesses find themselves considered major sources for MACT rule applicability based only upon worst-case potential to emit (PTE) calculations. Often, this involves a calculated PTE that exceeds 10 tons per year of a single hazardous air pollutant (HAP). Their actual emissions are typically well below any major source threshold. These same businesses often do not have financial or staff resources to understand the highly specialized nature of air pollution regulations such as MACT standards and synthetic minor permits. For these reasons, they often fail to obtain a timely synthetic minor permit prior to the first compliance date of a MACT rule. Because of the current OIAI policy, they are infinitely subject to a MACT rule even if their emissions decrease to negligible levels. This causes several complications including a potential for increased emissions and a disincentive to implement pollution prevention techniques.**
- **Case studies provided**

Joseph S. Casper, Vice President, Environment, Health and Safety, Brick Industry Association (BIA)

EPA-HQ-OAR-2004-0094-0082

Kevin Kessler, Director, Bureau of Air Management, Wisconsin Department of Natural Resources

EPA-HQ-OAR-2004-0094-0074

- **The proposal is inconsistent with CAA objectives and will allow backsliding**
- **The proposed policy change would also undermine compliance assurance and enforcement of Section 112 of the Clean Air Act by removing affected sources from Title V funded programs**
- **May 15, 2003, Proposed Rule provided a better solution**

Starting here, these are comments that should have been in SSM docket. I don't understand why they are in this docket. There is no mention of SSM in the proposal.

Jean-Cyril (JC) Walker, Keller and Heckman LLP on behalf of The Vinyl Institute (VI)

EPA-HQ-OAR-2004-0094-0028

Adam Babich, Director, Tulane Environmental Law Clinic on behalf of St. Bernard Citizens for Environmental Quality and the Louisiana Bucket Brigade

EPA-HQ-OAR-2004-0094-0020

Joseph Knocelik, Director, Ohio EPA

EPA-HQ-OAR-2004-0094-0037

Richard Sharpe, Director, Compliance Management Division, Bureau of Air Quality, South Carolina Department of Health and Environmental Control (SCDHEC)

EPA-HQ-OAR-2004-0094-0026

Bob Hodanbosi, Permitting Chair, State and Territorial Air Pollution Program Administrators (STAPPA) and Ursula Kramer, Permitting Chair, the Association of Local Air Pollution Control Officials (ALAPCO)

EPA-HQ-OAR-2004-0094-0017

Bill White, Mayor, City of Houston, Texas

EPA-HQ-OAR-2004-0094-0005

Alphonse McMahon, Risk Management Counsel, General Electric Company (GE)

EPA-HQ-OAR-2004-0094-0010

The American Chemistry Council (ACC) and Clean Air Implementation Project (CAIP)

EPA-HQ-OAR-2004-0094-0016

Carol Alvarado, Council Member, District 1, Houston City Council

EPA-HQ-OAR-2004-0094-0006

Melvin Keener, Ph.D., Executive Director, CRWI

EPA-HQ-OAR-2004-0094-0015

Alan E. Stinchfield, Director Environmental Technical Support, Georgia Pacific Corporation

EPA-HQ-OAR-2004-0094-0007

The Graphic Arts Coalition (GAC)

EPA-HQ-OAR-2004-0094-0019

Steven J. Rowlan, General Manager, Environmental Affairs, Nucor Corporation

EPA-HQ-OAR-2004-0094-0140

Kelly Haragan, Environmental Integrity Project (EIP) (Part 1 of 4)

EPA-HQ-OAR-2004-0094-0029

Robert P. Strieter, Vice President, Environment, Health & Safety, The Aluminum Association

EPA-HQ-OAR-2004-0094-0009

Allen Greene, Manager, Environmental Protection, CITGO Petroleum Corporation

EPA-HQ-OAR-2004-0094-0023

Eric Clark, Synthetic Organic Chemical Manufacturers Association (SOCMA)

EPA-HQ-OAR-2004-0094-0012

Keri Powell and James Pew, Attorneys, Earthjustice on behalf of Coalition for a Safe Environment (CFASE)

EPA-HQ-OAR-2004-0094-0047

Jean-Cyril (JC) Walker, Keller and Heckman LLP on behalf of The Vinyl Institute (VI)

EPA-HQ-OAR-2004-0094-0027

Kelly Haragan, Environmental Integrity Project (EIP) (Part 4 of 4)

EPA-HQ-OAR-2004-0094-0032

Michel R. Benoit, Executive Director, Cement Kiln Recycling Coalition (CKRC)

EPA-HQ-OAR-2004-0094-0014

Tracey J. Norberg, Vice President, Environment & Resource Recovery, Rubber Manufacturers Association (RMA)

EPA-HQ-OAR-2004-0094-0025

Myron Hafele, Supervisor, EHS Air Group, Kohler Co.

EPA-HQ-OAR-2004-0094-0034

Kelly Haragan, Environmental Integrity Project (EIP) (Part 3 of 4)

EPA-HQ-OAR-2004-0094-0031

Steve Nolan, Vice President, Howard Miller Company

EPA-HQ-OAR-2004-0094-0075

Kelly Haragan, Environmental Integrity Project (EIP) (Part 2 of 4)

EPA-HQ-OAR-2004-0094-0030

James L. McGraw, Managing Director and CEO, International Institute of Synthetic Rubber Producers, Inc. (IISRP)

EPA-HQ-OAR-2004-0094-0002

Norbert Dee, Ph.D., Director Environment & Safety, National Petrochemical and Refiners Association (NPRA)

EPA-HQ-OAR-2004-0094-0008

Leslie S. Ritts, Council, NEDA/CAP

EPA-HQ-OAR-2004-0094-0021

Robert M. Nolan, Advisor, SH&E, ExxonMobil

EPA-HQ-OAR-2004-0094-0036

Andrew T. O'Hare, Vice President, Portland Cement Association (PCA)

EPA-HQ-OAR-2004-0094-0011

Shannon S. Broome, Swidler Berlin LLP on behalf of American Forest and Paper Association, Alliance of Automobile Manufacturers, American Petroleum Institute, National Petrochemical and Refiners Association, and the Air Permitting Forum

EPA-HQ-OAR-2004-0094-0022

Arturo J. Blanco, Chief Bureau of Air Quality Control, Houston's Department of Health and Human Services

EPA-HQ-OAR-2004-0094-0004

Kelly Haragan, Environmental Integrity Project, et al.

EPA-HQ-OAR-2004-0094-0035

Karen M. Bond, Environmental Compliance Specialist, Lord Corporation

EPA-HQ-OAR-2004-0094-0038

Russell K. Snyder, Executive Vice President, Asphalt Roofing Manufacturers Association (ARMA)

EPA-HQ-OAR-2004-0094-0018

Alison A. Keane, Counsel, Government Affairs and David F. Darling, Director, Environmental Affairs, National Paint and Coatings Association, Inc. (NPCA)

EPA-HQ-OAR-2004-0094-0024

Joseph A. Trombka II, Technical Leader - Air, The Dow Chemical Company

EPA-HQ-OAR-2004-0094-0033

James L. McGraw, Managing Director and CEO, International Institute of Synthetic Rubber Producers, Inc. (IISRP)

EPA-HQ-OAR-2004-0094-0003

T. Ted Cromwell, Managing Director-Environment, American Chemistry Council (ACC)

EPA-HQ-OAR-2004-0094-0013

To: Lamason, Bill[Lamason.Bill@epa.gov]
Cc: Dalcher, Debra[dalcher.debra@epa.gov]
From: Jordan, Scott
Sent: Wed 1/10/2018 11:32:36 AM
Subject: RE: General Discussion

Thanks for letting me know. If you have any legal questions coming out of the meeting, just let me know.

Scott Jordan
Air and Radiation Law Office
Office of General Counsel
202-564-7508

From: Lamason, Bill
Sent: Tuesday, January 09, 2018 5:13 PM
To: Jordan, Scott <Jordan.Scott@epa.gov>
Cc: Dalcher, Debra <dalcher.debra@epa.gov>
Subject: RE: General Discussion

Scott, Thanks for offering to join the meeting tomorrow but it will be OAR only (David, Kevin, Debra and me). We need to be sure OAR is on the same page and we're not anticipating legal issues. Will let you know what comes out of the meeting.

Bill

From: Lamason, Bill
Sent: Tuesday, January 09, 2018 1:29 PM
To: Jordan, Scott <Jordan.Scott@epa.gov>
Cc: Dalcher, Debra <dalcher.debra@epa.gov>
Subject: FW: General Discussion

Meeting. Will confer with Kevin on your participation. B

From: Lamason, Bill
Sent: Tuesday, January 09, 2018 12:18 PM
To: Dalcher, Debra <dalcher.debra@epa.gov>; Culligan, Kevin <Culligan.Kevin@epa.gov>
Subject: General Discussion

Please join this short conversation with David Harlow on OIAI. We're asking about

Ex. 5 - Deliberative Process

Subject:	General Discussion
Location:	David will call Bill at Ex. 6 - Personal Privacy
Start:	Wed 1/10/2018 1:00 PM
End:	Wed 1/10/2018 1:30 PM
Recurrence:	(none)
Meeting Status:	Accepted
Organizer:	Harlow, David
Required Attendees:	Lamason, Bill

To: Rodman, Sonja[Rodman.Sonja@epa.gov]; Jordan, Scott[Jordan.Scott@epa.gov]
Cc: Lamason, Bill[Lamason.Bill@epa.gov]
From: Dalcher, Debra
Sent: Thur 1/25/2018 2:16:17 PM
Subject: OIAI.Memo. Reclassification of Major Sources as Area Sources Under Section 112_2018_01_24_Draft_Justin OGC 1.25.18.docx
OIAI.Memo. Reclassification of Major Sources as Area Sources Under Section 112_2018_01_24_Draft_Justin OGC 1.25.18.docx

Hi Sonja, Scott

A couple of comments for your consideration.

Debra

To: Cortelyou-Lee, Jan[Cortelyou-Lee.Jan@epa.gov]
From: Dalcher, Debra
Sent: Thur 1/25/2018 2:00:33 PM
Subject: EPA-HQ-OAR-2004-0094 2017-11-06 11-25-58.xlsx
EPA-HQ-OAR-2004-0094 2017-11-06 11-25-58.xlsx

Jan, summary of commenters on original 2007 proposal.

To: Torres, Elineth[Torres.Elineth@epa.gov]
From: Dalcher, Debra
Sent: Mon 11/6/2017 2:26:34 PM
Subject: Memo replacing OIAI with proposed 1997 interpretation_11_2_17 _ DD.docx
Memo replacing OIAI with proposed 1997 interpretation_11_2_17 _ DD.docx

Elineth,

Comments so far…..

To: French, Chuck[french.chuck@epa.gov]
From: Dalcher, Debra
Sent: Thur 12/7/2017 9:07:50 PM
Subject: 2007 OIAI Proposal
2007 OIAI FRN proposal.pdf
Factsheet_GP Proposed Amendments.pdf

Debra S. Dalcher

U.S. EPA

Policy and Strategies Group

Sector Policies and Programs Division, OAQPS

109 T.W. Alexander Drive

Research Triangle Park, NC 27711

Phone: 919-541-2443

To: Rodman, Sonja[Rodman.Sonja@epa.gov]; McLamb, Marguerite[McLamb.Marguerite@epa.gov]; Vetter, Rick[Vetter.Rick@epa.gov]
Cc: Torres, Elineth[Torres.Elineth@epa.gov]; Lamason, Bill[Lamason.Bill@epa.gov]
From: Dalcher, Debra
Sent: Mon 11/13/2017 9:26:20 PM
Subject: RE: Current Version of Revision Memo
NRDC comments 2007 OIAI proposal
2007 Comments by Category.docx

Sonja,

I am attaching the NRDC comments and an early comment summary (what we believe are the substantive comments from the 2007 docket). I will speak with Elineth in the morning regarding your other questions and we will follow-up with you in the am.

Best Regards, Debra

From: Rodman, Sonja
Sent: Monday, November 13, 2017 4:19 PM
To: Dalcher, Debra <dalcher.debra@epa.gov>; McLamb, Marguerite <McLamb.Marguerite@epa.gov>; Vetter, Rick <Vetter.Rick@epa.gov>; Lamason, Bill <Lamason.Bill@epa.gov>
Cc: Torres, Elineth <Torres.Elineth@epa.gov>
Subject: RE: Current Version of Revision Memo

Thanks. Can you also please forward the NRDC comments and any comment summaries you have prepared to date.

Ex. 5 - Attorney Client / Deliberative Process

Thank you. – Sonja

Sonja L. Rodman

Air Toxics, Consumer Protection and Indoor Air Practice Group

(202) 564-4079

CONFIDENTIALITY NOTICE: This message may contain sensitive, privileged information covered by the deliberative process, attorney-client and/or attorney work product privileges. Do not release this message under FOIA without appropriate review. If you are not the intended recipient, or the employee or agent responsible to deliver it to the intended recipient, please contact the sender and delete all copies.

From: Dalcher, Debra
Sent: Monday, November 13, 2017 4:09 PM
To: McLamb, Marguerite <McLamb.Marguerite@epa.gov>; Vetter, Rick <Vetter.Rick@epa.gov>; Lamason, Bill <Lamason.Bill@epa.gov>; Rodman, Sonja <Rodman.Sonja@epa.gov>
Cc: Dalcher, Debra <dalcher.debra@epa.gov>; Torres, Elineth <Torres.Elineth@epa.gov>
Subject: Current Version of Revision Memo
Importance: High

As promised during our meeting this morning I am sending out the current working draft of the memo for your review/any comments.

Elineth and I will begin work on this again tomorrow. We would appreciate any feedback you might have on the attached.

Thank you, Debra

Debra S. Dalcher

U.S. EPA

Policy and Strategies Group

Sector Policies and Programs Division, OAQPS

109 T.W. Alexander Drive

Research Triangle Park, NC 27711

Phone: 919-541-2443

From: Dalcher, Debra
Importance: Normal
Subject: Accepted: OIAI check-in
Start Date/Time: Mon 11/6/2017 3:00:00 PM
End Date/Time: Mon 11/6/2017 3:30:00 PM

From: Dalcher, Debra
Location: RTP-D201-Max40/RTP-Bldg-D
Importance: Normal
Subject: Accepted: OIAI cont. discussion
Start Date/Time: Wed 9/27/2017 4:00:00 PM
End Date/Time: Wed 9/27/2017 5:00:00 PM

To: Srivastava, Ravi[Srivastava.Ravi@epa.gov]
From: Dalcher, Debra
Sent: Mon 11/13/2017 9:01:03 PM
Subject: Sample comments - OIAI
EPA-HQ-OAR-2004-0094-0089-A1.pdf
EPA-HQ-OAR-2004-0094-0099-A1.pdf
EPA-HQ-OAR-2004-0094-0118-A2.pdf
EPA-HQ-OAR-2004-0094-0119-A2.pdf
EPA-HQ-OAR-2004-0094-0068-A2.pdf
EPA-HQ-OAR-2004-0094-0073-A2.pdf
EPA-HQ-OAR-2004-0094-0074-A1.pdf
EPA-HQ-OAR-2004-0094-0078-A2.pdf
EPA-HQ-OAR-2004-0094-0079-A2.pdf
EPA-HQ-OAR-2004-0094-0080-A1.pdf

Debra S. Dalcher

U.S. EPA

Policy and Strategies Group

Sector Policies and Programs Division, OAQPS

109 T.W. Alexander Drive

Research Triangle Park, NC 27711

Phone: 919-541-2443

action, with the same title, that is located in the ''Rules and Regulations'' section of this **Federal Register** publication.

Dated: December 18, 2006.

Donald S. Welsh,

Regional Administrator, Region III.

[FR Doc. E6–22415 Filed 12–29–06; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[EPA–HQ–OAR–2004–0094; FRL–8263–3]

RIN 2060–AM75

National Emission Standards for Hazardous Air Pollutants: General Provisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA is proposing amendments to the General Provisions to the national emission standards for hazardous air pollutants (NESHAP). The proposed amendments would replace the policy described in the May 16, 1995 EPA memorandum entitled, ''Potential to Emit for MACT Standards—Guidance on Timing Issues,'' from John Seitz, Director, Office of Air Quality Planning and Standards (OAQPS), to EPA Regional Air Division Directors. The proposed amendments provide that a major source may become an area source at any time by limiting its potential to emit hazardous air pollutants (HAP) to below the major source thresholds of 10 tons per year (tpy) of any single HAP or 25 tpy of any combination of HAP. Thus, under the proposed amendments, a major source can become an area source at any time, including after the first substantive compliance date of an applicable MACT standard so long as it limits its potential to emit to below the major source thresholds. We are also proposing to revise tables in numerous MACT standards that specify the applicability of General Provisions requirements to account for the regulatory provisions we are proposing to add through this notice.

DATES: *Comments.* Written comments must be received on or before March 5, 2007.

Public Hearing. If anyone contacts EPA requesting to speak at a public hearing by January 23, 2007, a public hearing will be held on February 2, 2007. Persons interested in attending the public hearing should contact Ms. Lala Alston at (919) 541–5545 to verify that a hearing will be held.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OAR–2004–0094, by one of the following methods:

- *www.regulations.gov.* Follow the on-line instructions for submitting comments.
- *Email: a-and-r-docket@epa.gov*, Attention Docket ID No. EPA–HQ–OAR–2004–0094.
- *Facsimile:* (202) 566–1741, Attention Docket ID No. EPA–HQ–OAR–2004–0094.
- *Mail:* U.S. Environmental Protection Agency, EPA West (Air Docket), 1200 Pennsylvania Ave., NW., Room: 3334, Mail Code: 6102T, Washington, DC 20460, Attention E-Docket ID No. EPA–HQ–OAR–2004–0094.
- *Hand Delivery:* Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, 1301 Constitution Ave., NW., Room: 3334, Mail Code: 6102T, Washington, DC, 20460, Attention Docket ID No. EPA–HQ–OAR–2004–0094. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–HQ–OAR–2004–0094. The EPA's policy is that all comments received will be included in the public docket without change and may be made available online at www.regulations.gov, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through www.regulations.gov, or e-mail. Send or deliver information identified as CBI only to the following address: Mr. Roberto Morales, OAQPS Document Control Officer, U.S. EPA (C404–02), Attention Docket ID No. EPA–HQ–OAR–2004–0094, Research Triangle Park, NC 27711. Clearly mark the part or all of the information that you claim to be CBI. The www.regulations.gov Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through www.regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the index. Although listed in the *www.regulations.gov* index, some information is not publicly available, (i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material will be publicly available only in hard copy. Publicly available docket materials are available either electronically at *www.regulations.gov* or in hard copy at the Air and Radiation Docket, EPA/DC, EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Air and Radiation Docket is (202) 566–1742.

Note: The EPA Docket Center suffered damage due to flooding during the last week of June 2006. The Docket Center is continuing to operate. However, during the cleanup, there will be temporary changes to Docket Center telephone numbers, addresses, and hours of operation for people who wish to make hand deliveries or visit the Public Reading Room to view documents. Consult EPA's **Federal Register** notice at 71 FR 38147 (July 5, 2006) or the EPA Web site at *http://www.epa.gov/epahome/dockets.htm* for current information on docket operations, locations and telephone numbers. The Docket Center's mailing address for U.S. mail and the procedure for submitting comments to *www.regulations.gov* are not affected by the flooding and will remain the same.

Public Hearing. If a public hearing is held, it will be held at the EPA facility complex in Research Triangle Park, NC or an alternate site nearby.

FOR FURTHER INFORMATION CONTACT: Rick Colyer, Program Design Group (D205–02), Sector Policies and Programs Division, Office of Air Quality Planning and Standards, U.S. EPA, Research Triangle Park, NC 27711, telephone number (919) 541–5262, electronic mail (e-mail) address, *colyer.rick@epa.gov.*

SUPPLEMENTARY INFORMATION:

Regulated Entities. Categories and entities potentially regulated by this action include all major sources regulated under section 112 of the CAA.

Worldwide Web (WWW). In addition to being available in the docket, an electronic copy of today's proposal will also be available on the WWW through the Technology Transfer Network (TTN). Following signature, a copy of this action will be posted on the TTN's policy and guidance page for newly proposed rules at *http://www.epa.gov/ttn/oarpg.* The TTN provides information and technology exchange in various areas of air pollution control.

Outline

The information presented in this preamble is organized as follows:

I. Summary of Proposed Action
II. Background
III. Rationale for the Proposed Amendments
A. Why is EPA proposing these amendments?
B. What is the authority for this action?
C. What are the implications of this proposed action?
D. What regulatory changes are we proposing?
IV. Impacts of the Proposed Amendments
V. Statutory and Executive Order Reviews
A. Executive Order 12866: Regulatory Planning and Review
B. Paperwork Reduction Act
C. Regulatory Flexibility Act
D. Unfunded Mandates Reform Act
E. Executive Order 13132: Federalism
F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments
G. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks
H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use
I. National Technology Transfer and Advancement Act

I. Summary of Proposed Action

Today's proposed amendments would replace an existing EPA policy established in a May 16, 1995, EPA memorandum entitled ''Potential to Emit for MACT Standards-Guidance on Timing Issues.'' *See* ''Potential to Emit for MACT Standards-Guidance on Timing Issues,'' from John Seitz, Director, Office of Air Quality Planning and Standards, to EPA Regional Air Division Directors. The 1995 policy provides that a major source may become an area source by limiting its potential to emit (PTE) HAP emissions to below major source levels (10 tpy or more of any individual HAP or 25 tpy or more of any combination of HAP), no later than the source's first substantive compliance date under an applicable NESHAP (also known as a MACT standard). Thus, under the 1995 policy, a source that limits its PTE and thereby attains area source designation by the first compliance date of the MACT is not subject to major source requirements. By contrast, a source that does not have a PTE limit in place by the first substantive compliance date would be subject to major source MACT, regardless of its subsequent HAP emissions. The 1995 policy is generally referred to as EPA's ''once in, always in'' (OIAI) policy for MACT standards.

The regulatory amendments proposed today, if finalized, would replace the 1995 OIAI policy and allow a major source of HAP emissions to become an area source at any time by limiting its PTE for HAP to below the major source thresholds.

II. Background

Section 112 of the CAA distinguishes between ''major'' and ''area'' sources of HAP. A major source of HAP is defined as ''* * * any stationary source or group of stationary sources located within a contiguous area and under common control that emits or has the potential to emit considering controls, in the aggregate, 10 tpy or more of any hazardous air pollutant or 25 tpy or more of any combination of hazardous air pollutants.'' (section 112(a)(1)). An area source is defined as any stationary source of HAP that is not a major source. (section 112(a)(2)). ''Hazardous air pollutant'' is defined as ''* * * any air pollutant listed pursuant to subsection (b)'' of section 112. (section 112(a)(6)).

''Potential to emit'' is currently defined in the NESHAP General Provisions as ''* * * the maximum capacity of a stationary source to emit a pollutant under its physical and operational design. Any physical or operational limitation on the capacity of the stationary source to emit a pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design if the limitation or the effect it would have on emissions is federally enforceable.'' (40 CFR 63.2).[1]

The CAA treats the regulation of major sources and area sources differently. Generally, major source categories are listed under section 112(c)(1), while area source categories are listed under section 112(c)(3) following a finding that either the source category presents a threat of adverse human health or environmental effects that warrants regulation under section 112, or the category falls within the purview of CAA section 112(k)(3)(B). See CAA section 112(c)(1) and (3). Standards for major sources are based on the performance of the maximum achievable control technology (MACT) currently employed by the best controlled sources in the industry. Standards for area sources may be based on MACT, but alternatively may be based on generally available control technology (GACT) or generally available management practices that reduce HAP emissions. See CAA section 112(d)(2) and (5).

Major sources can achieve significant HAP emission reductions and emit at levels below the major source thresholds through a variety of mechanisms. In order to be recognized as an area source and thereby avoid the application of major source MACT requirements, however, a major source must limit its potential to emit HAP to ensure that its emissions remain below major source thresholds. See CAA section 112(a)(1) (defining major source HAP thresholds); 40 CFR 63.2 (same).

A significant question that arose early in the development of the MACT program was when major sources may limit their PTE to below the major source thresholds in order to avoid having to comply with major source MACT standards. The EPA issued

[1] As explained further below, in *National Mining Association* v. *EPA,* 59 F. 3d 1351(D.C. Cir. 1995) (*NMA*), the D.C Circuit remanded the definition of ''potential to emit'' found in 40 CFR 63.2 to the extent it required that physical or operational limits be ''federally enforceable.'' The court did not vacate the rule during the remand. Two additional cases were decided after *National Mining.* In *Chemical Manufacturers Ass'n* v. *EPA, (CMA)* No. 89–1514, 1995 WL 650098 (D.C. Cir. Sept. 15, 1995), the court, in light of *National Mining,* vacated and remanded to EPA the federal enforceability component in the potential to emit definition in the PSD and NSR (40 CFR parts 51 and 52) regulations. In *Clean Air Implementation Project* v. *EPA,* No. 96–1224 1996 WL 393118 (D.C. Cir. June 28, 1996) (*CAIP*), the court vacated and remanded the federal enforceability requirement in the title V (40 CFR part 70) regulations. The *CMA* and the *CAIP* orders were similar in that they contained no independent legal analysis, but rather relied on the *National Mining* decision.

Before any of the above cases were decided, EPA implemented a ''transitional'' policy to allow sources to rely on state-only enforceable PTE limits. ''Options for Limiting the Potential to Emit (PTE) of a Stationary Source Under Section 112 and Title V of the Clean Air Act (Act)'' (Jan. 25, 1995), available at *http://www.epa.gov/Region7/programs/artd/air/title5/t5memos/ptememo.pdf.* After the court decisions, EPA extended the transition policy several times. See ''Third Extension of January 25, 1995 Potential to Emit Transition Policy'' (December 20, 1999), available at *http://www.epa.gov/Region7/programs/artd/air/title5/t5memos/4thext.pdf.* Under the Third Extension, sources can rely on state-only enforceable PTE limits until we finalize our response to the remands. EPA intends to issue a proposed PTE rule in the near future.

guidance on this and related issues on May 16, 1995, in a memorandum from John Seitz, Director of the Office of Air Quality Planning and Standards, to the EPA regional air division directors. The May 1995 memorandum addressed three issues:

• ''By what date must a facility limit its potential to emit if it wishes to avoid major source requirements of a MACT standard?''

• ''Is a facility that is required to comply with a MACT standard permanently subject to that standard?''

• ''In the case of facilities with two or more sources in different source categories: If such a facility is a major source for purposes of one MACT standard, is the facility necessarily a major source for purposes of subsequently promulgated MACT standards?''

In the May 1995 memorandum, EPA took the policy position that the latest date by which a source could obtain area source status by limiting its HAP PTE would be the first substantive compliance date of an applicable MACT standard. For existing sources, this would be no later than 3 years after the effective date of the regulation (which for MACT standards is the date of publication in the **Federal Register**), but could be sooner; for example, some standards for leaking equipment require compliance no later than 6 months after the effective date of the regulation.

Furthermore, in the May 16, 1995, memorandum, EPA stated that once a source was required to comply with a MACT standard, i.e., once the first substantive compliance date had passed without the source limiting its PTE, it must always comply, even though compliance with the standard may reduce HAP emissions from the source to below major source thresholds.

Finally, the May 16, 1995 memorandum provided that a source that is major for one MACT standard would not be considered major for a subsequent MACT standard if the potential to emit HAP emissions were reduced to below major source levels by complying with the first MACT standard.

The 1995 memorandum, on which we did not seek notice and comment, set forth transitional policy guidance and was intended to remain in effect only until such time as the Agency proposed and promulgated amendments to the Part 63 General Provisions. We are today proposing to amend the General Provisions and replace the 1995 policy memorandum.

III. Rationale for the Proposed Amendments

A. Why Is EPA Proposing These Amendments?

EPA issued the May 1995 memorandum in an effort to provide answers to pressing questions raised shortly after the inception of the air toxics program. Since issuance of the memorandum, EPA has received questions concerning the OIAI policy and recommendations to revise the policy.

In August 2000, EPA met with representatives of the State and Territorial Air Pollution Program Administrators and the Association of Local Air Pollution Control Officials (STAPPA/ALAPCO) to explore ways to revise the OIAI policy to promote pollution prevention (P2). The STAPPA/ALAPCO stated its belief that the OIAI policy provides no incentive for sources, after the first substantive compliance date of a MACT standard, to implement P2 measures in order to reduce their emissions to below major source thresholds because there are no benefits to be gained, e.g., no reduced monitoring, recordkeeping, and reporting, and no opportunity to get out of major source requirements. In light of these concerns, the STAPPA/ALAPCO recommended that the Agency revise the OIAI policy to encourage P2. To accommodate some of these P2 concerns, in May 2003 we proposed to amend the part 63 General Provisions (68 FR 26249; May 15, 2003) in the following ways. First, the proposed amendments encourage P2 by allowing an affected source that completely eliminates all HAP emissions after the first compliance date of the MACT standard to submit a request to the Administrator that it no longer be subject to the MACT standard. If the request is approved, the affected source would no longer be subject to the MACT standard provided the source does not resume emitting HAP from the regulated source(s) of emissions. Second, the proposed amendments encourage P2 by allowing an affected source that uses P2 to reduce HAP emissions to the level required by the MACT standard, or below, to request ''P2 alternative compliance requirements,'' which could include alternative monitoring, recordkeeping and reporting. If the request is approved, the alternative compliance requirements would replace the compliance requirements in the MACT standard.

It is important to understand the differences in applicability between the P2 amendments, and OIAI and today's proposal revising that policy. The proposed P2 amendments are targeted at the ''affected source'' as that term is defined in 40 CFR 63.2. ''Affected source'' describes the collection of regulated emission points defined as the entity subject to a specific MACT standard. See 40 CFR 63.2. For example, an affected source could be a single production unit or the combination of all production units within a single contiguous area and under common control, or a single emission point or a collection of many related emission points within a single contiguous area and under common control. Each MACT standard defines the ''affected source'' for regulation.

By contrast, the 1995 OIAI policy and today's proposed amendments that seek to replace that policy focus on ''major sources,'' as defined in 40 CFR 63.2. As explained above, major sources are defined by the total amount of HAP emitted from a stationary source or group of stationary sources located within a contiguous area and under common control. See 40 CFR 63.2. A major source can include several different affected sources subject to multiple MACT standards.

The relationship between the proposed P2 amendments and today's proposal is best illustrated by the following example. Consider a major source that emits 50 tpy total HAP which is comprised of 5 affected sources subject to various MACT. If the Agency finalizes the P2 amendments and one of the affected sources that emitted 15 tpy of HAP eliminated all its HAP emissions, the affected source, if its request is approved by the permitting authority, would no longer be subject to MACT. However, the other four affected sources within the major source would still be subject to their respective MACT because the sources' combined emissions would be 35 tpy, which exceeds the major source threshold. We are considering the comments received on the proposed P2 amendments and have not yet taken any final action with regard to that proposal.

In addition to the feedback from STAPPA concerning the OIAI policy, EPA has heard from others who have taken the position that the OIAI policy serves as a disincentive for sources to reduce emissions of HAP beyond the levels actually required by an applicable standard. For example, one source whose emissions after applying MACT were still above major source thresholds has significant emissions of one HAP for which the MACT standard does not require reductions. The source has indicated it is willing to substantially reduce that HAP to achieve area source status, but would not do so as long as

the OIAI policy applied and the source could not be redesignated as an area source. Another source, which has maintained actual HAP emissions well below major source levels, discovered its PTE limit (designating it as an area source) was based on an erroneous emission factor. Even though actual emissions have always been below major source levels, its PTE, when recalculated using the correct emission factors, exceeded the major source threshold. In this example, the source did not realize its problem until after the first substantive compliance date, which meant that, under the OIAI policy, the source was subject to the MACT standard.

Moreover, the OIAI policy, as written, does not encourage sources to explore the use of different control techniques, P2, or new and emerging technologies that would result in lower emissions. Thus, under OIAI, the same source could be subject to substantially different requirements based solely on the date by which the source reduced its potential to emit HAP to below the major source thresholds. For example, under OIAI, a major source that is subject to a MACT standard may become an area source prior to the first substantive compliance date of that standard, without reaching MACT levels of emissions reductions. As a result, prior to the first substantive compliance date of a MACT standard, a source emitting 30 tpy of a combination of HAP could reduce emissions by 10 tpy, take a HAP PTE limitation at 20 tpy, emit less than 10 tpy of any one HAP, and become an area source. Such a source would no longer meet the applicability criteria of a potentially applicable major source MACT standard and would, therefore, not be required to comply with that standard. By contrast, if the same source reduced its emissions of HAP to 20 tpy (and didn't emit 10 tpy or more of any single HAP) by complying with an applicable major source MACT standard after the first substantive compliance date of the standard, it would have to continue to comply with the requirements of the major source MACT standard because the first substantive compliance date had passed. The only difference in these two situations is the date on which the source reduced its emissions. As explained below, there is nothing in the CAA that compels the conclusion that a source cannot attain area source status after the first substantive compliance date of a MACT standard.

B. What Is the Authority for This Action?

As noted above, Congress expressly defined the terms ''major source'' and ''area source'' in section 112(a). A ''major source'' is a source that ''emits or has the potential to emit considering controls, in the aggregate,'' 10 tons per year or more of any HAP or 25 tons per year or more of any combination of HAP, and an ''area source'' is any stationary source that is not a ''major source.'' CAA section 112(a)(1) and (a)(2).[2] Notably absent from these definitions is any reference to the compliance date of a MACT standard. Rather, Congress defined major source by reference to the amount of HAP the source ''emits *or has the potential to emit considering controls*,'' and required EPA to determine whether that amount exceeds certain specified levels. 42 U.S.C. 112(a)(1) (emphasis added). Congress placed no temporal limitations on the determination of whether a source emits or has the potential to emit HAP in sufficient quantity to qualify as a major source.

In March 1994, EPA issued final regulations interpreting the term ''major source.'' See 59 FR 12408 (March 16, 1994) (the General Provisions governing the section 112 program).[3] The regulatory definition of ''major source'' is virtually identical to the statutory definition. Specifically, EPA defined ''major source'' as ''any stationary source or group of stationary sources * * * that emits *or has the potential to emit considering controls*'' at or above major source thresholds. 40 CFR 63.2. EPA, in turn, defined the phrase ''potential to emit'' that appears in the definition of ''major source,'' as the ''maximum capacity of a stationary source to emit a pollutant under its physical and operational design.'' *Id.* To give effect to the phrase ''considering controls'' in the statutory definition of ''major source,'' (CAA section 112(a)(1)), EPA further defined the term ''potential to emit'' in its regulations as follows:

> Any physical or operational limitation on the capacity of the stationary source to emit a pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design if the limitation or the effect it would have on emissions is federally enforceable.

40 CFR 63.2.

The Court of Appeals for the District of Columbia Circuit reviewed EPA's definition of ''potential to emit'' and, in July 1995, remanded the definition to EPA to the extent the definition required that physical or operational limitations be ''federally enforceable.'' *National Mining Ass'n* v. *EPA*, 59 F.3d 1351 (D.C. Cir. 1995).[4] In remanding the rule, the D.C. Circuit held that ''EPA has not explained * * * how its refusal to consider limitations other than those that are 'federally enforceable' serves the statute's directive to 'consider[] controls' when it results in a refusal to credit controls imposed by a state or locality even if they are unquestionably effective.'' *Id.* at 1363. The court also noted that ''[i]t is not apparent why a state's or locality's controls, when demonstrably effective, should not be credited in determining whether a source subject to those controls should be classified as a major or area source.'' *Id.; see also id.* at 1365 (''By no means does that suggest that Congress necessarily intended for state emissions controls to be disregarded in determining whether a source is classified as a 'major' or 'area' source.'').

As noted above, EPA is in the process of developing a proposed PTE rule that responds to the Court's remand in *NMA* and, among other things, proposes amendments to the definition of PTE in 40 CFR part 63. EPA anticipates issuing the proposed rule in the near future. See n.1.

Today's proposed rule is wholly consistent with the plain language of section 112(a)(1). Specifically, under today's proposed regulations, any source with a PTE limit that limits HAP emissions to less than the major source thresholds is, by definition, not a ''major source'' because its *''potential to emit considering controls''* is less than the identified major source thresholds. 42 U.S.C. 7412(a)(1) (emphasis added). By

[2] In addition to ''major sources'' and ''area sources,'' Congress identified a third type of source under section 112: electric utility steam generating units (''Utility Units''). See section 112(a)(8). Congress created a special statutory provision for Utility Units in section 112(n)(1)(A). Discussion of that provision is not relevant to this proposal. Today's proposal focuses solely on ''major sources'' and ''area sources.'' See CAA 112(a)(1), 112(a)(2).

[3] The General Provisions in 40 CFR Part 63 eliminate the repetition of general information and requirements in individual NESHAP subparts by consolidating all generally applicable information in one location. The General Provisions include sections on applicability, definitions, compliance dates, and monitoring, recordkeeping and reporting requirements, among others. In addition, the General Provisions include administrative sections concerning actions that the EPA Administrator must take, such as making determinations of applicability, reviewing applications for approval of new construction, responding to requests for extensions or waivers of applicable requirements, and generally enforcing NESHAP. The General Provisions apply to every facility that is subject to a NESHAP subpart, except where specifically overridden by that subpart.

[4] In that same opinion, the Court otherwise upheld EPA's definition of ''major source.''

contrast, under the 1995 policy memorandum, a source is treated as a major source in perpetuity even if sometime after the first compliance date of a MACT standard the source no longer meets the statutory definition of ''major source'' (i.e., the source has a ''potential to emit considering controls'' less than the major source thresholds). EPA believes that the approach proposed today gives full effect to the statutory definitions and to the distinctions that Congress created between ''major'' and ''area'' sources. *Id.* at 1353–54 (discussing differences in requirements affecting major and area sources and recognizing that Congress did not contemplate that all area sources be subject to regulation); *see also* 42 U.S.C. 7412(c)(3), 7412(k)(3)(B).

Moreover, nothing in the structure of the Act counsels against today's proposed approach. Congress defined major and area sources differently and established different requirements for such sources. *See NMA,* 59 F3d 1353–54. The 1995 policy memorandum creates a dividing line between major and area sources that does not exist on the face of the statute by including a temporal limitation on when a source can become an area source by limiting its PTE.

Furthermore, as noted in the May 1995 OIAI memorandum itself, EPA intended that the memorandum be a transitional policy which would remain in effect only until EPA undertook notice and comment rulemaking, which it is now doing. Nothing precludes the Agency from revising a prior agency position where, as here, we have a principled basis for doing so. As the Supreme Court recently observed:

> ''An initial agency interpretation is not instantly carved in stone. On the contrary, the agency * * * must consider varying interpretations and the wisdom of its policy on a continuing basis, *Chevron, supra* at 863–64, for example, in response to changed factual circumstances, or a change in administrations.''

National Cable & Telecomms. Ass'n v. *Brand X Internet Servs.,* 545 U.S. 967 (2005) (citations omitted); *see also American Trucking Ass'n* v. *Atchison, Topeka & Santa Fe Ry.,* 387 U.S. 397, 416 (1967); *Mobil Oil Corp.* v. *EPA,* 871 F.2d 149, 152 (D.C. Cir. 1989) (''an agency's reinterpretation of statutory language is nevertheless entitled to deference, so long as the agency acknowledges and explains the departure from its prior views''). We solicit comment on all aspects of today's proposal, including EPA's position that today's proposed approach gives proper effect to the statutory definitions in section 112(a) and is consistent with the language and structure of the Act.

C. What Are the Implications of This Proposed Action?

In the 1995 memorandum, EPA stated, as a matter of policy, that without the OIAI policy, facilities could backslide from MACT levels of control and increase their emissions to a level slightly below the major source thresholds. The 1995 memorandum further asserts that if this occurred, the ''maximum achievable emissions reductions that Congress mandated for major sources would not be achieved.'' We agree that Congress mandated that sources that meet the definition of ''major source'' in section 112(a) be required to comply with MACT, but a source that takes a PTE limit that limits its PTE to below the major source HAP thresholds does not, as explained above, meet the statutory definition of ''major source,'' and therefore should not be subject to the requirements applicable to a major source.

EPA recognizes that some sources in complying with an applicable MACT standard will reduce HAP emissions below the major source thresholds because that is the level of emissions necessary to maintain compliance with the MACT standard. If this rule is finalized, we believe it is unlikely that such sources would, in becoming area sources, increase their current emissions to a level just below the major source thresholds. While this may occur in some instances, it is more likely that sources will adopt PTE limitations at or near their current levels of emissions, which is the level needed to meet the MACT standard(s).[5] This conclusion is based on a number of factors.

First, many sources attaining area source status do so because of the control devices that they installed to meet the MACT standards. Such control systems are designed to operate a certain way and cannot be operated at a level which achieves only a partial emission reduction, *i.e.*, the devices either operate effectively or they do not. Thus, we expect that sources that have attained area source status by virtue of a particular control technology will maintain their current level of emissions.

Second, several additional programs have been implemented under the CAA since the issuance of the 1995 OIAI memorandum. Specifically, in many cases, sources will maintain the level of emission reduction associated with the MACT standard because that level is needed to comply with other requirements of the Act, such as RACT controls on emissions of volatile organic compounds, which are also HAP. Sources may also need to maintain their current level of control for other reasons, including, for example, for emissions netting and emissions trading purposes.

Third, if this rule is finalized, those sources that seek to maintain area source status will likely take PTE limits at or near their current MACT emission levels to ensure that their emissions remain below the major source thresholds. Sources have no incentive to establish their PTE limit too close to the major source thresholds because repeated or frequent exceedances above the PTE could provide the permitting authority reason to revoke the PTE and bring an enforcement action. 42 U.S.C. 7413(g); *see NMA,* 59 F.3d at 1363 n.20 (noting that a source that claims to have lowered its emissions to below major source thresholds, but has actual emissions that exceed such thresholds, can be subject to sanctions under CAA section 113).

Fourth, permitting authorities will likely encourage emission reduction maintenance and impose more stringent PTE terms and conditions on the source the closer the source's PTE is to the major source thresholds. Such terms and conditions may include shorter compliance periods and perhaps more robust monitoring, recordkeeping, and reporting to ensure that the source does not exceed its PTE.

Finally, many sources that take a PTE limitation to become an area source will ultimately be subject to area source standards issued pursuant to section 112. To date, EPA has issued emission standards for approximately 20 area source categories. Over the next three years, EPA is required to develop area source standards for approximately 50 additional categories. While the level at which those standards will be set is not known at this time, the standards will reflect at least generally available control technology and some may be set at MACT-based levels, which would mean that many sources could be required to maintain their current emission levels. *See, e.g.*, 42 U.S.C. 7412(d)(2), (d)(5), 7412(k)(3)(B).

For all of these reasons, we believe it is unlikely that a source that currently emits at a level below the major source

[5] We recognize that there may be instances where a source will emit at a level that is below the level required by the MACT. EPA cannot mandate that sources emit at such a level. Accordingly, in discussing potential emission increases as the result of today's proposal, we properly limit our discussion to those sources that emit below the major source thresholds because they must do so to meet the MACT standard, not those sources that, for other reasons, emit at a level below the level required by the MACT standard.

thresholds as the result of compliance with a MACT standard would increase its emissions in response to this rule. However, even if such increases occur, the increases will likely be offset by emission reductions at other sources that should occur as the result of this proposal. Specifically, this proposal provides an incentive for those sources that are currently emitting above major source thresholds and complying with MACT, to reduce their HAP emissions to below the major source thresholds.

We solicit comment on the issues discussed above. Please include with your comments any relevant factual information and describe the scenarios under which sources, in response to this proposal, would likely increase emissions from the level required by MACT to just below the major source thresholds.

D. What Regulatory Changes Are We Proposing?

For the reasons discussed above, we believe that the 1995 OIAI policy should be replaced and today are proposing to allow a major source to become an area source at any time by taking a PTE limit on its HAP emissions. Specifically, we are proposing to amend section 63.1 by adding a new paragraph (c)(6). That paragraph would specify that a major source may become an ''area source'' at any time by restricting its ''potential to emit'' (PTE) hazardous air pollutants, as that term is defined in 40 CFR Part 63, Subpart A, to below major source thresholds.[6] [7] If a source takes a PTE limit, it will no longer be subject to major source requirements that apply to HAP emissions, subject to certain restrictions described below. The major source requirements to which the source would no longer be subject, include, but are not limited to, compliance assurance monitoring and title V requirements (assuming the source is not otherwise subject to title V permitting). As an area source complying with its PTE limit, the source would nonetheless be subject to any applicable area source requirements issued pursuant to section 112, and title V if EPA has not exempted the area source category from such requirements.

There are two provisions of the current regulations that are relevant for background purposes: Sections 63.6(b)(7) and 63.6(c)(5). Section 63.6(b)(7) provides that when an area source becomes a major source ''by the addition of equipment or operations that meet the definition of new affected source in the relevant standard, the portion of the existing facility that is a new affected source must comply with all requirements of that standard applicable to *new sources*,'' and the source must comply with the relevant standard upon startup. 40 CFR 63.6(b)(7) (Emphasis added). Section 63.6(c)(5), in turn, states: ''Except as provided in section 63.6(b)(7),'' an area source that becomes a major source is treated as an existing major source and must comply with applicable MACT standards by the date specified in the standard for area sources that become major sources.[8] For those major source MACT standards that do not specify such a date, the affected source has a period of time to comply that is equivalent to the compliance period specified in the standard for existing affected sources (which is up to three years). 40 CFR 63.6(c)(5). Section 63.6(c)(5) was designed to address existing area sources that have not previously been subject to a MACT standard, but that later increase their emissions and become a major source. Section 63.6(c)(5) only applies, however, where the change that resulted in the increased emissions does not meet the definition of a new affected source under the relevant major source MACT standard.

As noted above, EPA today proposes to amend section 63.1 to add a new paragraph (c)(6) that would authorize a major source to become an area source at any time by obtaining a PTE limit limiting its HAP emissions to below major source thresholds. EPA proposes, however, the following restrictions.

The first restriction relates to a regulatory provision that we are adding to address the situation where sources switch between major and area source status more than once. Specifically, there may be situations where sources that are major sources as of the first substantive compliance date of the MACT standard later take PTE limitations to attain area source status, and then subsequently seek to switch back to major source status. In these situations, EPA proposes that 40 CFR 63.6(c)(5) not apply, and that, except as noted below, the source must meet the major source MACT standard immediately upon that standard again becoming applicable to the source. See proposed regulations at 40 CFR 63.1(c)(6)(i).[9] In this scenario, existing affected sources at the major source were previously subject to the MACT standard. The affected sources therefore should be able to comply with the standard immediately upon the standard again becoming applicable to them. *Id.*

To date, we have identified one set of circumstances where additional time would be necessary for the source to comply with the major source MACT. Specifically, there are situations where major source MACT rules may be amended and either become more stringent or apply to additional emission points or additional HAP. For example, under section 112(d)(6) MACT standards must be reviewed every 8 years and revised if necessary. If revisions issued pursuant to section 112(d)(6) increase the stringency of the standards or revise the standards such that they apply to additional emission points or HAP, it would be necessary to allow existing sources sufficient time to come into compliance with the new requirements. The revision of a MACT standard pursuant to section 112(d)(6) is only one example of a situation where a MACT rule may be revised. MACT rules are also amended for other reasons, including as the result of settlements resolving pending litigation over a standard. Any type of rule amendment situation where the

[6] We recognize that there may be sources that were major sources as of the first substantive compliance date of a MACT standard that, by complying with non-section 112 CAA requirements, became area sources for HAP emissions. In this instance, EPA proposes that the source obtain a PTE limit for its HAP emissions to ensure that those emissions remain below major source thresholds.

[7] Some individual MACT standards in Part 63 provide sources the opportunity to become area sources not by limiting total mass emissions directly, but by limiting material use or by taking other measures, which in turn, correlate to emissions below major source levels (*e.g.*, see subpart KK, Printing and Publishing and subpart JJ, Wood Furniture Manufacturing Operations (limiting HAP usage to below major source thresholds). We recommend that sources refer to the applicable NESHAP for guidance in determining whether the source meets the major source thresholds. See 40 CFR 63.2 (defining ''potential to emit''by reference to physical or operational limitations, including, for example, ''restrictions on hours of operation, or on the type or amount or material combusted, stored, or processed'').

[8] EPA explained the purpose of section 63.6(b)(7) in the preamble to the General Provisions as follows:

Section 63.6(b)(7) states that an unaffected new area source that increases its emissions of (or its potential to emit) HAP such that it becomes a major source, must comply with the relevant emission standard immediately upon becoming a major source. [Under section 63.6(b)(7), a]n unaffected existing area source that increases its emissions (or its potential to emit) such that it becomes a major source, must comply by the date specified for such a source in the standard. If such a date is not specified, the source would have an equivalent period of time to comply as the period specified in the standard for other existing sources. However, if the existing area source becomes a major source by the addition of a new affected source, or by reconstructing, the portion of the source that is new or reconstructed is required to comply with the standard's requirements for new sources.

59 FR 12408, 12413 (Mar. 16, 1994).

[9] The new proposed 40 CFR 63.1(c)(6)(i), like section 63.6(c)(5), is subject to the provisions of 40 CFR 63.6(b)(7).

amendments substantively modify the MACT could necessitate additional time for compliance. We are thus proposing that sources that switch status from major source to area source and then revert back to major source status, be allowed additional time for compliance if the major source standard has changed such that the source must undergo a physical change, install additional controls and/or implement new control measures. We propose that such sources have the same period of time to comply with the revised MACT standard as is allowed for existing sources subject to the revised standard. We solicit comment on this proposed compliance time-frame and whether the proposed regulatory text adequately captures the intended exception.

We are proposing the immediate compliance rule, with the above-noted exception, because we believe that in most cases, sources achieve and maintain area source status by operating the controls they used to meet the MACT standard. Therefore, a source that reverts to major source status should be in a position to comply immediately with the MACT standard. Sources may, in addition to, or in lieu of, operating controls, reduce their production level or hours of operation, but regardless of the means employed to attain area source status, we believe that the sources will likely not be removing the controls used to meet the MACT standard. We recognize that some MACT standards allow alternative compliance options, such as the use of low HAP materials, but these options should continue to be available for the affected source. Moreover, the addition of equipment or process units to an existing affected source should not change the source's ability to meet the MACT standard upon startup of the new equipment or unit because the equipment or process units should be accompanied by either a tie-in to existing controls or installation of new controls. See also 40 CFR 63.6(b)(7) (applying to new affected sources). We solicit comment on whether our assumptions, as stated in this paragraph, are correct.

More specifically, we solicit comment on the appropriateness of the proposed immediate compliance rule and whether such rule should be finalized. If it should be maintained, we solicit comment on whether there are other situations, in addition to the one noted above, that would necessitate an extension of the time period for compliance with the MACT standards. We further solicit comment on whether we should instead allow all sources that revert back to major source status a specific period of time in which to comply with the MACT standard, which would be consistent with the approach provided for in 40 CFR 63.6(c)(5). If we pursue this approach in the final rule, we request comment on whether we should provide the same time periods as are already provided for in 40 CFR 63.6(c)(5), or whether a different time period is appropriate and why. To the extent a commenter proposes a compliance time-frame, we request that the commenter explain the basis for providing that time-frame. Thus, depending on the comments received and the factual circumstances identified, we will consider (1) not finalizing the immediate compliance, with exceptions, approach, and instead providing all sources that revert back to major source status a defined period of time to comply consistent with the provisions of 40 CFR 63.6(c)(5); and (2) retaining the proposed immediate compliance rule, and adopting additional exceptions to that rule, if we receive persuasive and concrete scenarios that we believe would warrant allowing additional time to comply with a previously applicable MACT standard.[10] If we pursue the former approach, we would likely amend 40 CFR 63.6(c)(5). If we pursue the latter approach and retain the immediate compliance rule, but create exceptions in addition to the one noted above, there are two ways to implement the exceptions: Through a case-by-case compliance extension request process or by identifying in the final rule specific exceptions to the immediate compliance rule and providing a time period for compliance for each identified exception. Under the case-by-case approach, the permitting authority could grant limited additional time for compliance upon a specific showing of need. A case-by-case compliance extension request process would call for the owners or operators of sources to submit to the relevant permitting authority a request that (i) identifies the specific additional time needed for compliance, and (ii) explains, in detail, why the source needs additional time to come into compliance with the MACT standard. The permitting authority would review the request and could either approve it in whole, or in part (*i.e.*, by specifying a different compliance timeframe or allowing different timeframes for different parts of the affected sources), or deny the request.

We envision that a request for a compliance extension, if such an option is provided in the final rule, would ordinarily be made in the context of the title V permit application or an application to modify an existing title V permit. Any compliance extension, if granted, would be memorialized in the title V permit. Another option sources may consider is seeking approval to include in their title V permit alternative operating scenarios that address the source's different projected operating scenarios. By incorporating alternative operating scenarios into the permit, the source could avoid having to reopen and revise the permit if it chooses to switch source status and again become a major source.

If we retain the proposed immediate compliance rule with exceptions, we will also consider the option of including in the final rule defined compliance extension time-frames for defined factual scenarios, as we have done for the exception described above. Under this approach, if a source satisfies the criteria identified in the final rule, it would automatically be afforded the defined extension of time to comply with the MACT standard upon the source again becoming subject to MACT. This extension approach would be useful if there are specific factual scenarios that affect a broad number of sources, because defining the compliance extension time-frame in the final rule eliminates the burden on permitting authorities associated with the case-by-case approach.

In submitting your comments on the above-noted issues and proposed section 63.6(c)(6), please identify, with specificity, the factual circumstances that would warrant a compliance extension, explain why the source would need the extension under the circumstances identified, and why the source could not comply with the standard immediately upon returning to major source status given the identified circumstances. We specifically solicit comment on our discussion above as to the mechanics of obtaining a compliance extension if a case-by-case approach is finalized, including, for example, the type of information requested from the source seeking the proposed compliance extension, the permit vehicle used to obtain the extension, and any limitations on

[10] The new proposed regulatory provision at 40 CFR 63.1(c)(6)(i) is subject to the provisions of 40 CFR 63.6(b)(7). Thus, if a source adds a piece of equipment which results in emissions at levels in excess of the major source thresholds, and that equipment meets the definition of a new affected source under the relevant MACT standard, the source is subject to the provisions of 40 CFR 63.6(b)(7) and must meet the requirements for new sources in the relevant major source MACT standard including compliance at startup.

providing extensions.[11] We further solicit comment on the approach of providing a compliance extension in the final rule for certain defined factual scenarios. With regard to this approach, we solicit comment on the nature of the scenario that would warrant such an extension and the amount of additional time that would be needed to comply with the MACT standard and why such a period of time is needed to comply.

The second restriction to the new proposed regulatory provision at 40 CFR 63.1(c)(6) concerns those major sources that take PTE limits to become area sources and thereby become subject to area source standards in 40 CFR part 63. We propose that a major source with affected sources subject to a major source MACT standard that switches to area source status where the EPA has established area source standards for the same affected source would have to comply immediately with those area source standards if the first substantive compliance date has passed or would have to comply by the first substantive compliance date if it has not passed. Because the area source standard is not likely to be more stringent than the major source MACT standard that the source was already meeting, the source likely will not need additional compliance time after the source status change. However, if different emission points are controlled or different controls are necessary to comply with the area source standard or other physical changes are needed to comply with the standard, additional time, not to exceed 3 years, may be granted by the permitting authority if adequate support for the additional time is provided by the source.[12]

Accordingly, EPA is proposing to add 40 CFR 63.1(c)(6)(ii), which provides that a major source that subsequently becomes an area source by limiting its PTE must meet all applicable area source requirements in Part 63 immediately upon the effective date of the permit containing the PTE limits, provided the first compliance date for the area source standard has passed. We further propose that if a source (or a portion thereof) must undergo a physical change or install additional control equipment to meet the applicable area source standard, the source may submit to the relevant permitting authority a request that (i) identifies the specific additional time needed for compliance (i.e., such request cannot exceed three years) with the area source standard, and (ii) explains, in detail, why the additional time is necessary to comply with the standard. The proposed new regulatory provision—40 CFR 63.1(c)(6)(ii)—is delegable. *See generally* 42 U.S.C. 7412(l); 40 CFR Subpart E. A permitting authority may approve, in whole or in part, or deny the request.

The proposed new regulatory provision, 40 CFR 63.1(c)(6)(ii), is analogous to 40 CFR 63.6(c)(5), which is briefly described above. We promulgated 40 CFR 63.6(c)(5) as part of the General Provisions, because we recognized a gap in the statute. Specifically, the statute is silent as to how to address sources that are existing area sources at the time the MACT standard is promulgated and that, at some later date, become major sources subject to the MACT standard. Section 63.6(c)(5) fills this particular gap. Similarly, the statute does not address the scenario where a major source becomes an area source and the compliance date for the area source standard has already passed and modifications to the source are needed to achieve compliance with the standard. EPA today proposes 40 CFR 63.1(c)(6)(ii) to address this situation. Section 112(i)(3) does not directly address either of these identified scenarios. Rather, it directly addresses those sources that are existing affected sources as of the date the emission standard is promulgated. See CAA section 112(i)(3) (''After the effective date of any emission standard * * * promulgated under this section and *applicable to a source*, no person may operate such source in violation of such standard * * * except in the case of an existing source,'' EPA shall provide a compliance date that provides for compliance as expeditiously as practicable, but no later than 3 years *''after the effective date of the standard.''*) (emphasis added). Moreover, the new proposed regulatory provision, 40 CFR 63.1(c)(6)(ii), is consistent with CAA section 112(i)(3), because it requires sources to comply immediately with the area source standard upon the effective date of the permit containing the PTE limit (which is the permit that provides area source status), and authorizes additional time only if the Permitting Authority determines that such time is appropriate based on the facts and circumstances. In any event, any extension of time provided pursuant to proposed 40 CFR 63.1(c)(6)(ii) cannot exceed three years.

Under today's proposed regulations, sources that reduce their emission levels and obtain a PTE HAP limit below major source thresholds must meet that limit and all associated conditions, as specified in the relevant permit, on the effective date of the permit. Prior to the effective date of the permit, the source must continue to comply with the relevant major source MACT standard(s) and other conditions in its title V permit. Of course, permitting authorities may deny a request to adopt area source status where the source has changed its status more than once, if, in the opinion of the permitting authority, these actions are an indication that the restrictions on PTE are, in practice, ineffective.

To the extent an area source standard applies, the compliance date for that standard has passed, and the source needs a compliance extension, the source must apply for and obtain that compliance extension before becoming subject to the area source standard; otherwise, the source will be in violation of the area source standard. We solicit comment on the proposed case-by-case compliance extension date approach, including, for example, the type of information that should be requested from the source seeking the proposed compliance extension, the permit vehicle used to obtain the extension, and whether the limitations proposed above (i.e., the affected source must undergo a physical change or install additional control equipment in order to meet the area source standard) are appropriate. See proposed regulations at 40 CFR 63.1(c)(6)(ii). We also solicit comment generally on the mechanics of obtaining the compliance extension and the appropriate vehicle for requesting the compliance extension. If the area source category is not exempted from the requirements of title V, the request for a compliance extension can be made in the context of the title V permit process. If, however, the area source category at issue is exempt from title V, the source could submit its compliance date extension request to the permitting authority issuing its PTE HAP limitation, provided that the permitting authority is the same State authority that has been

[11] Some major sources that switch to area source status may, as an area source, no longer be subject to title V requirements and therefore apply to their permitting authority to terminate their title V permits and obtain a PTE limit through another permit vehicle. Presumably, such sources would have their title V permit terminated at the same time the non-title V permit limiting their PTE becomes effective. If, however, the area source reverts back to major source status, the source will once again have to obtain a title V permit. The source would also have to terminate the non-title V permit containing its PTE limit to allow it to emit at major source levels. Once the HAP PTE limitation no longer applies to the source, the source must comply with applicable major source MACT standards or have taken appropriate steps to apply for a compliance extension.

[12] The existing regulations do not address the issue of compliance time-frames for sources that switch from major source status to area source status. *See* CAA section 112(i)(3), 40 CFR 63.6(c)(5).

delegated authority to implement the Section 112 program. We further solicit comment on whether the proposed compliance date extension provision in 40 CFR 63.1(c)(6)(ii) should be extended to major sources that become area sources only a few months prior to the compliance date of an applicable area source standard, to the extent the source needs additional time to comply.

We solicit comment on all aspects of the proposed new regulatory provisions at 40 CFR 63.1(c)(6)(i) and (ii). For either of the two situations described above (*i.e.*, where a source switches from major, to area, and back to major source status, and where a source switches from major to area source status), a source must notify the Administrator under § 63.9(b) of any standards to which it becomes subject.

The final restriction relevant to the regulations we are proposing to add to 40 CFR 63.1 relates to an enforcement issue. See proposed regulations at 40 CFR 63.1(c)(6)(iii). Specifically, we do not intend to allow major sources that are subject to enforcement investigations or enforcement actions to avoid the results of such investigations or the consequences of such actions by becoming area sources. Although sources that are the subject of an investigation or enforcement action may still seek area source status for purposes of future applicability, they are not absolved of any previous or pending violations of the CAA that occurred while they were a ''major source,'' and the source must bear the consequences of any enforcement action or remedy imposed upon it, which could include fines or imposition of additional emission reduction requirements. Accordingly a source cannot use its new area source status as a defense to MACT violations that occurred while the source was a major source. Similarly, becoming a major source does not absolve a source subject to an enforcement action or investigation for area source violations or infractions from the consequences of any actions occurring when the source was an area source.

Finally, we are proposing to amend each of the General Provisions applicability tables contained within most subparts of part 63 to add a reference to new paragraph 63.1(c)(6). In addition, in reviewing several of the MACT standards, we identified one general category of regulatory provisions that may need revision and we solicit comment on whether any revisions are in fact necessary. This category of provisions addresses the date by which a major source can become an area source. The provisions that we have identified to date, however, all include the specific compliance date of the standard, which in all instances has passed. See e.g., 40 CFR 63.787(b)(iv) (''Existing major sources that intend to become area sources by the December 18, 1997 compliance date may choose to * * * ''). Thus, although these regulatory provisions reflect the 1995 OIAI policy that this proposed rule seeks to replace, the provisions themselves have no current effect because the compliance date specified in the regulations has passed. In light of this, we are not proposing regulatory changes to these provisions, but we solicit comment on whether such changes are necessary. We further solicit comment on whether there are any other regulatory provisions in any of the individual subparts that would warrant modification or clarification consistent with today's proposal.

IV. Impacts of the Proposed Amendments

The environmental, economic, and energy impacts of the proposed amendments cannot be quantified without knowing which sources will avail themselves of the regulatory provisions proposed in this rule and what methods of HAP emission reductions will be used. It is unknown how many sources would choose to take permit conditions that would limit their PTE to below major source levels. Within this group it also is not known how many sources may increase their emissions from the major source MACT level (assuming the level is below the major source thresholds). Similarly we cannot identify or quantify the universe of sources that would decrease their HAP emissions to below the level required by the NESHAP to achieve area source status. We believe that many, if not most, sources that could reduce HAP emissions to area source levels prior to the first substantive compliance date of a MACT standard have already done so. We solicit comment on potential impacts, specifically the number of potential and likely sources that may avail themselves of the approach provided for in today's proposal and additional emission reductions that may be achieved or increases that may occur; please provide any analysis in your comment. There is no requirement that sources avail themselves of the approach proposed today, and each source should assess its own situation to determine whether the additional costs associated with achieving additional emission reductions is beneficial to the source, in exchange for becoming an area source and realizing the associated benefits.

V. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is a ''significant regulatory action'' because it raises novel legal or policy issues arising out of legal mandates. Accordingly, EPA submitted this action to the Office of Management and Budget (OMB) for review under EO 12866 and any changes made in response to OMB recommendations have been documented in the docket for this action.

B. Paperwork Reduction Act

The proposed amendments would impose no information collection requirements. Sources opting to become area sources may experience some reduction in reporting and recordkeeping requirements, as they would no longer be subject to major source MACT requirements. Any changes in reporting or recordkeeping would be done through the permitting mechanisms of the responsible permitting authority. It is not possible to identify how many sources would choose to employ these provisions, nor is it possible to determine what, if any changes, to reporting and recordkeeping would be made. Permitting authorities may, in fact, choose to establish the NESHAP provisions themselves as the PTE limits and change little or nothing.

Furthermore, approval of an ICR is not required in connection with these proposed amendments. This is because the General Provisions do not themselves require any reporting and recordkeeping activities, and no ICR was submitted in connection with their original promulgation or their subsequent amendment. Any recordkeeping and reporting requirements are imposed only through the incorporation of specific elements of the General Provisions in the individual MACT standards which are promulgated for particular source categories which have their own ICRs.

The Office of Management and Budget has previously approved the information collection requirements contained in the existing regulations of 40 CFR part 63 under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501, *et seq.* A copy of the OMB approved Information Collection Request (ICR) for any of the existing regulations may be obtained from Susan Auby, Collection Strategies Division; U.S. EPA (2822T); 1200 Pennsylvania Ave., NW., Washington, DC 20460, or by calling (202) 566–1672.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act generally requires an agency to prepare a regulatory flexibility analysis of any proposed rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions.

For purposes of assessing the impacts of the proposed amendments on small entities, small entity is defined as: (1) A small business as defined in each applicable subpart; (2) a government jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and that is not dominant in its field.

After considering the economic impacts of the proposed amendments on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. In determining whether a rule has a significant economic impact on a substantial number of small entities, the impact of concern is any significant adverse economic impact on small entities, since the primary purpose of the regulatory flexibility analysis is to identify and address regulatory alternatives which minimize any significant economic impact on a substantial number of small entities (5 U.S.C. 603–604). Thus, an agency may certify that a rule will not have a significant economic impact on a substantial number of small entities if the rule relieves regulatory burden, or otherwise has a positive economic effect on all of the small entities subject to the rule.

Small entities that are subject to MACT standards would not be required to take any action under this proposal; any action a source takes to become reclassified as an area source would be voluntary. In addition, we expect that any sources using these provisions will experience cost savings that will outweigh any additional cost of achieving area source status.

The only mandatory cost that would be incurred by air pollution control agencies would be the cost of reviewing sources' permit applications for area source status and issuing permits. No small governmental jurisdictions operate their own air pollution control agencies, so none would be required to incur costs under the proposal. In addition, any costs associated with application reviews and permit issuance are expected to be offset by reduced agency oversight obligations for sources that no longer must meet major source MACT requirements.

Based on the considerations above, we have concluded that the proposed amendments will relieve regulatory burden for all affected small entities. Nevertheless, we continue to be interested in the potential impacts of the proposed amendments on small entities and welcome comments on issues related to such impacts.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures by State, local, and tribal governments, in aggregate, or by the private sector, of $100 million or more in any 1 year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective, or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

EPA has determined that the proposed amendments do not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any 1 year. Sources subject to MACT standards would not be required to take any action under this proposal, including sources owned or operated by State, local, or tribal governments; the provisions in these proposed amendments are strictly voluntary. In addition, the proposed amendments are expected to result in reduced burden on any source that achieves area source status in accord with them. Under the proposed amendments, a State, local, or tribal air pollution control agency to which we have delegated section 112 authority would be required to review permit applications and make modifications to the permit as necessary. However, most applications would not be lengthy or complicated, and costs would not approach the $100 million annual threshold. In addition, any costs associated with these reviews are expected to be offset by reduced agency oversight obligations for sources that no longer must meet major source requirements. Thus, the proposed amendments are not subject to the requirements of sections 202 and 205 of UMRA. EPA has determined that the proposed amendments contain no regulatory requirements that might significantly or uniquely affect small governments because they contain no requirements that apply to such governments or impose obligations upon them. Thus, the proposed

amendments are not subject to the requirements of section 203 of the UMRA.

E. Executive Order 13132: Federalism

Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.''

These proposed amendments do not have federalism implications. They will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. Although the proposed amendments would require State air pollution control agencies to review and modify permits as appropriate, the burden on States will not be substantial. In addition, we expect that the overall effect of the proposed amendments will be to reduce the burden on State agencies as their oversight obligations become less demanding for sources no longer subject to major source MACT requirements. Thus, Executive Order 13132 does not apply to these proposed amendments.

In the spirit of Executive Order 13132, and consistent with EPA policy to promote communications between EPA and State and local governments, EPA specifically solicits comment on these proposed amendments from State and local officials.

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 6, 2000), requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' ''Policies that have tribal implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and Indian tribes.''

These proposed amendments do not have tribal implications, as specified in Executive Order 13175. They will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes. Any tribal government that owns or operates a source subject to MACT standards would not be required to take any action under this proposal; the provisions in the proposed amendments would be strictly voluntary. In addition, achieving area source status would result in reduced burden on any source that no longer must meet major source requirements. Under the proposed amendments, a tribal government with an air pollution control agency to which we have delegated section 112 authority would be required to review permit applications and to modify permits as necessary. However, such reviews are not expected to be lengthy or complicated, so the effects will not be substantial. In addition, any costs associated with these reviews are expected to be offset by reduced agency oversight obligations for sources no longer required to meet major source requirements. Thus, Executive Order 13175 does not apply to these proposed amendments.

However, in the spirit of Executive Order 13175, and consistent with EPA policy to promote communications between EPA and Indian tribes, EPA specifically solicits comment on the proposed amendments from tribal officials.

G. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks

Executive Order 13045, entitled ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997) applies to any rule that: (1) Is determined to be ''economically significant'' as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

EPA interprets Executive Order 13045 as applying only to regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Executive Order has the potential to influence the regulation. These proposed amendments are not subject to Executive Order 13045 because they are not ''economically significant'' and because all MACT standards governed by the General Provisions are based on technology performance and not on health or safety risks.

H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

The proposed amendments are not a ''significant energy action'' as defined in Executive Order 13211 (66 FR 28355, May 22, 2001) because they are not likely to have a significant adverse effect on the supply, distribution, or use of energy. Further, we believe that the proposed amendments are not likely to have any adverse energy impacts.

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act (NTTAA) of 1995, Public Law 104–113,12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

These proposed amendments do not involve technical standards. Therefore, EPA is not considering the use of any voluntary consensus standards. EPA welcomes comments on this aspect of the proposed amendments, and specifically invites the public to identify potentially applicable voluntary consensus standards and to explain why such standards should be used in the proposed amendments.

List of Subjects in 40 CFR Part 63

Environmental protection, Air pollution control, Hazardous substances, Reporting and recordkeeping requirements.

Dated: December 21, 2006.

Stephen L. Johnson,

Administrator.

For the reasons cited in the preamble, title 40, chapter 1 of the Code of Federal

Regulations is proposed to be amended as follows:

PART 63—[AMENDED]

1. The authority citation of part 63 continues to read as follows:

Authority: 42 U.S.C. 7401, *et seq.*

Subpart A—[Amended]

2. Section 63.1 is amended by adding a new paragraph (c)(6) to read as follows:

§ 63.1 Applicability.

* * * * *

(c) * * *

(6) A major source may become an area source at any time by obtaining a permit limiting its potential to emit (PTE) hazardous air pollutants, as defined in this subpart, to below the major source thresholds established in 40 CFR 63.2, subject to the restrictions in paragraphs (c)(6)(i) through (iii) of this section. Until the permit containing the PTE limit becomes effective, the source remains subject to major source requirements. After the permit containing the PTE limit becomes effective, the source is subject to any applicable requirements for area sources.

(i)(A) The owner or operator of a major source subject to standards under this part that subsequently becomes an area source by limiting its PTE to below major source thresholds, and then later again becomes a major source by increasing its emissions to the major source thresholds or above, must comply immediately with the major source requirements of this part upon becoming a major source, notwithstanding § 63.6(c)(5), except as noted in paragraph (i)(B) below. Such major sources must comply with the notification requirements of § 63.9(b).

(B) If, as described in paragraph (i)(A), a source again becomes subject to the standard for major sources, that standard has been revised since the source was last subject to the standard and, in order to comply, the source must undergo a physical change, install additional controls and/or implement new control measures, the source will have up to the same amount of time to comply as the amount of time allowed for existing sources subject to the revised standard.

(ii) A major source that becomes an area source by limiting its PTE must meet all applicable area source requirements promulgated under this part immediately upon the effective date of the permit containing the PTE limits, provided the first substantive compliance date for the area source standard has passed, except that the permitting authority may grant additional time, up to 3 years, if the source must undergo physical changes or install additional control equipment in order for the source (or portion thereof) to comply with the applicable area source standard and the permitting authority determines that such additional time is warranted based on the record. A source seeking additional compliance time must submit a request to the permitting authority that identifies the amount of additional time requested for compliance and provides a detailed justification supporting the requested. Area sources not previously subject to area source standards must comply with the notification requirements of § 63.9(b).

(iii) Becoming an area source does not absolve a source subject to an enforcement action or investigation for major source violations or infractions from the consequences of any actions occurring when the source was major. Becoming a major source does not absolve a source subject to an enforcement action or investigation for area source violations or infractions from the consequences of any actions occurring when the source was an area source.

* * * * *

3. Section 63.6 is amended by revising the second sentence in paragraph (c)(5) to read as follows:

§ 63.6 Compliance with standards and maintenance requirements.

* * * * *

(c) * * *

(5) * * * Except as provided in § 63.1(c)(6)(i) such sources must comply by the date specified in the standards for existing area sources that become major sources. * * *

* * * * *

4. Section 63.9 is amended by adding a sentence to the end of paragraph (b)(1)(ii) to read as follows:

§ 63.9 Notification requirements.

* * * * *

(b) * * *

(1)(i) * * *

(ii) * * * Area sources previously subject to major source requirements that again become major sources are also subject to the notification requirements of this paragraph.

* * * * *

Subpart F—[Amended]

5. Table 3 to subpart F of part 63 is amended by adding an entry for § 63.1(c)(6) to read as follows:

TABLE 3 TO SUBPART F OF PART 63—GENERAL PROVISIONS APPLICABILITY TO SUBPARTS F, G, AND H[A] TO SUBPART F

Reference	Applies to subparts F, G, and H	Comment
* * * * * * *		
63.1(c)(6)	Yes.	
* * * * * * *		

[a] Wherever subpart A specifies "postmark" dates, submittals may be sent by methods other than the U.S. Mail (*e.g.*, by fax or courier). Submittals shall be sent by the specified dates, but a postmark is not necessarily required.

* * * * *

Subpart N—[Amended]

6. Table 1 to subpart N of part 63 is amended by adding an entry for § 63.1(c)(6) to read as follows:

TABLE 1 TO SUBPART N OF PART 63—GENERAL PROVISIONS APPLICABILITY TO SUBPART N

General Provisions Reference	Applies to subpart N	Comment
* * *	* * *	* *
63.1(c)(6)	Yes.	
* * *	* * *	* *

Subpart O—[Amended]

7. Table 1 to § 63.360 is amended by adding an entry for § 63.1(c)(6) to read as follows:

§ 63.360 Applicability.

(a) * * *

TABLE 1 OF SECTION 63.360.—GENERAL PROVISIONS APPLICABILITY TO SUBPART O

Reference	Applies to sources using 10 tons in subpart O [a]	Applies to sources using 1 to 10 tons in subpart O [a]	Comment
* * *	* * *	* *	* *
63.1(c)(6)		Yes.	
* * *	* * *	* *	* *

[a] See definition.

* * * * *

Subpart R—[Amended]

8. Table 1 to subpart R of part 63 is amended by adding an entry for § 63.1(c)(6) to read as follows:

TABLE 1 TO SUBPART R OF PART 63.—GENERAL PROVISIONS APPLICABILITY TO SUBPART R

Reference	Applies to subpart R	Comment
* * *	* * *	* *
63.1(c)(6)	Yes.	
* * *	* * *	* *

Subpart S—[Amended]

9. Table 1 to subpart S of part 63 is amended by adding an entry for § 63.1(c)(6) to read as follows:

TABLE 1 TO SUBPART S OF PART 63.—GENERAL PROVISIONS APPLICABILITY TO SUBPART S[A]

Reference	Applies to subpart S	Comment
* * *	* * *	* *
63.1(c)(6)	Yes.	
* * *	* * *	* *

[a] Wherever subpart A specifies ''postmark'' dates, submittals may be sent by methods other than the U.S. Mail (*e.g.*, by fax or courier). Submittals shall be sent by the specified dates, but a postmark is not required.

* * * * *

Subpart T—[Amended]

10. Appendix B to subpart T of part 63 is amended by adding an entry for § 63.1(c)(6) to read as follows:

Appendix B to Subpart T of Part 63—General Provisions Applicability to Subpart T

Reference	Applies to subpart T		Comments
	BCC	BVI	
* *	* *	* *	*
63.1(c)(6)	Yes	Yes.	
* *	* *	* *	*

* * * * *

Subpart U—[Amended]

11. Table 1 to subpart U of part 63 is amended by adding an entry for § 63.1(c)(6) to read as follows:

Table 1 to subpart U of part 63 is amended by adding an entry for § 63.1(c)(6) to read as follows:

TABLE 1 TO SUBPART U OF PART 63.—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART U AFFECTED SOURCES

Reference	Applies to subpart U	Explanation
* *	* *	*
63.1(c)(6)	Yes.	
* *	* *	*

* * * * *

Subpart W—[Amended]

12. Table 1 to subpart W of part 63 is amended by adding an entry for § 63.1(c)(6) to read as follows:

TABLE 1 TO SUBPART W OF PART 63.—GENERAL PROVISIONS APPLICABILITY TO SUBPART W

Reference	Applies to subpart W			Comment
	BLR	WSR	WSR alternative standard, and BLR equipment leak standard (40 CFR part 63, subpart H)	
* *	* *	* *	*	*
§ 63.1(c)(6)	Yes	Yes	Yes.	
* *	* *	* *	*	*

Subpart Y—[Amended]

13. Table 1 of § 63.560 is amended by adding an entry for § 63.1(c)(6) to read as follows:

§ 63.560 Applicability and designation of affected sources.

* * * * *

TABLE 1 OF § 63.560.—GENERAL PROVISIONS APPLICABILITY TO SUBPART Y

Reference	Applies to affected sources in subpart Y	Comment

TABLE 1 OF § 63.560.—GENERAL PROVISIONS APPLICABILITY TO SUBPART Y—Continued

Reference	Applies to affected sources in subpart Y	Comment
* * *	* * *	*
63.1(c)(6)	Yes.	
* * *	* * *	*

Subpart AA—[Amended]

14. Appendix A to subpart AA of part 63 is amended by adding an entry for § 63.1(c)(6) to read as follows:

40 CFR citation	Requirement	Applies to subpart AA	Comment
* * *	* * *	*	*
63.1(c)(6)		Yes.	
* * *	* * *	*	*

Subpart BB—[Amended]

15. Appendix A to subpart BB of part 63 is amended by adding an entry for § 63.1(c)(6) to read as follows:

Appendix A to Subpart BB of Part 63—Applicability of General Provisions (40 CFR Part 63, Subpart A) to Subpart BB

40 CFR citation	Requirement	Applies to subpart BB	Comment
* * *	* * *	*	*
63.1(c)(6)		Yes.	
* * *	* * *	*	*

Subpart CC—[Amended]

16. Table 6 to Appendix of subpart CC of part 63 is amended by adding an entry for § 63.1(c)(6) to read as follows:

Appendix to Subpart CC of Part 63—Tables

* * * * *

TABLE 6.—GENERAL PROVISIONS APPLICABILITY TO SUBPART CC [A]

Reference	Applies to subpart CC	Comment
* * *	* * *	*
63.1(c)(6)	Yes.	
* * *	* * *	*

[a] Wherever subpart A specifies ''postmark'' dates, submittals may be sent by methods other than the U.S. Mail (*e.g.*, by fax or courier). Submittals shall be sent by the specified dates, but a postmark is not required.

* * * * *

Subpart DD—[Amended]

17. Table 2 to subpart DD of part 63 is amended by adding an entry for § 63.1(c)(6) to read as follows:

TABLE 2 TO SUBPART DD OF PART 63.—APPLICABILITY OF PARAGRAPHS IN SUBPART A OF THIS PART 63—GENERAL PROVISIONS TO SUBPART DD

Subpart A reference	Applies to subpart DD	Explanation

TABLE 2 TO SUBPART DD OF PART 63.—APPLICABILITY OF PARAGRAPHS IN SUBPART A OF THIS PART 63—GENERAL PROVISIONS TO SUBPART DD—Continued

Subpart A reference	Applies to subpart DD	Explanation
* * *	* * *	* *
63.1(c)(6)	Yes.	
* * *	* * *	* *

* * * * *

Subpart EE—[Amended]

18. Table 1 to subpart EE of part 63 is amended by adding an entry for § 63.1(c)(6) to read as follows:

TABLE 1 TO SUBPART EE OF PART 63.—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART EE

Reference	Applies to subpart EE	Comment
* * *	* * *	* *
63.1(c)(6)	Yes.	
* * *	* * *	* *

Subpart GG—[Amended]

19. Table 1 to subpart GG of part 63 is amended by adding an entry for § 63.1(c)(6) to read as follows:

TABLE 1 TO SUBPART GG OF PART 63.—GENERAL PROVISIONS APPLICABILITY TO SUBPART GG

Reference	Applies to affected sources in subpart GG	Comment
* * *	* * *	* *
63.1(c)(6)	Yes.	
* * *	* * *	* *

Subpart HH—[Amended]

20. Table 2 of Appendix to subpart HH of part 63 is amended by adding an entry for § 63.1(c)(6) to read as follows:

Appendix to Subpart HH of Part 63-Tables

TABLE 2 TO SUBPART HH OF PART 63.—APPLICABILITY OF 40 CFR PART 63 GENERAL PROVISIONS TO SUBPART HH

General provisions reference	Applies to subpart HH	Explanation
* * *	* * *	* *
§ 63.1(c)(6)	Yes.	
* * *	* * *	* *

Subpart JJ—[Amended]

21. Table 1 to subpart JJ of part 63 is amended by adding an entry for § 63.1(c)(6) to read as follows:

TABLE 1 TO SUBPART JJ OF PART 63.—GENERAL PROVISIONS APPLICABILITY TO SUBPART JJ

Reference	Applies to subpart JJ	Comment
* * *	* * *	* * *
63.1(c)(6)	Yes.	
* * *	* * *	* * *

Subpart KK—[Amended]

22. Table 1 to subpart KK of part 63 is amended by adding an entry for § 63.1(c)(6) to read as follows:

TABLE 1 TO SUBPART KK OF PART 63.—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART KK

General provisions reference	Applicable to subpart KK	Comment
* * *	* * *	* * *
§ 63.1(c)(6)	Yes.	
* * *	* * *	* * *

Subpart MM—[Amended]

23. Table 1 to subpart MM of part 63 is amended by adding an entry for § 63.1(c)(6) to read as follows:

TABLE 1 TO SUBPART MM OF PART 63.—GENERAL PROVISIONS APPLICABILITY TO SUBPART MM

Reference	Summary of requirements	Applies to subpart MM	Explanation
* * *	* * *	* * *	* * *
63.1(c)(6)	Becoming an area source	Yes.	
* * *	* * *	* * *	* * *

Subpart DDD—[Amended]

24. Table 1 to subpart DDD of part 63 is amended by adding an entry for § 63.1(c)(6) to read as follows:

TABLE 1 TO SUBPART DDD OF PART 63.—APPLICABILITY OF GENERAL PROVISIONS (40 CFR PART 63, SUBPART A) TO SUBPART DDD OF PART 63

General provisions citation	Requirement	Applies to subpart DDD?	Explanation
* * *	* * *	* * *	* * *
63.1(c)(6)		Yes.	
* * *	* * *	* * *	* * *

Subpart GGG—[Amended]

25. Table 1 to subpart GGG of part 63 is amended by adding an entry for § 63.1(c)(6) to read as follows:

TABLE 1 TO SUBPART GGG OF PART 63.—GENERAL PROVISIONS APPLICABILITY TO SUBPART GGG

General provisions reference	Summary of requirements	Applies to subpart GGG	Comments
* * *	*	*	* *
63.1(c)(6)	Becoming an area source	Yes.	
* * *	*	*	* *

Subpart HHH—[Amended]

26. Table 2 to subpart HHH of part 63 is amended by adding an entry for § 63.1(c)(6) to read as follows:

Appendix: Table 2 to Subpart HHH of Part 63—Applicability of 40 CFR Part 63 General Provisions to Subpart HHH

General Provisions Reference	Applies to subpart HHH	Explanation
* * *	*	* *
§ 63.1(c)(6)	Yes.	
* * *	*	* *

Subpart JJJ—[Amended]

27. Table 1 to subpart JJJ of part 63 is amended by adding an entry for § 63.1(c)(6) to read as follows:

TABLE 1 TO SUBPART JJJ OF PART 63—APPLICABILITY OF 40 CFR PART 63 GENERAL PROVISIONS TO SUBPART JJJ AFFECTED SOURCES

Reference	Applies to subpart JJJ	Explanation
* * *	*	* *
§ 63.1(c)(6)	Yes.	
* * *	*	* *

* * * * *

Subpart LLL—[Amended]

28. Table 1 to subpart LLL of part 63 is amended by adding an entry for § 63.1(c)(6) to read as follows:

TABLE 1 TO SUBPART LLL OF PART 63.—APPLICABILITY OF GENERAL PROVISIONS

Citation	Requirement	Applies to subpart LLL	Explanation
* * *	*	*	* *
63.1(c)(6)		Yes.	
* * *	*	*	* *

Subpart MMM—[Amended]

29. Table 1 to subpart MMM of part 63 is amended by adding an entry for § 63.1(c)(6) to read as follows:

TABLE 1 TO SUBPART MMM OF PART 63.—GENERAL PROVISIONS APPLICABILITY TO SUBPART MMM

Reference to subpart A	Applies to subpart MMM	Explanation

TABLE 1 TO SUBPART MMM OF PART 63.—GENERAL PROVISIONS APPLICABILITY TO SUBPART MMM—Continued

Reference to subpart A	Applies to subpart MMM	Explanation
* * *	* * *	* * *
§ 63.1(c)(6)	Yes.	
* * *	* * *	* * *

Subpart NNN—[Amended]

30. Table 1 to subpart NNN of part 63 is amended by adding an entry for § 63.1(c)(6) to read as follows:

TABLE 1 TO SUBPART NNN OF PART 63.—APPLICABILITY OF GENERAL PROVISIONS (40 CFR PART 63, SUBPART A) TO SUBPART NNN

General provisions citation	Requirement	Applies to subpart NNN	Explanation
* * *	* * *	* * *	* * *
63.1(c)(6)		Yes.	
* * *	* * *	* * *	* * *

Subpart OOO—[Amended]

31. Table 1 to subpart OOO of part 63 is amended by adding an entry for § 63.1(c)(6) to read as follows:

TABLE 1 TO SUBPART OOO OF PART 63.—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART OOO AFFECTED SOURCES

Reference	Applies to subpart OOO	Explanation
* * *	* * *	* * *
63.1(c)(6)	Yes.	
* * *	* * *	* * *

* * * * *

Subpart PPP—[Amended]

32. Table 1 to subpart PPP of part 63 is amended by adding an entry for § 63.1(c)(6) to read as follows:

TABLE 1 TO SUBPART PPP OF PART 63.—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART PPP AFFECTED SOURCES

Reference	Applies to subpart PPP	Explanation
* * *	* * *	* * *
63.1(c)(6)	Yes.	
* * *	* * *	* * *

* * * * *

Subpart RRR—[Amended]

33. Appendix A to subpart RRR of part 63 is amended by adding an entry for § 63.1(c)(6) to read as follows:

APPENDIX A TO SUBPART RRR OF PART 63. I GENERAL PROVISIONS APPLICABILITY TO SUBPART RRR

Citation	Requirement	Applies to RRR	Comment
* * *	* * *	*	*
§ 63.1(c)(6)		Yes.	
* * *	* * *	*	*

Subpart VVV—[Amended]

34. Table 1 to subpart VVV of part 63 is amended by adding an entry for § 63.1(c)(6) to read as follows:

TABLE 1 TO SUBPART VVV OF PART 63.—APPLICABILITY OF 40 CFR PART 63 GENERAL PROVISIONS TO SUBPART VVV

General provisions reference	Applicable to subpart VVV	Explanation
* * *	* * *	*
§ 63.1(c)(6)	Yes.	
* * *	* * *	*

Subpart HHHH—[Amended]

35. Table 2 to subpart HHHH of part 63 is amended by adding an entry for § 63.1(c)(6) to read as follows:

TABLE 2 TO SUBPART HHHH OF PART 63.—APPLICABILITY OF GENERAL PROVISIONS (40 CFR PART 63, SUBPART A) TO SUBPART HHHH

Citation	Requirement	Applies to HHHH	Explanation
* * *	* * *	*	*
§ 63.1(c)(6)		Yes.	
* * *	* * *	*	*

Subpart IIII—[Amended]

36. Table 2 to subpart IIII of part 63 is amended by adding an entry for § 63.1(c)(6) to read as follows:

TABLE 2 TO SUBPART IIII OF PART 63.—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART IIII OF PART 63

Citation	Subject	Applicable to subpart IIII	Explanation
* * *	* * *	*	*
§ 63.1(c)(6)	Becoming an area source	Yes.	
* * *	* * *	*	*

Subpart JJJJ—[Amended]

37. Table 2 to subpart JJJJ of part 63 is amended by adding an entry for § 63.1(c)(6) to read as follows:

TABLE 2 TO SUBPART JJJJ OF PART 63.—APPLICABILITY OF 40 CFR PART 63 GENERAL PROVISIONS TO SUBPART JJJJ

General provisions reference	Applicable to subpart JJJJ	Explanation
* * *	* * *	* * *
§ 63.1(c)(6)	Yes.	
* * *	* * *	* * *

Subpart KKKK—[Amended]

38. Table 5 to subpart KKKK of part 63 is amended by adding an entry for § 63.1(c)(6) to read as follows:

TABLE 5 TO SUBPART KKKK OF PART 63.—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART KKKK

Citation	Subject	Applicable to subpart KKKK	Explanation
* * *	* * *	* * *	* * *
§ 63.1(c)(6)	Becoming an area source	Yes.	
* * *	* * *	* * *	* * *

Subpart MMMM—[Amended]

39. Table 2 to subpart MMMM of part 63 is amended by adding an entry for § 63.1(c)(6) to read as follows:

TABLE 2 TO SUBPART MMMM OF PART 63.—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART MMMM OF PART 63

Citation	Subject	Applicable to subpart III	Explanation
* * *	* * *	* * *	* * *
§ 63.1(c)(6)	Becoming an area source	Yes.	
* * *	* * *	* * *	* * *

Subpart NNNN—[Amended]

40. Table 2 to subpart NNNN of part 63 is amended by adding an entry for § 63.1(c)(6) to read as follows:

TABLE 2 TO SUBPART NNNN OF PART 63.—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART NNNN

Citation	Subject	Applicable to subpart NNNN	Explanation
* * *	* * *	* * *	* * *
§ 63.1(c)(6)	Becoming an area source	Yes.	
* * *	* * *	* * *	* * *

Subpart OOOO—[Amended]

41. Table 3 to subpart OOOO of part 63 is amended by adding an entry for § 63.1(c)(6) to read as follows:

TABLE 3 TO SUBPART OOOO OF PART 63.—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART OOOO

Citation	Subject	Applicable to subpart OOOO	Explanation
* * *	*	*	*
§ 63.1(c)(6)	Becoming an area source	Yes.	
* * *	*	*	*

Subpart PPPP—[Amended]

42. Table 2 to subpart PPPP of part 63 is amended by adding an entry for § 63.1(c)(6) to read as follows:

TABLE 2 TO SUBPART PPPP OF PART 63.—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART PPPP OF PART 63

Citation	Subject	Applicable to subpart PPPP	Explanation
* * *	*	*	*
§ 63.1(c)(6)	Becoming an area source	Yes.	
* * *	*	*	*

Subpart QQQQ—[Amended]

43. Table 4 to subpart QQQQ of part 63 is amended by adding an entry for § 63.1(c)(6) to read as follows:

TABLE 4 TO SUBPART QQQQ OF PART 63.—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART QQQQ OF PART 63

Citation	Subject	Applicable to subpart QQQQ	Explanation
* * *	*	*	*
§ 63.1(c)(6)	Becoming an area source	Yes.	
* * *	*	*	*

Subpart RRRR—[Amended]

44. Table 2 to subpart RRRR of part 63 is amended by adding an entry for § 63.1(c)(6) to read as follows:

TABLE 2 TO SUBPART RRRR OF PART 63.—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART RRRR

Citation	Subject	Applicable to subpart	Explanation
* * *	*	*	*
§ 63.1(c)(6)	Becoming an area source	Yes.	
* * *	*	*	*

Subpart SSSS—[Amended]

45. Table 2 to subpart SSSS of part 63 is amended by adding an entry for § 63.1(c)(6) to read as follows:

TABLE 2 TO SUBPART SSSS OF PART 63.—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART SSSS

General provisions reference	Applicable to subpart SSSS	Explanation
* * *	* * *	* * *
§ 63.1(c)(6)	Yes.	
* * *	* * *	* * *

Subpart VVVV—[Amended]

46. Table 8 to subpart VVVV of part 63 is amended by adding an entry for § 63.1(c)(6) to read as follows:

TABLE 8 TO SUBPART VVVV OF PART 63.—APPLICABILITY OF GENERAL PROVISIONS TO (40 CFR PART 63, SUBPART A) TO SUBPART VVVV

Citation	Requirement	Applies to subpart VVVV	Explanation
* * *	* * *	* * *	* * *
§ 63.1(c)(6)		Yes.	
* * *	* * *	* * *	* * *

Subpart WWWW—[Amended]

47. Table 15 to subpart WWWW of part 63 is amended by adding an entry for § 63.1(c)(6) to read as follows:

TABLE 15 TO SUBPART WWWW OF PART 63.—APPLICABILITY OF GENERAL PROVISIONS (SUBPART A) TO SUBPART WWWW OF PART 63

The general provisions reference . . .	That addresses . . .	And applies to subpart WWWW of part 63 . . .	Subject to the following additional information . . .
* * *	* * *	* * *	* * *
§ 63.1(c)(6)	Becoming an area source	Yes.	
* * *	* * *	* * *	* * *

Subpart AAAAA—[Amended]

48. Table 8 to subpart AAAAA of part 63 is amended by adding an entry for § 63.1(c)(6) to read as follows:

TABLE 8 TO SUBPART AAAAA OF PART 63.—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART AAAAA

Citation	Summary of requirement	Am I subject to this requirement?	Explanation
* * *	* * *	* * *	* * *
§ 63.1(c)(6)	Becoming an area source	Yes.	
* * *	* * *	* * *	* * *

Subpart PPPPP—[Amended]

49. Table 7 to subpart PPPPP of part 63 is amended by adding an entry for § 63.1(c)(6) to read as follows:

TABLE 7 TO SUBPART PPPPP OF PART 63.—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART PPPPP

Citation	Subject	Brief description	Applies to subpart PPPPP
* *	*	* *	* *
§ 63.1(c)(6)	Applicability	Becoming an area source	Yes.
* *	*	* *	* *

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

42 CFR Part 72

RIN 0920–AA03

Interstate Shipment of Etiologic Agents

AGENCY: Centers for Disease Control and Prevention (CDC), HHS.

ACTION: Notice for proposed rulemaking.

SUMMARY: HHS proposes to remove Part 72 of Title 42, Code of Federal Regulations, which governs the interstate shipment of etiologic agents, because the U.S. Department of Transportation (DOT) already has in effect a more comprehensive set of regulations applicable to the transport in commerce of infectious substances. DOT harmonizes its transport requirements with international standards adopted by the United Nations (UN) Committee of Experts on the Transport of Dangerous Goods for the classification, packaging, and transport of infectious substances. Rescinding the rule will eliminate duplication of the more current DOT regulations that cover intrastate and international, as well as interstate, transport. HHS replaced those sections of Part 72 that deal with select biological agents and toxins with a new set of regulations found in Part 73 of Title 42. HHS anticipates that removal of Part 72 will alleviate confusion and reduce the regulatory burden with no adverse impact on public health and safety.

DATES: Written comments must be received on or before March 5, 2007. Written comments on the proposed information collection requirements should also be submitted on or before March 5, 2007. Comments received after March 5, 2007 will be considered to the extent practicable.

ADDRESSES: You may submit written comments to the following address: U.S. Department of Health and Human Services, Centers for Disease Control and Prevention, National Center for Infectious Diseases/OD, ATTN: Interstate Shipment of Etiologic Agents Comments, 1600 Clifton Road, NE (C12), Atlanta, GA 30333. Comments will be available for public inspection Monday through Friday, except for legal holidays, from 9 a.m. until 5 p.m. at 1600 Clifton Road, NE, Atlanta, GA. Please call Ruenell Massey at 404–639–945 to schedule your visit. Comments also may be viewed at *http://www.cdc.gov/ncidod/agentshipment/index.htm*. You may submit written comments by fax to 404–639–3039, Attention: Dr. Janet Nicholson, or electronically via the Internet at *http://www.regulations.gov*. To download an electronic version of the rule, you may access *http://www.regulations.gov*. You must include the agency name (Centers for Disease Control and Prevention) and Regulatory Information Number (RIN) on all submissions for this rulemaking.

FOR FURTHER INFORMATION CONTACT: Dr. Janet K. Nicholson, National Center for Infectious Diseases/OD, Centers for Disease Control and Prevention, U.S. Department of Health and Human Services, 1600 Clifton Rd., NE (MS–C12), Atlanta GA 30333; telephone: 404–639–3945; e-mail *jkn1@cdc.gov*.

SUPPLEMENTARY INFORMATION: Part 72 of Title 42 of the Code of Federal Regulations provides minimal requirements for packaging and shipping materials, including diagnostic specimens and biological products, reasonably believed to contain an etiologic agent. It provides more detailed requirements, including labeling, for materials containing certain etiologic agents, with a list of the biological agents and toxins provided. For agents on the list, the rule requires reporting to HHS/CDC damaged packages and packages not received. The rule also requires sending certain agents on the list by registered mail or an equivalent system.

The rule, as currently promulgated, is out-of-date, and duplicates more current regulations of DOT. Further, the regulation is inconsistent with the procedures of other transport governing bodies, such as the International Civil Aviation Organization (ICAO) and the International Air Transport Association (IATA), for air, and the U.S. Postal Service for ground.

Section 72.6, a major portion of 42 CFR 72 that dealt with select agents, was superseded by the issuance of an Interim Final Rule for 42 CFR 73 on December 13, 2002 (67 FR 76886). Part 73 implements provisions of the Public Health Security and Bioterrorism Preparedness and Response Act of 2002.

The continued existence of the remaining provisions of the out-of-date HHS/CDC regulation is confusing to the packaging and transport communities. The provisions serve no useful purpose that merits their retention. HHS/CDC will remain available for consultation on and response to public-health issues and emergencies, in accordance with its normal duties in the interest of public health and safety.

Transition From HHS to DOT Regulations

DOT has the primary statutory authority to regulate the safe and secure transportation of all hazardous materials, including infectious materials, shipped in intrastate, interstate, and foreign commerce. The etiologic agents covered by 42 CFR 72 are considered to be hazardous materials, and, in practice, the DOT regulations, 49 CFR 171–178, have superseded since DOT began including more specific regulations on infectious substances. The earlier versions of the DOT regulations on etiologic agents were based on and virtually identical to the HHS regulations. These regulations have been modified over time, as necessary, to continue to provide protection for persons who handle shipments with as few impediments as possible to quick shipment. In 1990, DOT authorized the term ''infectious substance'' as synonymous with ''etiologic agent.'' In 1991, DOT expanded the definition of ''etiologic agent'' to include agents listed in 42 CFR 72, plus others that cause or could cause severe, disabling or fatal human disease, thereby including agents such as human immunodeficiency virus that were not on the HHS list. DOT also issued expanded packaging

http://www.epa.gov/ttn/oarpg/t3/fact_sheets/OIAIpropfs.html
Last updated on Wednesday, March 05, 2008

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MORE INFORMATION

ACTION

- On December 21, 2006, the Environmental Protection Agency (EPA) proposed to amend the General Provisions to the air toxics standards. The proposed amendment would clarify how and when an industrial facility can switch its status from "major source" to "area source."
- Major sources are those that have the potential to emit more than 10 tons per year of a single toxic air pollutant or 25 tons per year of any combination of toxic air pollutants. If sources emit less than these amounts, they are called area sources.
- The proposed amendment would allow a major source to become an area source at any time by limiting its potential to emit toxic air pollutants to below the major source thresholds. The limit would be enforced through a permit. The amendment would allow this change either before a standard is in place or after a standard is already in place.
- Once a major source becomes an areas source, it would no longer need to comply with the major source standards. The source would be required to comply with any area source standards for that industry.
- The amendment would replace EPA's so-called "once in, always in" policy established in May, 1995. The once in always in policy stated that once a source was subject to a major source standard, it would always be subject, regardless of the source's subsequent toxic air pollutant emissions.
- EPA is proposing this change to provide an incentive for industry to reduce emissions below major source threshold.
- EPA will accept comments for 60 days after the proposal is published in the Federal Register.

BACKGROUND

- Under the Clean Air Act, EPA is required to regulate sources of 187 listed toxic air pollutants. On July 16, 1992, EPA published a list of industrial source categories that emit one or more of these air toxics.
- EPA originally promulgated General Provisions for air toxics rules in 1994. The General Provisions contain general requirements regarding applicability, compliance, testing, monitoring, reporting, recordkeeping that apply to most or all of the Maximum Achievable Control Technology (MACT) Standards.
- For listed categories of major sources the Act requires EPA to develop standards that require the application of MACT, or maximum achievable control technology standards. MACT Standards are based on emissions levels that are already being achieved by the better-controlled and lower-emitting sources in an industry.
- For listed categories of area sources the Act requires EPA to develop generally

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available control technologies (GACT) or management practices rather than the maximum achievable control technology (MACT) required for major sources.

FOR MORE INFORMATION

- To download the proposal from EPA's website, go to the following address: http://www.epa.gov/ttn/oarpg/new.html.
- Today's proposed rule and other background information are also available either electronically at http://www.regulations.gov/, EPA's electronic public docket and comment system, or in hardcopy at the EPA Docket Center's Public Reading Room.
  - The Reading Room is located in the EPA Headquarters Library, Room Number 3334 in the EPA West Building, located at 1301 Constitution Ave., NW, Washington, DC. Hours of operation are 8:30 AM to 4:30 PM Eastern Standard Time (EST), Monday through Friday, excluding Federal holidays.
  - Visitors are required to show photographic identification, pass through a metal detector, and sign the EPA visitor log. All visitor materials will be processed through an X-ray machine as well. Visitors will be provided a badge that must be visible at all times.
  - Materials for this proposed action can be accessed using Docket ID No. OAR-2004-0094.
- HOW TO COMMENT: Comments should be identified by Docket ID No. EPA-HQ- OAR-2004-0094 and submitted by one of the following methods:
  - Federal eRulemaking Portal (http://www.regulations.gov),
  - e-mail (a-and-r-docket@epa.gov),
  - Mail (EPA Docket Center, Environmental Protection Agency, Mailcode 6102T, 1200 Pennsylvania Avenue, NW, Washington, DC 20460), or
  - Hand delivery (EPA Docket Center, Environmental Protection Agency, Room 3334, 1301 Constitution Avenue, NW, Washington, DC).
  - We request that a separate copy of each comment also be sent to the contact person listed below:
    - Mr. Rick Colyer of EPA's Program Design Group at (919) 541-5262 or colyer.rick@epa.gov.

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ONE HUNDRED TENTH CONGRESS

U.S. House of Representatives
Committee on Energy and Commerce
Washington, DC 20515–6115

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February 23, 2007

The Honorable Stephen L. Johnson
Administrator
Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460-0001

Dear Administrator Johnson:

I am writing to request additional factual and analytical information regarding the air toxic emission consequences of your December 21, 2006, proposal to change the air toxics program. I also request that you discuss how the proposed rule would affect the ability of the Environmental Protection Agency (EPA) to ensure that companies are complying with air toxics requirements.

In 1990, Congress made major changes to the way that EPA regulates air toxic emissions because EPA had regulated only seven air toxics in the preceding 20 years. Congress was quite prescriptive in its direction to EPA in 1990. We required EPA to issue rules limiting emissions of approximately 190 air toxics from all major sources over a 10-year period. Although EPA has not acted as quickly as Congress required, air toxic emissions have been reduced significantly as a result of the 96 air toxics rules (also called MACT or Maximum Achievable Control Technology standards) that EPA has issued since 1990.

Under EPA's current policy, adopted in 1995, sources are required to meet the applicable MACT air toxics standard if, on the date that the MACT standard went into effect, the source emitted more than 10 tons of one air toxic or 25 tons of any combination of air toxics annually (the "10/25 ton threshold"). You have proposed to change this so that sources that are currently complying with MACT air toxic standards would have the option of getting out of all MACT requirements if their emissions are below the 10/25 ton threshold – even if the source is currently subject to a MACT standard that requires emissions below that threshold.

EPA regional offices have expressed the concern that this proposal has the potential to increase air toxic emissions by undercutting many of the MACT air toxic standards issued over the last 15 years. Would this proposal have the effect of changing existing air toxics standards to

allow sources to meet the *higher* of the MACT standard or the 10/25 ton threshold? Does this have the potential to increase air toxics emissions by changing the legal applicable limit under the MACT program?

The preamble notes that MACT standards currently require some sources to emit less than the 10/25 ton threshold, and goes on to state that "we believe it is unlikely that such sources would . . . increase their current emissions." To justify this belief, the Agency speculates about what sources or State regulators *may* do and provides conclusory statements that the sources will not increase emissions because the same controls required by MACT may be required by other regulations. If there are facts to back up this speculation, none are referenced in the Agency's justification for the rule. Does the Agency have factual support for its belief that sources currently below the 10/25 threshold will not increase their emissions to that level if this proposal is adopted?

EPA goes on to state that, if there are emissions increases, they "will likely be offset by emission reductions at other sources that should occur as the result of this proposal." The preamble provides just one anecdotal example of one source that has indicated it would reduce emissions of one pollutant if this proposal were finalized. Does EPA have any quantitative analysis or other factual information to support the proposition that any increases would likely be offset by reductions at other sources?

The proposal provides no discussion of the potential impacts on enforcement of air toxics requirements. EPA mentions that the benefits to sources might include reduced monitoring, recordkeeping, or reporting requirements. EPA Regions commenting on the proposal noted that, "Many of the environmental benefits that are achieved by the comprehensive monitoring and reporting requirements of the MACT standards will be lost in the process." How would the proposal affect EPA's ability to ensure that sources are complying with legal limits on air toxics emissions?

More detailed questions on these same subjects are attached. In light of the preamble's limited discussion of these key issues, I request that you answer the enclosed questions by Tuesday, March 6, 2007. I further request that, once the requested information is provided, you place the information in the rulemaking docket for this rule and extend the public comment period at least 30 days afterwards.

Thank you for your assistance in this matter. If you have any questions regarding this request, please contact me or have your office contact Lorie Schmidt, Majority Counsel to the Committee on Energy and Commerce at (202) 225-2927.

Sincerely,

JOHN D. DINGELL
CHAIRMAN

Attachment

cc: Mr. Bill Wehrum, Acting Assistant Administrator
Office of Air and Radiation
Environmental Protection Agency

Mr. Granta Nakayama, Assistant Administrator
Office of Enforcement and Compliance Assurance
Environmental Protection Agency

Questions for the Honorable Stephen L. Johnson
Administrator, Environmental Protection Agency

1. You state in the proposal that you cannot quantify "the environmental, economic or energy impacts of the proposed amendments . . . without knowing which sources will avail themselves of the regulatory provisions proposed in this rule . . . ." You can, however, provide any useful quantitative information regarding the potential emissions impacts of this proposal. Please provide the following information (providing ranges where appropriate):

   a. What would be the maximum potential decrease in air toxic emissions if this proposal were finalized? In other words, if all sources that currently are allowed by MACT standards to emit less than the 10/25 ton threshold decided to decrease emissions to just below the threshold, how much would air toxic emissions decrease annually? In answering this question, please provide both the number of sources currently subject to a MACT standard that legally emit more than 10 tons of one air toxic or 25 tons of any combination of air toxics and how much more they emit.

   b. What would be the maximum potential increase in air toxic emissions if this proposal were finalized? In other words, if all sources that currently are required by MACT standards to emit less than the 10/25 ton threshold decided to increase their emissions to that threshold, how much would air toxic emissions increase annually? In answering this question, please provide both the number of sources currently subject to a MACT standard that legally emit less than 10 tons of one air toxic or 25 tons of any combination of air toxics and how much less they emit.

   c. Under which MACT standards, if any, are sources allowed to emit more than 10 tons of one air toxic or 25 tons of any combination of air toxics annually?

   d. Under which MACT standards, if any, are sources required to emit less than 10 tons of one air toxic and 25 tons of any combination of air toxics annually?

2. The preamble to this proposal states that EPA does not believe the maximum potential increase in air toxic emissions will occur and provides a rationale. Please state how much of the potential decrease EPA believes will materialize if the proposal is finalized, and provide your rationale.

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3. If this proposed rule were finalized, would you anticipate air toxic emission reductions from sources required by MACT to emit below the 10/25 ton threshold? If so, please explain why and provide the likely potential decrease from this group of sources.

4. Please provide all documents dated prior to issuance of the proposal that contain, relate to, or refer to analysis, calculations, or data regarding quantification of the potential reduction or increase in air toxic emissions that could result from this proposal.

5. The preamble states that "EPA has heard from others who have taken the position that the OIAI [once-in-always-in] policy serves as a disincentive for sources to reduce emission of HAP [hazardous air pollutants or air toxics] beyond the levels required by an applicable standard." For each of these "others" from whom EPA has heard, please provide:

   a. the name and affiliation of the person who stated that position, including the company or association that the person represented;

   b. the names of the EPA employees to whom that position was conveyed;

   c. a description of the manner in which the position was provided to EPA (e.g., written letter, oral communication, comment at private meeting);

   d. all documents reflecting or containing communications between EPA and the person regarding this position.

EPA's preamble also states that "we believe" that it is unlikely that sources that currently emit less than the 10/25 ton threshold due to MACT requirements would increase emissions up to that threshold. To support this belief, you rely on a number of assertions. Please answer the questions 6 through 9 below with respect to these assertions.

6. You state that "many sources" that emit below the 10/25 ton threshold "do so because of the control devices they installed to meet MACT standards. Such control devices are designed to operate a certain way and cannot be operated at a level which achieves only a partial emission reduction." For each source category that is subject to a MACT standard and that has sources emitting below the 10/25 ton threshold:

   a. identify the control devices or other methods sources use to meet the MACT standard;

   b. provide the percentage of sources in that category that use each control device or other compliance method;

   c. state whether the control device or other method can be operated at a level that achieves only a partial emission reduction; and

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d. state whether the control device or other method costs money to operate and whether it can be turned off for a given time period (or whether it must be operated continuously).

7. If you did not have the information requested in the previous question at the time the proposal was signed, please provide the factual basis for the statements quoted in that question.

8. You state that "in many cases, sources will maintain the level of emission reduction associated with the MACT standard because that level is needed to comply with other requirements of the Act such as RACT controls on emissions of volatile organic compounds . . . ." With respect to this statement, please provide the following information:

   a. What percentage of sources that are subject to MACT are also subject to identical or more stringent RACT controls on volatile organic compounds?

   b. Do RACT controls on emissions of volatile organic compounds apply across the entire country? If not, what areas are not subject to RACT controls for volatile organic compounds?

9. You state that "those sources that seek to maintain area source status will likely take PTE [potential-to-emit] limits at or near their current MACT emission levels to ensure that their emissions remain below the major source thresholds [10/25 ton threshold]. Sources have no incentive to establish their PTE limit too close to the major source thresholds because repeated or frequent exceedances above the PTE could provide the permitting authority reason to revoke the PTE and bring an enforcement action."

   a. Given that the PTE is an enforceable emission limit, would not the source have an incentive to have its PTE as high as possible because repeated or frequent exceedances above the PTE could provide the permitting authority reason to bring an enforcement action for violating the PTE regardless of how the PTE compares to the 10/25 ton threshold?

   b. Is it likely that a PTE at or near the 10/25 ton threshold would give a source more flexibility than a significantly lower PTE? If not, please explain why.

   c. A number of States have laws that prohibit State air pollution requirements from being more stringent than Federal law. Would such a State be allowed to require a source to accept a PTE in a State permit below the 10/25 ton threshold?

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10. For sources that must comply with MACT, please describe:

a. sources' recordkeeping requirements;

b. sources' reporting requirements;

c. sources' monitoring obligations;

d. sources' Title V permitting obligations;

e. citizens' right to bring enforcement actions against sources that are not complying with the applicable MACT standard; and

f. whether EPA can bring enforcement actions against sources that are not complying with the applicable MACT standard.

11. If the proposal were finalized and sources chose to avail themselves of the regulatory provisions of the rule and accept a PTE, please describe the Federal requirements for these sources:

a. sources' recordkeeping requirements;

b. sources' reporting requirements;

c. sources' monitoring obligations;

d. sources' Title V permitting obligations; and

e. citizens' right to bring enforcement actions against sources that are not complying with their PTE.

Please also state whether EPA would have the ability to bring an enforcement action against sources that are not complying with their PTE.

12. Please provide all documents (including those from regional offices, the Office of Enforcement and Compliance Assurance, the Office of General Counsel, or the Department of Justice) discussing, regarding, or relating to the potential effect of the proposed rule, if adopted, on:

a. sources' recordkeeping, reporting, monitoring, or Title V obligations; or

b. on EPA's or citizens' ability to enforce air toxic requirements (including PTEs).

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February 27, 2007

U.S. Environmental Protection Agency
EPA West (Air Docket)
Attn: Docket ID No. EPA–HQ–OAR–2004–0094
1200 Pennsylvania Ave., NW.
Room: 3334, Mail Code: 6102T
Washington, DC 20460

Re: CMI Comments on EPA Proposed Rule to Amend the National Emission Standards for Hazardous Air Pollutants: General Provisions, 72 *Federal Register* 69 (January 3, 2007)

The Can Manufacturers Institute (CMI) appreciates this opportunity to submit comments in support of the proposal to amend the National Emission Standards for Hazardous Air Pollutants: General Provisions, 72 *Federal Register* 69 (January 3, 2007). CMI is the national trade association of the metal can manufacturing industry and its suppliers in the U.S. Its members account for over 81 percent of annual domestic production of 133 billion cans; together they employ some 22,000 people with 132 plants in 33 states.

CMI supports the Agency's proposal to replace the policy (the so-called "Once In, Always In" policy) described in the May 16, 1995 EPA memorandum entitled, ''Potential to Emit for MACT Standards—Guidance on Timing Issues,'' from John Seitz, Director, Office of Air Quality Planning and Standards (OAQPS), to EPA Regional Air Division Directors. We support amending the General Provisions to allow a major source to become an area source at any time by limiting its potential to emit (PTE) hazardous air pollutants (HAP) to below the major source thresholds of 10 tons per year (tpy) of any single HAP or 25 tpy of any combination of HAP.

The current "Once In, Always In" policy takes away incentives for a major source facility to reduce emissions after the initial compliance date for its applicable MACT. Further, it treats facilities that were able to lower their PTE below the major source threshold before the compliance date differently from those who lower their PTE after the compliance date.

EPA's proposal would create incentives for facilities to lower HAP emissions and level the playing field for facilities that were unable to lower their PTE before becoming subject to a MACT. Facilities that make process changes, use lower HAP coatings, add new control technology or equipment, or change the size of their operations should not be prevented from taking permit limitations to become synthetic minors. In addition, it is possible that changes at a facility's operation could result in that facility becoming a true minor. In either case, the facility should not be denied area source status simply because the MACT compliance date has passed.

The proposed rule includes reasonable requirements and safeguards to address the

obligations of a facility that goes from major to area source status. It also makes clear what the facility's obligations are if it returns to major source status at some later date. In addition, a facility would have to obtain a PTE limit in its Tile V permit to become a synthetic minor and this process would provide another level of regulatory review for the change in major source status.

CMI appreciates the chance to submit these comments and urges EPA to proceed quickly to a final rule. Please contact me at 202-232-4677 with any questions.

Sincerely,

Geoffrey Cullen
Director of Government Relations
CMI

State of Wisconsin \ DEPARTMENT OF NATURAL RESOURCES

WISCONSIN
DEPT. OF NATURAL RESOURCES

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Scott Hassett, Secretary

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February 27, 2007

U.S. Environmental Protection Agency
EPA West (Air Docket), Room: 3334, Mail Code: 6102T
1200 Pennsylvania Ave., NW
Washington, DC 20460

Subject: Docket ID No. EPA–HQ–OAR–2004–0094

To Whom It May Concern:

Thank you for the opportunity to comment on the proposed amendments to the NESHAP: General Provisions (40 CFR 63, Subpart A and related subparts) which would revise the Once-In-Always-In (OIAI) policy established by John Seitz in May 16, 1995. I am submitting the following comments on behalf of the Wisconsin Department of Natural Resources' Bureau of Air Management. Under the 1995 policy, a source that limits its PTE and thereby attains area source designation by the first compliance date of the MACT is not subject to major source requirements; and a source that does not have a PTE limit in place by the first substantive compliance date would be subject to major source MACT, regardless of its subsequent HAP emissions. The proposed regulatory amendments, if finalized, would replace the 1995 OIAI policy and allow a major source of HAP emissions to become an area source at any time by limiting its PTE for HAP to below the major source thresholds. This letter summarizes our significant concerns regarding the proposed amendments. The attachment to this letter contains additional specific concerns.

Inconsistent with the Clean Air Act Emission Reduction Objectives

In the 1995 Seitz memorandum, EPA stated, as a matter of policy, that without the OIAI policy, facilities could backslide from MACT levels of control and increase their emissions to a level slightly below the major source thresholds. The 1995 memorandum further asserts that if this occurred, the ''maximum achievable emissions reductions that Congress mandated for major sources would not be achieved.'' This evaluation and assertion still hold true today.

The preamble to the proposed policy change appears to ignore the objective of the Clean Air Act of reducing hazardous emissions and the health risk from these emissions. The 1995 OIAI policy and the Clean Air Act took a planning perspective of the major sources at the time and developed a program to reduce emissions from those major sources. The current proposal now circumvents that plan by artificially removing sources from the group of sources that were intended to achieve technology based reductions. By removing the OIAI policy, EPA essentially re-writes Section 112 of the Clean Air Act to set, as an objective, emissions of no more than the major source thresholds (10 tons per year of any individual HAP and no more than 25 tons per year of a combination of HAPs) from any facility. Rather than achieve the full emission reduction possible due to applying the technology based level of emission control required under the Clean Air Act, this proposed change would allow just enough reduction to get emissions below the major source thresholds. More on this in the specific comments appended to this letter.

From the preamble, the rationale for this change appears to be simply that EPA has the authority to make such a change, so it will. Some speculation is provided that there may be a few cases where a source may actually reduce emissions as a result of this change, and a best case speculation is provided on how sources in general may respond to the change. However, no worst case or down-side consideration is provided. It is like considering an investment by only looking at the possible gains, without considering the possibility for loss. It is very likely that emissions will increase as a result of the proposed policy change exactly as stated in the 1995 Seitz memorandum. See the specific comments appended to this letter for more detail.

Removes Funding for Compliance Assurance And Enforcement

The proposed policy change would also undermine compliance assurance and enforcement of Section 112 of the Clean Air Act by removing affected sources from Title V funded programs. The proposed policy change would encourage sources to take synthetic minor permit limits to cap HAP emissions below the major source thresholds. These sources then would no longer be subject to Title V permit requirements and compliance assurance and enforcement activities for these sources would not be supported with Title V funding. Even if these sources would become subject to area source standards, EPA has been exempting area sources from Title V permit requirements, so Title V funding would still not be available.

The EPA CMS Policy requires the permit authority to inspect, on a specified recurring frequency, synthetic minor sources that emit over 80 percent of the major source threshold. Therefore, states like Wisconsin are expected to provide compliance assurance and enforcement for affected sources without the support of Title V funding. The effect of the proposed policy change would be to continue the compliance assurance and enforcement workload for these sources, while removing the source of funding for that work. Note also that in contrast to the assumption in the preamble that sources would cap emissions at levels comparable to the emissions allowed under MACT requirements (i.e. much lower than the major source thresholds), no sources in Wisconsin have requested synthetic minor emission limits more stringent than the major source threshold, even if the source's actual emissions are far less than the major source thresholds. If sources did want to now make such a change to their permit limits, the permits would need to be revised. This would be an increase in non-Title V funded permit workload resulting from the proposed change. Finding the resources to complete such a permitting effort would put an additional strain on an already resource limited program.

Summary: May 15, 2003, Proposed Rule Provided a Better Solution

In summary, the 1995 OIAI policy is not perfect, but the currently proposed changes are far worse. The 1995 OIAI policy could be improved as discussed in the May 15, 2003 proposed change to the General Provisions. At that time EPA worked with the state and local permitting authorities to enhance the policy. The May 2003 proposal would have resolved most of the problems with the 1995 policy without increasing emissions and without undermining implementation and funding of Section 112 of the Clean Air Act. EPA should return to the May 15, 2003, proposed rule change for the OIAI policy, and promulgate it with minor changes as described in the July 14, 2003 comment letter on the proposed rule submitted by STAPPA/ALAPCO (now NACAA, see EPA-HQ-OAR-2002-0044-0038). EPA should disregard or otherwise rescind the current proposal.

Sincerely,

Kevin Kessler, Director
Bureau of Air Management

Specific Comments

EPA requested comments on various topics in the preamble. The following presents portions of the preamble text with comments following it.

From Pages 73 & 74. *First, many sources attaining area source status do so because of the control devices that they installed to meet the MACT standards. Such control systems are designed to operate a certain way and cannot be operated at a level which achieves only a partial emission reduction, i.e., the devices either operate effectively or they do not. Thus, we expect that sources that have attained area source status by virtue of a particular control technology will maintain their current level of emissions.*

... we believe it is unlikely that a source that currently emits at a level below the major source thresholds as the result of compliance with a MACT standard would increase its emissions in response to this rule.

> Comment: Control devices such as oxidizers can be operated or bypassed. For example, in the control of VOC emissions some source are only required to operate controls during the ozone season. Similarly, sources can bypass controls and emit uncontrolled HAPs part of the year and control HAPs only to the extent needed to keep annual emissions below the 10 tpy/25 tpy major source threshold. For the many surface coating MACTs and sources that use compliant coatings, the source would only need to use compliant coatings to the extent needed to keep annual emissions below the major source threshold. The assumption that sources would maintain their MACT level of controlled emissions because controls cannot be operated to only provide partial reduction is unfounded under an annual time frame. Monthly compliance demonstration does not change this situation because sources typically request and receive monthly limits based on a 12 month rolling average. Therefore, it is very likely that a source that currently emits at a level below the major source thresholds as the result of compliance with a MACT standard could and would increase its emissions in response to this rule. In essence, the currently proposed changes remove what were anti-backsliding provisions of the 1995 policy. Sources would have an economic incentive (reduced costs due to not operating control equipment, less cost for noncompliant coatings) to increase HAP emissions.

From Page 75. *We are thus proposing that sources that switch status from major source to area source and then revert back to major source status, be allowed additional time for compliance if the major source standard has changed such that the source must undergo a physical change, install additional controls and/or implement new control measures. We propose that such sources have the same period of time to comply with the revised MACT standard as is allowed for existing sources subject to the revised standard.*

> Comment: Determining when to allow additional time is difficult from a practical implementation standpoint. The terms "*physical change, install additional controls and/or implement new control measures*" are very nebulous and could apply to even the most trivial situations. For consistency across the nation, and considering that these sources already have been major and should have already complied with the MACT, and considering that this proposal assumes sources will maintain the MACT level of control even if it is not required, sources should be required to meet the major source MACT requirements without further delay. Therefore, existing sources that were major, then cap emissions to avoid the MACT, and then return to major source status should be required to comply with the MACT immediately upon becoming a major source again. Otherwise, this proposal should assume major sources that cap emissions below the major source thresholds will increase HAP emissions and prepare an environmental assessment of the resulting increase.

From Page 76. *To the extent an area source standard applies, the compliance date for that standard has passed, and the source needs a compliance extension, the source must apply for and obtain that compliance extension before becoming subject to the area source standard; otherwise, the source will be in violation of the area source standard.*

Comment: Sources subject to the area source standard typically are exempt from Title V permitting and EPA does not allow work related to that source to be supported by Title V funds. Permitting authorities like Wisconsin DNR do not have many resources available for non-Title V work. If EPA hopes to delegate the area source program to state and local agencies, program implementation will need to be streamlined and simple. Case-by-case determinations are time consuming and costly.

From Page 77. *We solicit comment on all aspects of the proposed new regulatory provisions at 40 CFR 63.1(c)(6)(i) and (ii). For either of the two situations described above (i.e., where a source switches from major, to area, and back to major source status, and where a source switches from major to area source status)…*

Comment: EPA has been exempting area sources from Title V permitting. A source that switches from major source, to area source, and then back to major source again would need permit changes from a Title V permit, to a non-Title V permit, and back again to a Title V permit. Administratively, this is very costly. Perhaps these sources should remain Title V sources at least until permit renewal. If frequent changes are likely, they should probably remain subject to the MACT. It is not clear what purpose is served by allowing frequent changes in the applicable requirements and the permit status. The proposed change is administratively costly for the source and the permit authority, and serves no environmental purpose.

From: Dalcher, Debra
Location: Elineth's office
Importance: Normal
Subject: Accepted: Debra/Elineth OIAI
Start Date/Time: Wed 9/20/2017 1:30:00 PM
End Date/Time: Wed 9/20/2017 2:30:00 PM

To: Jordan, Scott[Jordan.Scott@epa.gov]; Rodman, Sonja[Rodman.Sonja@epa.gov]
Cc: Lamason, Bill[Lamason.Bill@epa.gov]
From: Dalcher, Debra
Sent: Mon 1/29/2018 12:10:14 PM
Subject: RE: OIAI - FR Notice Signed?

Scott,

I am sure you know my now, but Peter signed the FR Notice.

I think Bill sent links to everyone for the materials that got signed last week, but if you need anything, please let me know.

Scott and Sonya, I wanted to let you know how much everyone in SPPD/OAQPS appreciated your help in getting everything ready to be signed last week. I know moving up the signature date made things crazy, but we did get everything done. Thank you so much for your assistance with everything and I am looking forward to working with you as we move on to the next steps!

Best Regards, Debra

From: Jordan, Scott
Sent: Thursday, January 25, 2018 3:49 PM
To: Lamason, Bill <Lamason.Bill@epa.gov>
Cc: Dalcher, Debra <dalcher.debra@epa.gov>; Rodman, Sonja <Rodman.Sonja@epa.gov>
Subject: OIAI - FR Notice Signed?

Thanks.

What was the final decision about who would sign the FR notice? And, has that been signed?

Once the FR notice is published, we will keep an eye out to see if anyone sues on that within 60 days.

Scott Jordan

Air and Radiation Law Office

Office of General Counsel

202-564-7508

From: Lamason, Bill
Sent: Thursday, January 25, 2018 3:43 PM
To: Eck, Janet <Eck.Janet@epa.gov>; Mills, Kathy <Mills.Kathy@epa.gov>; Culligan, Kevin <Culligan.Kevin@epa.gov>; Jordan, Scott <Jordan.Scott@epa.gov>; Rodman, Sonja <Rodman.Sonja@epa.gov>
Subject: FW: OIAI Reclassification of Major Sources as Area Sources Under Section 112 _01 25 2018.docx

Signed. Waiting on PACS (OAQPS comms) to post desk statement on web. The embargo lifted. B

From: Lewis, Josh
Sent: Thursday, January 25, 2018 3:37 PM
To: Henigin, Mary <Henigin.Mary@epa.gov>; Iglesias, Amber <Iglesias.Amber@epa.gov>; Koerber, Mike <Koerber.Mike@epa.gov>; Lamason, Bill <Lamason.Bill@epa.gov>; Dalcher, Debra <dalcher.debra@epa.gov>; French, Chuck <French.Chuck@epa.gov>; Lassiter, Penny <Lassiter.Penny@epa.gov>
Subject: RE: OIAI Reclassification of Major Sources as Area Sources Under Section 112 _01 25 2018.docx

Thanks again. Here's the pdf. Isabel also has it so she will be sending to OAQPS comms to coordinate web posting

Josh

From: Henigin, Mary
Sent: Thursday, January 25, 2018 3:17 PM
To: Lewis, Josh <Lewis.Josh@epa.gov>; Iglesias, Amber <Iglesias.Amber@epa.gov>
Subject: Fwd: OIAI Reclassification of Major Sources as Area Sources Under Section 112 _01 25 2018.docx

Josh, It is here.

Amber, thanks much

Thank you

Mary

Begin forwarded message:

From: "South, Peter" <South.Peter@epa.gov>
Date: January 25, 2018 at 3:13:56 PM EST
To: "Eck, Janet" <Eck.Janet@epa.gov>, "Koerber, Mike" <Koerber.Mike@epa.gov>, "Henigin, Mary" <Henigin.Mary@epa.gov>
Cc: "Henigin, Mary" <Henigin.Mary@epa.gov>, "Lamason, Bill" <Lamason.Bill@epa.gov>, "Dalcher, Debra" <dalcher.debra@epa.gov>, "French, Chuck" <French.Chuck@epa.gov>, "Lassiter, Penny" <Lassiter.Penny@epa.gov>
Subject: RE: OIAI Reclassification of Major Sources as Area Sources Under Section 112 _01 25 2018.docx

See final version. No edits to text other than Bill's signature block (just formatting changes).

Thanks.

From: Eck, Janet
Sent: Thursday, January 25, 2018 2:37 PM
To: Koerber, Mike <Koerber.Mike@epa.gov>; South, Peter <South.Peter@epa.gov>
Cc: Henigin, Mary <Henigin.Mary@epa.gov>; Lamason, Bill <Lamason.Bill@epa.gov>; Dalcher, Debra <dalcher.debra@epa.gov>; French, Chuck <French.Chuck@epa.gov>; Lassiter, Penny <Lassiter.Penny@epa.gov>
Subject: OIAI Reclassification of Major Sources as Area Sources Under Section 112 _01 25 2018.docx

Attached is the Once In Always In memo that has been approved by OAR. Please forward for their final review and signature. I will put this document into CMS as #OAR-18-000-3788 for their staff to finalize. We will forward the FR notice as soon as it is approved. Thanks.

From: Dalcher, Debra
Location: RTP-D201-Max40/RTP-Bldg-D
Importance: High
Subject: OIAI re. (Pollution Prevention re. Coatings, Industrial Boilers)
Start Date/Time: Tue 11/14/2017 3:00:00 PM
End Date/Time: Tue 11/14/2017 3:30:00 PM

To: Lamason, Bill[Lamason.Bill@epa.gov]
From: Dalcher, Debra
Sent: Mon 1/22/2018 1:22:15 PM
Subject: RE: FRN OIAI Guidance Memorandum 1_19_18+SJJ 1.19.18 DD.docx

Yes.

From: Lamason, Bill
Sent: Monday, January 22, 2018 7:31 AM
To: Dalcher, Debra <dalcher.debra@epa.gov>
Subject: Re: FRN OIAI Guidance Memorandum 1_19_18+SJJ 1.19.18 DD.docx

Ok. So this is the notice announcing the memo - looks like there is a December 14th date that should be a blank to be filled in. Otherwise looks good. Thanks.

Sent from my iPhone

On Jan 22, 2018, at 6:41 AM, Dalcher, Debra <dalcher.debra@epa.gov> wrote:

> Draft FR Notice already reviewed by Scott. We will need to make final changes when the memo is final.
>
> Debra
>
> <FRN OIAI Guidance Memorandum 1_19_18+SJJ 1.19.18 DD.docx>

From: Dalcher, Debra
Location: RTP-OAQPS-D210A-SPPD-IO-only/RTP-OAQPS-BLDG-D/Restricted
Importance: Normal
Subject: Accepted: OIAI Discussion, Call-in: Ex. 6 - Personal Privacy
Start Date/Time: Mon 12/4/2017 6:15:00 PM
End Date/Time: Mon 12/4/2017 6:45:00 PM

Cc: Lamason, Bill[Lamason.Bill@epa.gov]
To: Barnett, Keith[Barnett.Keith@epa.gov]
From: Dalcher, Debra
Sent: Thur 11/30/2017 5:12:33 PM
Subject: OIAI - Examples of Sources Affected by Memo

Keith,

Did you / staff have an opportunity to either refine the examples you had provided previously and/or have new examples to share for inclusion in the OIAI memo. I need those examples as soon as possible. We are providing Peter with a draft of the memo on Monday and I would like to refine those examples today or tomorrow.

Thank you, Debra

To: Noonan, Jenny[Noonan.Jenny@epa.gov]
Cc: Mills, Kathy[Mills.Kathy@epa.gov]; Cortelyou-Lee, Jan[Cortelyou-Lee.Jan@epa.gov]; Ashley, Jackie[Ashley.Jackie@epa.gov]
Bcc: Dalcher, Debra[dalcher.debra@epa.gov]
From: Dalcher, Debra
Sent: Mon 1/29/2018 12:00:55 PM
Subject: RE: For tomorrow

Hi Jenny,

Interesting that they are not correct. Thank you for letting me know. I believe those spreadsheets were put together when those dockets closed. I will let Elineth know given I think she plans to use those for reference purposes.

I can't thank the staff in PAC enough for assisting last week. **You and your staff is the best**. Thank you everyone!

Thank you, Debra

From: Noonan, Jenny
Sent: Thursday, January 25, 2018 4:21 PM
To: Dalcher, Debra <dalcher.debra@epa.gov>
Cc: Mills, Kathy <Mills.Kathy@epa.gov>; Cortelyou-Lee, Jan <Cortelyou-Lee.Jan@epa.gov>; Ashley, Jackie <Ashley.Jackie@epa.gov>
Subject: For tomorrow

Debra –

In thinking through what would be helpful to the Regions as they distribute this OIAI memo, I pulled the states out from the list of commenters on the spreadsheet (attached) labeled "Docket_OIAI Summary…"

I wanted you to know that many of the docket numbers in that spreadsheet are incorrect. This may not matter at all but I wanted to let you know in case you do need to refer back to some of the source material for these comments from the EO 13777 docket.

I've also attached a spreadsheet with

•□□□□□□□□ parties that DC may want to call/contact in the coming days about this action and

•□□□□□□□□ a tab for states with the links to the correct docket number in the EO 13777 docket. My plan is to share the info in the "States" tab with the regions tomorrow morning -- if that works with Jan/Jackie's communication plans.

Thanks and we appreciate you working with so many of us in PACS today to get this out; it really does take 3 of us to replace Jan ☺

--Jenny

From: Ashley, Jackie
Sent: Thursday, January 25, 2018 10:00 AM
To: Noonan, Jenny <Noonan.Jenny@epa.gov>
Subject: FW: Docket_OIAI Summary of Comments.xlsx

Jackie Ashley - US EPA - Office of Air Quality Planning and Standards - 919-541-7664 – ashley.jackie@epa.gov

From: Dalcher, Debra
Sent: Thursday, January 25, 2018 9:40 AM
To: Cortelyou-Lee, Jan <Cortelyou-Lee.Jan@epa.gov>
Cc: Ashley, Jackie <Ashley.Jackie@epa.gov>
Subject: Docket_OIAI Summary of Comments.xlsx

EO 13777 Summary – re. industry groups.

From: Dalcher, Debra
Location: BLO/Kevin to call Ex. 6 - Personal Privacy
Importance: Normal
Subject: Accepted: Backfill with Kevin on OIAI
Start Date/Time: Mon 11/13/2017 4:15:00 PM
End Date/Time: Mon 11/13/2017 4:30:00 PM

To: Morales, Mariel[Morales.Mariel@epa.gov]
From: Dalcher, Debra
Sent: Mon 1/22/2018 12:11:23 PM
Subject: RE: CMS ASSIGNMENT AL-18-000-3332
EPA response to Sens Barrasso Capito on onceinalwaysin.docx

Mariel,

Let me know if this is what you are looking for. Bill has not reviewed this yet.

I left a note in the letter for you.

Please review the letter.

Thank you, Debra

From: Morales, Mariel
Sent: Friday, January 19, 2018 4:13 PM
To: Dalcher, Debra <dalcher.debra@epa.gov>
Cc: Lamason, Bill <Lamason.Bill@epa.gov>; Barnett, Keith <Barnett.Keith@epa.gov>
Subject: CMS ASSIGNMENT AL-18-000-3332

Hi Debra,

This control is being assigned to PSG. A template response has already been drafted by OCIR. Please make any edits as appropriate to the template.

The current deadline for this control is Jan 19. An extension will be needed.

Mariel Morales

Communications Specialist

OAQPS/SPPD

U.S. Environmental Protection Agency

(919) 541-9774

To: Rodman, Sonja[Rodman.Sonja@epa.gov]
From: Dalcher, Debra
Sent: Fri 12/8/2017 7:53:49 PM
Subject: Re: oiai

Great!

From: Rodman, Sonja
Sent: Friday, December 8, 2017 2:32:58 PM
To: Jordan, Scott; Dalcher, Debra
Subject: RE: oiai

Ill be here

Sonja L. Rodman

Air Toxics, Consumer Protection and Indoor Air Practice Group

(202) 564-4079

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From: Jordan, Scott
Sent: Friday, December 08, 2017 12:24 PM
To: Dalcher, Debra <dalcher.debra@epa.gov>; Rodman, Sonja <Rodman.Sonja@epa.gov>
Subject: Re: oiai

I will be out on leave on 12/20, and so will not be able to participate.

Scott Jordan

Air and Radiation Law Office

Office of General Counsel

202-564-7508

From: Dalcher, Debra
Sent: Friday, December 8, 2017 12:19 PM
To: Rodman, Sonja; Jordan, Scott
Subject: Re: oiai

Wehrum briefing now scheduled for 12/20 btw 4-5 pm.

From: Rodman, Sonja
Sent: Friday, December 8, 2017 11:30:26 AM
To: Dalcher, Debra
Cc: Jordan, Scott
Subject: RE: oiai

Thx. Since the memo itself is really just an example of the kind of memo we could produce, I decided not to review it further at this time.

Sonja L. Rodman

Air Toxics, Consumer Protection and Indoor Air Practice Group

(202) 564-4079

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From: Dalcher, Debra
Sent: Friday, December 08, 2017 11:25 AM

To: Rodman, Sonja <Rodman.Sonja@epa.gov>
Cc: Jordan, Scott <Jordan.Scott@epa.gov>
Subject: Re: oiai

Just noted that your edits are on the pager. I will get those incorporated now. That is not moving until Monday. Sorry, it's been a crazy morning. Debra

---

From: Rodman, Sonja
Sent: Friday, December 8, 2017 11:16:25 AM
To: Dalcher, Debra
Cc: Jordan, Scott
Subject: FW: oiai

A few edits from me. I don't intend to read the memo again until we have some guidance from Wehrum

Sonja L. Rodman

Air Toxics, Consumer Protection and Indoor Air Practice Group

(202) 564-4079

CONFIDENTIALITY NOTICE: This message may contain sensitive, privileged information covered by the deliberative process, attorney-client and/or attorney work product privileges. Do not release this message under FOIA without appropriate review. If you are not the intended recipient, or the employee or agent responsible to deliver it to the intended recipient, please contact the sender and delete all copies.

From: Dalcher, Debra
Location: D201/Call in number Ex. 6 - Personal Privacy
Importance: Normal
Subject: Accepted: OIAI Check in
Start Date/Time: Mon 11/13/2017 2:15:00 PM
End Date/Time: Mon 11/13/2017 3:00:00 PM

To: Lamason, Bill[Lamason.Bill@epa.gov]
From: Dalcher, Debra
Sent: Thur 11/30/2017 4:56:16 PM
Subject: Re: OIAI Memo

OK, working on the memo.

From: Lamason, Bill
Sent: Thursday, November 30, 2017 11:41:28 AM
To: Dalcher, Debra
Cc: McLamb, Marguerite
Subject: Re: OIAI Memo

Thanks. Will touch base after SPPD manager's meeting still underway. B

Sent from my iPhone

On Nov 30, 2017, at 10:44 AM, Dalcher, Debra <dalcher.debra@epa.gov> wrote:

Marguerite is going to call me when she is free. I am reviewing the memo.

Debra

From: McLamb, Marguerite
Sent: Thursday, November 30, 2017 10:17 AM
To: Lamason, Bill
Cc: Dalcher, Debra
Subject: Re: OIAI Memo

Hi, Bill,

I have heard from OGC this morning and have comments from Scott Jordan. I will share those shortly. We can talk about this if you'd like this morning.

Best, Marguerite

On Nov 29, 2017, at 3:31 PM, Lamason, Bill <Lamason.Bill@epa.gov> wrote:

Marguerite,

Thanks for the update. Can we see the current version? It would help me prepare some talking points for Peter. On timing, let's chat in the morning when you are in before Kevin calls me. I'll wait to set the meeting with Peter until Kevin and I touch base. Thanks again!

Bill

From: McLamb, Marguerite
Sent: Wednesday, November 29, 2017 3:28 PM
To: Lamason, Bill <Lamason.Bill@epa.gov>
Cc: Dalcher, Debra <dalcher.debra@epa.gov>
Subject: Re: OIAI Memo

Hi, Bill,

OGC has the memo from me and is reviewing and adding to it. I talked to Sonja yesterday, and she is having Rick and Scott work on it while she is out, and she'll weigh in on it early next week. She knows our timeframe. We can talk in the morning if you'd like.

Best,

Marguerite

On Nov 29, 2017, at 2:49 PM, Lamason, Bill <Lamason.Bill@epa.gov> wrote:

Marguerite,

Hope you are well. I left you a voicemail on your desk phone. Just checking on where we are on your (and OGC's) review of the OIAI memo. I need to schedule time with Peter for next week to prep for a discussion with the AA and would like to update Peter on the latest version of the memo and potential timing/direction for moving forward. Let me know when you

have a moment. Thanks!

Bill

To: Shrager, Brian[Shrager.Brian@epa.gov]
From: Dalcher, Debra
Sent: Fri 1/19/2018 9:23:08 PM
Subject: Re: RIA for OIAI Rule Package (either supplemental or new proposal)

Okay, thank you. Debra

From: Shrager, Brian
Sent: Friday, January 19, 2018 4:15:10 PM
To: Dalcher, Debra
Subject: RE: RIA for OIAI Rule Package (either supplemental or new proposal)

I called her and left a message. I am out of the office on Monday, so unless she calls me back in the next 15 minutes, it will have to wait.

From: Dalcher, Debra
Sent: Friday, January 19, 2018 2:37 PM
To: Shrager, Brian <Shrager.Brian@epa.gov>; Weatherhead, Darryl <Weatherhead.Darryl@epa.gov>
Cc: Lamason, Bill <Lamason.Bill@epa.gov>
Subject: Re: RIA for OIAI Rule Package (either supplemental or new proposal)

Brian, I spoke with Darryl and gave her a short overview. She mentioned giving you a call to discuss. If you have time to reach out it would probably be helpful.

Thank you, Debra

From: Shrager, Brian
Sent: Friday, January 19, 2018 2:35 PM
To: Weatherhead, Darryl; Dalcher, Debra
Cc: Lamason, Bill
Subject: RE: RIA for OIAI Rule Package (either supplemental or new proposal)

Once in Always In...the policy which will be rescinded.

From: Weatherhead, Darryl
Sent: Friday, January 19, 2018 2:02 PM
To: Dalcher, Debra <dalcher.debra@epa.gov>; Shrager, Brian <Shrager.Brian@epa.gov>
Cc: Lamason, Bill <Lamason.Bill@epa.gov>
Subject: RE: RIA for OIAI Rule Package (either supplemental or new proposal)

Hi Debra,

Sorry, I'm coming into this one cold and need a bit more background. What is OIAI?

From: Dalcher, Debra
Sent: Friday, January 19, 2018 10:54 AM
To: Shrager, Brian <Shrager.Brian@epa.gov>
Cc: Lamason, Bill <Lamason.Bill@epa.gov>; Weatherhead, Darryl <Weatherhead.Darryl@epa.gov>
Subject: Re: RIA for OIAI Rule Package (either supplemental or new proposal)

Thank you. Debra

From: Shrager, Brian
Sent: Friday, January 19, 2018 10:51:12 AM
To: Dalcher, Debra
Cc: Lamason, Bill; Weatherhead, Darryl
Subject: RE: RIA for OIAI Rule Package (either supplemental or new proposal)

Ex. 5 - Deliberative Process

Short answer is that this seems like a 6 month process to me. I'm guessing that we'll be told to get it done in a month or two?

Brian

From: Dalcher, Debra
Sent: Friday, January 19, 2018 9:59 AM
To: Shrager, Brian <Shrager.Brian@epa.gov>
Cc: Dalcher, Debra <dalcher.debra@epa.gov>; Lamason, Bill <Lamason.Bill@epa.gov>
Subject: RIA for OIAI Rule Package (either supplemental or new proposal)

Good Morning Brian,

Can you tell me approximately how long it would take to prepare a RIA for the OIAI rule? The RIA would need to cross all source categories. No RIA was prepared for the 2007 package although the rule was considered significant. I am working on some time estimates for options (a little different format than what you and I reviewed). If you can respond before Monday that would be great.
Thank you, Debra

To: Ashley, Jackie[Ashley.Jackie@epa.gov]; Lamason, Bill[Lamason.Bill@epa.gov]
Cc: Mills, Kathy[Mills.Kathy@epa.gov]
From: Dalcher, Debra
Sent: Thur 1/25/2018 4:16:29 PM
Subject: RE: Draft Comms Plan for Today's Memo - Please Review ASAP

Yes, it is in. We will be sending a final draft to OGC to make sure we have captured all of their edits this morning for a last quick review.

Thank you, Debra

From: Ashley, Jackie
Sent: Thursday, January 25, 2018 11:15 AM
To: Lamason, Bill <Lamason.Bill@epa.gov>
Cc: Mills, Kathy <Mills.Kathy@epa.gov>; Dalcher, Debra <dalcher.debra@epa.gov>
Subject: Re: Draft Comms Plan for Today's Memo - Please Review ASAP

That is going in the memo?

And will do. Thanks.

On Jan 25, 2018, at 11:13 AM, Lamason, Bill <Lamason.Bill@epa.gov> wrote:

> The OAR IO may want to add a paragraph to the summary similar to this. Check with OAR comms.

Ex. 5 - Deliberative Process

I'd follow OAR lead. Bill

From: Ashley, Jackie
Sent: Thursday, January 25, 2018 10:59 AM
To: Lamason, Bill <Lamason.Bill@epa.gov>; Mills, Kathy <Mills.Kathy@epa.gov>; Dalcher, Debra <dalcher.debra@epa.gov>
Subject: RE: Draft Comms Plan for Today's Memo - Please Review ASAP

Ex. 5 - Deliberative Process

We can chase edits if we need to. The urgency is we'd like to give it to the press office ASAP as they are drafting a press release.

Jackie Ashley - US EPA - Office of Air Quality Planning and Standards - 919-541-7664 – ashley.jackie@epa.gov

From: Lamason, Bill
Sent: Thursday, January 25, 2018 10:57 AM
To: Ashley, Jackie <Ashley.Jackie@epa.gov>; Mills, Kathy <Mills.Kathy@epa.gov>; Dalcher, Debra <dalcher.debra@epa.gov>
Subject: RE: Draft Comms Plan for Today's Memo - Please Review ASAP

Looking at but multitasking with OAR on the memo. B

From: Ashley, Jackie
Sent: Thursday, January 25, 2018 10:51 AM
To: Cortelyou-Lee, Jan <Cortelyou-Lee.Jan@epa.gov>; Mills, Kathy <Mills.Kathy@epa.gov>; Dalcher, Debra <dalcher.debra@epa.gov>; Lamason, Bill <Lamason.Bill@epa.gov>; DeLuca, Isabel <DeLuca.Isabel@epa.gov>; Koerber, Mike <Koerber.Mike@epa.gov>
Subject: RE: Draft Comms Plan for Today's Memo - Please Review ASAP

Bill, Debra, KB –

Just checking on where you are in review.

Jackie Ashley - US EPA - Office of Air Quality Planning and Standards - 919-541-7664 – ashley.jackie@epa.gov

From: Cortelyou-Lee, Jan
Sent: Thursday, January 25, 2018 10:02 AM
To: Mills, Kathy <Mills.Kathy@epa.gov>; Dalcher, Debra <dalcher.debra@epa.gov>; Lamason, Bill <Lamason.Bill@epa.gov>; Ashley, Jackie <Ashley.Jackie@epa.gov>; DeLuca, Isabel <DeLuca.Isabel@epa.gov>; Koerber, Mike <Koerber.Mike@epa.gov>
Subject: FW: Draft Comms Plan for Today's Memo - Please Review ASAP

Ex. 6 - Personal Privacy

Jackie – this version includes a few comments in tracked changes from Mike.

Jan Cortelyou-Lee

US Environmental Protection Agency

Office of Air Quality Planning and Standards

MD-C404-03

109 TW Alexander Drive

Research Triangle Park, NC 27709

Desk: 919-541-5393

Ex. 6 - Personal Privacy

From: Koerber, Mike
Sent: Thursday, January 25, 2018 8:56 AM
To: Cortelyou-Lee, Jan <Cortelyou-Lee.Jan@epa.gov>; Dalcher, Debra <dalcher.debra@epa.gov>; Lamason, Bill <Lamason.Bill@epa.gov>
Cc: Mills, Kathy <Mills.Kathy@epa.gov>
Subject: RE: Draft Comms Plan for Today's Memo - Please Review ASAP

Minor edits attached

From: Cortelyou-Lee, Jan
Sent: Thursday, January 25, 2018 8:42 AM
To: Dalcher, Debra <dalcher.debra@epa.gov>; Lamason, Bill <Lamason.Bill@epa.gov>; Koerber, Mike <Koerber.Mike@epa.gov>
Cc: Mills, Kathy <Mills.Kathy@epa.gov>
Subject: Draft Comms Plan for Today's Memo - Please Review ASAP

This include KBs QAs (with some minor adjustments) and additional pieces I think we need. Debra will you share with OGC?

Ex. 5 - Deliberative Process

I will get something mocked up for the web with the ITG folks soon.

Jan Cortelyou-Lee

US Environmental Protection Agency

Office of Air Quality Planning and Standards

MD-C404-03

109 TW Alexander Drive

Research Triangle Park, NC 27709

Desk: 919-541-5393

Ex. 6 - Personal Privacy

To: Srivastava, Ravi[Srivastava.Ravi@epa.gov]
Cc: Lamason, Bill[Lamason.Bill@epa.gov]
From: Dalcher, Debra
Sent: Wed 11/1/2017 12:09:15 PM
Subject: FW: docket exported file OIAI
Export doket file_EPA-HQ-OAR-2004-0094.xlsx

Ravi,

This is a copy of a docket index. We need to connect the document name with the docket ID to address Karen's comment from the 2nd training session. You can download this document from the docket.

Debra

From: Torres, Elineth
Sent: Wednesday, November 01, 2017 7:56 AM
To: Dalcher, Debra <dalcher.debra@epa.gov>
Subject: docket exported file OIAI

Debra,

This is the information you get when you export the docket file from regulations.gov.

The attached example is for OIAI.

Elineth Torres

OAQPS

919-541-4347

To: Lamason, Bill[Lamason.Bill@epa.gov]
From: Dalcher, Debra
Sent: Thur 1/18/2018 2:56:35 PM
Subject: Fw: OIAI - Briefing Memo for This Afternoon

From: Jordan, Scott
Sent: Thursday, January 18, 2018 9:37 AM
To: Dalcher, Debra
Subject: OIAI - Briefing Memo for This Afternoon

Debra –

I am scheduled to talk to Sonja this morning, and hoping that after that call I will be able to send my briefing memo to you and all other participants listed on our 4:00 call.

Scott Jordan

Air and Radiation Law Office

Office of General Counsel

202-564-7508

Cc: McLamb, Marguerite[McLamb.Marguerite@epa.gov]
To: Lamason, Bill[Lamason.Bill@epa.gov]
From: Dalcher, Debra
Sent: Thur 11/30/2017 3:44:00 PM
Subject: Re: OIAI Memo

Marguerite is going to call me when she is free. I am reviewing the memo.

Debra

From: McLamb, Marguerite
Sent: Thursday, November 30, 2017 10:17 AM
To: Lamason, Bill
Cc: Dalcher, Debra
Subject: Re: OIAI Memo

Hi, Bill,

I have heard from OGC this morning and have comments from Scott Jordan. I will share those shortly. We can talk about this if you'd like this morning.

Best, Marguerite

On Nov 29, 2017, at 3:31 PM, Lamason, Bill <Lamason.Bill@epa.gov> wrote:

Marguerite,

Thanks for the update. Can we see the current version? It would help me prepare some talking points for Peter. On timing, let's chat in the morning when you are in before Kevin calls me. I'll wait to set the meeting with Peter until Kevin and I touch base. Thanks again!

Bill

From: McLamb, Marguerite
Sent: Wednesday, November 29, 2017 3:28 PM

To: Lamason, Bill <Lamason.Bill@epa.gov>
Cc: Dalcher, Debra <dalcher.debra@epa.gov>
Subject: Re: OIAI Memo

Hi, Bill,

OGC has the memo from me and is reviewing and adding to it. I talked to Sonja yesterday, and she is having Rick and Scott work on it while she is out, and she'll weigh in on it early next week. She knows our timeframe. We can talk in the morning if you'd like.

Best,

Marguerite

On Nov 29, 2017, at 2:49 PM, Lamason, Bill <Lamason.Bill@epa.gov> wrote:

Marguerite,

Hope you are well. I left you a voicemail on your desk phone. Just checking on where we are on your (and OGC's) review of the OIAI memo. I need to schedule time with Peter for next week to prep for a discussion with the AA and would like to update Peter on the latest version of the memo and potential timing/direction for moving forward. Let me know when you have a moment. Thanks!

Bill

To: McLamb, Marguerite[McLamb.Marguerite@epa.gov]
From: Dalcher, Debra
Sent: Mon 12/4/2017 1:08:32 PM
Subject: RE: OIAI legal text additions

I will be sending out a new version in a few minutes - revised examples included.

Debra

-----Original Message-----
From: McLamb, Marguerite
Sent: Monday, December 04, 2017 7:57 AM
To: Dalcher, Debra <dalcher.debra@epa.gov>
Subject: OIAI legal text additions

Debra,
Language from Perez is added on page 3 of the attached document (the version that Chuck commented on at the end of last week).
Best,
Marguerite

****

Marguerite E. McLamb
Policy Advisor
Sector Policies and Programs Division
Office of Air Quality Planning & Standards
U.S. Environmental Protection Agency
Research Triangle Park, NC 27711
Phone: (919) 541-7858
Fax: (919) 541-4991
mclamb.marguerite@epa.gov

To: Jordan, Scott[Jordan.Scott@epa.gov]
From: Dalcher, Debra
Sent: Thur 1/18/2018 2:54:56 PM
Subject: Re: OIAI - Briefing Memo for This Afternoon

Great, thank you Scott. Debra

From: Jordan, Scott
Sent: Thursday, January 18, 2018 9:37:13 AM
To: Dalcher, Debra
Subject: OIAI - Briefing Memo for This Afternoon

Debra –

I am scheduled to talk to Sonja this morning, and hoping that after that call I will be able to send my briefing memo to you and all other participants listed on our 4:00 call.

Scott Jordan

Air and Radiation Law Office

Office of General Counsel

202-564-7508

From: Dalcher, Debra
Location: RTP-OAQPS-D210A-SPPD-IO-only/RTP-OAQPS-BLDG-D/Restricted
Importance: Normal
Subject: Accepted: OIAI Discussion, Call-in: Ex. 6 - Personal Privacy
Start Date/Time: Mon 12/4/2017 6:00:00 PM
End Date/Time: Mon 12/4/2017 6:30:00 PM

From: Dalcher, Debra
Location: RTP-OAQPS-Ex. 6 - Personal Privacy-SPPD/Phone-Line/RTP-OAQPS-BLDG-C
Importance: Normal
Subject: OIAI Discussion
Start Date/Time: Mon 1/8/2018 4:00:00 PM
End Date/Time: Mon 1/8/2018 5:00:00 PM

Agenda to be added.

From: Dalcher, Debra
Location: RTP-D201-Max40/RTP-Bldg-D
Importance: Normal
Subject: Accepted: once in, always in discussion - RCG and PSG
Start Date/Time: Tue 1/9/2018 6:00:00 PM
End Date/Time: Tue 1/9/2018 7:00:00 PM

Jennifer,

Hi! I would appreciate some discussion points a few days prior to this meeting so I can come prepared. If the discussion is focused on future changes to the policy then it would be appropriate to invite Scott Jordan and Kevin Culligan.

Thank you, Debra

From: Dalcher, Debra
Location: RTP-D201-Max40/RTP-Bldg-D
Importance: Normal
Subject: Accepted: OIAI Discussion: Principle-based policy
Start Date/Time: Wed 9/20/2017 6:30:00 PM
End Date/Time: Wed 9/20/2017 7:30:00 PM

To: Ex. 6 - Personal Privacy @gmail.com]
From: Dalcher, Debra
Sent: Sun 12/3/2017 10:17:46 PM
Subject: Fw: OIAI - Examples of Sources Affected by Memo
WF Case Study on Benefits of Reformulated Coatings.pdf

From: Barnett, Keith
Sent: Friday, December 1, 2017 1:47 PM
To: Dalcher, Debra
Cc: Teal, Kim
Subject: FW: OIAI - Examples of Sources Affected by Memo

Dear Debra:

As Kim noted in the aerospace industry we have 143 sources that were major prior to the Aerospace NESHAP and later became non-major sources but are still subject due to once-always-in. So in the case of the Aerospace industry we have a majority of the covered sources that are not currently major sources

Most (if not all) of these facilities came into compliance by reformulating their coatings. As shown in the case study for wood furniture, there are benefits to converting to low-HAP coatings. Once a facility does the conversion it would make no sense for them to convert back to higher HAP coatings.

Keith Barnett

Minerals and Manufacturing Group Leader

919-541-5605

From: Teal, Kim
Sent: Friday, December 01, 2017 12:17 PM
To: Barnett, Keith <Barnett.Keith@epa.gov>

Subject: RE: OIAI - Examples of Sources Affected by Memo

Keith,

I never heard back from my contacts but what I do have is based on a survey conducted of the aerospace industry in 2011. We received responses from 233 sources that meet the applicability criteria for the aerospace NESHAP and must demonstrate compliance with at least the recordkeeping requirements due to OIAI. Only 99 of the 233 sources are true major sources today.

Although not based on the aerospace industry, I've attached a case study on the benefits of converting to low-HAP coatings, which is the primary method of compliance in the coatings sector.

From: Barnett, Keith
Sent: Thursday, November 30, 2017 2:23 PM
To: Teal, Kim <Teal.Kim@epa.gov>
Subject: FW: OIAI - Examples of Sources Affected by Memo
Importance: High

Dear Kim:

I recollect we committed to giving them something on aerospace. Could we get that together tomorrow morning?

Keith Barnett

Minerals and Manufacturing Group Leader

919-541-5605

From: Dalcher, Debra

Sent: Thursday, November 30, 2017 12:13 PM
To: Barnett, Keith <Barnett.Keith@epa.gov>
Cc: Lamason, Bill <Lamason.Bill@epa.gov>
Subject: OIAI - Examples of Sources Affected by Memo
Importance: High

Keith,

Did you / staff have an opportunity to either refine the examples you had provided previously and/or have new examples to share for inclusion in the OIAI memo. I need those examples as soon as possible. We are providing Peter with a draft of the memo on Monday and I would like to refine those examples today or tomorrow.

Thank you, Debra

To: McLamb, Marguerite[McLamb.Marguerite@epa.gov]
From: Dalcher, Debra
Sent: Thur 12/7/2017 12:09:19 PM
Subject: RE: OIAI

Yes, mid-morning today.

From: McLamb, Marguerite
Sent: Wednesday, December 06, 2017 4:22 PM
To: Dalcher, Debra <dalcher.debra@epa.gov>
Subject: OIAI

Hi, Debra,

Could you send me the latest version of the memo?

Thanks!

Marguerite

To: French, Chuck[french.chuck@epa.gov]
From: Dalcher, Debra
Sent: Tue 11/21/2017 12:19:09 PM
Subject: FW: Peter's Example Regarding Ex. 5 - Deliberative Process

Just FYI

From: Dalcher, Debra
Sent: Monday, November 20, 2017 4:18 PM
To: Culligan, Kevin <Culligan.Kevin@epa.gov>; McLamb, Marguerite <McLamb.Marguerite@epa.gov>
Cc: Lamason, Bill <Lamason.Bill@epa.gov>; Dalcher, Debra <dalcher.debra@epa.gov>
Subject: Peter's Example Regarding Ex. 5 - Deliberative Process

Kevin, Marguerite

I spoke with Brian Shrager, Jodi Howard, and Nabanita Modak regarding Ex. 5 - Deliberative Process

Ex. 5 - Deliberative Process

Ex. 5 - Deliberative Process

Thank you, Debra

Debra S. Dalcher

U.S. EPA

Policy and Strategies Group

Sector Policies and Programs Division, OAQPS

109 T.W. Alexander Drive

Research Triangle Park, NC 27711

Phone: 919-541-2443

To: Culligan, Kevin[Culligan.Kevin@epa.gov]
Cc: Tsirigotis, Peter[Tsirigotis.Peter@epa.gov]; Lamason, Bill[Lamason.Bill@epa.gov]; French, Chuck[french.chuck@epa.gov]; Jordan, Scott[Jordan.Scott@epa.gov]; Vetter, Rick[Vetter.Rick@epa.gov]; Rodman, Sonja[Rodman.Sonja@epa.gov]
Bcc: Dalcher, Debra[dalcher.debra@epa.gov]
From: Dalcher, Debra
Sent: Wed 12/6/2017 7:11:47 PM
Subject: OECA Contact on OIAI Memo

Hi Kevin,

Peter asked that Bill and I touch base with Ed Messina, OECA, to give him a heads-up on the meeting with Bill Wehrum next week on OIAI (date TBD). We spoke with Ed today and he is going to call Apple Chapman to also give her a heads-up.

Regards, Debra

Debra S. Dalcher

U.S. EPA

Policy and Strategies Group

Sector Policies and Programs Division, OAQPS

109 T.W. Alexander Drive

Research Triangle Park, NC 27711

Phone: 919-541-2443

To: Ex. 6 - Personal Privacy
From: Dalcher, Debra
Sent: Wed 11/8/2017 8:22:52 PM
Subject: FW: Memo replacing OIAI with proposed 2007 interpretation_11_6_17 MM (002).docx
Memo replacing OIAI with proposed 2007 interpretation_11_8_17 DD.docx
2007 OIAI Steel_Manufacturers_Association_(SMA)_comments.pdf
Comment_National_Resources_Defence_Council_(NRDC) May 4 2007 (1).pdf
Sample of comments OIAI legal interpretation.docx
2007 Comments by Category.docx
2007 OIAI FRN proposal.pdf

-----Original Message-----
From: Dalcher, Debra
Sent: Wednesday, November 08, 2017 3:15 PM
To: McLamb, Marguerite <McLamb.Marguerite@epa.gov>
Cc: Lamason, Bill <Lamason.Bill@epa.gov>; Torres, Elineth <Torres.Elineth@epa.gov>; Dalcher, Debra <dalcher.debra@epa.gov>
Subject: RE: Memo replacing OIAI with proposed 2007 interpretation_11_6_17 MM (002).docx

Marguerite,

Ex. 5 - Deliberative Process

Thank you, Debra

-----Original Message-----
From: McLamb, Marguerite
Sent: Wednesday, November 08, 2017 3:04 PM
To: Dalcher, Debra <dalcher.debra@epa.gov>
Cc: Lamason, Bill <Lamason.Bill@epa.gov>; Torres, Elineth <Torres.Elineth@epa.gov>
Subject: RE: Memo replacing OIAI with proposed 2007 interpretation_11_6_17 MM (002).docx

Hi, all,
I sent the draft memo and explained the current approach to Sonja. She had not yet read the memo.

Ex. 5 - Deliberative Process

I'm glad to discuss this more if you'd like; I'll be in the office tomorrow morning.
Best,
Marguerite

****
Marguerite E. McLamb
Policy Advisor
Sector Policies and Programs Division
Office of Air Quality Planning & Standards U.S. Environmental Protection Agency Research Triangle Park, NC 27711
Phone: (919) 541-7858
Fax: (919) 541-4991
mclamb.marguerite@epa.gov

From: Dalcher, Debra
Sent: Wednesday, November 8, 2017 2:51 PM
To: McLamb, Marguerite
Cc: Lamason, Bill; Torres, Elineth
Subject: RE: Memo replacing OIAI with proposed 2007 interpretation_11_6_17 MM (002).docx

Marguerite,

Could you give us an overview of what you discussed with Sonja regarding OIAI and the way forward re. OGC's role.

Thank you, Debra

-----Original Message-----
From: McLamb, Marguerite
Sent: Wednesday, November 08, 2017 10:27 AM
To: Dalcher, Debra <dalcher.debra@epa.gov>
Cc: Lamason, Bill <Lamason.Bill@epa.gov>; Torres, Elineth <Torres.Elineth@epa.gov>
Subject: RE: Memo replacing OIAI with proposed 2007 interpretation_11_6_17 MM (002).docx

Thank you, Debra.

****
Marguerite E. McLamb
Policy Advisor
Sector Policies and Programs Division
Office of Air Quality Planning & Standards U.S. Environmental Protection Agency Research Triangle Park, NC 27711
Phone: (919) 541-7858
Fax: (919) 541-4991
mclamb.marguerite@epa.gov

From: Dalcher, Debra
Sent: Wednesday, November 8, 2017 10:18 AM
To: McLamb, Marguerite
Cc: Lamason, Bill; Torres, Elineth; Dalcher, Debra
Subject: Memo replacing OIAI with proposed 2007 interpretation_11_6_17 MM (002).docx

Thank you Marguerite.

Please let me know if she has any suggestions/thoughts.

Debra

To: Cortelyou-Lee, Jan[Cortelyou-Lee.Jan@epa.gov]; Ashley, Jackie[Ashley.Jackie@epa.gov]
From: Dalcher, Debra
Sent: Thur 1/25/2018 2:42:59 PM
Subject: Impact of Federal Regulations on Domestic Manufacturing Overview_JG.xlsx
Impact of Federal Regulations on Domestic Manufacturing Overview_JG.xlsx

EO Impact of Federal Regulations on Domestic Manufacturing – re. industry groups.

To: Cortelyou-Lee, Jan[Cortelyou-Lee.Jan@epa.gov]
Cc: Ashley, Jackie[Ashley.Jackie@epa.gov]
From: Dalcher, Debra
Sent: Thur 1/25/2018 2:40:26 PM
Subject: Docket_OIAI Summary of Comments.xlsx
Docket_OIAI Summary of Comments.xlsx

EO 13777 Summary – re. industry groups.

To: Rodman, Sonja[Rodman.Sonja@epa.gov]; Jordan, Scott[Jordan.Scott@epa.gov]
Cc: Lamason, Bill[Lamason.Bill@epa.gov]
From: Dalcher, Debra
Sent: Thur 1/25/2018 2:35:24 PM
Subject: RE: OIAI.Memo. Reclassification of Major Sources as Area Sources Under Section 112_2018_01_24_Draft_Justin OGC 1.25.18.docx

Thanks Sonja,

The only other edits are some administrative things like page numbering, removing the watermark, things we did yesterday that are not in this version.

I am assuming it will come back this way to take care of those things.

Thank you, Debra

From: Rodman, Sonja
Sent: Thursday, January 25, 2018 9:18 AM
To: Dalcher, Debra <dalcher.debra@epa.gov>; Jordan, Scott <Jordan.Scott@epa.gov>
Cc: Lamason, Bill <Lamason.Bill@epa.gov>
Subject: RE: OIAI.Memo. Reclassification of Major Sources as Area Sources Under Section 112_2018_01_24_Draft_Justin OGC 1.25.18.docx

Yes to both

Sonja L. Rodman

Air Toxics, Consumer Protection and Indoor Air Practice Group

(202) 564-4079

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responsible to deliver it to the intended recipient, please contact the sender and delete all copies.

From: Dalcher, Debra
Sent: Thursday, January 25, 2018 9:16 AM
To: Rodman, Sonja <Rodman.Sonja@epa.gov>; Jordan, Scott <Jordan.Scott@epa.gov>
Cc: Lamason, Bill <Lamason.Bill@epa.gov>
Subject: OIAI.Memo. Reclassification of Major Sources as Area Sources Under Section 112_2018_01_24_Draft_Justin OGC 1.25.18.docx

Hi Sonja, Scott

A couple of comments for your consideration.

Debra

To: McLamb, Marguerite[McLamb.Marguerite@epa.gov]
Cc: Lamason, Bill[Lamason.Bill@epa.gov]; Torres, Elineth[Torres.Elineth@epa.gov]
From: Dalcher, Debra
Sent: Wed 11/8/2017 7:51:14 PM
Subject: RE: Memo replacing OIAI with proposed 2007 interpretation_11_6_17 MM (002).docx

Marguerite,

Could you give us an overview of what you discussed with Sonja regarding OIAI and the way forward re. OGC's role.

Thank you, Debra

-----Original Message-----
From: McLamb, Marguerite
Sent: Wednesday, November 08, 2017 10:27 AM
To: Dalcher, Debra <dalcher.debra@epa.gov>
Cc: Lamason, Bill <Lamason.Bill@epa.gov>; Torres, Elineth <Torres.Elineth@epa.gov>
Subject: RE: Memo replacing OIAI with proposed 2007 interpretation_11_6_17 MM (002).docx

Thank you, Debra.

****
Marguerite E. McLamb
Policy Advisor
Sector Policies and Programs Division
Office of Air Quality Planning & Standards U.S. Environmental Protection Agency Research Triangle Park, NC 27711
Phone: (919) 541-7858
Fax: (919) 541-4991
mclamb.marguerite@epa.gov

From: Dalcher, Debra
Sent: Wednesday, November 8, 2017 10:18 AM
To: McLamb, Marguerite
Cc: Lamason, Bill; Torres, Elineth; Dalcher, Debra
Subject: Memo replacing OIAI with proposed 2007 interpretation_11_6_17 MM (002).docx

Thank you Marguerite.

Please let me know if she has any suggestions/thoughts.

Debra

To: Lamason, Bill[Lamason.Bill@epa.gov]
From: Dalcher, Debra
Sent: Wed 11/29/2017 8:36:21 PM
Subject: FW: NRDC comments 2007 OIAI proposal
Comment_National_Resources_Defence_Council_(NRDC) May 4 2007 (1).pdf

From: Torres, Elineth
Sent: Thursday, November 02, 2017 10:01 AM
To: Culligan, Kevin <Culligan.Kevin@epa.gov>
Cc: Dalcher, Debra <dalcher.debra@epa.gov>
Subject: NRDC comments 2007 OIAI proposal

Kevin,

As requested here are the links to the comments from NRDC on EPA's 2007 OIAI proposal. I have attached NRDC main comment letter but their complete submission include more than 13 attachments.

https://www.regulations.gov/document?D=EPA-HQ-OAR-2004-0094-0151

https://www.regulations.gov/document?D=EPA-HQ-OAR-2004-0094-0060

https://www.regulations.gov/document?D=EPA-HQ-OAR-2004-0094-0068

Thanks,

Elineth Torres

OAQPS

919-541-4347

From: Dalcher, Debra
Location: TBD
Importance: Normal
Subject: Accepted: OIAI Check-in
Start Date/Time: Wed 11/1/2017 2:00:00 PM
End Date/Time: Wed 11/1/2017 2:30:00 PM

From: Dalcher, Debra
Location: Debra's Office
Importance: Normal
Subject: Scheduling for OIAI
Start Date/Time: Thur 1/11/2018 3:30:00 PM
End Date/Time: Thur 1/11/2018 4:00:00 PM

To: Jordan, Scott[Jordan.Scott@epa.gov]
Cc: Rodman, Sonja[Rodman.Sonja@epa.gov]
Bcc: Dalcher, Debra[dalcher.debra@epa.gov]
From: Dalcher, Debra
Sent: Wed 12/13/2017 7:42:34 PM
Subject: FW: NRDC comments 2007 OIAI proposal
Comment_National_Resources_Defence_Council_(NRDC) May 4 2007 (1).pdf

For informational purposes.

From: Dalcher, Debra
Sent: Wednesday, November 29, 2017 3:36 PM
To: Lamason, Bill <Lamason.Bill@epa.gov>
Subject: FW: NRDC comments 2007 OIAI proposal

From: Torres, Elineth
Sent: Thursday, November 02, 2017 10:01 AM
To: Culligan, Kevin <Culligan.Kevin@epa.gov>
Cc: Dalcher, Debra <dalcher.debra@epa.gov>
Subject: NRDC comments 2007 OIAI proposal

Kevin,

As requested here are the links to the comments from NRDC on EPA's 2007 OIAI proposal. I have attached NRDC main comment letter but their complete submission include more than 13 attachments.

https://www.regulations.gov/document?D=EPA-HQ-OAR-2004-0094-0151

https://www.regulations.gov/document?D=EPA-HQ-OAR-2004-0094-0060

https://www.regulations.gov/document?D=EPA-HQ-OAR-2004-0094-0068

Thanks,

Elineth Torres

OAQPS

919-541-4347

To: Ashley, Jackie[Ashley.Jackie@epa.gov]
From: Dalcher, Debra
Sent: Thur 1/25/2018 7:54:29 PM
Subject: FW: OIAI Reclassification of Major Sources as Area Sources Under Section 112 _01 25 2018.docx
OIAI.Reclassification of Major Sources as Area Sources Under Section 112 _01 25 2018.docx

Jackie,

Here is the final version that went upstairs. Close hold, but I am sure you know that ☺. D

From: Eck, Janet
Sent: Thursday, January 25, 2018 2:37 PM
To: Koerber, Mike <Koerber.Mike@epa.gov>; South, Peter <South.Peter@epa.gov>
Cc: Henigin, Mary <Henigin.Mary@epa.gov>; Lamason, Bill <Lamason.Bill@epa.gov>; Dalcher, Debra <dalcher.debra@epa.gov>; French, Chuck <French.Chuck@epa.gov>; Lassiter, Penny <Lassiter.Penny@epa.gov>
Subject: OIAI Reclassification of Major Sources as Area Sources Under Section 112 _01 25 2018.docx

Attached is the Once In Always In memo that has been approved by OAR. Please forward for their final review and signature. I will put this document into CMS as #OAR-18-000-3788 for their staff to finalize. We will forward the FR notice as soon as it is approved. Thanks.

From: Dalcher, Debra
Location: Elineth's office
Importance: Normal
Subject: Accepted: OIAI and SSM check-in
Start Date/Time: Thur 10/12/2017 5:00:00 PM
End Date/Time: Thur 10/12/2017 5:30:00 PM

To: Eck, Janet[Eck.Janet@epa.gov]
From: Dalcher, Debra
Sent: Thur 1/25/2018 7:36:48 PM
Subject: FW: FRN Notice of Memorandum Availability Draft 01 25 18 JE DD.docx
FRN Notice of Memorandum Availability Draft 01 25 18 JE DD.docx

Janet,

Here it is. No changes from Harlow. They are waiting upstairs.

Debra

From: Lamason, Bill
Sent: Thursday, January 25, 2018 2:33 PM
To: Dalcher, Debra <dalcher.debra@epa.gov>
Subject: FW: FRN Notice of Memorandum Availability Draft 01 25 18 JE DD.docx

B

From: Lamason, Bill
Sent: Thursday, January 25, 2018 1:46 PM
To: Harlow, David <harlow.david@epa.gov>
Subject: FW: FRN Notice of Memorandum Availability Draft 01 25 18 JE DD.docx

David, This is the FR notice with harmonized changes. Bill

From: Dalcher, Debra
Sent: Thursday, January 25, 2018 1:45 PM
To: Lamason, Bill <Lamason.Bill@epa.gov>
Cc: Dalcher, Debra <dalcher.debra@epa.gov>
Subject: FRN Notice of Memorandum Availability Draft 01 25 18 JE DD.docx

From: Dalcher, Debra
Location: RTP-OAQPS-D210A-SPPD-IO-only/RTP-OAQPS-BLDG-D/Restricted
Importance: Normal
Subject: Accepted: Update on Once In, Always In (OIAI), Call-in: Ex. 6 - Personal Privacy
Start Date/Time: Wed 10/11/2017 2:00:00 PM
End Date/Time: Wed 10/11/2017 2:30:00 PM

From: Dalcher, Debra
Location: Elineth's office
Importance: Normal
Subject: Accepted: OIAI check-in
Start Date/Time: Tue 10/10/2017 6:00:00 PM
End Date/Time: Tue 10/10/2017 6:30:00 PM

To: Noonan, Jenny[noonan.jenny@epa.gov]
Cc: Lamason, Bill[Lamason.Bill@epa.gov]
From: Dalcher, Debra
Sent: Wed 1/24/2018 4:14:02 PM
Subject: FW: Revised OI/AI memorandum
dshReclassification of Major Sources as Area Sources Under Section 112_DHarlow Draft.docx

Here it is Jenny. I have not reviewed it yet.

Thank you, Debra

From: Harlow, David
Sent: Wednesday, January 24, 2018 11:03 AM
To: Lamason, Bill <Lamason.Bill@epa.gov>; Jordan, Scott <Jordan.Scott@epa.gov>; Culligan, Kevin <Culligan.Kevin@epa.gov>; Dalcher, Debra <dalcher.debra@epa.gov>; Rodman, Sonja <Rodman.Sonja@epa.gov>; Lassiter, Penny <Lassiter.Penny@epa.gov>
Subject: Revised OI/AI memorandum

All,

Attached is a new draft of the memorandum, revised to reflect what was discussed on our call, the suggested language sent to me subsequent to our call, the few interlineal edits Bill Wehrum had provided to me this morning on yesterday afternoon's draft, and some of my own edits on yesterday's draft.

The "underlying" document remains yesterday's draft, which Bill Lamason had circulated. I "accepted all" of the "track change" changes that earlier draft reflected, and then edited accordingly. (I mention this only in case I didn't properly turn off "track changes" or otherwise misfired in some way in producing this new version.)

I did take the liberty of scrubbing out all of the “the’s” before “EPA.” I think I got them all.

Bill Wehrum and I appreciate all your good and fast work on this.

Sonja, I leave it to you or Scott to forward this to Justin and anyone else in OGC who should review it.

Thank you.

David S. Harlow
Senior Counsel

Immediate Office of the Assistant Administrator
Office of Air and Radiation, USEPA
WJC-N Room 5409K

1200 Pennsylvania Avenue NW
Washington, DC 20460
202-564-1233

Harlow.David@epa.gov

SeverStal
North America, Inc.

3001 Miller Road
P.O. Box 1699
Dearborn, MI 48121

March 5, 2007

ATTN: E-Docket ID No. EPA-HQ-OAR-2004-0094

U.S. Environmental Protection Agency
EPA West (Air Docket)
1200 Pennsylvania Avenue, N.W., Room 3334
Mail Code 6102T
Washington, D.C. 20460

Re: Docket ID No. EPA-HQ-OAR-2004-0094

Dear Sir or Madam:

Severstal North America, Inc. ("Severstal") is writing to provide comments on U.S. EPA's proposal to amend the "once in, always in" (OIAI) policy for applicability of Maximum Available Control Technology (MACT) standards, as proposed at 72 Federal Register 69 (January 3, 2007). Severstal is an integrated steel manufacturer located in Dearborn, Michigan. We are writing in support of the proposal because it would provide a mechanism to promote reductions in emissions of hazardous air pollutants (HAPs) to below MACT major source thresholds. The current OIAI policy serves as a disincentive to voluntary emissions reductions because such reductions do not result in a reduced regulatory compliance burden.

Severstal is currently subject to the MACT standards at 40 CFR Part 63, Subpart CCC, Steel Pickling-HCL Process, and Subpart FFFFF, Integrated Iron and Steel Manufacturing. Severstal is a major source of HAP emissions due to the potential to emit more than 10 tons per year of HCL from its steel pickling process. As far as Severstal is aware, it does not have any other HAP emissions that exceed the 10 ton threshold, on an individual basis, nor do Severstal's combined HAP emissions exceed the 25 ton threshold for combined HAP emissions.

Under current EPA policy, if Severstal were to reduce HCl emissions to below the 10 ton per year threshold, it would remain subject to both Subparts CCC and FFFFF. Both of those Subparts, including particularly Subpart FFFFF, impose significant regulatory obligations. The application of Subpart FFFFF is somewhat ironic, as none of the sources regulated by that MACT standard at Severstal have emissions in excess of the MACT major source thresholds. The opportunity to be regulated as a non-major source for HAPs, if Severstal reduces its emissions to that level, would be an incentive for Severstal to do so. Accordingly, if the proposed revision to the OIAI policy is finalized, Severstal would seriously evaluate the possibility of reducing HCl emissions to below the major source threshold.

We recognize that the concern has been raised of whether facilities would respond to a revision to the OIAI policy by increasing their emissions to just below the major source thresholds. In

Severstal's case, Severstal does not anticipate any circumstance under which it would increase the emissions if the OIAI policy is changed. The HCl emissions are controlled by scrubbers and Severstal would be obligated to maintain the scrubbers properly, in order to assure that emissions remained below the major source threshold. Additionally, Severstal has an independent obligation under state law to follow good air pollution control practices. There would be no opportunity for Severstal to increase emissions as a result of this rule change.

Accordingly, Severstal encourages EPA to promulgate, as a final rule, the proposal set forth in 72 Federal Register 69.

Please feel free to contact me at (313) 845-3217, if you have any questions regarding this subject.

Very truly yours,

D. S. Windeler, Manager
Environmental Engineering

Kathleen Hartnett White, *Chairman*
Larry R. Soward, *Commissioner*
Glenn Shankle, *Executive Director*

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

March 8, 2007

U.S. Environmental Protection Agency
EPA West (Air Docket)
Attn: E-Docket ID No. EPA-HQ-OAR-2004-0094
1200 Pennsylvania Avenue, NW., Room: 3334
Mail Code 6102T
Washington, DC 20460

Re: Request for Comments on Proposed Rule Relating to National Emission Standards for Hazardous Air Pollutants: General Provisions

Dear Sir or Madam:

The Texas Commission on Environmental Quality (TCEQ) appreciates the opportunity to comment on the U.S. Environmental Protection Agency's (EPA) request for comments on the General Provisions to the National Emission Standards for Hazardous Air Pollutants (MACT standards) and replacement of the 1995 EPA memorandum entitled "Potential to Emit for MACT Standards - Guidance on Timing Issues" as described in the referenced notice of proposed rulemaking as published in the January 3, 2006, edition of the *Federal Register*.

The TCEQ supports the proposal to allow major sources to become area sources by limiting emissions to area source emission levels at any time, regardless of the compliance date. This proposal would enhance compliance understanding by simplifying applicability determinations, and eliminate resource costs of tracking historic applicability dates and emissions for this purpose. Owners and operators may also be encouraged to reduce emissions beyond the MACT applicability thresholds. The initiative would also allow the TCEQ to plan outreach based on need and workload, instead of compliance dates of MACT standards. The January 3, 2006, proposal is an improvement to the May 2003 proposal, which allowed sites to avoid MACT requirements only for sources that completely eliminate hazardous air pollutants (HAP). Eliminating HAP emissions completely may not be realistic for all industries.

With regard to a source changing from major to area source status, the TCEQ concurs with the proposed immediate compliance deadline for any applicable area source standards (if the compliance date has passed) upon the issuance of the permitting action that establishes the HAP limit. This would ensure seamless control of HAP emissions by regulation. However, it is the TCEQ's position that the proposed exception to immediate compliance for sources that change from major to area source status be eliminated. EPA has noted that some sources may need to install controls or undergo a physical change and, therefore, the permitting authority may allow additional time for a source to comply. Because an owner or operator may establish that a source is an area source at any time, regardless of a standard's compliance date, TCEQ believes it is not appropriate for a source to avoid MACT requirements and be granted additional time to comply with area source requirements. The TCEQ believes that, if the final rule allows for the exception, the final rule should specify that the source remain subject to the major source standards until compliant with the area source standards.

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Re: Request for Comments on Proposed Rule Relating to National Emission Standards for Hazardous Air Pollutants: General Provisions

The TCEQ is also commenting on the aspect of the proposal that addresses the situation in which a major source becomes an area source, and subsequently becomes a major source, again. It is the position of the TCEQ that when the source becomes major due to emission increases from physical and operational facility changes, immediate compliance with the MACT standards be required. The TCEQ also requests that the final rule address changes in source status where no physical changes to the source itself occurs. The buying and selling of parts of facilities that changes the site status occurs often and should be clearly addressed in this action. In addition, there is no guidance for owners and operators regarding MACT applicability in cases where major source status changes because the EPA has updated or changed existing emission factors. In many cases, an owner or operator may not be aware that, due to an EPA factor change, the facility or operation is now subject to an existing MACT standard. The TCEQ requests clarification of this in the final rule.

The TCEQ opposes a case-by-case extension to the immediate compliance rule through the permitting authority. The case-by-case exception policy would require permitting authorities to review and approve requests for compliance extensions and issue Title V permit revisions. Case-by-case reviews are a resource drain on the agency, provide little benefit, and complicate compliance. Eliminating this option would ease the burden on permitting authorities, while providing certainty to regulated entities and the public on compliance deadlines. Further, the notice indicated that extensions should not exceed three years. A case-by-case extension would be a burden on the permitting authority and provide little additional flexibility.

If you have comments or questions concerning the included information, please contact Mr. Richard A. Hyde, P.E., Director, Air Permits Division, Office of Permitting, Remediation and Registration, at (512) 239-1308.

Sincerely,

Glenn Shankle, Executive Director
Texas Commission on Environmental Quality

Department of Energy
Washington, DC 20585
February 27, 2007

Mr. Peter Tsirigotis
Director, Sector Policies and Programs Division
Mail Code: D205-01
U.S. Environmental Protection Agency
Research Triangle Park, North Carolina 27711

Dear Mr. Tsirigotis:

The Department of Energy (DOE) has reviewed the Environmental Protection Agency's (EPA's) proposed rule, "National Emission Standards for Hazardous Air Pollutants: General Provisions," published in the January 3, 2007, *Federal Register* (72 FR 69). We agree with EPA's assessment that this rule will provide an incentive for major sources to reduce hazardous air pollutant (HAP) emissions by allowing a major source of HAPs to become an area source subject to less stringent requirements at any time by limiting the source's potential to emit HAPs to below the major source emission thresholds.

In its proposed rule, EPA specifically requested comments on: (1) whether sources that have reduced HAP emissions below the major source thresholds might, when they become area sources, tend to increase their current emissions to a level just below the major source thresholds; and (2) sources that may avail themselves of the proposed approach and the additional emission reductions that may be achieved or increases that may occur.

As a DOE example with regard to the first area, the Kansas City Plant (KCP) of the Department's National Nuclear Security Administration would likely limit its potential to emit (PTE) under this rule and become an area source, but the plant would not increase emissions to just below the major source thresholds. The KCP operates under an Environmental Management System (EMS), under which staff identifies and pursues emission reduction opportunities, in order to reduce environmental liability and cost. Increasing emissions would run counter to EMS philosophy and goals. In addition, we note that the possibility that a few excursions of the major source thresholds could result in an area source being re-designated to a major source would be an incentive for DOE sites to maintain a reasonable buffer between the PTE limits and the major source thresholds.

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DOE appreciates the opportunity to comment on the proposed rule. If you have any questions concerning these comments, please contact Theodore Koss (<theodore.koss@eh.doe.gov>; 202-586-7964) of my staff, or Jim Tucholski of DOE's Kansas City Plant (<jtucholski@kcp.com>; 816-997-3245).

Sincerely,

Andrew C. Lawrence
Director
Office of Nuclear Safety
and Environment
Office of Health, Safety and Security

cc: Rick Colyer, EPA
Jim Tucholski, Kansas City Plant

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Allen Stegman
Director of Safety and Environmental Affairs

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February 26, 2007

U.S. Environmental Protection Agency
EPA West (Air Docket)
Room 3334, Mail code: 6102T
Attention E-Docket ID No. EPA-HQ-OAR-2004-0094
1200 Pennsylvania Ave., NW
Washington, DC 20460

RE: National Emission Standards for Hazardous Air Pollutants for Source Categories: General Provisions; Proposed Rule

To Whom It May Concern:

The Valspar Corporation (Valspar) is submitting comments on the National Emission Standards for Hazardous Air Pollutants for Source Categories (NESHAP): General Provisions (hereinafter referred to as the "Proposed Rule").[1] Valspar appreciates the opportunity to comment on this important rule and supports EPA's proposal that would replace the policy described in the May 16, 1995 EPA memorandum entitled, "Potential to Emit for MACT Standards – Guidance on Timing Issues," from John Seitz, Director, Office of Air Quality Planning and Standards (OAQPS), to Regional Air Division Directors. The proposed amendments provide that a major source may become an area source at any time by limiting its potential to emit hazardous air pollutants (HAP) to below the major source thresholds of 10 tons per year (tpy) of any single HAP or 25 tpy of any combination of HAP. Thus, under the proposed amendments, a major source can become an area source at any time, including after the first

[1] 72 Federal Register 69 (January 3, 2007).

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substantive compliance date of an applicable MACT standard so long as it limits its potential to emit to below the major source thresholds.

As an individual company and as a member of the National Paint and Coatings Association, Valspar supports NPCA's comments and believes that Pollution Prevention (P2) should be an essential part of any rulemaking. In this case it is especially important given the strides our industry has and will continue to make in reducing emissions. If finalized as written, coating manufacturing facilities will be encouraged to developed even lower HAP content "compliant coatings" in order to assist their surface coating application customers with the current and future Surface Coating MACTs, as well as state and local regulations.

In addition, this proposed rule offers major source coating and resin manufacturing operations that have installed expensive add-on controls in order to comply with the Miscellaneous Coatings Manufacturing MACT (MCM), as well as the Miscellaneous Organic Chemical Manufacturing MACT (MOCM) incentives to implement pollution prevention measures to lower HAP emissions to below major source status. By doing so these operations can effectively reduce the expensive annual operation and maintenance costs, reduce electricity and natural gas consumption, and reduce carbon dioxide, carbon monoxide, nitrogen oxides and sulfur dioxide emissions.

Further, given the importance of P2 and EPA's mandate to promote its use, Valspar recommends that EPA extend the Proposed Rule's P2 compliance options to other Title V emissions, specifically the National Ambient Air Quality Standards (NAAQS). While a myriad of industry sectors would benefit from P2 provisions under the NAAQS, the opportunity is again, particularly apparent for the coatings manufacturing industry. As stated, our industry has made tremendous strides in reducing both Volatile Organic Compounds (VOC) and HAP content in coatings over the last decade. Many of the facilities achieving these reductions are Title V facilities under the NAAQS. EPA should allow, by extending this rulemaking or proposing an additional rulemaking, for industries to meet their NAAQS requirements via pollution prevention as well. This will further fulfill EPA's mandate to promote P2, while providing added incentives for facilities to reduce not just HAPs, but other pollution emission sources under the Clean Air Act. In addition, extending the

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proposed rule to other Title V emissions (VOC) – EPA would provide the industry further incentives to drive the VOC content of paints and coatings lower to assist our customers in lowering their emissions.

Conclusion

Valspar greatly appreciates the opportunity to comment on this proposal. We firmly believe that the Proposed Rule is a practical approach that is a win/win for industry and the environment. This proposal if finalized as written would encourage our industry to both reduce HAP and VOC contents in our products and it would encourage our manufacturing operations to minimize HAP emissions as well as reduce energy consumption and green house gas emissions.

Sincerely,

Allen Stegman
Director of Safety and Environmental Affairs

OAR-2004-0094

Flexible Packaging Association

March 5, 2007

Attention: Docket ID No. EPA-HQ-OAR-2004-0094
U.S. Environmental Protection Agency
EPA West (Air Docket)
1200 Pennsylvania Avenue, N.W.
Room: 3334, Mail Code: **6102T**
Washington, D.C. 20460
a-and-r-docket@epa.gov

Mr. Rick Colyer
U.S. Environmental Protection Agency
Office of Air Quality Planning, and Standards
Research Triangle Park, NC 27711

Re: Proposed Amendments to the General Provisions to the National Emissions Standards for Hazardous Air Pollutants (NESHAPs); Proposed Rule, 72 Fed. Reg. 69 (January 3, 2007)

Dear Mr. Colyer:

The Flexible Packaging Association (FPA) appreciates the opportunity to comment on the Environmental Protection Agency's (EPA) proposed amendments to the General Provisions to the National Emission Standards for Hazardous Air Pollutants (NESHAP General Provisions). Established in 1950, FPA is the national trade association, which represents businesses in the paper, foil, plastic and film converting industry. FPA members use multiple printing and coating materials and processes to meet ever-changing technical product demands and regulatory requirements for the packaging of foods, pharmaceuticals, household goods, garden supplies, cosmetics and other industrial, institutional and agricultural applications. Flexible packaging is an over $21 billion industry in the United States and is the second largest segment of the U.S. packaging market.

source reduction
less waste in the first place.
971 Corporate Boulevard • Suite 403 • Linthicum, Maryland 21090
phone: 410.694.0800 • fax: 410.694.0900 • e-mail: fpa@flexpack.org • web: www.flexpack.org

MAR 05 2007

This rulemaking is significant to our members who are potentially subject to several MACT standards, including the Printing and Publishing MACT, 40 CFR Part 63, Subpart KK, and the Paper and Other Web Coating MACT, 40 CFR Part 63, Subpart JJJJ, and may be able to make changes to their processes and materials to lower hazardous air pollutants (HAPs) below major source thresholds. The Agency's May 16, 1995, guidance entitled, "Potential to Emit for MACT Standards – Guidance on Timing Issues," was bad public policy and as a practical matter impaired our members' ability to make some environmentally consequential changes.

I. FPA Supports EPA's Proposed Amendments.

EPA proposes to amend the NESHAP General Provisions so that an emissions source that is regulated as a major source can become an area source at any time by limiting its potential to emit (PTE) hazardous air pollutants (HAPs) to below the major source thresholds of 10 tons per year (TPY) for any single HAP or 25 TPY for any combination of HAPs. This proposed amendment would replace the current "once in, always in" (OIAI) policy of May 16, 1995, which does not allow a source to switch from a major source to an area source after the first substantive compliance date, regardless of reductions in emissions. FPA supports EPA's proposed amendments to the NESHAP General Provisions, but we have set forth several comments below that we believe would improve its clarity and workability.

II. FPA Has The Following Comments To Help Clarify The Rule.

A. *EPA Should Clarify That the OIAI Policy Did Not Apply in Cases Where EPA Removed a Chemical From The Section 112(a) List Of Hazardous Air Pollutants ("HAPs").*

FPA would like the Agency to clear up some confusion regarding the application of the OIAI policy to HAPs that have been delisted. It is our understanding from EPA officials at Headquarters that when EPA goes through a rulemaking and thereby "delists" a compound once considered a HAP, the OIAI policy would not apply to a source that

had met the criteria for "major" source designation because of the inclusion of the emissions of the delisted compound; the delisting would apply as if the source had never been a "major source." There is great confusion in various EPA regional and some State air offices about the application of the policy in this situation and FPA would appreciate if the Agency will clarify its national position because it does affect several members who use MEK as a solvent at their facilities.

B. *PTE Limits Should Not Be Required for "Natural" Area Sources*

FPA's members are concerned that EPA's rule will apply to certain sources that become area sources and subject them unfairly to PTE requirements when in fact they become natural "area" sources, and no longer have even the potential to emit 10 or 25 tons per year of HAPs. While FPA agrees that some sources should be subject to permit requirements, including possible recordkeeping and monitoring, to ensure that they maintain emissions below "major source" applicability thresholds, this is wholly unnecessary for a plant that permanently removes a coating/printing line or discontinued an operation. FPA asks EPA to clarify for both the regulators and the regulated industry that it is not necessary for all sources to obtain a PTE limit in a practically enforceable instrument in order to become an area source. [1] Sources that do require practically enforceable limits to require them to operate pollution controls or to limit certain inputs should not have to obtain new substantive Title V amendments, other than removing the prior applicable MACT limits.

C. *EPA Proposed Amendments Will Not Result in Emissions Increases.*

FPA agrees that in the absence of EPA's OIAI policy, it is unlikely that facilities would backslide from MACT levels of control to just below the major source MACT thresholds for several reasons. EPA is correct in assuming that most sources that can take advantage of the rule will do so by continuing to either operate stringent control equipment or through pollution prevention, or both, which will result in stable emissions

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[1] See particularly the inference created by footnote 6 on page 74 of the January 3rd notice, which seems to suggest that a source always should obtain a PTE limit for its HAP emissions "to ensure that those emissions remain below major source thresholds."

below the applicability thresholds. In other words, the entities will continue to operate controls at whatever capture and destruction efficiency that the control was designed for in the first place. For instance, there is not a great deal of operational variability with an oxidizer in the removal efficiency of the equipment as long as the key performance criteria are maintained.

D. *EPA Should be Explicit That Sources Can Take New PTE Limits and Remove Existing MACT Standards Using Minor Permit Revision Procedures.*

EPA's goal of lowering emissions will not be realized unless the Agency provides a streamlined mechanism for getting MACT limits out of existing permits and substituting new PTE limits. (As we noted above, where new PTE limits are not necessary, the Agency needs to provide an equally effective mechanism for removing obsolete MACT requirements.) If sources have to go through extensive permitting procedures only to be subject to state permit appeals with no "end" and or permit objections regarding excessive monitoring requirements, few sources will seek to take advantage of the rule.

E. *EPA Should Repeat In The Final Notice That The General Provisions Are Applicable If A Particular MACT Does Not Address The Situation.*

The Agency clearly has tried to examine all of the individual MACT rules to conform them to this rulemaking. That is a Herculean task, however, and to be sure that these rules are applied evenly, except when the Agency has determined explicitly they should not be applied, FPA suggests that the Agency repeat in the rules themselves, or in its Preamble, the maxim that excepted as prohibited by a specific MACT, these rules should be applied.

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In conclusion, FPA appreciates the opportunity to comment on EPA's proposed amendments to the General Provisions to the National Emission Standards for Hazardous

Air Pollutants (General Provisions). If you have questions, please contact me at 410-694-0823.

Sincerely,

Ram Singhal

Director, Regulatory & Government Relations

1730 M Street NW
Suite 206
Washington, DC 20036-5603
Telephone 202.457.0911
Fax 202.331.1388

David C. Foerter, *Executive Director*
Email: dfoerter@icac.com

Chad S. Whiteman, *Deputy Director*
Email: cwhiteman@icac.com

INSTITUTE OF CLEAN AIR COMPANIES

May 4, 2007

Honorable Stephen L. Johnson, Administrator
U.S. Environmental Protection Agency (West – Air Docket)
Room 3334, Mail Code: 6102T
1200 Pennsylvania Ave., NW
Washington, DC 20460

Attention Docket ID No. EPA–HQ–OAR–2004–0094

Dear Administrator Johnson:

The Institute of Clean Air Companies (ICAC) is the national trade association of companies that supply air pollution control and monitoring technology for stationary sources. Our members include more than ninety leading suppliers of air pollution control and monitoring technologies for affected industries in the U.S. and abroad. These companies operate and provide environmental solutions for affected industries as well as employment opportunities across the U.S.

ICAC would like to make the following points concerning the proposed National Emission Standards for Hazardous Air Pollutants: General Provisions rule published in the Federal Register on January 3, 2007. ICAC's comments discuss some of the potential implications of the rule on the air pollution control industry as well as some general comments concerning environmental protection. ICAC's main points are the following:

- **Emissions Control Equipment Performance Is Adjustable and Requires Maintenance in order to Sustain Performance**
- **Vast Majority of Sources for Certain Industrial Source Categories Will Be Able to Increase Their Emissions**
- **Control Technology Innovation and Research and Development Efforts will be Detrimentally Affected**
- **General Provisions Will Progressively Weaken the MACT Standards and Markets for Emissions Control Equipment**

The MACT standards that have been promulgated to-date require sources for a particular source category to meet the level of emissions currently being achieved by the best-performing similar sources through clean processes, emissions control equipment, work practices, or other methods. These emission levels often

require the installation of emissions control equipment such as thermal oxidizers, catalytic oxidizers, electrostatic precipitators, fabric filters, mechanical collectors, and wet scrubbers. The performance of each of these technologies and others can be adjusted to capture or destroy fewer or more emissions. Emissions increases will occur over time if the frequency of maintenance of control equipment is reduced due to lack of accountability established through emissions monitoring and reporting requirements. Due to the harsh environments in which control equipment operates, routine maintenance is needed to prevent leaks, repair broken parts, and generally ensure the proper operation of the control equipment.

The performance and capabilities of emissions control equipment has improved over time as advanced research and market demand have provided incentives for manufacturers to continually improve upon their technologies. The design and operation of emissions control equipment is based on many variables that directly affect the performance and working life of the technology. Advanced computer systems allow end users to program the installed equipment to achieve the necessary emissions reductions at least cost. By changing control equipment operating parameters, end users are able to change the emissions destruction removal efficiency (DRE) and operation of the control system.

For major sources that are able to reduce their emissions below the major source threshold and qualify as area sources, they will no longer be required to follow the same level of record keeping and reporting requirements as those mandated under the more stringent MACT rules. When sources are required to record their emissions and report them to regulatory agencies, they are held accountable for meeting the emissions standards. For the sources that are able to change from being affected as a major source under the MACT rules to an area source under the GACT rules, they will have no regulatory driver to maintain their emissions control equipment as the GACT rules have minimal requirements in comparison to the MACT rules. In many cases, GACT rules for certain industrial source categories have not been promulgated, which creates situations where sources may go from meeting stringent emissions limits to no control requirements at all. For sources that have installed emissions control equipment, they will no longer have incentives to maintain their emissions control equipment, as they will not be required to meet the more stringent MACT standards.

The proposed rule will be detrimental to the development of innovative emissions control technologies and penalizes emissions control manufactures who have invested significantly in research and development of technologies that would offer better emissions removal efficiencies at lower costs. The proposed rule does not encourage additional emissions reductions but encourages sources to reduce the effectiveness of their installed emissions controls systems up to the major source thresholds of 10 tons/year for any given pollutant and 25 tons/year for any combination of pollutants. Meanwhile, the air pollution control industry has been creating new processes and improving existing equipment to achieve more emissions reductions at lower costs.

I. Emissions Control Equipment Performance Is Adjustable and Requires Maintenance in order to Sustain Performance

ICAC would like to provide comment on the following section of the proposed rule that states emissions control equipment performance cannot be changed so that sources that have emissions below the major source threshold will not increase their emissions to just below the major source threshold. The following

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statement in the rule is not accurate and will be discussed in the following paragraphs:

"*Such control systems are designed to operate a certain way and cannot be operated at a level which achieves only a partial emission reduction, i.e., the devices either operate effectively or they do not. Thus, we expect that sources that have attained area source status by virtue of a particular control technology will maintain their current level of emissions.*"

There are a number of the commonly installed emissions control technologies on major sources affected by MACT rules including thermal and catalytic oxidizers, electrostatic precipitators, fabric filters, wet scrubbers, and mechanical collectors. A few examples of some of the ways to adjust their emissions control/destruction performance will be discussed. The following discussion was not meant to be an exhaustive list of the potential adjustments possible to the mechanical, chemical, or electrical systems that make up emissions control equipment, as there are many design variables that are considered when designing emissions control equipment that are not mentioned below.

A. Thermal and Catalytic Oxidizers

Thermal oxidation is the process of oxidizing combustible materials such as volatile organic compounds (VOCs) by raising the temperature of the material above its auto-ignition point in the presence of oxygen, and maintaining it at high temperature for sufficient time to complete combustion that produces carbon dioxide and water. Thermal oxidizers have been installed on emissions sources with gas flow rates from 500 – 200,000 scfm in size and on industrial processes such as: paint spray, finishing, chemical, printing, web converting, coil coating, composites, bakery, plastics, coating and microelectronics.

There are three basic types of thermal oxidation systems including direct flame, recuperative, and regenerative. Direct flame systems or flares rely on contact of the waste stream with a flame to achieve oxidation of the VOCs. These systems are the simplest thermal oxidizers and the least expensive to install, but require the greatest amount of auxiliary fuel to operate, thus entailing the highest operating cost. Recuperative thermal oxidation systems use a tube or plate heat exchanger to preheat the effluent stream prior to oxidation in the combustion chamber. Recuperative systems are more expensive to install than direct flame systems, but have lower operating costs due to the addition of the heat exchanger. Regenerative thermal oxidation systems typically incorporate multiple ceramic heat exchanger beds to produce higher levels of heat recovery. Regenerative thermal oxidation systems are the most expensive thermal oxidizers to build, but savings in auxiliary fuel offsets the added capital expense.

As with any incineration process, the critical elements of successful thermal treatment are time, temperature and turbulence. This means the waste gas must be kept at incineration temperature for an adequate amount of time, generally 0.75 to 1 second. To destroy 98 to 99 percent of non-chlorinated VOCs, a thermal process will heat VOCs to about 1,500 °F. As the treatment time, temperature, and turbulence (mixing) can all be adjusted in thermal oxidation control equipment, the rate of emissions destruction can also be adjusted.

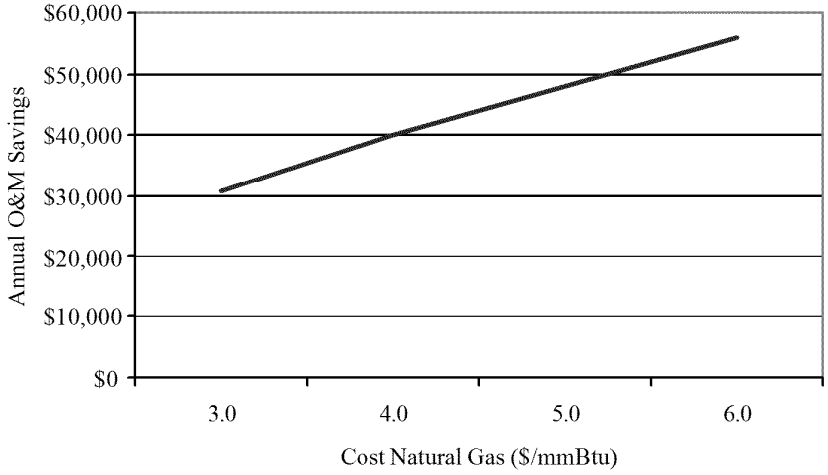
For direct flame systems, which compose the majority of installed thermal oxidation systems on industrial sources, the operating costs are the greatest due to the high level of auxiliary fuel used in the incineration

process. For these systems, there is a great economic incentive to reduce the amount of auxiliary fuel consumed due to the relatively high price of natural gas used as an auxiliary fuel. By reducing the temperature of the thermal oxidizer, the emissions destruction efficiency is reduced as a direct correlation. Permitting sources to increase their emissions permits incentives for end users to derate their thermal and catalytic oxidation systems so that they consume less natural gas, reducing their O&M costs. With natural gas prices expected to increase over time, the desire to use less natural gas in emissions control systems will continue to increase.

Figure 1 below provides an example of the annual O&M cost reduction that an end user would receive by lowering the incineration temperature of a thermal oxidizer by 100 °F. By reducing the operating temperature of the thermal oxidizer, the end user could save from $45,000 to $55,000 per year in operation costs due to the reduction in the consumption of natural gas. The cost curve used to estimate the cost savings by reducing the oxidizer's temperature by 100 °F is given in Figure 1 using the following design parameters:

Flowrate into RTO = 75,000 SCFM
Thermal Oxidizer Configuration = 6 CHAMBERS
VOC Inlet Concentration = 25 lb/hr
VOC Heating Value = 15,000 Btu/lb
Annual Operating Hours = 8,000 hrs/yr
Initial RTO Operating Temperature = 1450 F
Reduced RTO Operating Temperature = 1350 F

Figure 1. Annual Reduction in O&M Costs by Reducing Oxidizer Temperature by 100 °F



Catalytic oxidation systems operate under similar principals as thermal oxidation systems but use a catalyst to accelerate the combustion process and reduce auxiliary fuel requirements as the combustion occurs at lower temperatures across the catalyst. The catalyst will typically be contained in a bed or reactor that is filled with multiple layers of catalyst substrates. The catalyst substrate for a particular application is

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typically of the same shape, size, and chemical composition.

There are a number of operational and maintenance changes to emissions control equipment that end users may implement in order to reduce operation and maintenance costs as they increase their emissions up to the major source threshold. For catalytic control systems, the performance or 'activity' of the catalyst will decrease with time necessitating the replacement or reactivation of the catalyst. By simply not replacing the catalyst, the emissions control technology performance will gradually decrease over time. Emissions control manufacturers have developed catalyst activity curves through testing and field sampling as a means of developing these curves and predicting catalyst life. In addition, the end user may remove several layers of catalyst from the catalytic oxidation system that would have the effect of reducing the removal efficiency of the emissions control system.

Figure 2 below provides an estimate of the cost reduction from incremental decreases in the temperature of a catalytic oxidation system that is operated from 650 – 900 °F.

Figure 2. O&M Savings from Temperature Reduction of a Catalytic Oxidation System

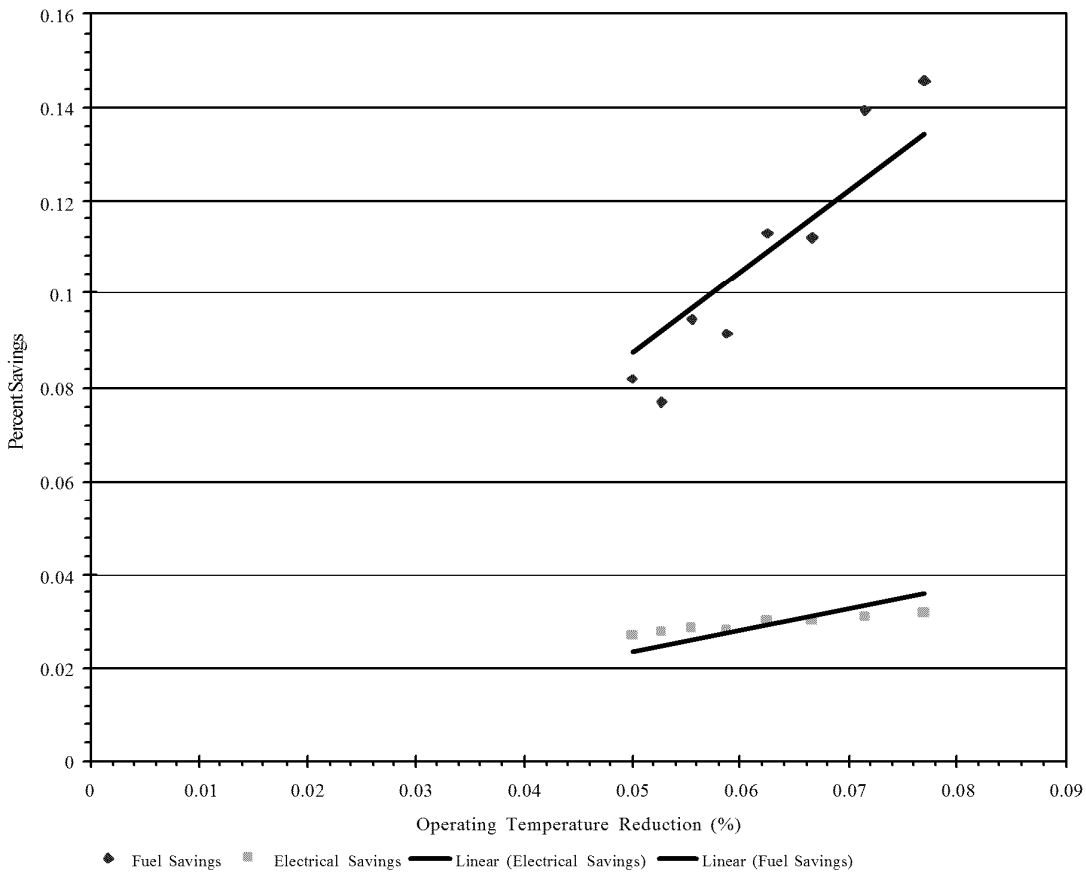

Table 1 below provides an example of how an end user could reduce the performance of their emissions control system from a MACT standard requiring 95 percent emissions control to much lower emissions

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control levels and meet the Area Source requirements without triggering the major source thresholds. Typical inlet VOC loading going into a catalytic oxidizer was assumed to be 35 lb/hr and 60 lb/hr and the source operating either 5,000 or 8,000 hours per year. Depending on the inlet hazardous air pollutant concentration and number of hours the source operated each year, the source could more than triple their emissions based on the provisions of the new rule. This would have the effect of lowering the control requirement for these sources from 95 percent to between 83 to 93 percent depending on the operating conditions for the sources.

Table 1. Comparison of Source Emissions Under MACT Versus Area Source Requirements

	Single Pollutant		**Multiple Pollutants**	
	Source 1	Source 2	Source 3	Source 4
Operating Hours (per year)	5000	8760	5000	8760
Flow (scfm)	120,000	120,000	120,000	120,000
Inlet VOC's (lb/hr)	35	35	60	60
Inlet VOC's (tpy)	88	153	150	263
MACT Rule Requirements				
Stack VOC's (lb/hr)	1.8	1.8	3.0	3.0
Stack VOC's (tpy)	4	8	8	13
VOC's Reduced (tpy)	83	146	143	250
Required Emission Reduction (%)	95	95	95	95
Area Source Rule Requirements				
Stack VOC's (lb/hr)	4.0	2.3	10.0	5.7
Stack VOC's (tpy)	10	10	25	25
VOC's Reduced (tpy)	78	143	125	238
Required Emission Reduction (%)	89	93	83	90
VOC Emissions Increase (tpy)	**5.6**	**2.3**	**17.5**	**11.9**

One of the potential drawbacks of exempting MACT sources from compliance assurance monitoring, and ongoing maintenance of their control equipment, is a potential lack of servicing of installed catalyst in a catalytic oxidizer. For certain applications, the catalyst needs to be tested annually to determine if foreign elements have deactivated the catalyst. Certain elements can 'poison' the catalyst by coating the catalyst so that further chemical reactions are blocked and the catalyst activity is reduced. In these instances, the catalyst can be sent back to the catalyst vendor for catalyst cleaning, which restores the catalyst to near 100 percent of its original activity. Figure 3 illustrates an example of a bakery in EPA Region 1, where after two years of operation, the catalyst had been deactivated to the point where it was only operating at 70 percent activity. By cleaning the catalyst, the activity was nearly fully restored to its original condition.

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Figure 3. Catalyst Cleaning Maintains Emissions Destruction Percentage on Catalytic Oxidizer

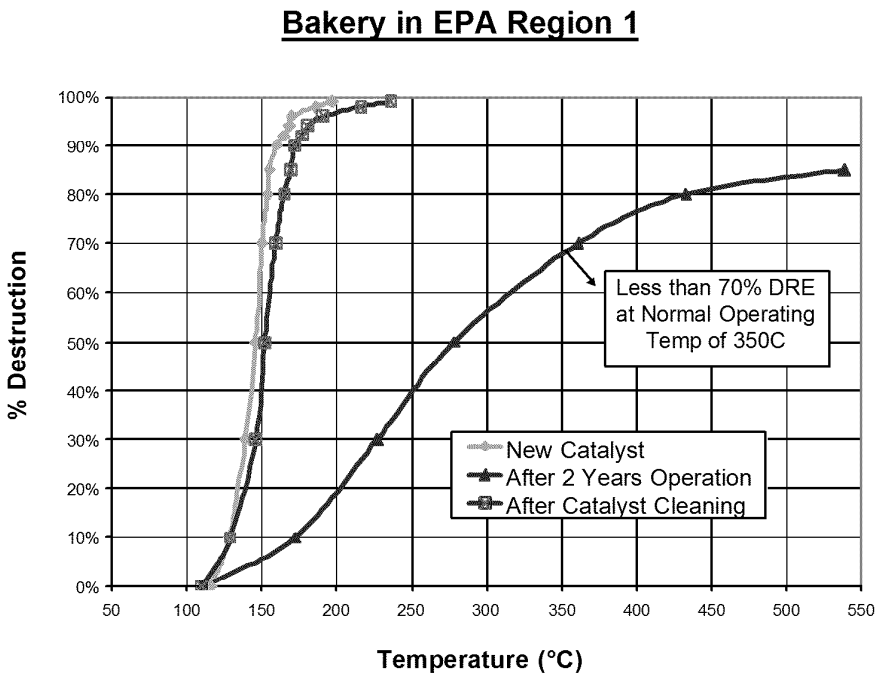

Table 2 quantifies the effect on annual emissions in running a catalytic oxidizer with dirty catalyst after 2 years, versus getting the catalyst cleaned and restoring its activity. When operating a catalytic oxidizer at 98 percent control with inlet VOC emissions at 75 lbs/hr, the total annual emissions are only six tons per year of VOCs. In this instance, catalyst activity had been reduced such that only 70 percent of the inlet VOCs emissions were destroyed. As you can see by the table, if the bakery were allowed to not maintain their oxidizer and catalyst on an annual basis, the effect on emissions would take the total annual emission rate from under ten tons per year, to nearly 100 tons per year.

Table 2. Emissions Monitoring and Reporting Maintain Emissions Control Equipment Efficiency

Emission Rate	Condition
75 lbs/hr of Total VOC	Typical bakery (ethanol and aldehydes)
300 Tons Per year	Uncontrolled @ 8,000 hrs/year
6 Tons per year	Running a Catalytic Oxidizer at 98% DRE
90 Tons per year	Running a Catalytic Oxidizer at 70% DRE

B. Electrostatic Precipitators

An electrostatic precipitator (ESP) is often installed on sources as a means of controlling particulate emissions as a surrogate method of removing heavy metals to meet MACT standards. In an ESP, an

intense electric field is maintained between high-voltage discharge electrodes, typically wires or rigid frames, and grounded collecting electrodes, typically plates. The electric field drives the negatively charged particles to the collecting electrodes. Periodically, the collecting electrodes are rapped mechanically to dislodge collected particulate, which falls into hoppers for removal.

The collecting plates in an ESP are arranged parallel to the gas flow with discharge electrodes between them. Most precipitators are split into several independent electrical sections, i.e., sets of discharge and collecting electrodes with independent power supplies, in series. Each independent section removes a fraction of the particulate in the gas stream and can be adjusted to increase or decrease it's fraction of particle collection, providing the source with the flexibility to increase or reduce their emissions.

C. Fabric Filters

Fabric filter collectors, commonly called baghouses, pass flue gas through a tightly woven fabric in which particulates in the flue-gas are collected by sieving and other mechanisms. The dust will form a cake on the surface of the fabric and can contribute significantly to collection efficiency. Two major baghouse types include reverse-air and pulse jet fabric filters. In a reverse-air baghouse, the flue gas flows upward through the insides of vertical bags that open downward. The fly ash thus collects on the insides of the bags, and the gas flow keeps the bags inflated. To clean the bags, a compartment of the baghouse is taken off-line, and the gas flow in this compartment reversed. This causes the bags to collapse, and collected dust to fall from the bags into hoppers. In a pulse-jet fabric filter, dirty air flows from the outside of the bags inward, and the bags are mounted on cages to keep them from collapsing. For pulse-jet fabric filters, the dust that is collected on the outside of the bags is removed by a reverse pulse of high-pressure air.

Determinants of baghouse performance include the fabric chosen, the cleaning frequency and methods, and the particulate characteristics. Fabrics can be chosen which will intercept a greater or lesser fraction of particulate, and some fabrics are coated with a membrane with very fine openings for enhanced removal of submicron particulate. Such fabrics tend to be more expensive. Cleaning intensity and frequency are important variables in determining removal efficiency. Because the dust cake can provide a significant fraction of the fine particulate removal capability of a fabric, cleaning which is too frequent or too intense will lower the removal efficiency. On the other hand, if removal is too infrequent or too ineffective, then the baghouse pressure drop will become too high and require more power to operate fans to maintain proper flue gas flowrates through the baghouse.

D. Wet Scrubbers

Wet scrubber technology is based on the collection of particles in liquid droplets so the objective of the technology is to optimize droplet creation and contact with particulates. In venturi scrubbers, which are commonly used for particulate collection, the scrubbing liquid and flue gases accelerate through a converging section of duct into a narrow throat, and then pass through the throat into a diverging section. In the throat, very high gas velocity shears the scrubbing liquid into a cloud of very fine droplets, which collect particles. Higher gas velocities increase pressure drop across the venture, which leads to better droplet formation and particle collection.

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In addition, the amount of scrubbing liquid injected into the process may be altered to change the removal efficiency of the wet scrubber. Allowing an increase in emissions will permit the operator to make changes in the pump settings to inject less scrubber liquid. Injecting less scrubbing liquid creates fewer opportunities for particle to liquid contact, decreasing the overall removal efficiency of the wet scrubber.

E. Mechanical Collectors

Particulate controls can also come in the form of mechanical collectors that use a variety of mechanical forces to collect particulate. Mechanical collectors such as cyclones use centrifugal force to separate particulates from gas streams. A multiple cyclone is an array of a large number of small (several inch diameter) cyclones in parallel. Addition of a second multiple cyclone in series with the first will allow for increased removal efficiency. Note that the centrifugal force in, and hence efficiency of, a cyclone increases with the gas flow rate through the cyclone. Thus, multiple cyclones on boilers are most effective at high boilers loads, where flue gas flow rates are highest, with collection efficiency decreasing at lower loads.

The flow rate of gases passing through cyclone can be adjusted to decrease the centrifugal force and therefore the removal efficiency of the system. Cyclone flow rate is controlled by fans, which force exhaust gases through the system creating the centrifugal forces that make the technology work. For systems with multiple cyclones in a series, the downstream cyclone may be bypassed or derated to permit more stack emissions.

II. Vast Majority of Sources for Certain Industrial Source Categories Will Be Able to Increase Their Emissions

A thorough environmental and health impact analysis should be conducted to determine the potential affects of the proposed rule for each MACT rule that has the potential to take advantage of the general provisions The rule impacts all major source NESHAP rules which total close to 100 rulemakings affecting a broad range of industrial source categories. For each of the MACT rules, EPA provided detailed technical and cost analysis supporting the development of the emissions control levels and environmental benefits associated with the emission reductions. As the rule affects every major source MACT rule, EPA has the obligation to provide technical explanations of the presumption that there will be no emissions increases or weakening of the standards due to the proposed rule.

There are thousands of sources affected by the various MACT rules for a broad range of industry categories that could take advantage of the provisions in the proposed general MACT that could significantly increase the emissions. EPA identified close to 60,000 affected sources under the Industrial Boiler & Process Heater MACT and has identified the universe of affected sources for other MACT rules as well. State air regulators and EPA regional offices monitor Title V permits for major sources and have the ability to provide information concerning emissions profiles from sources affected by the MACT rules and the potential implications of any rule changes.

For the printing industry for example, the MACT rule was finalized on May 30, 1996 with compliance starting on May 30, 1999. The rule affects various types of printing processes establishing emission limitations for certain source categories that could be achieved by overall control of at least 92 percent of

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organic HAP used, by substitution of non-HAP materials for organic HAP, or by a combination of capture and control technologies and substitution of materials. The MACT rule from 1996 provided significant emission reductions from this source category although the recently proposed general MACT provision has the potential to significantly increase the emissions from this source category. Looking at the highest HAP emitters from the printing industry listed in Appendix A, it will be feasible for these sources to increase their HAP emissions by more than 1,600 tons/yr (3.3 million pounds of HAP), which is more than a 50 percent increase in emissions from less than 100 facilities. As the Toxic Release Inventory (TRI) data used for this analysis is reported by facility, it is possible that there is more than one major source at each facility that was required to reduce their emissions in accordance with the 1996 MACT limits. Under the proposed general provisions, each major source would be able to increase their emissions up to the major source threshold of 10 ton/yr of any single HAP or 25 ton/yr of any combination of HAP.

ICAC did not perform any additional analysis for other industry source categories, however, the information is readily available to determine whether sources may be likely to increase their emissions. It appears that large numbers of sources for entire source categories may be able to increase their emissions based on the report TRI data.

III. Control Technology Innovation and Research and Development Efforts will be Detrimentally Affected

As mentioned previously, emissions control manufacturers have invested significant resources into the development of innovative technologies that provide better emissions reduction performance at lower costs. Many of these improvements have been driven by regulatory standards that require sources to operate their emissions control technologies to achieve emission reductions from 90-95 percent. The proposed rule would work to reverse this trend as sources would not be required to further reduce their emissions but would be permitted to increase their emissions.

On October 17, 1994, the Administrator established the Common Sense Initiative (CSI) Council in accordance with the Federal Advisory Committee Act (U.S.C. App. 2, section 9(c)) requirements that outline six principles for the development of emissions standards for industrial sectors. One of the six principles of the CSI program, as stated in the "Advisory Committee Charter" was to give industry the incentives and flexibility to develop innovative technologies that meet and exceed environmental standards while cutting costs. Unfortunately, the proposed general MACT provision discourages emissions control manufacturers from developing new technologies that are more cost effective operate, provide greater operational flexibility to end users, and greater emissions reduction capabilities.

IV. General Provisions Will Progressively Weaken the MACT Standards and Markets for Emissions Control Equipment

The proposed general provisions will also exempt the vast majority of sources from being classified as major sources, which in turn will reduce the universe of sources used to establish the MACT standards floor. As the MACT standards for a particular source category are established based on the level of emissions currently being achieved by the best-performing similar sources, the MACT standards will

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become less stringent over time. Typically the MACT floor must equal the average emissions limitations currently achieved by the best-performing 12 percent of affected sources in that source category. The best-performing sources are typically the sources that have installed emissions control technologies and have the lowest emissions. As affected MACT sources take advantage of the voluntary general provisions and become classified as area sources, they will no longer be considered when conducting further MACT analysis. The remaining sources that would compose the best-performing 12 percent of affected sources will have higher average emission rates thus increasing overall emissions from the source category.

In conclusion, the proposed general MACT provisions discourage the air pollution control industry from improving the reliability and performance of their technologies due to the incentives the rule provides for end users to increase their emissions. It is highly probably that affected sources would take advantage of the rule provisions, as there are considerable economic benefits to derating emission control equipment. Although there may be some direct O&M savings that end users may experience from the proposed rule, the potential HAP emissions increases would directly impact human health and the environment. EPA should perform a thorough analysis of the health and environmental impacts of the rule on each MACT source category, as the agency is responsible for the protection of human health and the environment.

Thank you for the opportunity to provide comments on the NESHAP: General Provisions proposal. Please contact me if you would like to discuss the ICAC comments further.

Sincerely Yours,

David C. Foerter
ICAC, Executive Director

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Appendix A. Potential HAP Emissions Increases from Printing Industry's Top Emitting Facilities[i]

Facility	City	State	2005 HAP Emissions (tons/yr)	Potential Incremental Increase in Emissions up to 10 tpy (tons/yr)	Potential Incremental Increase in Emissions up to 25 tpy (tons/yr)
QUEBECOR WORLD FRANKLIN	FRANKLIN	KY	397.2		
QUEBECOR WORLD RICHMOND INC.	RICHMOND	VA	379.1		
QUEBECOR WORLD ATGLEN INC.	ATGLEN	PA	345.4		
R R DONNELLEY PRINTING CO	LYNCHBURG	VA	285.5		
RR DONNELLEY & SONS	SPARTANBURG	SC	268.0		
R.R. DONNELLEY & SONS CO.	WARSAW	IN	234.3		
RR DONNELLEY LANCATER EAST	LANCASTER	PA	179.3		
QUAD/GRAPHICS INC	MARTINSBURG	WV	163.5		
R.R. DONNELLEY & SONS CO	MATTOON	IL	116.3		
QUAD/GRAPHICS INC	LOMIRA	WI	101.5		
QUEBECOR WORLD MT. MORRIS	MOUNT MORRIS	IL	89.6		
QUEBECOR WORLD KRI INC	CORINTH	MS	78.7		
QUEBECOR WORLD DALLAS INC.	DALLAS	TX	68.5		
QUEBECOR WORLD KRI INC	EVANS	GA	65.0		
R.R. DONNELLEY & SONS CO	GALLATIN	TN	47.8		
QUEBECOR WORLD NEVADA INC	FERNLEY	NV	34.4		
AMERICAN PACKAGING CORP	COLUMBUS	WI	25.5		
CFC INTERNATIONAL	CHICAGO HEIGHTS	IL	22.3		2.7
QUEBECOR WORLD MEMPHIS	MEMPHIS	TN	21.3		3.7
QUEBECOR WORLD MEMPHIS CORP DICKSON FACILITY	DICKSON	TN	15.7		9.3
QUEBECOR WORLD - DYERSBURG DIV	DYERSBURG	TN	13.5		11.5
EMPIRE SCREEN PRINTING	ONALASKA	WI	11.9		13.1
TOPPAN INTERAMERICA INC	MC DONOUGH	GA	11.5		13.5
QUEBECOR WORLD BUFFALO	DEPEW	NY	10.5		14.5
R.R. DONNELLEY & SONS CO.	RENO	NV	9.4	0.6	15.6
BUTLER PRINTING & LAMINATING INC	BUTLER	NJ	8.0	2.0	17.0
PROEDGE, INC	SHELBY	IN	6.7	3.3	18.3
MCC-NORWAY INC	NORWAY	MI	6.3	3.7	18.7
BELLWOOD PRINTING PLANT	RICHMOND	VA	6.2	3.8	18.8
CHIYODA AMERICA INC	MORGANTOWN	PA	5.9	4.1	19.1
JW FERGUSSON & SONS LLC	RICHMOND	VA	5.5	4.5	19.5
RR DONNELLEY CRAWFORDSVILLE DIV	CRAWFORDSVILLE	IN	5.3	4.7	19.7
AVERY DENNISON PFD	SCHERERVILLE	IN	4.3	5.7	20.7
QUEBECOR WORLD OLIVE BRANCH DIV	OLIVE BRANCH	MS	3.8	6.2	21.2
MULTI-COLOR CORP	SCOTTSBURG	IN	3.3	6.7	21.7
QUAD GRAPHICS OKLAHOMA CITY	OKLAHOMA CITY	OK	2.9	7.1	22.1
CARDPAK INC	SOLON	OH	2.8	7.2	22.2
R.R. DONNELLEY & SONS CO	WILLARD	OH	2.7	7.3	22.3
SPIRALKOTE FLEXIBLE PACKAGING	ORLANDO	FL	2.6	7.4	22.4
RR DONNELLEY DWIGHT DIV	DWIGHT	IL	2.5	7.5	22.5
METROMEDIA TECHNOLOGIES INC	WOOSTER	OH	2.4	7.6	22.6

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AMERICAN DECORATIVE SURFACES INC	DUPO	IL	2.4	7.6	22.6
DOT PACKAGING GROUP INC. PRINTPAK DIV	SPARTANBURG	SC	2.4	7.6	22.6
CONSTANT SERVICES INC	FAIRFIELD	NJ	2.3	7.7	22.7
MCC DEC TECH LLC	FRAMINGHAM	MA	2.3	7.7	22.7
NEWCO INC	NEWTON	NJ	2.1	7.9	22.9
GARLOCK PRINTING & CONVERTING	GARDNER	MA	2.1	7.9	22.9
WEBTECH INC.	ROBBINSVILLE	NJ	1.9	8.1	23.1
RR DONNELLEY	HARRISONBURG	VA	1.8	8.3	23.3
J. JOSEPHSON INC.	SOUTH HACKENSACK	NJ	1.6	8.4	23.4
TRANSPRINT USA INC	HARRISONBURG	VA	1.5	8.5	23.5
COLWELL INC.	KENDALLVILLE	IN	1.1	8.9	23.9
MACDERMID PRINTING SOLUTIONS	SAN MARCOS	CA	1.1	8.9	23.9
ROYSONS CORP	ROCKAWAY	NJ	1.0	9.0	24.0
ARCADE MARKETING INC	CHATTANOOGA	TN	0.8	9.2	24.2
QUEBECOR WORLD RETAIL GROUP	NASHVILLE	TN	0.7	9.3	24.3
QUEBECOR WORLD - STILLWATER DIV	STILLWATER	OK	0.7	9.3	24.3
QUAD/GRAPHICS, INC.	HARTFORD	WI	0.7	9.3	24.3
ANDERSON LITHOGRAPH CO	LOS ANGELES	CA	0.6	9.4	24.4
R.R. DONNELLEY	TORRANCE	CA	0.5	9.5	24.5
R. R. DONNELLEY & SONS CO GLASGOW MANUFACTURING DIV.	GLASGOW	KY	0.5	9.5	24.5
QUAD/GRAPHICS, INC.	SUSSEX	WI	0.5	9.5	24.5
QUAD/GRAPHICS, INC.	THE ROCK	GA	0.5	9.6	24.6
RR DONNELLEY LANCASTER WEST	LANCASTER	PA	0.4	9.6	24.6
QUEBECOR WORLD - LEBANON DIV	LEBANON	OH	0.4	9.6	24.6
R. R. DONNELLEY & SONS CO DANVILLE DIV	DANVILLE	KY	0.4	9.6	24.6
QUAD/GRAPHICS, INC.	SARATOGA SPRINGS	NY	0.4	9.6	24.6
QUEBECOR WORLD INC.	CLARKSVILLE	TN	0.3	9.7	24.7
VERTIS	COLUMBUS	OH	0.3	9.7	24.7
BANTA PUBLICATIONS -KANSAS CITY	LIBERTY	MO	0.3	9.7	24.7
BANTA CATALOG GROUP	MAPLE GROVE	MN	0.3	9.7	24.7
DOT PACKAGING GROUP INC.	BATAVIA	IL	0.3	9.7	24.7
VERTIS INC	ELK GROVE VILLAGE	IL	0.2	9.8	24.8
PERRY JUDD'S INC. STRASBURG DIV	STRASBURG	VA	0.2	9.8	24.8
RR DONNELLEY - PONTIAC MANUFACTURING	PONTIAC	IL	0.2	9.8	24.8
VERTIS INC	SAUGERTIES	NY	0.2	9.8	24.8
LITHOGRAPHIC INDUSTRIES INC.	BROADVIEW	IL	0.2	9.8	24.8
QUEBECOR WORLD LINCOLN	LINCOLN	NE	0.2	9.8	24.8
WEBCRAFTERS INC WESTPORT FACILITY	MADISON	WI	0.2	9.8	24.8
SPENCER PRESS AN RR DONNELLEY CO	WELLS	ME	0.1	9.9	24.9
TREND OFFSET PRINTING SERVICES INC.	LOS ALAMITOS	CA	0.1	9.9	24.9
QUEBECOR WORLD WINCHESTER VIRGINIA	WINCHESTER	VA	0.1	9.9	24.9
VERTIS INC RNS SPRINGFIELD DIV	EAST LONGMEADOW	MA	0.1	9.9	24.9
CADMUS SPECIALTY PUBLICATIONS	RICHMOND	VA	0.1	9.9	24.9
BROWN PRINTING CO	EAST GREENVILLE	PA	0.1	9.9	24.9
NAHAN PRINTING INC	SAINT CLOUD	MN	0.1	9.9	24.9
RR DONNELLEY	CHARLESTOWN	IN	0.1	9.9	24.9

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QUEBECOR WORLD TAUNTON RETAIL	TAUNTON	MA	0.1	9.9	24.9
QUEBECOR WORLD NORTHEAST GRAPHICS	NORTH HAVEN	CT	0.1	9.9	24.9
ARANDELL CORP	MENOMONEE FALLS	WI	0.0	10.0	25.0
BROWN PRINTING CO	WASECA	MN	0.0	10.0	25.0
		Totals =	3102.0	554.5	1627.8

[i] – EPA Toxic Release Inventory Data for 2005 – list contains 92 of the top 100 emitting HAP sources

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Fields of Opportunities

STATE OF IOWA

CHESTER J CULVER, GOVERNOR
PATTY JUDGE LT. GOVERNOR

DEPARTMENT OF NATURAL RESOURCES
RICHARD A LEOPOLD, DIRECTOR

Transmitted to the docket via e-mail

April 30, 2007

U.S. Environmental Protection Agency (EPA)
EPA West (Air Docket)
1200 Pennsylvania Avenue, NW
Room: 3334, Mail Code 6102T
Washington, DC 20460

Attn: E-Docket ID No. EPA-HQ-OAR-2004-0094

The Iowa Department of Natural Resources (IDNR) is pleased to submit the following comments regarding the EPA's proposed changes to the General Provisions of the national emission standards for hazardous air pollutants (NESHAP), Docket ID No. EPA-HQ-OAR-2004-0094. As EPA indicates in its proposed amendments, EPA's proposal would replace an EPA memorandum from 1995 entitled "Potential to Emit for MACT Standards – Guidance and Timing Issues," commonly termed the "Once-In-Always-In" (OIAI) policy.

The IDNR generally supports EPA's plans to rescind the previous OIAI policy by amending 40 CFR Part 63, General Provisions to allow a major source to become minor source by limiting its HAP PTE below the major source thresholds, even after the applicable Maximum Achievable Control Technology (MACT) compliance deadline has passed. Although IDNR does not support all possible applications of EPA's proposed amendments, IDNR specifically supports the changes as applicable to facilities like those described in Scenarios 1, 2 and 3 below.

According to the existing OIAI policy, its intent is 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." The IDNR believes that the intent of the MACT program was to reduce HAP emissions at sources that were **actually** operating as major sources (sources actually emitting greater than 10/25 tons of HAP per year). The MACT program was clearly meant to focus on the largest HAP emitters and reduce those emissions as far as technology would allow.

In complement to the major source MACT program, the area source program was meant to address HAP from sources emitting less than the 10/25 major source threshold. Although EPA can require MACT for an area source sector, EPA also has the discretion to hold area sources to the lesser standard of Generally Available Control Technology (GACT). The OIAI policy, by not letting facilities obtain limits after an applicable MACT compliance date, has resulted in some sources with very low actual HAP emissions (sources operating as area sources) being held forever to a MACT. This means that a source emitting only a few tons of HAP has to contend with a level of regulation designed for a much larger facility. It also means that the source can never limit out of Title V, which also was designed for higher-emitting facilities.

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The IDNR has encountered many cases in which it doesn't make sense to adhere to the OIAI policy, either from an environmental harm or regulatory perspective. These cases could clearly benefit from EPA's proposed amendments, and are described below.

Scenario 1

The source had a total potential to emit (PTE) over 10/25 but has never actually operated as a major HAP source. This type of source would have easily been able to limit PTE before the compliance date, but did not, typically because of lack of knowledge about the MACT program. This is often the case with surface coating operations.

Examples of these types of facilities in Iowa include:

- **Facility MW*:** This facility came in for construction permits two months after compliance date for WWWW, Composites Manufacturing. MW's calculated HAP PTE was 78 tons. However, MW's actual HAP emissions for the previous year were only 1.4 tons. MW had not applied for a Title V permit, and, in fact, was not major for any other pollutants. Because of this, the IDNR made the decision that this facility's very low emissions did not justify adhering to the OIAI policy, and IDNR subsequently wrote construction permits with synthetic minor limits.

- **Company MPL** (two facilities in Iowa with this scenario)**:** These two facilities obtained permit limits to make them minor for Subpart R before the compliance date, but later discovered that they'd used the wrong emission factor and that PTE was not effectively limited by the permits they'd obtained. IDNR issued revised permits based on correct emission factor that limited these facilities out of Subpart R.

- **Facility MB:** This facility is subject to Subpart WWWW, Composites Manufacturing. The IDNR issued the original Title V permit in 2000. At that time, the total HAP PTE was calculated to be 37 tons. However, the actual, total HAP emissions have ranged from 4 to 6 tons over the last 10 years. The facility could have taken limits prior to WWWW compliance date, but did not, probably because they did not realize that potential emissions, not actual emission, triggered MACT applicability. The Department issued the Title V renewal in 2006 indicating that the facility is subject to WWWW.

- Approximately 45 sources in Iowa's database for minor source emissions inventories reported surface coating-type HAP emissions that, based on PTE, classify them as major HAP sources. For the reporting period from 2002-2004, the total HAP PTE at each of these facilities ranges from 11 to 1,282 tons per year. However, the actual total HAP emissions range at these facilities ranges from 0 to 20 tons HAP.

**The IDNR is not including the company names with these comments. However, the IDNR can provide EPA with the facility names, locations, emissions calculations and other pertinent information, upon request.*

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Scenario 2
The source has operated as a major source in the past, but the actual HAP emissions have dropped well below the 10/25 thresholds, either because of lower production, cleaner materials/processes (including low-HAP or no-HAP materials), or removal of equipment. For the same reasons listed in Scenario #1 above, the facility didn't obtain federally enforceable limits prior to the MACT compliance date.

Examples of these types of facilities in Iowa include:

- **Facility RI:** This facility is subject to Subpart MMMM, Miscellaneous Metal Surface Coating. The IDNR issued the original Title V permit in 2000. At that time, the total HAP PTE was calculated at 200 tons. The facility had actual HAP emissions that were over 10/25 tpy in 1997 and 1998. However, the facility's emissions have dropped dramatically since then and have ranged from 2 to 4 tons per year total HAP since 2000. Facility RI received construction permits in March 2007 indicating that the facility is subject to MMMM.

- Conversely, two other facilities, **Facility C** and **Facility SBS** were both in a very similar situation to Facility RI described above, but obtained permit limits in December 2006 (prior to the January 2007 compliance date) and were thus able to avoid MMMM applicability.

- **Facility TI:** This facility is subject to Subpart WWWW, Composites Manufacturing. The IDNR issued the original Title V issued in 2002. At that time, the total HAP PTE was calculated at 30 tons. The facility's actual HAP emissions were over 10 tons of styrene in 1998 and 1999, but have been below 10 tons since then. Actual styrene emissions in 2005 were 8.42 tons. This facility probably could have taken limits prior to WWWW compliance date, but did not, probably because of lack of knowledge of the MACT program.

Scenario 3
The source was major as of the compliance date, but has since made drastic changes in method of operation or removed equipment such that PTE is well below major source thresholds.

An example of this type of facility in Iowa is as follows:
Facility KF: Unlike most other MACT standards that apply to the entire facility, the Boiler MACT treats individual units that are constructed after the proposal date as new MACT-affected sources. Existing, MACT-affected sources were given three years to comply (or take limits to avoid compliance).

Facility KF had three existing coal-fired units that comprised the affected source at the time. The best way for them to reduce HAP emissions to limit out of the Boiler MACT was to replace those units with gas-fired units. This was accomplished well before the September 13, 2007 compliance date, and currently the facility's PTE is below 10/25. However, their PTE was still at major source levels when one gas-fired boiler and two gas-fired water heaters were installed. Since new boilers are considered to be individual MACT-affected sources, the units were required to comply with the Boiler MACT upon start-up.

So, Facility KF really didn't have the opportunity to reduce HAP emissions and opt out of the Boiler MACT. They couldn't shut down their coal units until at least one of the gas-fired boilers was operational, so there was no way for them to get their PTE to minor source levels before starting up the gas units. And since the gas units are currently affected sources under the Boiler MACT, OIAI would mandate that those units will be MACT-affected forever. This also means that Facility KF must maintain its Title V permit, at least for those units.

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The IDNR's current plan is to write Facility KF's Title V renewal permit just for the three Boiler MACT-affected sources. The facility will have to submit semi-annual Title V and MACT compliance reports for one boiler and two water heaters, pay annual fees on those units, and conduct an annual CO test on the boiler.

In most of these and similar cases in Iowa, the sources will not have trouble meeting the actual emission limits required in the MACT. Where these facilities will likely run into trouble is in understanding the reporting and recordkeeping requirements, and in filling out another set of semi-annual reports. The IDNR will continue to spend a lot of time explaining these regulations to facilities with small or nonexistent environmental staff. This will perpetuate IDNR needing to spend precious resources on facilities that emit just a few tons of HAP.

There may be some cases in which a major source of HAPs has installed air emissions controls and implemented work practices, as required by the MACT, that bring their actual emissions to well below the 10/25 thresholds. The IDNR generally does not support allowing these facilities to later obtain PTE limits to get out of the MACT. However, facilities in Iowa that were capable of reducing emissions to below major source thresholds largely did so before the MACT compliance dates, specifically to avoid MACT applicability.

Most facilities that were required to install MACT controls continue to emit above the 10/25 threshold, even with control. These facilities are the true major HAP sources for which the MACT program was most certainly designed. These facilities would not be impacted by EPA's proposed amendments and would rightly still be considered MACT-subject.

In conclusion, DNR supports EPA's proposed amendment to 40 CFR Part 63, General Provisions, with the following exceptions:

- If a facility's **actual** HAP emissions have exceeded the 10/25 threshold at any time since an applicable MACT compliance date, the facility should continue to be considered a major source and should not be allowed to later limit out of the applicable MACT standard.
- If a facility was subject to a MACT standard due to its **actual** HAP emissions, installed the required controls, and those controls reduced emissions below major source thresholds, the facility should continue to be considered a major source, and should not be allowed to later limit out of the applicable MACT standard.

Sincerely,

Catharine Fitzsimmons

Catharine Fitzsimmons, Chief
Air Quality Bureau

ED_001627_00001443

action, with the same title, that is located in the ''Rules and Regulations'' section of this **Federal Register** publication.

Dated: December 18, 2006.

Donald S. Welsh,

Regional Administrator, Region III.

[FR Doc. E6–22415 Filed 12–29–06; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[EPA–HQ–OAR–2004–0094; FRL–8263–3]

RIN 2060–AM75

National Emission Standards for Hazardous Air Pollutants: General Provisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA is proposing amendments to the General Provisions to the national emission standards for hazardous air pollutants (NESHAP). The proposed amendments would replace the policy described in the May 16, 1995 EPA memorandum entitled, ''Potential to Emit for MACT Standards—Guidance on Timing Issues,'' from John Seitz, Director, Office of Air Quality Planning and Standards (OAQPS), to EPA Regional Air Division Directors. The proposed amendments provide that a major source may become an area source at any time by limiting its potential to emit hazardous air pollutants (HAP) to below the major source thresholds of 10 tons per year (tpy) of any single HAP or 25 tpy of any combination of HAP. Thus, under the proposed amendments, a major source can become an area source at any time, including after the first substantive compliance date of an applicable MACT standard so long as it limits its potential to emit to below the major source thresholds. We are also proposing to revise tables in numerous MACT standards that specify the applicability of General Provisions requirements to account for the regulatory provisions we are proposing to add through this notice.

DATES: *Comments.* Written comments must be received on or before March 5, 2007.

Public Hearing. If anyone contacts EPA requesting to speak at a public hearing by January 23, 2007, a public hearing will be held on February 2, 2007. Persons interested in attending the public hearing should contact Ms. Lala Alston at (919) 541–5545 to verify that a hearing will be held.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OAR–2004–0094, by one of the following methods:

- *www.regulations.gov.* Follow the on-line instructions for submitting comments.
- *Email: a-and-r-docket@epa.gov*, Attention Docket ID No. EPA–HQ–OAR–2004–0094.
- *Facsimile:* (202) 566–1741, Attention Docket ID No. EPA–HQ–OAR–2004–0094.
- *Mail:* U.S. Environmental Protection Agency, EPA West (Air Docket), 1200 Pennsylvania Ave., NW., Room: 3334, Mail Code: 6102T, Washington, DC 20460, Attention E-Docket ID No. EPA–HQ–OAR–2004–0094.
- *Hand Delivery:* Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, 1301 Constitution Ave., NW., Room: 3334, Mail Code: 6102T, Washington, DC, 20460, Attention Docket ID No. EPA–HQ–OAR–2004–0094. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–HQ–OAR–2004–0094. The EPA's policy is that all comments received will be included in the public docket without change and may be made available online at www.regulations.gov, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through www.regulations.gov, or e-mail. Send or deliver information identified as CBI only to the following address: Mr. Roberto Morales, OAQPS Document Control Officer, U.S. EPA (C404–02), Attention Docket ID No. EPA–HQ–OAR–2004–0094, Research Triangle Park, NC 27711. Clearly mark the part or all of the information that you claim to be CBI. The www.regulations.gov Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through www.regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the index. Although listed in the *www.regulations.gov* index, some information is not publicly available, (i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material will be publicly available only in hard copy. Publicly available docket materials are available either electronically at *www.regulations.gov* or in hard copy at the Air and Radiation Docket, EPA/DC, EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Air and Radiation Docket is (202) 566–1742.

Note: The EPA Docket Center suffered damage due to flooding during the last week of June 2006. The Docket Center is continuing to operate. However, during the cleanup, there will be temporary changes to Docket Center telephone numbers, addresses, and hours of operation for people who wish to make hand deliveries or visit the Public Reading Room to view documents. Consult EPA's **Federal Register** notice at 71 FR 38147 (July 5, 2006) or the EPA Web site at *http://www.epa.gov/epahome/dockets.htm* for current information on docket operations, locations and telephone numbers. The Docket Center's mailing address for U.S. mail and the procedure for submitting comments to *www.regulations.gov* are not affected by the flooding and will remain the same.

Public Hearing. If a public hearing is held, it will be held at the EPA facility complex in Research Triangle Park, NC or an alternate site nearby.

FOR FURTHER INFORMATION CONTACT: Rick Colyer, Program Design Group (D205–02), Sector Policies and Programs Division, Office of Air Quality Planning and Standards, U.S. EPA, Research Triangle Park, NC 27711, telephone number (919) 541–5262, electronic mail (e-mail) address, *colyer.rick@epa.gov.*

SUPPLEMENTARY INFORMATION:

Regulated Entities. Categories and entities potentially regulated by this action include all major sources regulated under section 112 of the CAA.

Worldwide Web (WWW). In addition to being available in the docket, an electronic copy of today's proposal will also be available on the WWW through the Technology Transfer Network (TTN). Following signature, a copy of this action will be posted on the TTN's policy and guidance page for newly proposed rules at *http://www.epa.gov/ttn/oarpg.* The TTN provides information and technology exchange in various areas of air pollution control.

Outline

The information presented in this preamble is organized as follows:

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I. National Technology Transfer and Advancement Act

I. Summary of Proposed Action

Today's proposed amendments would replace an existing EPA policy established in a May 16, 1995, EPA memorandum entitled ''Potential to Emit for MACT Standards-Guidance on Timing Issues.'' *See* ''Potential to Emit for MACT Standards-Guidance on Timing Issues,'' from John Seitz, Director, Office of Air Quality Planning and Standards, to EPA Regional Air Division Directors. The 1995 policy provides that a major source may become an area source by limiting its potential to emit (PTE) HAP emissions to below major source levels (10 tpy or more of any individual HAP or 25 tpy or more of any combination of HAP), no later than the source's first substantive compliance date under an applicable NESHAP (also known as a MACT standard). Thus, under the 1995 policy, a source that limits its PTE and thereby attains area source designation by the first compliance date of the MACT is not subject to major source requirements. By contrast, a source that does not have a PTE limit in place by the first substantive compliance date would be subject to major source MACT, regardless of its subsequent HAP emissions. The 1995 policy is generally referred to as EPA's ''once in, always in'' (OIAI) policy for MACT standards.

The regulatory amendments proposed today, if finalized, would replace the 1995 OIAI policy and allow a major source of HAP emissions to become an area source at any time by limiting its PTE for HAP to below the major source thresholds.

II. Background

Section 112 of the CAA distinguishes between ''major'' and ''area'' sources of HAP. A major source of HAP is defined as ''* * * any stationary source or group of stationary sources located within a contiguous area and under common control that emits or has the potential to emit considering controls, in the aggregate, 10 tpy or more of any hazardous air pollutant or 25 tpy or more of any combination of hazardous air pollutants.'' (section 112(a)(1)). An area source is defined as any stationary source of HAP that is not a major source. (section 112(a)(2)). ''Hazardous air pollutant'' is defined as ''* * * any air pollutant listed pursuant to subsection (b)'' of section 112. (section 112(a)(6)).

''Potential to emit'' is currently defined in the NESHAP General Provisions as ''* * * the maximum capacity of a stationary source to emit a pollutant under its physical and operational design. Any physical or operational limitation on the capacity of the stationary source to emit a pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design if the limitation or the effect it would have on emissions is federally enforceable.'' (40 CFR 63.2).[1]

The CAA treats the regulation of major sources and area sources differently. Generally, major source categories are listed under section 112(c)(1), while area source categories are listed under section 112(c)(3) following a finding that either the source category presents a threat of adverse human health or environmental effects that warrants regulation under section 112, or the category falls within the purview of CAA section 112(k)(3)(B). See CAA section 112(c)(1) and (3). Standards for major sources are based on the performance of the maximum achievable control technology (MACT) currently employed by the best controlled sources in the industry. Standards for area sources may be based on MACT, but alternatively may be based on generally available control technology (GACT) or generally available management practices that reduce HAP emissions. See CAA section 112(d)(2) and (5).

Major sources can achieve significant HAP emission reductions and emit at levels below the major source thresholds through a variety of mechanisms. In order to be recognized as an area source and thereby avoid the application of major source MACT requirements, however, a major source must limit its potential to emit HAP to ensure that its emissions remain below major source thresholds. See CAA section 112(a)(1) (defining major source HAP thresholds); 40 CFR 63.2 (same).

A significant question that arose early in the development of the MACT program was when major sources may limit their PTE to below the major source thresholds in order to avoid having to comply with major source MACT standards. The EPA issued

[1] As explained further below, in *National Mining Association* v. *EPA,* 59 F. 3d 1351(D.C. Cir. 1995) (*NMA*), the D.C Circuit remanded the definition of ''potential to emit'' found in 40 CFR 63.2 to the extent it required that physical or operational limits be ''federally enforceable.'' The court did not vacate the rule during the remand. Two additional cases were decided after *National Mining.* In *Chemical Manufacturers Ass'n* v. *EPA, (CMA)* No. 89–1514, 1995 WL 650098 (D.C. Cir. Sept. 15, 1995), the court, in light of *National Mining,* vacated and remanded to EPA the federal enforceability component in the potential to emit definition in the PSD and NSR (40 CFR parts 51 and 52) regulations. In *Clean Air Implementation Project* v. *EPA,* No. 96–1224 1996 WL 393118 (D.C. Cir. June 28, 1996) (*CAIP*), the court vacated and remanded the federal enforceability requirement in the title V (40 CFR part 70) regulations. The *CMA* and the *CAIP* orders were similar in that they contained no independent legal analysis, but rather relied on the *National Mining* decision.

Before any of the above cases were decided, EPA implemented a ''transitional'' policy to allow sources to rely on state-only enforceable PTE limits. ''Options for Limiting the Potential to Emit (PTE) of a Stationary Source Under Section 112 and Title V of the Clean Air Act (Act)'' (Jan. 25, 1995), available at *http://www.epa.gov/Region7/programs/artd/air/title5/t5memos/ptememo.pdf.* After the court decisions, EPA extended the transition policy several times. See ''Third Extension of January 25, 1995 Potential to Emit Transition Policy'' (December 20, 1999), available at *http://www.epa.gov/Region7/programs/artd/air/title5/t5memos/4thext.pdf.* Under the Third Extension, sources can rely on state-only enforceable PTE limits until we finalize our response to the remands. EPA intends to issue a proposed PTE rule in the near future.

guidance on this and related issues on May 16, 1995, in a memorandum from John Seitz, Director of the Office of Air Quality Planning and Standards, to the EPA regional air division directors. The May 1995 memorandum addressed three issues:

• ''By what date must a facility limit its potential to emit if it wishes to avoid major source requirements of a MACT standard?''

• ''Is a facility that is required to comply with a MACT standard permanently subject to that standard?''

• ''In the case of facilities with two or more sources in different source categories: If such a facility is a major source for purposes of one MACT standard, is the facility necessarily a major source for purposes of subsequently promulgated MACT standards?''

In the May 1995 memorandum, EPA took the policy position that the latest date by which a source could obtain area source status by limiting its HAP PTE would be the first substantive compliance date of an applicable MACT standard. For existing sources, this would be no later than 3 years after the effective date of the regulation (which for MACT standards is the date of publication in the **Federal Register**), but could be sooner; for example, some standards for leaking equipment require compliance no later than 6 months after the effective date of the regulation.

Furthermore, in the May 16, 1995, memorandum, EPA stated that once a source was required to comply with a MACT standard, i.e., once the first substantive compliance date had passed without the source limiting its PTE, it must always comply, even though compliance with the standard may reduce HAP emissions from the source to below major source thresholds.

Finally, the May 16, 1995 memorandum provided that a source that is major for one MACT standard would not be considered major for a subsequent MACT standard if the potential to emit HAP emissions were reduced to below major source levels by complying with the first MACT standard.

The 1995 memorandum, on which we did not seek notice and comment, set forth transitional policy guidance and was intended to remain in effect only until such time as the Agency proposed and promulgated amendments to the Part 63 General Provisions. We are today proposing to amend the General Provisions and replace the 1995 policy memorandum.

III. Rationale for the Proposed Amendments

A. Why Is EPA Proposing These Amendments?

EPA issued the May 1995 memorandum in an effort to provide answers to pressing questions raised shortly after the inception of the air toxics program. Since issuance of the memorandum, EPA has received questions concerning the OIAI policy and recommendations to revise the policy.

In August 2000, EPA met with representatives of the State and Territorial Air Pollution Program Administrators and the Association of Local Air Pollution Control Officials (STAPPA/ALAPCO) to explore ways to revise the OIAI policy to promote pollution prevention (P2). The STAPPA/ALAPCO stated its belief that the OIAI policy provides no incentive for sources, after the first substantive compliance date of a MACT standard, to implement P2 measures in order to reduce their emissions to below major source thresholds because there are no benefits to be gained, e.g., no reduced monitoring, recordkeeping, and reporting, and no opportunity to get out of major source requirements. In light of these concerns, the STAPPA/ALAPCO recommended that the Agency revise the OIAI policy to encourage P2. To accommodate some of these P2 concerns, in May 2003 we proposed to amend the part 63 General Provisions (68 FR 26249; May 15, 2003) in the following ways. First, the proposed amendments encourage P2 by allowing an affected source that completely eliminates all HAP emissions after the first compliance date of the MACT standard to submit a request to the Administrator that it no longer be subject to the MACT standard. If the request is approved, the affected source would no longer be subject to the MACT standard provided the source does not resume emitting HAP from the regulated source(s) of emissions. Second, the proposed amendments encourage P2 by allowing an affected source that uses P2 to reduce HAP emissions to the level required by the MACT standard, or below, to request ''P2 alternative compliance requirements,'' which could include alternative monitoring, recordkeeping and reporting. If the request is approved, the alternative compliance requirements would replace the compliance requirements in the MACT standard.

It is important to understand the differences in applicability between the P2 amendments, and OIAI and today's proposal revising that policy. The proposed P2 amendments are targeted at the ''affected source'' as that term is defined in 40 CFR 63.2. ''Affected source'' describes the collection of regulated emission points defined as the entity subject to a specific MACT standard. See 40 CFR 63.2. For example, an affected source could be a single production unit or the combination of all production units within a single contiguous area and under common control, or a single emission point or a collection of many related emission points within a single contiguous area and under common control. Each MACT standard defines the ''affected source'' for regulation.

By contrast, the 1995 OIAI policy and today's proposed amendments that seek to replace that policy focus on ''major sources,'' as defined in 40 CFR 63.2. As explained above, major sources are defined by the total amount of HAP emitted from a stationary source or group of stationary sources located within a contiguous area and under common control. See 40 CFR 63.2. A major source can include several different affected sources subject to multiple MACT standards.

The relationship between the proposed P2 amendments and today's proposal is best illustrated by the following example. Consider a major source that emits 50 tpy total HAP which is comprised of 5 affected sources subject to various MACT. If the Agency finalizes the P2 amendments and one of the affected sources that emitted 15 tpy of HAP eliminated all its HAP emissions, the affected source, if its request is approved by the permitting authority, would no longer be subject to MACT. However, the other four affected sources within the major source would still be subject to their respective MACT because the sources' combined emissions would be 35 tpy, which exceeds the major source threshold. We are considering the comments received on the proposed P2 amendments and have not yet taken any final action with regard to that proposal.

In addition to the feedback from STAPPA concerning the OIAI policy, EPA has heard from others who have taken the position that the OIAI policy serves as a disincentive for sources to reduce emissions of HAP beyond the levels actually required by an applicable standard. For example, one source whose emissions after applying MACT were still above major source thresholds has significant emissions of one HAP for which the MACT standard does not require reductions. The source has indicated it is willing to substantially reduce that HAP to achieve area source status, but would not do so as long as

the OIAI policy applied and the source could not be redesignated as an area source. Another source, which has maintained actual HAP emissions well below major source levels, discovered its PTE limit (designating it as an area source) was based on an erroneous emission factor. Even though actual emissions have always been below major source levels, its PTE, when recalculated using the correct emission factors, exceeded the major source threshold. In this example, the source did not realize its problem until after the first substantive compliance date, which meant that, under the OIAI policy, the source was subject to the MACT standard.

Moreover, the OIAI policy, as written, does not encourage sources to explore the use of different control techniques, P2, or new and emerging technologies that would result in lower emissions. Thus, under OIAI, the same source could be subject to substantially different requirements based solely on the date by which the source reduced its potential to emit HAP to below the major source thresholds. For example, under OIAI, a major source that is subject to a MACT standard may become an area source prior to the first substantive compliance date of that standard, without reaching MACT levels of emissions reductions. As a result, prior to the first substantive compliance date of a MACT standard, a source emitting 30 tpy of a combination of HAP could reduce emissions by 10 tpy, take a HAP PTE limitation at 20 tpy, emit less than 10 tpy of any one HAP, and become an area source. Such a source would no longer meet the applicability criteria of a potentially applicable major source MACT standard and would, therefore, not be required to comply with that standard. By contrast, if the same source reduced its emissions of HAP to 20 tpy (and didn't emit 10 tpy or more of any single HAP) by complying with an applicable major source MACT standard after the first substantive compliance date of the standard, it would have to continue to comply with the requirements of the major source MACT standard because the first substantive compliance date had passed. The only difference in these two situations is the date on which the source reduced its emissions. As explained below, there is nothing in the CAA that compels the conclusion that a source cannot attain area source status after the first substantive compliance date of a MACT standard.

B. What Is the Authority for This Action?

As noted above, Congress expressly defined the terms ''major source'' and ''area source'' in section 112(a). A ''major source'' is a source that ''emits or has the potential to emit considering controls, in the aggregate,'' 10 tons per year or more of any HAP or 25 tons per year or more of any combination of HAP, and an ''area source'' is any stationary source that is not a ''major source.'' CAA section 112(a)(1) and (a)(2).[2] Notably absent from these definitions is any reference to the compliance date of a MACT standard. Rather, Congress defined major source by reference to the amount of HAP the source ''emits *or has the potential to emit considering controls*,'' and required EPA to determine whether that amount exceeds certain specified levels. 42 U.S.C. 112(a)(1) (emphasis added). Congress placed no temporal limitations on the determination of whether a source emits or has the potential to emit HAP in sufficient quantity to qualify as a major source.

In March 1994, EPA issued final regulations interpreting the term ''major source.'' See 59 FR 12408 (March 16, 1994) (the General Provisions governing the section 112 program).[3] The regulatory definition of ''major source'' is virtually identical to the statutory definition. Specifically, EPA defined ''major source'' as ''any stationary source or group of stationary sources * * * that emits *or has the potential to emit considering controls*'' at or above major source thresholds. 40 CFR 63.2. EPA, in turn, defined the phrase ''potential to emit'' that appears in the definition of ''major source,'' as the ''maximum capacity of a stationary source to emit a pollutant under its physical and operational design.'' *Id.* To give effect to the phrase ''considering controls'' in the statutory definition of ''major source,'' (CAA section 112(a)(1)), EPA further defined the term ''potential to emit'' in its regulations as follows:

> Any physical or operational limitation on the capacity of the stationary source to emit a pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design if the limitation or the effect it would have on emissions is federally enforceable.

40 CFR 63.2.

The Court of Appeals for the District of Columbia Circuit reviewed EPA's definition of ''potential to emit'' and, in July 1995, remanded the definition to EPA to the extent the definition required that physical or operational limitations be ''federally enforceable.'' *National Mining Ass'n* v. *EPA*, 59 F.3d 1351 (D.C. Cir. 1995).[4] In remanding the rule, the D.C. Circuit held that ''EPA has not explained * * * how its refusal to consider limitations other than those that are 'federally enforceable' serves the statute's directive to 'consider[] controls' when it results in a refusal to credit controls imposed by a state or locality even if they are unquestionably effective.'' *Id.* at 1363. The court also noted that ''[i]t is not apparent why a state's or locality's controls, when demonstrably effective, should not be credited in determining whether a source subject to those controls should be classified as a major or area source.'' *Id.; see also id.* at 1365 (''By no means does that suggest that Congress necessarily intended for state emissions controls to be disregarded in determining whether a source is classified as a 'major' or 'area' source.'').

As noted above, EPA is in the process of developing a proposed PTE rule that responds to the Court's remand in *NMA* and, among other things, proposes amendments to the definition of PTE in 40 CFR part 63. EPA anticipates issuing the proposed rule in the near future. See n.1.

Today's proposed rule is wholly consistent with the plain language of section 112(a)(1). Specifically, under today's proposed regulations, any source with a PTE limit that limits HAP emissions to less than the major source thresholds is, by definition, not a ''major source'' because its *''potential to emit considering controls''* is less than the identified major source thresholds. 42 U.S.C. 7412(a)(1) (emphasis added). By

[2] In addition to ''major sources'' and ''area sources,'' Congress identified a third type of source under section 112: electric utility steam generating units (''Utility Units''). See section 112(a)(8). Congress created a special statutory provision for Utility Units in section 112(n)(1)(A). Discussion of that provision is not relevant to this proposal. Today's proposal focuses solely on ''major sources'' and ''area sources.'' See CAA 112(a)(1), 112(a)(2).

[3] The General Provisions in 40 CFR Part 63 eliminate the repetition of general information and requirements in individual NESHAP subparts by consolidating all generally applicable information in one location. The General Provisions include sections on applicability, definitions, compliance dates, and monitoring, recordkeeping and reporting requirements, among others. In addition, the General Provisions include administrative sections concerning actions that the EPA Administrator must take, such as making determinations of applicability, reviewing applications for approval of new construction, responding to requests for extensions or waivers of applicable requirements, and generally enforcing NESHAP. The General Provisions apply to every facility that is subject to a NESHAP subpart, except where specifically overridden by that subpart.

[4] In that same opinion, the Court otherwise upheld EPA's definition of ''major source.''

contrast, under the 1995 policy memorandum, a source is treated as a major source in perpetuity even if sometime after the first compliance date of a MACT standard the source no longer meets the statutory definition of ''major source'' (i.e., the source has a ''potential to emit considering controls'' less than the major source thresholds). EPA believes that the approach proposed today gives full effect to the statutory definitions and to the distinctions that Congress created between ''major'' and ''area'' sources. *Id.* at 1353–54 (discussing differences in requirements affecting major and area sources and recognizing that Congress did not contemplate that all area sources be subject to regulation); *see also* 42 U.S.C. 7412(c)(3), 7412(k)(3)(B).

Moreover, nothing in the structure of the Act counsels against today's proposed approach. Congress defined major and area sources differently and established different requirements for such sources. *See NMA,* 59 F3d 1353–54. The 1995 policy memorandum creates a dividing line between major and area sources that does not exist on the face of the statute by including a temporal limitation on when a source can become an area source by limiting its PTE.

Furthermore, as noted in the May 1995 OIAI memorandum itself, EPA intended that the memorandum be a transitional policy which would remain in effect only until EPA undertook notice and comment rulemaking, which it is now doing. Nothing precludes the Agency from revising a prior agency position where, as here, we have a principled basis for doing so. As the Supreme Court recently observed:

> ''An initial agency interpretation is not instantly carved in stone. On the contrary, the agency * * * must consider varying interpretations and the wisdom of its policy on a continuing basis, *Chevron, supra* at 863–64, for example, in response to changed factual circumstances, or a change in administrations.''

National Cable & Telecomms. Ass'n v. *Brand X Internet Servs.,* 545 U.S. 967 (2005) (citations omitted); *see also American Trucking Ass'n* v. *Atchison, Topeka & Santa Fe Ry.,* 387 U.S. 397, 416 (1967); *Mobil Oil Corp.* v. *EPA,* 871 F.2d 149, 152 (D.C. Cir. 1989) (''an agency's reinterpretation of statutory language is nevertheless entitled to deference, so long as the agency acknowledges and explains the departure from its prior views''). We solicit comment on all aspects of today's proposal, including EPA's position that today's proposed approach gives proper effect to the statutory definitions in section 112(a) and is consistent with the language and structure of the Act.

C. What Are the Implications of This Proposed Action?

In the 1995 memorandum, EPA stated, as a matter of policy, that without the OIAI policy, facilities could backslide from MACT levels of control and increase their emissions to a level slightly below the major source thresholds. The 1995 memorandum further asserts that if this occurred, the ''maximum achievable emissions reductions that Congress mandated for major sources would not be achieved.'' We agree that Congress mandated that sources that meet the definition of ''major source'' in section 112(a) be required to comply with MACT, but a source that takes a PTE limit that limits its PTE to below the major source HAP thresholds does not, as explained above, meet the statutory definition of ''major source,'' and therefore should not be subject to the requirements applicable to a major source.

EPA recognizes that some sources in complying with an applicable MACT standard will reduce HAP emissions below the major source thresholds because that is the level of emissions necessary to maintain compliance with the MACT standard. If this rule is finalized, we believe it is unlikely that such sources would, in becoming area sources, increase their current emissions to a level just below the major source thresholds. While this may occur in some instances, it is more likely that sources will adopt PTE limitations at or near their current levels of emissions, which is the level needed to meet the MACT standard(s).[5] This conclusion is based on a number of factors.

First, many sources attaining area source status do so because of the control devices that they installed to meet the MACT standards. Such control systems are designed to operate a certain way and cannot be operated at a level which achieves only a partial emission reduction, *i.e.*, the devices either operate effectively or they do not. Thus, we expect that sources that have attained area source status by virtue of a particular control technology will maintain their current level of emissions.

Second, several additional programs have been implemented under the CAA since the issuance of the 1995 OIAI memorandum. Specifically, in many cases, sources will maintain the level of emission reduction associated with the MACT standard because that level is needed to comply with other requirements of the Act, such as RACT controls on emissions of volatile organic compounds, which are also HAP. Sources may also need to maintain their current level of control for other reasons, including, for example, for emissions netting and emissions trading purposes.

Third, if this rule is finalized, those sources that seek to maintain area source status will likely take PTE limits at or near their current MACT emission levels to ensure that their emissions remain below the major source thresholds. Sources have no incentive to establish their PTE limit too close to the major source thresholds because repeated or frequent exceedances above the PTE could provide the permitting authority reason to revoke the PTE and bring an enforcement action. 42 U.S.C. 7413(g); *see NMA,* 59 F.3d at 1363 n.20 (noting that a source that claims to have lowered its emissions to below major source thresholds, but has actual emissions that exceed such thresholds, can be subject to sanctions under CAA section 113).

Fourth, permitting authorities will likely encourage emission reduction maintenance and impose more stringent PTE terms and conditions on the source the closer the source's PTE is to the major source thresholds. Such terms and conditions may include shorter compliance periods and perhaps more robust monitoring, recordkeeping, and reporting to ensure that the source does not exceed its PTE.

Finally, many sources that take a PTE limitation to become an area source will ultimately be subject to area source standards issued pursuant to section 112. To date, EPA has issued emission standards for approximately 20 area source categories. Over the next three years, EPA is required to develop area source standards for approximately 50 additional categories. While the level at which those standards will be set is not known at this time, the standards will reflect at least generally available control technology and some may be set at MACT-based levels, which would mean that many sources could be required to maintain their current emission levels. *See, e.g.*, 42 U.S.C. 7412(d)(2), (d)(5), 7412(k)(3)(B).

For all of these reasons, we believe it is unlikely that a source that currently emits at a level below the major source

[5] We recognize that there may be instances where a source will emit at a level that is below the level required by the MACT. EPA cannot mandate that sources emit at such a level. Accordingly, in discussing potential emission increases as the result of today's proposal, we properly limit our discussion to those sources that emit below the major source thresholds because they must do so to meet the MACT standard, not those sources that, for other reasons, emit at a level below the level required by the MACT standard.

thresholds as the result of compliance with a MACT standard would increase its emissions in response to this rule. However, even if such increases occur, the increases will likely be offset by emission reductions at other sources that should occur as the result of this proposal. Specifically, this proposal provides an incentive for those sources that are currently emitting above major source thresholds and complying with MACT, to reduce their HAP emissions to below the major source thresholds.

We solicit comment on the issues discussed above. Please include with your comments any relevant factual information and describe the scenarios under which sources, in response to this proposal, would likely increase emissions from the level required by MACT to just below the major source thresholds.

D. What Regulatory Changes Are We Proposing?

For the reasons discussed above, we believe that the 1995 OIAI policy should be replaced and today are proposing to allow a major source to become an area source at any time by taking a PTE limit on its HAP emissions. Specifically, we are proposing to amend section 63.1 by adding a new paragraph (c)(6). That paragraph would specify that a major source may become an ''area source'' at any time by restricting its ''potential to emit'' (PTE) hazardous air pollutants, as that term is defined in 40 CFR Part 63, Subpart A, to below major source thresholds.[6] [7] If a source takes a PTE limit, it will no longer be subject to major source requirements that apply to HAP emissions, subject to certain restrictions described below. The major source requirements to which the source would no longer be subject, include, but are not limited to, compliance assurance monitoring and title V requirements (assuming the source is not otherwise subject to title V permitting). As an area source complying with its PTE limit, the source would nonetheless be subject to any applicable area source requirements issued pursuant to section 112, and title V if EPA has not exempted the area source category from such requirements.

There are two provisions of the current regulations that are relevant for background purposes: Sections 63.6(b)(7) and 63.6(c)(5). Section 63.6(b)(7) provides that when an area source becomes a major source ''by the addition of equipment or operations that meet the definition of new affected source in the relevant standard, the portion of the existing facility that is a new affected source must comply with all requirements of that standard applicable to *new sources*,'' and the source must comply with the relevant standard upon startup. 40 CFR 63.6(b)(7) (Emphasis added). Section 63.6(c)(5), in turn, states: ''Except as provided in section 63.6(b)(7),'' an area source that becomes a major source is treated as an existing major source and must comply with applicable MACT standards by the date specified in the standard for area sources that become major sources.[8] For those major source MACT standards that do not specify such a date, the affected source has a period of time to comply that is equivalent to the compliance period specified in the standard for existing affected sources (which is up to three years). 40 CFR 63.6(c)(5). Section 63.6(c)(5) was designed to address existing area sources that have not previously been subject to a MACT standard, but that later increase their emissions and become a major source. Section 63.6(c)(5) only applies, however, where the change that resulted in the increased emissions does not meet the definition of a new affected source under the relevant major source MACT standard.

As noted above, EPA today proposes to amend section 63.1 to add a new paragraph (c)(6) that would authorize a major source to become an area source at any time by obtaining a PTE limit limiting its HAP emissions to below major source thresholds. EPA proposes, however, the following restrictions.

The first restriction relates to a regulatory provision that we are adding to address the situation where sources switch between major and area source status more than once. Specifically, there may be situations where sources that are major sources as of the first substantive compliance date of the MACT standard later take PTE limitations to attain area source status, and then subsequently seek to switch back to major source status. In these situations, EPA proposes that 40 CFR 63.6(c)(5) not apply, and that, except as noted below, the source must meet the major source MACT standard immediately upon that standard again becoming applicable to the source. See proposed regulations at 40 CFR 63.1(c)(6)(i).[9] In this scenario, existing affected sources at the major source were previously subject to the MACT standard. The affected sources therefore should be able to comply with the standard immediately upon the standard again becoming applicable to them. *Id.*

To date, we have identified one set of circumstances where additional time would be necessary for the source to comply with the major source MACT. Specifically, there are situations where major source MACT rules may be amended and either become more stringent or apply to additional emission points or additional HAP. For example, under section 112(d)(6) MACT standards must be reviewed every 8 years and revised if necessary. If revisions issued pursuant to section 112(d)(6) increase the stringency of the standards or revise the standards such that they apply to additional emission points or HAP, it would be necessary to allow existing sources sufficient time to come into compliance with the new requirements. The revision of a MACT standard pursuant to section 112(d)(6) is only one example of a situation where a MACT rule may be revised. MACT rules are also amended for other reasons, including as the result of settlements resolving pending litigation over a standard. Any type of rule amendment situation where the

[6] We recognize that there may be sources that were major sources as of the first substantive compliance date of a MACT standard that, by complying with non-section 112 CAA requirements, became area sources for HAP emissions. In this instance, EPA proposes that the source obtain a PTE limit for its HAP emissions to ensure that those emissions remain below major source thresholds.

[7] Some individual MACT standards in Part 63 provide sources the opportunity to become area sources not by limiting total mass emissions directly, but by limiting material use or by taking other measures, which in turn, correlate to emissions below major source levels (*e.g.*, see subpart KK, Printing and Publishing and subpart JJ, Wood Furniture Manufacturing Operations (limiting HAP usage to below major source thresholds). We recommend that sources refer to the applicable NESHAP for guidance in determining whether the source meets the major source thresholds. See 40 CFR 63.2 (defining ''potential to emit''by reference to physical or operational limitations, including, for example, ''restrictions on hours of operation, or on the type or amount or material combusted, stored, or processed'').

[8] EPA explained the purpose of section 63.6(b)(7) in the preamble to the General Provisions as follows:

Section 63.6(b)(7) states that an unaffected new area source that increases its emissions of (or its potential to emit) HAP such that it becomes a major source, must comply with the relevant emission standard immediately upon becoming a major source. [Under section 63.6(b)(7), a]n unaffected existing area source that increases its emissions (or its potential to emit) such that it becomes a major source, must comply by the date specified for such a source in the standard. If such a date is not specified, the source would have an equivalent period of time to comply as the period specified in the standard for other existing sources. However, if the existing area source becomes a major source by the addition of a new affected source, or by reconstructing, the portion of the source that is new or reconstructed is required to comply with the standard's requirements for new sources.

59 FR 12408, 12413 (Mar. 16, 1994).

[9] The new proposed 40 CFR 63.1(c)(6)(i), like section 63.6(c)(5), is subject to the provisions of 40 CFR 63.6(b)(7).

amendments substantively modify the MACT could necessitate additional time for compliance. We are thus proposing that sources that switch status from major source to area source and then revert back to major source status, be allowed additional time for compliance if the major source standard has changed such that the source must undergo a physical change, install additional controls and/or implement new control measures. We propose that such sources have the same period of time to comply with the revised MACT standard as is allowed for existing sources subject to the revised standard. We solicit comment on this proposed compliance time-frame and whether the proposed regulatory text adequately captures the intended exception.

We are proposing the immediate compliance rule, with the above-noted exception, because we believe that in most cases, sources achieve and maintain area source status by operating the controls they used to meet the MACT standard. Therefore, a source that reverts to major source status should be in a position to comply immediately with the MACT standard. Sources may, in addition to, or in lieu of, operating controls, reduce their production level or hours of operation, but regardless of the means employed to attain area source status, we believe that the sources will likely not be removing the controls used to meet the MACT standard. We recognize that some MACT standards allow alternative compliance options, such as the use of low HAP materials, but these options should continue to be available for the affected source. Moreover, the addition of equipment or process units to an existing affected source should not change the source's ability to meet the MACT standard upon startup of the new equipment or unit because the equipment or process units should be accompanied by either a tie-in to existing controls or installation of new controls. See also 40 CFR 63.6(b)(7) (applying to new affected sources). We solicit comment on whether our assumptions, as stated in this paragraph, are correct.

More specifically, we solicit comment on the appropriateness of the proposed immediate compliance rule and whether such rule should be finalized. If it should be maintained, we solicit comment on whether there are other situations, in addition to the one noted above, that would necessitate an extension of the time period for compliance with the MACT standards. We further solicit comment on whether we should instead allow all sources that revert back to major source status a specific period of time in which to comply with the MACT standard, which would be consistent with the approach provided for in 40 CFR 63.6(c)(5). If we pursue this approach in the final rule, we request comment on whether we should provide the same time periods as are already provided for in 40 CFR 63.6(c)(5), or whether a different time period is appropriate and why. To the extent a commenter proposes a compliance time-frame, we request that the commenter explain the basis for providing that time-frame. Thus, depending on the comments received and the factual circumstances identified, we will consider (1) not finalizing the immediate compliance, with exceptions, approach, and instead providing all sources that revert back to major source status a defined period of time to comply consistent with the provisions of 40 CFR 63.6(c)(5); and (2) retaining the proposed immediate compliance rule, and adopting additional exceptions to that rule, if we receive persuasive and concrete scenarios that we believe would warrant allowing additional time to comply with a previously applicable MACT standard.[10] If we pursue the former approach, we would likely amend 40 CFR 63.6(c)(5). If we pursue the latter approach and retain the immediate compliance rule, but create exceptions in addition to the one noted above, there are two ways to implement the exceptions: Through a case-by-case compliance extension request process or by identifying in the final rule specific exceptions to the immediate compliance rule and providing a time period for compliance for each identified exception. Under the case-by-case approach, the permitting authority could grant limited additional time for compliance upon a specific showing of need. A case-by-case compliance extension request process would call for the owners or operators of sources to submit to the relevant permitting authority a request that (i) identifies the specific additional time needed for compliance, and (ii) explains, in detail, why the source needs additional time to come into compliance with the MACT standard. The permitting authority would review the request and could either approve it in whole, or in part (*i.e.*, by specifying a different compliance timeframe or allowing different timeframes for different parts of the affected sources), or deny the request.

We envision that a request for a compliance extension, if such an option is provided in the final rule, would ordinarily be made in the context of the title V permit application or an application to modify an existing title V permit. Any compliance extension, if granted, would be memorialized in the title V permit. Another option sources may consider is seeking approval to include in their title V permit alternative operating scenarios that address the source's different projected operating scenarios. By incorporating alternative operating scenarios into the permit, the source could avoid having to reopen and revise the permit if it chooses to switch source status and again become a major source.

If we retain the proposed immediate compliance rule with exceptions, we will also consider the option of including in the final rule defined compliance extension time-frames for defined factual scenarios, as we have done for the exception described above. Under this approach, if a source satisfies the criteria identified in the final rule, it would automatically be afforded the defined extension of time to comply with the MACT standard upon the source again becoming subject to MACT. This extension approach would be useful if there are specific factual scenarios that affect a broad number of sources, because defining the compliance extension time-frame in the final rule eliminates the burden on permitting authorities associated with the case-by-case approach.

In submitting your comments on the above-noted issues and proposed section 63.6(c)(6), please identify, with specificity, the factual circumstances that would warrant a compliance extension, explain why the source would need the extension under the circumstances identified, and why the source could not comply with the standard immediately upon returning to major source status given the identified circumstances. We specifically solicit comment on our discussion above as to the mechanics of obtaining a compliance extension if a case-by-case approach is finalized, including, for example, the type of information requested from the source seeking the proposed compliance extension, the permit vehicle used to obtain the extension, and any limitations on

[10] The new proposed regulatory provision at 40 CFR 63.1(c)(6)(i) is subject to the provisions of 40 CFR 63.6(b)(7). Thus, if a source adds a piece of equipment which results in emissions at levels in excess of the major source thresholds, and that equipment meets the definition of a new affected source under the relevant MACT standard, the source is subject to the provisions of 40 CFR 63.6(b)(7) and must meet the requirements for new sources in the relevant major source MACT standard including compliance at startup.

providing extensions.[11] We further solicit comment on the approach of providing a compliance extension in the final rule for certain defined factual scenarios. With regard to this approach, we solicit comment on the nature of the scenario that would warrant such an extension and the amount of additional time that would be needed to comply with the MACT standard and why such a period of time is needed to comply.

The second restriction to the new proposed regulatory provision at 40 CFR 63.1(c)(6) concerns those major sources that take PTE limits to become area sources and thereby become subject to area source standards in 40 CFR part 63. We propose that a major source with affected sources subject to a major source MACT standard that switches to area source status where the EPA has established area source standards for the same affected source would have to comply immediately with those area source standards if the first substantive compliance date has passed or would have to comply by the first substantive compliance date if it has not passed. Because the area source standard is not likely to be more stringent than the major source MACT standard that the source was already meeting, the source likely will not need additional compliance time after the source status change. However, if different emission points are controlled or different controls are necessary to comply with the area source standard or other physical changes are needed to comply with the standard, additional time, not to exceed 3 years, may be granted by the permitting authority if adequate support for the additional time is provided by the source.[12]

Accordingly, EPA is proposing to add 40 CFR 63.1(c)(6)(ii), which provides that a major source that subsequently becomes an area source by limiting its PTE must meet all applicable area source requirements in Part 63 immediately upon the effective date of the permit containing the PTE limits, provided the first compliance date for the area source standard has passed. We further propose that if a source (or a portion thereof) must undergo a physical change or install additional control equipment to meet the applicable area source standard, the source may submit to the relevant permitting authority a request that (i) identifies the specific additional time needed for compliance (i.e., such request cannot exceed three years) with the area source standard, and (ii) explains, in detail, why the additional time is necessary to comply with the standard. The proposed new regulatory provision—40 CFR 63.1(c)(6)(ii)—is delegable. *See generally* 42 U.S.C. 7412(l); 40 CFR Subpart E. A permitting authority may approve, in whole or in part, or deny the request.

The proposed new regulatory provision, 40 CFR 63.1(c)(6)(ii), is analogous to 40 CFR 63.6(c)(5), which is briefly described above. We promulgated 40 CFR 63.6(c)(5) as part of the General Provisions, because we recognized a gap in the statute. Specifically, the statute is silent as to how to address sources that are existing area sources at the time the MACT standard is promulgated and that, at some later date, become major sources subject to the MACT standard. Section 63.6(c)(5) fills this particular gap. Similarly, the statute does not address the scenario where a major source becomes an area source and the compliance date for the area source standard has already passed and modifications to the source are needed to achieve compliance with the standard. EPA today proposes 40 CFR 63.1(c)(6)(ii) to address this situation. Section 112(i)(3) does not directly address either of these identified scenarios. Rather, it directly addresses those sources that are existing affected sources as of the date the emission standard is promulgated. See CAA section 112(i)(3) (''After the effective date of any emission standard * * * promulgated under this section and *applicable to a source*, no person may operate such source in violation of such standard * * * except in the case of an existing source,'' EPA shall provide a compliance date that provides for compliance as expeditiously as practicable, but no later than 3 years *''after the effective date of the standard.''*) (emphasis added). Moreover, the new proposed regulatory provision, 40 CFR 63.1(c)(6)(ii), is consistent with CAA section 112(i)(3), because it requires sources to comply immediately with the area source standard upon the effective date of the permit containing the PTE limit (which is the permit that provides area source status), and authorizes additional time only if the Permitting Authority determines that such time is appropriate based on the facts and circumstances. In any event, any extension of time provided pursuant to proposed 40 CFR 63.1(c)(6)(ii) cannot exceed three years.

Under today's proposed regulations, sources that reduce their emission levels and obtain a PTE HAP limit below major source thresholds must meet that limit and all associated conditions, as specified in the relevant permit, on the effective date of the permit. Prior to the effective date of the permit, the source must continue to comply with the relevant major source MACT standard(s) and other conditions in its title V permit. Of course, permitting authorities may deny a request to adopt area source status where the source has changed its status more than once, if, in the opinion of the permitting authority, these actions are an indication that the restrictions on PTE are, in practice, ineffective.

To the extent an area source standard applies, the compliance date for that standard has passed, and the source needs a compliance extension, the source must apply for and obtain that compliance extension before becoming subject to the area source standard; otherwise, the source will be in violation of the area source standard. We solicit comment on the proposed case-by-case compliance extension date approach, including, for example, the type of information that should be requested from the source seeking the proposed compliance extension, the permit vehicle used to obtain the extension, and whether the limitations proposed above (i.e., the affected source must undergo a physical change or install additional control equipment in order to meet the area source standard) are appropriate. See proposed regulations at 40 CFR 63.1(c)(6)(ii). We also solicit comment generally on the mechanics of obtaining the compliance extension and the appropriate vehicle for requesting the compliance extension. If the area source category is not exempted from the requirements of title V, the request for a compliance extension can be made in the context of the title V permit process. If, however, the area source category at issue is exempt from title V, the source could submit its compliance date extension request to the permitting authority issuing its PTE HAP limitation, provided that the permitting authority is the same State authority that has been

[11] Some major sources that switch to area source status may, as an area source, no longer be subject to title V requirements and therefore apply to their permitting authority to terminate their title V permits and obtain a PTE limit through another permit vehicle. Presumably, such sources would have their title V permit terminated at the same time the non-title V permit limiting their PTE becomes effective. If, however, the area source reverts back to major source status, the source will once again have to obtain a title V permit. The source would also have to terminate the non-title V permit containing its PTE limit to allow it to emit at major source levels. Once the HAP PTE limitation no longer applies to the source, the source must comply with applicable major source MACT standards or have taken appropriate steps to apply for a compliance extension.

[12] The existing regulations do not address the issue of compliance time-frames for sources that switch from major source status to area source status. *See* CAA section 112(i)(3), 40 CFR 63.6(c)(5).

delegated authority to implement the Section 112 program. We further solicit comment on whether the proposed compliance date extension provision in 40 CFR 63.1(c)(6)(ii) should be extended to major sources that become area sources only a few months prior to the compliance date of an applicable area source standard, to the extent the source needs additional time to comply.

We solicit comment on all aspects of the proposed new regulatory provisions at 40 CFR 63.1(c)(6)(i) and (ii). For either of the two situations described above (*i.e.*, where a source switches from major, to area, and back to major source status, and where a source switches from major to area source status), a source must notify the Administrator under § 63.9(b) of any standards to which it becomes subject.

The final restriction relevant to the regulations we are proposing to add to 40 CFR 63.1 relates to an enforcement issue. See proposed regulations at 40 CFR 63.1(c)(6)(iii). Specifically, we do not intend to allow major sources that are subject to enforcement investigations or enforcement actions to avoid the results of such investigations or the consequences of such actions by becoming area sources. Although sources that are the subject of an investigation or enforcement action may still seek area source status for purposes of future applicability, they are not absolved of any previous or pending violations of the CAA that occurred while they were a ''major source,'' and the source must bear the consequences of any enforcement action or remedy imposed upon it, which could include fines or imposition of additional emission reduction requirements. Accordingly a source cannot use its new area source status as a defense to MACT violations that occurred while the source was a major source. Similarly, becoming a major source does not absolve a source subject to an enforcement action or investigation for area source violations or infractions from the consequences of any actions occurring when the source was an area source.

Finally, we are proposing to amend each of the General Provisions applicability tables contained within most subparts of part 63 to add a reference to new paragraph 63.1(c)(6). In addition, in reviewing several of the MACT standards, we identified one general category of regulatory provisions that may need revision and we solicit comment on whether any revisions are in fact necessary. This category of provisions addresses the date by which a major source can become an area source. The provisions that we have identified to date, however, all include the specific compliance date of the standard, which in all instances has passed. See e.g., 40 CFR 63.787(b)(iv) (''Existing major sources that intend to become area sources by the December 18, 1997 compliance date may choose to * * * ''). Thus, although these regulatory provisions reflect the 1995 OIAI policy that this proposed rule seeks to replace, the provisions themselves have no current effect because the compliance date specified in the regulations has passed. In light of this, we are not proposing regulatory changes to these provisions, but we solicit comment on whether such changes are necessary. We further solicit comment on whether there are any other regulatory provisions in any of the individual subparts that would warrant modification or clarification consistent with today's proposal.

IV. Impacts of the Proposed Amendments

The environmental, economic, and energy impacts of the proposed amendments cannot be quantified without knowing which sources will avail themselves of the regulatory provisions proposed in this rule and what methods of HAP emission reductions will be used. It is unknown how many sources would choose to take permit conditions that would limit their PTE to below major source levels. Within this group it also is not known how many sources may increase their emissions from the major source MACT level (assuming the level is below the major source thresholds). Similarly we cannot identify or quantify the universe of sources that would decrease their HAP emissions to below the level required by the NESHAP to achieve area source status. We believe that many, if not most, sources that could reduce HAP emissions to area source levels prior to the first substantive compliance date of a MACT standard have already done so. We solicit comment on potential impacts, specifically the number of potential and likely sources that may avail themselves of the approach provided for in today's proposal and additional emission reductions that may be achieved or increases that may occur; please provide any analysis in your comment. There is no requirement that sources avail themselves of the approach proposed today, and each source should assess its own situation to determine whether the additional costs associated with achieving additional emission reductions is beneficial to the source, in exchange for becoming an area source and realizing the associated benefits.

V. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is a ''significant regulatory action'' because it raises novel legal or policy issues arising out of legal mandates. Accordingly, EPA submitted this action to the Office of Management and Budget (OMB) for review under EO 12866 and any changes made in response to OMB recommendations have been documented in the docket for this action.

B. Paperwork Reduction Act

The proposed amendments would impose no information collection requirements. Sources opting to become area sources may experience some reduction in reporting and recordkeeping requirements, as they would no longer be subject to major source MACT requirements. Any changes in reporting or recordkeeping would be done through the permitting mechanisms of the responsible permitting authority. It is not possible to identify how many sources would choose to employ these provisions, nor is it possible to determine what, if any changes, to reporting and recordkeeping would be made. Permitting authorities may, in fact, choose to establish the NESHAP provisions themselves as the PTE limits and change little or nothing.

Furthermore, approval of an ICR is not required in connection with these proposed amendments. This is because the General Provisions do not themselves require any reporting and recordkeeping activities, and no ICR was submitted in connection with their original promulgation or their subsequent amendment. Any recordkeeping and reporting requirements are imposed only through the incorporation of specific elements of the General Provisions in the individual MACT standards which are promulgated for particular source categories which have their own ICRs.

The Office of Management and Budget has previously approved the information collection requirements contained in the existing regulations of 40 CFR part 63 under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501, *et seq.* A copy of the OMB approved Information Collection Request (ICR) for any of the existing regulations may be obtained from Susan Auby, Collection Strategies Division; U.S. EPA (2822T); 1200 Pennsylvania Ave., NW., Washington, DC 20460, or by calling (202) 566–1672.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act generally requires an agency to prepare a regulatory flexibility analysis of any proposed rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions.

For purposes of assessing the impacts of the proposed amendments on small entities, small entity is defined as: (1) A small business as defined in each applicable subpart; (2) a government jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and that is not dominant in its field.

After considering the economic impacts of the proposed amendments on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. In determining whether a rule has a significant economic impact on a substantial number of small entities, the impact of concern is any significant adverse economic impact on small entities, since the primary purpose of the regulatory flexibility analysis is to identify and address regulatory alternatives which minimize any significant economic impact on a substantial number of small entities (5 U.S.C. 603–604). Thus, an agency may certify that a rule will not have a significant economic impact on a substantial number of small entities if the rule relieves regulatory burden, or otherwise has a positive economic effect on all of the small entities subject to the rule.

Small entities that are subject to MACT standards would not be required to take any action under this proposal; any action a source takes to become reclassified as an area source would be voluntary. In addition, we expect that any sources using these provisions will experience cost savings that will outweigh any additional cost of achieving area source status.

The only mandatory cost that would be incurred by air pollution control agencies would be the cost of reviewing sources' permit applications for area source status and issuing permits. No small governmental jurisdictions operate their own air pollution control agencies, so none would be required to incur costs under the proposal. In addition, any costs associated with application reviews and permit issuance are expected to be offset by reduced agency oversight obligations for sources that no longer must meet major source MACT requirements.

Based on the considerations above, we have concluded that the proposed amendments will relieve regulatory burden for all affected small entities. Nevertheless, we continue to be interested in the potential impacts of the proposed amendments on small entities and welcome comments on issues related to such impacts.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures by State, local, and tribal governments, in aggregate, or by the private sector, of $100 million or more in any 1 year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective, or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

EPA has determined that the proposed amendments do not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any 1 year. Sources subject to MACT standards would not be required to take any action under this proposal, including sources owned or operated by State, local, or tribal governments; the provisions in these proposed amendments are strictly voluntary. In addition, the proposed amendments are expected to result in reduced burden on any source that achieves area source status in accord with them. Under the proposed amendments, a State, local, or tribal air pollution control agency to which we have delegated section 112 authority would be required to review permit applications and make modifications to the permit as necessary. However, most applications would not be lengthy or complicated, and costs would not approach the $100 million annual threshold. In addition, any costs associated with these reviews are expected to be offset by reduced agency oversight obligations for sources that no longer must meet major source requirements. Thus, the proposed amendments are not subject to the requirements of sections 202 and 205 of UMRA. EPA has determined that the proposed amendments contain no regulatory requirements that might significantly or uniquely affect small governments because they contain no requirements that apply to such governments or impose obligations upon them. Thus, the proposed

amendments are not subject to the requirements of section 203 of the UMRA.

E. Executive Order 13132: Federalism

Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.''

These proposed amendments do not have federalism implications. They will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. Although the proposed amendments would require State air pollution control agencies to review and modify permits as appropriate, the burden on States will not be substantial. In addition, we expect that the overall effect of the proposed amendments will be to reduce the burden on State agencies as their oversight obligations become less demanding for sources no longer subject to major source MACT requirements. Thus, Executive Order 13132 does not apply to these proposed amendments.

In the spirit of Executive Order 13132, and consistent with EPA policy to promote communications between EPA and State and local governments, EPA specifically solicits comment on these proposed amendments from State and local officials.

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 6, 2000), requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' ''Policies that have tribal implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and Indian tribes.''

These proposed amendments do not have tribal implications, as specified in Executive Order 13175. They will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes. Any tribal government that owns or operates a source subject to MACT standards would not be required to take any action under this proposal; the provisions in the proposed amendments would be strictly voluntary. In addition, achieving area source status would result in reduced burden on any source that no longer must meet major source requirements. Under the proposed amendments, a tribal government with an air pollution control agency to which we have delegated section 112 authority would be required to review permit applications and to modify permits as necessary. However, such reviews are not expected to be lengthy or complicated, so the effects will not be substantial. In addition, any costs associated with these reviews are expected to be offset by reduced agency oversight obligations for sources no longer required to meet major source requirements. Thus, Executive Order 13175 does not apply to these proposed amendments.

However, in the spirit of Executive Order 13175, and consistent with EPA policy to promote communications between EPA and Indian tribes, EPA specifically solicits comment on the proposed amendments from tribal officials.

G. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks

Executive Order 13045, entitled ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997) applies to any rule that: (1) Is determined to be ''economically significant'' as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

EPA interprets Executive Order 13045 as applying only to regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Executive Order has the potential to influence the regulation. These proposed amendments are not subject to Executive Order 13045 because they are not ''economically significant'' and because all MACT standards governed by the General Provisions are based on technology performance and not on health or safety risks.

H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

The proposed amendments are not a ''significant energy action'' as defined in Executive Order 13211 (66 FR 28355, May 22, 2001) because they are not likely to have a significant adverse effect on the supply, distribution, or use of energy. Further, we believe that the proposed amendments are not likely to have any adverse energy impacts.

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act (NTTAA) of 1995, Public Law 104–113,12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

These proposed amendments do not involve technical standards. Therefore, EPA is not considering the use of any voluntary consensus standards. EPA welcomes comments on this aspect of the proposed amendments, and specifically invites the public to identify potentially applicable voluntary consensus standards and to explain why such standards should be used in the proposed amendments.

List of Subjects in 40 CFR Part 63

Environmental protection, Air pollution control, Hazardous substances, Reporting and recordkeeping requirements.

Dated: December 21, 2006.

Stephen L. Johnson,

Administrator.

For the reasons cited in the preamble, title 40, chapter 1 of the Code of Federal

Regulations is proposed to be amended as follows:

PART 63—[AMENDED]

1. The authority citation of part 63 continues to read as follows:

Authority: 42 U.S.C. 7401, *et seq.*

Subpart A—[Amended]

2. Section 63.1 is amended by adding a new paragraph (c)(6) to read as follows:

§ 63.1 Applicability.

* * * * *

(c) * * *

(6) A major source may become an area source at any time by obtaining a permit limiting its potential to emit (PTE) hazardous air pollutants, as defined in this subpart, to below the major source thresholds established in 40 CFR 63.2, subject to the restrictions in paragraphs (c)(6)(i) through (iii) of this section. Until the permit containing the PTE limit becomes effective, the source remains subject to major source requirements. After the permit containing the PTE limit becomes effective, the source is subject to any applicable requirements for area sources.

(i)(A) The owner or operator of a major source subject to standards under this part that subsequently becomes an area source by limiting its PTE to below major source thresholds, and then later again becomes a major source by increasing its emissions to the major source thresholds or above, must comply immediately with the major source requirements of this part upon becoming a major source, notwithstanding § 63.6(c)(5), except as noted in paragraph (i)(B) below. Such major sources must comply with the notification requirements of § 63.9(b).

(B) If, as described in paragraph (i)(A), a source again becomes subject to the standard for major sources, that standard has been revised since the source was last subject to the standard and, in order to comply, the source must undergo a physical change, install additional controls and/or implement new control measures, the source will have up to the same amount of time to comply as the amount of time allowed for existing sources subject to the revised standard.

(ii) A major source that becomes an area source by limiting its PTE must meet all applicable area source requirements promulgated under this part immediately upon the effective date of the permit containing the PTE limits, provided the first substantive compliance date for the area source standard has passed, except that the permitting authority may grant additional time, up to 3 years, if the source must undergo physical changes or install additional control equipment in order for the source (or portion thereof) to comply with the applicable area source standard and the permitting authority determines that such additional time is warranted based on the record. A source seeking additional compliance time must submit a request to the permitting authority that identifies the amount of additional time requested for compliance and provides a detailed justification supporting the requested. Area sources not previously subject to area source standards must comply with the notification requirements of § 63.9(b).

(iii) Becoming an area source does not absolve a source subject to an enforcement action or investigation for major source violations or infractions from the consequences of any actions occurring when the source was major. Becoming a major source does not absolve a source subject to an enforcement action or investigation for area source violations or infractions from the consequences of any actions occurring when the source was an area source.

* * * * *

3. Section 63.6 is amended by revising the second sentence in paragraph (c)(5) to read as follows:

§ 63.6 Compliance with standards and maintenance requirements.

* * * * *

(c) * * *

(5) * * * Except as provided in § 63.1(c)(6)(i) such sources must comply by the date specified in the standards for existing area sources that become major sources. * * *

* * * * *

4. Section 63.9 is amended by adding a sentence to the end of paragraph (b)(1)(ii) to read as follows:

§ 63.9 Notification requirements.

* * * * *

(b) * * *

(1)(i) * * *

(ii) * * * Area sources previously subject to major source requirements that again become major sources are also subject to the notification requirements of this paragraph.

* * * * *

Subpart F—[Amended]

5. Table 3 to subpart F of part 63 is amended by adding an entry for § 63.1(c)(6) to read as follows:

TABLE 3 TO SUBPART F OF PART 63—GENERAL PROVISIONS APPLICABILITY TO SUBPARTS F, G, AND H[A] TO SUBPART F

Reference	Applies to subparts F, G, and H	Comment
* * * * * * *		
63.1(c)(6)	Yes.	
* * * * * * *		

[a] Wherever subpart A specifies "postmark" dates, submittals may be sent by methods other than the U.S. Mail (*e.g.*, by fax or courier). Submittals shall be sent by the specified dates, but a postmark is not necessarily required.

* * * * *

Subpart N—[Amended]

6. Table 1 to subpart N of part 63 is amended by adding an entry for § 63.1(c)(6) to read as follows:

TABLE 1 TO SUBPART N OF PART 63—GENERAL PROVISIONS APPLICABILITY TO SUBPART N

General Provisions Reference	Applies to subpart N	Comment
* * *	* * *	*
63.1(c)(6)	Yes.	
* * *	* * *	*

Subpart O—[Amended]

7. Table 1 to § 63.360 is amended by adding an entry for § 63.1(c)(6) to read as follows:

§ 63.360 Applicability.

(a) * * *

TABLE 1 OF SECTION 63.360.—GENERAL PROVISIONS APPLICABILITY TO SUBPART O

Reference	Applies to sources using 10 tons in subpart O [a]	Applies to sources using 1 to 10 tons in subpart O [a]	Comment
* * *	* * *	*	
63.1(c)(6)		Yes.	
* * *	* * *	*	

[a] See definition.

* * * * *

Subpart R—[Amended]

8. Table 1 to subpart R of part 63 is amended by adding an entry for § 63.1(c)(6) to read as follows:

TABLE 1 TO SUBPART R OF PART 63.—GENERAL PROVISIONS APPLICABILITY TO SUBPART R

Reference	Applies to subpart R	Comment
* * *	* * *	*
63.1(c)(6)	Yes.	
* * *	* * *	*

Subpart S—[Amended]

9. Table 1 to subpart S of part 63 is amended by adding an entry for § 63.1(c)(6) to read as follows:

TABLE 1 TO SUBPART S OF PART 63.—GENERAL PROVISIONS APPLICABILITY TO SUBPART S[A]

Reference	Applies to subpart S	Comment
* * *	* * *	*
63.1(c)(6)	Yes.	
* * *	* * *	*

[a] Wherever subpart A specifies ''postmark'' dates, submittals may be sent by methods other than the U.S. Mail (*e.g.*, by fax or courier). Submittals shall be sent by the specified dates, but a postmark is not required.

* * * * *

Subpart T—[Amended]

10. Appendix B to subpart T of part 63 is amended by adding an entry for § 63.1(c)(6) to read as follows:

Appendix B to Subpart T of Part 63—General Provisions Applicability to Subpart T

Reference	Applies to subpart T		Comments
	BCC	BVI	
* *	* *	* *	*
63.1(c)(6)	Yes	Yes.	
* *	* *	* *	*

* * * * *

Subpart U—[Amended]

11. Table 1 to subpart U of part 63 is amended by adding an entry for § 63.1(c)(6) to read as follows:

Table 1 to subpart U of part 63 is amended by adding an entry for § 63.1(c)(6) to read as follows:

TABLE 1 TO SUBPART U OF PART 63.—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART U AFFECTED SOURCES

Reference	Applies to subpart U	Explanation
* *	* *	*
63.1(c)(6)	Yes.	
* *	* *	*

* * * * *

Subpart W—[Amended]

12. Table 1 to subpart W of part 63 is amended by adding an entry for § 63.1(c)(6) to read as follows:

TABLE 1 TO SUBPART W OF PART 63.—GENERAL PROVISIONS APPLICABILITY TO SUBPART W

Reference	Applies to subpart W			Comment
	BLR	WSR	WSR alternative standard, and BLR equipment leak standard (40 CFR part 63, subpart H)	
* *	* *	* *	*	*
§ 63.1(c)(6)	Yes	Yes	Yes.	
* *	* *	* *	*	*

Subpart Y—[Amended]

13. Table 1 of § 63.560 is amended by adding an entry for § 63.1(c)(6) to read as follows:

§ 63.560 Applicability and designation of affected sources.

* * * * *

TABLE 1 OF § 63.560.—GENERAL PROVISIONS APPLICABILITY TO SUBPART Y

Reference	Applies to affected sources in subpart Y	Comment

TABLE 1 OF § 63.560.—GENERAL PROVISIONS APPLICABILITY TO SUBPART Y—Continued

Reference	Applies to affected sources in subpart Y	Comment
* * *	* * *	*
63.1(c)(6)	Yes.	
* * *	* * *	*

Subpart AA—[Amended]

14. Appendix A to subpart AA of part 63 is amended by adding an entry for § 63.1(c)(6) to read as follows:

40 CFR citation	Requirement	Applies to subpart AA	Comment
* * *	* * *	*	*
63.1(c)(6)		Yes.	
* * *	* * *	*	*

Subpart BB—[Amended]

15. Appendix A to subpart BB of part 63 is amended by adding an entry for § 63.1(c)(6) to read as follows:

Appendix A to Subpart BB of Part 63—Applicability of General Provisions (40 CFR Part 63, Subpart A) to Subpart BB

40 CFR citation	Requirement	Applies to subpart BB	Comment
* * *	* * *	*	*
63.1(c)(6)		Yes.	
* * *	* * *	*	*

Subpart CC—[Amended]

16. Table 6 to Appendix of subpart CC of part 63 is amended by adding an entry for § 63.1(c)(6) to read as follows:

Appendix to Subpart CC of Part 63—Tables

* * * * *

TABLE 6.—GENERAL PROVISIONS APPLICABILITY TO SUBPART CC [A]

Reference	Applies to subpart CC	Comment
* * *	* * *	*
63.1(c)(6)	Yes.	
* * *	* * *	*

[a] Wherever subpart A specifies ''postmark'' dates, submittals may be sent by methods other than the U.S. Mail (*e.g.*, by fax or courier). Submittals shall be sent by the specified dates, but a postmark is not required.

* * * * *

Subpart DD—[Amended]

17. Table 2 to subpart DD of part 63 is amended by adding an entry for § 63.1(c)(6) to read as follows:

TABLE 2 TO SUBPART DD OF PART 63.—APPLICABILITY OF PARAGRAPHS IN SUBPART A OF THIS PART 63—GENERAL PROVISIONS TO SUBPART DD

Subpart A reference	Applies to subpart DD	Explanation

TABLE 2 TO SUBPART DD OF PART 63.—APPLICABILITY OF PARAGRAPHS IN SUBPART A OF THIS PART 63—GENERAL PROVISIONS TO SUBPART DD—Continued

Subpart A reference	Applies to subpart DD	Explanation
* * *	* * *	* * *
63.1(c)(6)	Yes.	
* * *	* * *	* * *

* * * * *

Subpart EE—[Amended]

18. Table 1 to subpart EE of part 63 is amended by adding an entry for § 63.1(c)(6) to read as follows:

TABLE 1 TO SUBPART EE OF PART 63.—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART EE

Reference	Applies to subpart EE	Comment
* * *	* * *	* * *
63.1(c)(6)	Yes.	
* * *	* * *	* * *

Subpart GG—[Amended]

19. Table 1 to subpart GG of part 63 is amended by adding an entry for § 63.1(c)(6) to read as follows:

TABLE 1 TO SUBPART GG OF PART 63.—GENERAL PROVISIONS APPLICABILITY TO SUBPART GG

Reference	Applies to affected sources in subpart GG	Comment
* * *	* * *	* * *
63.1(c)(6)	Yes.	
* * *	* * *	* * *

Subpart HH—[Amended]

20. Table 2 of Appendix to subpart HH of part 63 is amended by adding an entry for § 63.1(c)(6) to read as follows:

Appendix to Subpart HH of Part 63-Tables

TABLE 2 TO SUBPART HH OF PART 63.—APPLICABILITY OF 40 CFR PART 63 GENERAL PROVISIONS TO SUBPART HH

General provisions reference	Applies to subpart HH	Explanation
* * *	* * *	* * *
§ 63.1(c)(6)	Yes.	
* * *	* * *	* * *

Subpart JJ—[Amended]

21. Table 1 to subpart JJ of part 63 is amended by adding an entry for § 63.1(c)(6) to read as follows:

TABLE 1 TO SUBPART JJ OF PART 63.—GENERAL PROVISIONS APPLICABILITY TO SUBPART JJ

Reference	Applies to subpart JJ	Comment
* * *	* * *	* * *
63.1(c)(6)	Yes.	
* * *	* * *	* * *

Subpart KK—[Amended]

22. Table 1 to subpart KK of part 63 is amended by adding an entry for § 63.1(c)(6) to read as follows:

TABLE 1 TO SUBPART KK OF PART 63.—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART KK

General provisions reference	Applicable to subpart KK	Comment
* * *	* * *	* * *
§ 63.1(c)(6)	Yes.	
* * *	* * *	* * *

Subpart MM—[Amended]

23. Table 1 to subpart MM of part 63 is amended by adding an entry for § 63.1(c)(6) to read as follows:

TABLE 1 TO SUBPART MM OF PART 63.—GENERAL PROVISIONS APPLICABILITY TO SUBPART MM

Reference	Summary of requirements	Applies to subpart MM	Explanation
* * *	* * *	* * *	* * *
63.1(c)(6)	Becoming an area source	Yes.	
* * *	* * *	* * *	* * *

Subpart DDD—[Amended]

24. Table 1 to subpart DDD of part 63 is amended by adding an entry for § 63.1(c)(6) to read as follows:

TABLE 1 TO SUBPART DDD OF PART 63.—APPLICABILITY OF GENERAL PROVISIONS (40 CFR PART 63, SUBPART A) TO SUBPART DDD OF PART 63

General provisions citation	Requirement	Applies to subpart DDD?	Explanation
* * *	* * *	* * *	* * *
63.1(c)(6)		Yes.	
* * *	* * *	* * *	* * *

Subpart GGG—[Amended]

25. Table 1 to subpart GGG of part 63 is amended by adding an entry for § 63.1(c)(6) to read as follows:

TABLE 1 TO SUBPART GGG OF PART 63.—GENERAL PROVISIONS APPLICABILITY TO SUBPART GGG

General provisions reference	Summary of requirements	Applies to subpart GGG	Comments
* * *	*	*	* *
63.1(c)(6)	Becoming an area source	Yes.	
* * *	*	*	* *

Subpart HHH—[Amended]

26. Table 2 to subpart HHH of part 63 is amended by adding an entry for § 63.1(c)(6) to read as follows:

Appendix: Table 2 to Subpart HHH of Part 63—Applicability of 40 CFR Part 63 General Provisions to Subpart HHH

General Provisions Reference	Applies to subpart HHH	Explanation
* * *	*	* *
§ 63.1(c)(6)	Yes.	
* * *	*	* *

Subpart JJJ—[Amended]

27. Table 1 to subpart JJJ of part 63 is amended by adding an entry for § 63.1(c)(6) to read as follows:

TABLE 1 TO SUBPART JJJ OF PART 63—APPLICABILITY OF 40 CFR PART 63 GENERAL PROVISIONS TO SUBPART JJJ AFFECTED SOURCES

Reference	Applies to subpart JJJ	Explanation
* * *	*	* *
§ 63.1(c)(6)	Yes.	
* * *	*	* *

* * * * *

Subpart LLL—[Amended]

28. Table 1 to subpart LLL of part 63 is amended by adding an entry for § 63.1(c)(6) to read as follows:

TABLE 1 TO SUBPART LLL OF PART 63.—APPLICABILITY OF GENERAL PROVISIONS

Citation	Requirement	Applies to subpart LLL	Explanation
* * *	*	*	* *
63.1(c)(6)		Yes.	
* * *	*	*	* *

Subpart MMM—[Amended]

29. Table 1 to subpart MMM of part 63 is amended by adding an entry for § 63.1(c)(6) to read as follows:

TABLE 1 TO SUBPART MMM OF PART 63.—GENERAL PROVISIONS APPLICABILITY TO SUBPART MMM

Reference to subpart A	Applies to subpart MMM	Explanation

TABLE 1 TO SUBPART MMM OF PART 63.—GENERAL PROVISIONS APPLICABILITY TO SUBPART MMM—Continued

Reference to subpart A	Applies to subpart MMM	Explanation
* * *	* * *	* * *
§ 63.1(c)(6)	Yes.	
* * *	* * *	* * *

Subpart NNN—[Amended]

30. Table 1 to subpart NNN of part 63 is amended by adding an entry for § 63.1(c)(6) to read as follows:

TABLE 1 TO SUBPART NNN OF PART 63.—APPLICABILITY OF GENERAL PROVISIONS (40 CFR PART 63, SUBPART A) TO SUBPART NNN

General provisions citation	Requirement	Applies to subpart NNN	Explanation
* * *	* * *	* * *	* * *
63.1(c)(6)		Yes.	
* * *	* * *	* * *	* * *

Subpart OOO—[Amended]

31. Table 1 to subpart OOO of part 63 is amended by adding an entry for § 63.1(c)(6) to read as follows:

TABLE 1 TO SUBPART OOO OF PART 63.—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART OOO AFFECTED SOURCES

Reference	Applies to subpart OOO	Explanation
* * *	* * *	* * *
63.1(c)(6)	Yes.	
* * *	* * *	* * *

* * * * *

Subpart PPP—[Amended]

32. Table 1 to subpart PPP of part 63 is amended by adding an entry for § 63.1(c)(6) to read as follows:

TABLE 1 TO SUBPART PPP OF PART 63.—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART PPP AFFECTED SOURCES

Reference	Applies to subpart PPP	Explanation
* * *	* * *	* * *
63.1(c)(6)	Yes.	
* * *	* * *	* * *

* * * * *

Subpart RRR—[Amended]

33. Appendix A to subpart RRR of part 63 is amended by adding an entry for § 63.1(c)(6) to read as follows:

APPENDIX A TO SUBPART RRR OF PART 63. I GENERAL PROVISIONS APPLICABILITY TO SUBPART RRR

Citation	Requirement	Applies to RRR	Comment
* * *	* * *	*	*
§ 63.1(c)(6)		Yes.	
* * *	* * *	*	*

Subpart VVV—[Amended]

34. Table 1 to subpart VVV of part 63 is amended by adding an entry for § 63.1(c)(6) to read as follows:

TABLE 1 TO SUBPART VVV OF PART 63.—APPLICABILITY OF 40 CFR PART 63 GENERAL PROVISIONS TO SUBPART VVV

General provisions reference	Applicable to subpart VVV	Explanation
* * *	* * *	*
§ 63.1(c)(6)	Yes.	
* * *	* * *	*

Subpart HHHH—[Amended]

35. Table 2 to subpart HHHH of part 63 is amended by adding an entry for § 63.1(c)(6) to read as follows:

TABLE 2 TO SUBPART HHHH OF PART 63.—APPLICABILITY OF GENERAL PROVISIONS (40 CFR PART 63, SUBPART A) TO SUBPART HHHH

Citation	Requirement	Applies to HHHH	Explanation
* * *	* * *	*	*
§ 63.1(c)(6)		Yes.	
* * *	* * *	*	*

Subpart IIII—[Amended]

36. Table 2 to subpart IIII of part 63 is amended by adding an entry for § 63.1(c)(6) to read as follows:

TABLE 2 TO SUBPART IIII OF PART 63.—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART IIII OF PART 63

Citation	Subject	Applicable to subpart IIII	Explanation
* * *	* * *	*	*
§ 63.1(c)(6)	Becoming an area source	Yes.	
* * *	* * *	*	*

Subpart JJJJ—[Amended]

37. Table 2 to subpart JJJJ of part 63 is amended by adding an entry for § 63.1(c)(6) to read as follows:

TABLE 2 TO SUBPART JJJJ OF PART 63.—APPLICABILITY OF 40 CFR PART 63 GENERAL PROVISIONS TO SUBPART JJJJ

General provisions reference	Applicable to subpart JJJJ	Explanation
* * *	* * *	* * *
§ 63.1(c)(6)	Yes.	
* * *	* * *	* * *

Subpart KKKK—[Amended]

38. Table 5 to subpart KKKK of part 63 is amended by adding an entry for § 63.1(c)(6) to read as follows:

TABLE 5 TO SUBPART KKKK OF PART 63.—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART KKKK

Citation	Subject	Applicable to subpart KKKK	Explanation
* * *	* * *	* * *	* * *
§ 63.1(c)(6)	Becoming an area source	Yes.	
* * *	* * *	* * *	* * *

Subpart MMMM—[Amended]

39. Table 2 to subpart MMMM of part 63 is amended by adding an entry for § 63.1(c)(6) to read as follows:

TABLE 2 TO SUBPART MMMM OF PART 63.—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART MMMM OF PART 63

Citation	Subject	Applicable to subpart III	Explanation
* * *	* * *	* * *	* * *
§ 63.1(c)(6)	Becoming an area source	Yes.	
* * *	* * *	* * *	* * *

Subpart NNNN—[Amended]

40. Table 2 to subpart NNNN of part 63 is amended by adding an entry for § 63.1(c)(6) to read as follows:

TABLE 2 TO SUBPART NNNN OF PART 63.—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART NNNN

Citation	Subject	Applicable to subpart NNNN	Explanation
* * *	* * *	* * *	* * *
§ 63.1(c)(6)	Becoming an area source	Yes.	
* * *	* * *	* * *	* * *

Subpart OOOO—[Amended]

41. Table 3 to subpart OOOO of part 63 is amended by adding an entry for § 63.1(c)(6) to read as follows:

TABLE 3 TO SUBPART OOOO OF PART 63.—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART OOOO

Citation	Subject	Applicable to subpart OOOO	Explanation
* * *	*	*	*
§ 63.1(c)(6)	Becoming an area source	Yes.	
* * *	*	*	*

Subpart PPPP—[Amended]

42. Table 2 to subpart PPPP of part 63 is amended by adding an entry for § 63.1(c)(6) to read as follows:

TABLE 2 TO SUBPART PPPP OF PART 63.—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART PPPP OF PART 63

Citation	Subject	Applicable to subpart PPPP	Explanation
* * *	*	*	*
§ 63.1(c)(6)	Becoming an area source	Yes.	
* * *	*	*	*

Subpart QQQQ—[Amended]

43. Table 4 to subpart QQQQ of part 63 is amended by adding an entry for § 63.1(c)(6) to read as follows:

TABLE 4 TO SUBPART QQQQ OF PART 63.—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART QQQQ OF PART 63

Citation	Subject	Applicable to subpart QQQQ	Explanation
* * *	*	*	*
§ 63.1(c)(6)	Becoming an area source	Yes.	
* * *	*	*	*

Subpart RRRR—[Amended]

44. Table 2 to subpart RRRR of part 63 is amended by adding an entry for § 63.1(c)(6) to read as follows:

TABLE 2 TO SUBPART RRRR OF PART 63.—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART RRRR

Citation	Subject	Applicable to subpart	Explanation
* * *	*	*	*
§ 63.1(c)(6)	Becoming an area source	Yes.	
* * *	*	*	*

Subpart SSSS—[Amended]

45. Table 2 to subpart SSSS of part 63 is amended by adding an entry for § 63.1(c)(6) to read as follows:

TABLE 2 TO SUBPART SSSS OF PART 63.—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART SSSS

General provisions reference	Applicable to subpart SSSS	Explanation
* * *	* * *	* * *
§ 63.1(c)(6)	Yes.	
* * *	* * *	* * *

Subpart VVVV—[Amended]

46. Table 8 to subpart VVVV of part 63 is amended by adding an entry for § 63.1(c)(6) to read as follows:

TABLE 8 TO SUBPART VVVV OF PART 63.—APPLICABILITY OF GENERAL PROVISIONS TO (40 CFR PART 63, SUBPART A) TO SUBPART VVVV

Citation	Requirement	Applies to subpart VVVV	Explanation
* * *	* * *	* * *	* * *
§ 63.1(c)(6)		Yes.	
* * *	* * *	* * *	* * *

Subpart WWWW—[Amended]

47. Table 15 to subpart WWWW of part 63 is amended by adding an entry for § 63.1(c)(6) to read as follows:

TABLE 15 TO SUBPART WWWW OF PART 63.—APPLICABILITY OF GENERAL PROVISIONS (SUBPART A) TO SUBPART WWWW OF PART 63

The general provisions reference . . .	That addresses . . .	And applies to subpart WWWW of part 63 . . .	Subject to the following additional information . . .
* * *	* * *	* * *	* * *
§ 63.1(c)(6)	Becoming an area source	Yes.	
* * *	* * *	* * *	* * *

Subpart AAAAA—[Amended]

48. Table 8 to subpart AAAAA of part 63 is amended by adding an entry for § 63.1(c)(6) to read as follows:

TABLE 8 TO SUBPART AAAAA OF PART 63.—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART AAAAA

Citation	Summary of requirement	Am I subject to this requirement?	Explanation
* * *	* * *	* * *	* * *
§ 63.1(c)(6)	Becoming an area source	Yes.	
* * *	* * *	* * *	* * *

Subpart PPPPP—[Amended]

49. Table 7 to subpart PPPPP of part 63 is amended by adding an entry for § 63.1(c)(6) to read as follows:

TABLE 7 TO SUBPART PPPPP OF PART 63.—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART PPPPP

Citation	Subject	Brief description	Applies to subpart PPPPP
* *	*	* *	* *
§ 63.1(c)(6)	Applicability	Becoming an area source	Yes.
* *	*	* *	* *

[FR Doc. E6–22283 Filed 12–29–06; 8:45 am]
BILLING CODE 6560–50–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

42 CFR Part 72

RIN 0920–AA03

Interstate Shipment of Etiologic Agents

AGENCY: Centers for Disease Control and Prevention (CDC), HHS.

ACTION: Notice for proposed rulemaking.

SUMMARY: HHS proposes to remove Part 72 of Title 42, Code of Federal Regulations, which governs the interstate shipment of etiologic agents, because the U.S. Department of Transportation (DOT) already has in effect a more comprehensive set of regulations applicable to the transport in commerce of infectious substances. DOT harmonizes its transport requirements with international standards adopted by the United Nations (UN) Committee of Experts on the Transport of Dangerous Goods for the classification, packaging, and transport of infectious substances. Rescinding the rule will eliminate duplication of the more current DOT regulations that cover intrastate and international, as well as interstate, transport. HHS replaced those sections of Part 72 that deal with select biological agents and toxins with a new set of regulations found in Part 73 of Title 42. HHS anticipates that removal of Part 72 will alleviate confusion and reduce the regulatory burden with no adverse impact on public health and safety.

DATES: Written comments must be received on or before March 5, 2007. Written comments on the proposed information collection requirements should also be submitted on or before March 5, 2007. Comments received after March 5, 2007 will be considered to the extent practicable.

ADDRESSES: You may submit written comments to the following address: U.S. Department of Health and Human Services, Centers for Disease Control and Prevention, National Center for Infectious Diseases/OD, ATTN: Interstate Shipment of Etiologic Agents Comments, 1600 Clifton Road, NE (C12), Atlanta, GA 30333. Comments will be available for public inspection Monday through Friday, except for legal holidays, from 9 a.m. until 5 p.m. at 1600 Clifton Road, NE, Atlanta, GA. Please call Ruenell Massey at 404–639–945 to schedule your visit. Comments also may be viewed at *http://www.cdc.gov/ncidod/agentshipment/index.htm*. You may submit written comments by fax to 404–639–3039, Attention: Dr. Janet Nicholson, or electronically via the Internet at *http://www.regulations.gov*. To download an electronic version of the rule, you may access *http://www.regulations.gov*. You must include the agency name (Centers for Disease Control and Prevention) and Regulatory Information Number (RIN) on all submissions for this rulemaking.

FOR FURTHER INFORMATION CONTACT: Dr. Janet K. Nicholson, National Center for Infectious Diseases/OD, Centers for Disease Control and Prevention, U.S. Department of Health and Human Services, 1600 Clifton Rd., NE (MS–C12), Atlanta GA 30333; telephone: 404–639–3945; e-mail *jkn1@cdc.gov*.

SUPPLEMENTARY INFORMATION: Part 72 of Title 42 of the Code of Federal Regulations provides minimal requirements for packaging and shipping materials, including diagnostic specimens and biological products, reasonably believed to contain an etiologic agent. It provides more detailed requirements, including labeling, for materials containing certain etiologic agents, with a list of the biological agents and toxins provided. For agents on the list, the rule requires reporting to HHS/CDC damaged packages and packages not received. The rule also requires sending certain agents on the list by registered mail or an equivalent system.

The rule, as currently promulgated, is out-of-date, and duplicates more current regulations of DOT. Further, the regulation is inconsistent with the procedures of other transport governing bodies, such as the International Civil Aviation Organization (ICAO) and the International Air Transport Association (IATA), for air, and the U.S. Postal Service for ground.

Section 72.6, a major portion of 42 CFR 72 that dealt with select agents, was superseded by the issuance of an Interim Final Rule for 42 CFR 73 on December 13, 2002 (67 FR 76886). Part 73 implements provisions of the Public Health Security and Bioterrorism Preparedness and Response Act of 2002.

The continued existence of the remaining provisions of the out-of-date HHS/CDC regulation is confusing to the packaging and transport communities. The provisions serve no useful purpose that merits their retention. HHS/CDC will remain available for consultation on and response to public-health issues and emergencies, in accordance with its normal duties in the interest of public health and safety.

Transition From HHS to DOT Regulations

DOT has the primary statutory authority to regulate the safe and secure transportation of all hazardous materials, including infectious materials, shipped in intrastate, interstate, and foreign commerce. The etiologic agents covered by 42 CFR 72 are considered to be hazardous materials, and, in practice, the DOT regulations, 49 CFR 171–178, have superseded since DOT began including more specific regulations on infectious substances. The earlier versions of the DOT regulations on etiologic agents were based on and virtually identical to the HHS regulations. These regulations have been modified over time, as necessary, to continue to provide protection for persons who handle shipments with as few impediments as possible to quick shipment. In 1990, DOT authorized the term ''infectious substance'' as synonymous with ''etiologic agent.'' In 1991, DOT expanded the definition of ''etiologic agent'' to include agents listed in 42 CFR 72, plus others that cause or could cause severe, disabling or fatal human disease, thereby including agents such as human immunodeficiency virus that were not on the HHS list. DOT also issued expanded packaging

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May 4, 2007

Air and Radiation Docket
U.S. Environmental Protection Agency
1301 Constitution Avenue, N.W.
Room 3334, Mail Code 6102T
Washington, D.C. 20460

Re: Comments on the Proposed Rule to Amend the "Once In, Always In" Policy; Docket ID No. EPA-HQ-OAR-20040094

Dear Air and Radiation Docket:

I am writing on behalf of the Steel Manufacturers Association ("SMA") and the Specialty Steel Industry of North America ("SSINA") to express the support of SMA and SSINA for the U.S. Environmental Protection Agency's ("EPA's") proposed change to the "once in, always in" ("OIAI") policy for major sources subject to national emissions standards for hazardous air pollutants ("NESHAP").[1] The proposed rule may provide many of SMA and SSINA's major source member companies with an incentive to reduce and maintain their hazardous air pollutant ("HAP") emissions to levels below the thresholds of Title III of the Clean Air Act. ("CAA")

SMA is the primary trade association for scrap-based electric arc furnace (EAF) carbon steel producers in the United States. SMA members account for over half of the steel produced in the U.S. today. The organization consists of 40 North American companies that operate over 130 facilities and employ approximately 40,000 people. The member companies of the SMA are widely dispersed geographically, with 33 companies located in the United States, five companies in Canada, and two companies in Mexico. SSINA is a voluntary trade association representing virtually all of the North American production of specialty steel products, including stainless, electrical, tool, magnetic, and other alloy steels.

I. Summary of Proposed Rule

Questions arose early in the NESHAP program about the circumstances under which major sources could become area sources if they were to limit their potential to emit ("PTE"). In 1995, EPA issued guidance on this and other issues through a memorandum from John Seitz

[1] 72 Fed. Reg. 69 (Jan. 3, 2007).

("the 1995 memorandum"), then Director of the Office of Air Quality Planning and Standards ("OAQPS").[2]

The 1995 memorandum stated that the latest date by which a source could obtain area source status by limiting its HAP PTE would be the first substantive compliance date of an applicable MACT standard. In the case of existing sources, this would be no later than three years after the effective date of the regulation. The 1995 memorandum then further stated that, once a source was required to comply with a MACT standard (*i.e.*, once the first substantive compliance date had passed without the source limiting its PTE), it must always comply, even though compliance with the standard may reduce HAP emissions from the source to below major source thresholds. Under this policy, known as the "once in, always in" policy, a source is treated as a major source in perpetuity even if, sometime after the first compliance date of a MACT standard, the source no longer meets the statutory definition of a major source (because the source has a PTE below major source thresholds).

In the present proposed rule, EPA has recognized that prohibiting facilities from changing from major source status to area source status can create a disincentive for many facilities to reduce HAP emissions. EPA therefore, is proposing to reverse the policy outlined in the 1995 memorandum and authorize Title III major sources to become area sources at any time if they obtain a PTE limit capping their HAP emissions below the major source thresholds. All limitations on a facility's PTE must be made through a federally-enforceable permit, or, in the event that the facility would cease to be a major source, the PTE would need to be memorialized in "another permit vehicle."

In promulgating this proposed rule, EPA has requested comment on three aspects of the implementation of the rule. Specifically, EPA has requested comment on the potential for, and design of, compliance periods for: (1) major sources seeking to be reclassified as area sources; and, (2) major sources that have been reclassified as area sources and which seek to revert back to major source classification. Additionally and more generally, EPA is seeking comment on whether any other revisions are necessary or recommended in order to allow major sources to switch to area source status.

II. Impact of the Proposed Rule on SMA and SSINA Member Companies

The proposed rule would provide some benefit to select SMA and SSINA member companies. Most, if not all, SMA and SSINA member companies are classified as major sources under Title I and would therefore remain subject to Title V permitting requirements. These facilities operate electric arc furnaces ("EAF"), which are not subject to an industry NESHAP. However, many SMA and SSINA member companies are subject to various NESHAPs for ancillary operations which may occur at their facilities. For example, many SMA and SSINA

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[2] *Potential to Emit for MACT Standards - - Guidance on Timing Issues*, John S. Seitz , USEPA (May 16, 1995).

member companies operate steel pickling lines subject to the Subpart CCC NESHAP for Steel Pickling – HCL process, coil coating operations subject to the Subpart SSSS NESHAP for Metal Coil (Surface Coating), or the Subpart MMMM NESHAP for Miscellaneous Metal Parts and Product (Surface Coating). Facilities which include these types of ancillary operations would benefit from the proposed rule to the extent that they have controlled, or will be able to control, HAP emissions to levels below the Title III thresholds.

Industries that are regulated under NESHAPs lost an important incentive to reduce emissions below the CAA's Title III thresholds for major source status (10 tons per year ("tpy") of a single HAP or 25 tpy of any combination of HAPs) following the publication of the 1995 memorandum. Many facilities were not able to meet the Title III thresholds by the initial compliance date of their industry's MACT standard. These facilities were then classified as major sources. Since becoming classified as Title III major sources, many of these facilities have substantially reduced their HAP emissions through compliance with MACT standards and by voluntarily updating technology and process efficiency. Those SMA and SSINA member companies that have taken positive steps to reduce HAP emissions to levels close to the Title III major source thresholds presently have no incentive to decrease their HAP emissions any further. The proposed rule would create that incentive, by providing a regulatory benefit to those companies that voluntarily take steps to reduce their HAP emissions.

III. Proposed Rule Has Net Environmental Benefit

The proposed rule would provide a significant environmental benefit while also potentially benefiting many regulated industries. Regulated industries benefit because those that are willing and able voluntarily to control their HAP emissions may be relieved of their major source status. The environmental benefit is realized when facilities respond to the incentives in this proposed rule and take steps to further reduce their HAP emissions to below the Title III major source thresholds. This environmental benefit will likely be realized without any meaningful risk of allowing companies to backslide on emissions in order to remain just below major source thresholds. There are a number of reasons why backsliding would not be likely. First of all, the proposed rule would require that the emissions limitations allowing for the change from major source status be memorialized in a federally-enforceable permit, like a Title V permit. Additionally, those facilities that are able to avail themselves of the proposed rule and cease being regulated as major sources would still be regulated as area sources, thus insuring a safety net for environmental and public health protection. In most cases, facilities could only achieve further HAP reductions by technology improvements aimed at controlling air emissions. These controls likely would also be included in the facility's Title V permit and therefore become enforceable limitations as a practical matter.

Each SMA and SSINA member company reports its toxic releases through the Toxic Release Inventory ("TRI") program. TRI reports are closely monitored by the public, the press, public interest groups, EPA, and state and local regulatory authorities. The intense scrutiny to which TRI reports are subject provides a strong incentive to minimize the release of toxic

chemicals, including HAPs. Even if a small number of SMA or SSINA member companies were capable of increasing HAP emissions under the proposed rule, they would not likely do so because of their desire to reduce their TRI reported releases.

Companies that can avail themselves of this proposed rule are likely to be companies that already have (either through MACT compliance or voluntary efforts) significantly cut their HAP emissions. To obtain these emissions reductions, these facilities have engineered more robust control technology and amended production processes. Once a facility has made capital investments to create reductions in their HAP emissions, it is very unlikely that such a facility would reverse those changes simply because they may be permitted to do so.

Additionally, the overwhelming majority (if not all) of SMA and SSINA member companies are classified as major sources under Title I. These facilities, like many facilities in other industries, will remain subject to permitting requirements of Title V. The Title V permits under which these facilities currently operate, and would continue to operate, often contain State-mandated limits, controls, and reporting mechanisms which would significantly deter any increases in HAP emissions.

IV. Proposed Rule is Within EPA's Discretionary Authority Under the CAA

Section 112 of the CAA distinguishes between major sources and area sources of HAPs, but it is silent regarding a facility's ability to switch from a major source to an area source.

In developing the OIAI policy, the 1995 Memorandum arguably modified the definition of a major source in a manner that was inconsistent with the CAA. Under the 1995 policy, a source with a PTE less than the Title III major source thresholds is still classified as a major source. Neither the CAA nor its underlying legislative history indicate that Congress intended major sources to be so classified simply because they may have exceeded the applicable thresholds at some point in the past. Additionally, the 1995 memorandum itself stated that EPA intended the OIAI policy to be an interim guidance until EPA promulgated a full rulemaking. EPA therefore is well within its authority under the CAA to promulgate a rule that overturns Agency guidance and reinstates a definition of a major source that is consistent with the language and intent of the CAA.

V. Specific Comments on Proposed Rule

EPA requested comments on a number of provisions proposed in this rule. In situations where a major source switches to an area source and then becomes a major source again, EPA proposes to require that the facility meet the MACT requirements immediately upon switching back to major source status. EPA proposes an exception to this provision, which SMA and SSINA support. However, SMA and SSINA also believe that it is reasonable for EPA to allow those facilities which revert back to major source status a reasonable amount of time to be able to meet the MACT requirements for that NESHAP. The reason this is necessary is because sources

may not know immediately that their level of emissions may have exceeded a major source threshold. In addition, if the MACT standards change, to become more stringent than the MACT standards with which the facility was previously complying, then SMA and SSINA believe that it would be unreasonable for EPA to require immediate compliance. Requiring immediate compliance with a MACT standard in the context of a major source reversion is only appropriate where the facility had previously met those MACT requirements and had a reasonable opportunity to determine whether its actual level of emissions may have exceeded an applicable threshold. Substantive changes to the MACT requirements can necessitate significant changes to a facility's control technology and processes. Those facilities that must revert back to major source status, and thereby voluntarily take on new and augmented MACT standards, should be provided reasonable time with which to comply with those new standards in the same manner as if they had never switched from major source standards.

Even in reversion situations where the MACT standard remains unchanged, facilities will undoubtedly need to make some changes to prepare to comply with a completely different standard. As such, SMA and SSINA support an automatic compliance period following any reversion back to major source status. Placing potential roadblocks in the way of facilities striving to meet and maintain HAP emissions below area source levels will only serve to eliminate the incentive to reduce HAP emissions.

Similarly, if a switch from major source to area source requires different emissions controls or the control of different emissions points, then, upon submission of a request for an extension, the facility should be granted an extension of the compliance period. Simply put, EPA should encourage HAP reductions by liberally granting necessary compliance extensions.

VI. Conclusion

EPA's proposed rule may provide significant relief to many of SMA and SSINA's member companies while providing a critical incentive to reduce HAP emissions. Many SMA and SSINA member companies already have taken significant steps to reduce their HAP emissions. We believe that many more would follow suit if given the proper incentive. Companies that have taken HAP emission reduction steps will not likely backslide under this rule. These companies have invested in the control technology and process changes necessary to make these HAP reductions and have little incentive to forgo their control upgrades and process changes in order to increase HAP emissions. To the contrary, these facilities have a powerful incentive consistently to lower their emissions for purposes of environmental stewardship and community relations.

In this proposed rule, EPA is providing a powerful incentive to many Title III major sources. EPA should not diminish this incentive by placing unnecessary compliance deadlines on facilities which must undergo physical or process amendments in order to change their NESHAP status.

SMA and SSINA appreciate the opportunity to comment on this proposed rule. If you have any questions, please feel free to contact John Wittenborn at 202.342.8514 or jwittenborn@kelleydrye.com.

Respectfully,

John L. Wittenborn
Counsel to the Steel Manufacturers Association and
The Specialty Steel Industry of North America

May 4, 2007

U.S. Environmental Protection Agency
EPA West (Air Docket)
1200 Pennsylvania Avenue, Northwest,
B102, Mail Code 6102T
Washington, DC 20460.

Re: Docket ID No. EPA–HQ–OAR–2004–0094.

To Whom it May Concern:

On behalf of the 1.2 million members of the Natural Resources Defense Council, we are writing to provide comments on EPA's rulemaking proposal for the "National Emission Standards for Hazardous Air Pollutants: General Provisions," published at 72 Fed. Reg. 69 (Jan. 3, 2007).

I. EPA's Proposal Contravenes the Language, Structure and Legislative History of the Clean Air Act.

EPA's proposal pretends that the only relevant or governing statutory provisions concerning the lawfulness of its proposal are the "major source" and "area source" definitions in sections 112(a)(1) and (a)(2). *See generally* 72 Fed. Reg. at 72-73 (discussing only these two statutory provisions). EPA further asserts – without any statutory analysis, support or rationale – that its proposal "is consistent with the language and structure of the Act." *Id.* at 73 (failing to discuss any further statutory language or any structure of the Act).[1]

As we discuss below, EPA's proposal contravenes multiple provisions of the Act and the very structure, intent and legislative history of section 112 itself. The proposal defies the history and reasons for Congressional adoption of section 112 in the 1990 Clean Air Act Amendments; defies the statute's carefully tailored phase I technology-

[1] Indeed, EPA's conclusory statement that "[n]othing in the structure of the Act counsels against today's proposed approach" (72 Fed. Reg. at 73/1) is followed incredibly and arbitrarily by absolutely no support for that proposition, instead repeating EPA's own conclusions that the only relevant considerations are the differing definitions of major source and area source. *Id.* Sheepishly unable to back up its first conclusory statement, the agency pivots immediately to discussing the statutorily irrelevant observation that its 1995 legal interpretation was only intended to be "transitional." *Id.* None of this, of course, supports the raw assertion that "[n]othing in the structure of the Act counsels against today's proposed approach." This explanation is especially arbitrary considering that the proposal does not even deign to address, much less grapple with, the statutory provisions and structure that led EPA in that 1995 interpretation to conclude that the longstanding, existing interpretation "follows most naturally from the language and structure of the Act." "Potential to Emit for MACT Standards – Guidance on Timing Issues," Memo from John Seitz, Director, Office of Air Quality Planning and Standards, to EPA Regional Air Division Directors (May 16, 1995).

based MACT approach and phase II residual risk approach; squarely contravenes section 112's compliance schedules; and creates a radically different regime in which no industrial source of HAPs in the country would be required by federal law to reduce facility-wide HAP emissions below 24.9 tons per year (tpy) of a combination of HAPs or 9.9 tpy of a single HAP.[2]

EPA pretends that this is the *laissez-faire,* unconcerned regulatory approach that Congress intended for the most toxic air pollutants known to man, including carcinogens and other substances that are deadly in parts per million or parts per billion concentrations. Instead, according to the inescapable internal logic of EPA's proposal, Congress intended every industrial source of HAPs in the country to have the legal right to emit 49,800 pounds per year of deadly toxins, with no obligation to reduce those emissions further or to assess the risk to public health remaining at this or lower emission levels or to provide an ample margin of safety to protect public health or prevent adverse environmental effects beyond those levels.[3]

As demonstrated by the preceding paragraph, the proposal utterly fails to discuss the additional statutory provisions discussed below, and fails further to discuss the legislative history that prompted adoption of section 112 in 1990 or the structural elements that Congress selected to implement the two-phase MACT and residual risk regime. Because section 307(d)(3)(C) requires EPA rulemaking proposals to contain a "statement of basis and purpose" including "the major legal interpretations and policy considerations underlying the proposed rule," two conclusions follow: (1) EPA believes that the section 112(a) major source and area source definitions are the only relevant statutory provisions embodying the "major legal interpretations" to support its proposal, and (2) should EPA decide to rely on additional or different legal authority to support any final rule adopting the proposal, the agency will be required to promulgate a supplemental proposal seeking comment on any new major legal interpretations, factual data and analysis, and policy considerations.[4]

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[2] For ease of reference, these comments will refer to these thresholds subsequently as 24.9/9.9 tpy or 25/10 tpy, as appropriate. Also for ease of reference, these comments should be read to oppose each and every proposed regulatory provision that implements EPA's proposal, including the proposed amendments to the part 63 General Provisions, and the corresponding amendments to the accompanying General Provisions applicability tables. *See* 72 Fed. Reg. at 80-92.

[3] *See* discussions of sections 112(d) and 112(f) *infra.* Indeed, EPA's proposal would also result in significant increases in criteria pollutants such as VOCs and particulate matter since, as EPA has long touted, "[t]he MACT regulations are also resulting in substantial co-control of criteria air pollutants." EPA, RESIDUAL RISK REPORT TO CONGRESS 10 (1999).

[4] Additionally, EPA's proposal contravenes section 307(d)(3)(A) & (B), by failing to include "the factual data on which the proposed rule is based," and "the methodology used in obtaining the data and in analyzing the data." EPA admitted in a March 30, 2007 letter to the Honorable John D. Dingell that at the time the agency developed the proposed rule, "we were not able to identify any information which we felt was suitable for use in performing a realistic and reliable analysis. We, therefore, decided to use the proposed rule as a vehicle for obtaining information that is suitable for that purpose. Any such information received in response to the proposal will be considered in taking final action on the proposed rule." Letter from William Wehrum, Acting Assistant Administrator, EPA Office of Air and Radiation, to the Honorable John Dingell (Mar. 30, 2007), at 3. And in a January 29, 2007, draft "Q & A" briefing paper prepared for the Administrator's appearance at a Senate Environment and Public Works Committee oversight hearing on February 6, 2007, where he discussed the proposal, EPA states "[w]e're asking for public comment and

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As discussed below, EPA's proposal contravenes numerous provisions of the Act and the structure, intent and legislative history of section 112 and may not be adopted as a matter of law.

A. Clean Air Act Provisions.

1. Section 112(d).

The proposal fundamentally contravenes the carefully crafted Congressional authorities in CAA section 112 meant to ensure that industrial HAP emitters would achieve:

> the maximum degree of reduction in emissions of the hazardous air pollutants subject to this section (including a prohibition on such emissions, where achievable) that the Administrator, taking into consideration the cost of achieving such emission reduction, and any non-air quality health and environmental impacts and energy requirements, determines is achievable for new or existing sources in the category or subcategory to which such emission standard applies through application of measures, processes, methods, systems or techniques including, but not limited to, measures which -
>
> (A) reduce the volume of, or eliminate emissions of, such pollutants through process changes, substitution of materials or other modifications,
>
> (B) enclose systems or processes to eliminate emissions,
>
> (C) collect, capture or treat such pollutants when released from a process, stack, storage or fugitive emissions point,
>
> (D) are design, equipment, work practice, or operational standards (including requirements for operator training or certification) as provided in subsection (h), or
>
> (E) are a combination of the above.

CAA § 112(d)(2) (emphases added). This insistence on maximum achievable emissions reductions, echoed in the defining criteria in section 112(d)(3) (*see infra*), contradicts the defining characteristic of EPA's proposal, which is to allow every source previously or potentially subject to MACT standards to maintain HAP emissions just below the 25/10 tpy thresholds, no matter whether those emissions levels are significantly greater than MACT floors reflecting the maximum degree of reduction in emissions derived

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information to test out theories." Section 307(d)(3) demands more than "theories" to support CAA rulemaking proposals, and it does not allow the agency to shirk its rulemaking responsibilities with the backwards request that the public provide EPA with the factual data, methodologies and analysis that must underlie the agency's proposals.

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according to the section 112(d)(3) criteria. As discussed above, EPA offers no explanation for how the proposal's approach, which operates legally and practically as a 24.9/9.9 tpy minimum floor level, comports with this language in section 112(d)(2).

EPA also fails to explain, nor can it, how the proposal comports with the insistence in section 112(d)(2) that emission standards for new and existing sources of HAP emissions "includ[e] a prohibition on such emissions, where achievable." Under EPA's proposal, MACT standards would never compel a prohibition on HAP emissions from any source, since EPA's proposal now reads sources' legal right to emit up to 24.9/9.9 tpy of HAP to trump both the Act's "maximum degree of reduction" and "prohibition" commands. The inescapable legal and logical outcome of EPA's proposal would be to have MACT standards on the books that are the legal equivalent of empty vessels, mere paper requirements for MACT floors based on the maximum degree of reduction of HAP emissions, with no sources in the real world actually subject to that obligation at levels below 25 tpy.

Worse, no sources are ever compelled to "prohibit[]" or "eliminate" HAP emissions since, under EPA's proposal, those sources may always choose to adopt PTE limits to escape the obligation to eliminate their HAP emissions. EPA's proposal thus reads section 112(d)(2)'s references to the "prohibition" and "eliminat[ion]" of emissions out of the statute. The proposal eliminates any legal obligation or possibility of MACT standards eliminating HAP emissions, since the proposal would always allow a source instead to "become an area source at any time by obtaining a permit limiting its potential to emit (PTE) hazardous air pollutants, as defined in this subpart, to below the major source thresholds established in 40 CFR 63.2."[5] This maneuver violates basic canons of statutory construction: "a statute ought, upon the whole, to be so construed that, if it can be prevented, no clause, sentence, or word shall be superfluous, void, or insignificant." TRW Inc. v. Andrews, 534 U.S. 19, 31 (2001) (internal quotations omitted). EPA does not and cannot advance an interpretation of these terms that prevents them from being legally meaningless paper requirements that do not function to prohibit or eliminate HAP emissions. Indeed, any elimination requirement would not be a requirement at all, since proposed section 63.1(c)(6) would always allow any source to evade any elimination or prohibition requirement. Nor does EPA offer any reason in policy, legislative history or the statute's structure why Congress would create such an arbitrary, ineffectual and self-defeating statutory approach.

A fundamental conflict between EPA's proposal and the statute lies in the proposal's treatment of section 112(d)(3). For new sources, section 112(d)(3) provides:

> The maximum degree of reduction in emissions that is deemed achievable for new sources in a category or subcategory shall not be less stringent than the emission

[5] 72 Fed. Reg. at 80 (proposed section 63.1(c)(6)). This contradiction is most stark for a single source category or source subject to a single MACT standard, but it is also fully possible for sources or source categories subject to multiple MACT standards.

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> control that is achieved in practice by the best controlled similar source, as determined by the Administrator.

For existing sources, emission standards "shall not be less stringent, and may be more stringent than. . . the average emission limitation achieved by the best performing 12 percent of the existing sources" or "the average emission limitation achieved by the best performing 5 sources (for which the Administrator has or could reasonably obtain emissions information) in the category or subcategory for categories or subcategories with fewer than 30 sources." CAA § 112(d)(3)(A).

EPA's proposal contravenes section 112(d)(3) by failing to require each of these forms of maximum achievable emission reductions:

- new sources are allowed to limit their emission reductions to as high as 24.9/9.9 tpy rather than the "emission control that is achieved in practice by the best controlled similar source";

- existing sources in categories/subcategories with more than 30 sources are allowed to limit their emission reductions to as high as 24.9/9.9 tpy rather than "the average emission limitation achieved by the best performing 12 percent of the existing sources"; and

- existing sources in categories/subcategories with fewer than 30 sources are allowed to limit their emission reductions to as high as 24.9/9.9 tpy rather than "the average emission limitation achieved by the best performing 5 sources."

Thus does EPA's proposal completely disregard and confound the statutory criteria mandating the maximum achievable emission reductions of HAPs under section 112.

EPA's proposal and administrative record materials inexplicably fail even to explain how the proposal is consistent with these provisions of section 112(d)(3). One obvious explanation is that the agency realizes its proposal contradicts section 112(d)(3), and cannot even muster a plausible alternative interpretation. This most obvious explanation is also the most likely one, as discussed below in the context of the 1995 Memo by John Seitz. *See generally*, "Potential to Emit for MACT Standards – Guidance on Timing Issues," Memo from John Seitz, Director, Office of Air Quality Planning and Standards, to EPA Regional Air Division Directors (May 16, 1995) (hereinafter "1995 Seitz Memo").

The proposal's silence makes it impossible to know fully how and why the agency might believe its new interpretation is consistent with section 112(d)(3). One possible explanation, nowhere suggested by the proposal or record, however, is that EPA might contend that it could discharge its section 112(d)(3) statutory obligations as it has done (with varying degrees of success) in issuing the existing suite of MACT standards, and then argue that whatever results may flow from the proposal's adoption – in terms of covered sources escaping MACT controls – is something that Congress intended to allow

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and immaterial to the operation of section 112(d)(3). Thus, if sources subject to maximum achievable emission reduction obligations subsequently increases their emissions above those maximum achievable reduction levels, that is irrelevant. Similarly, if the MACT standards ended up amounting in practice to empty obligations covering an empty source category with no actual sources required to obtain maximum achievable emission reductions – a distinct possibility[6] – that too is irrelevant.

Any such explanation would contravene the language, structure and legislative history of section 112 as discussed throughout these comments. The very language of section 112(d)(2) and (3) speaks in terms of "maximum" reductions that Congress expected sources to "achieve," not just minimal enough reductions that sources need not even achieve as a matter of federal law.[7] EPA's proposal turns the maximum achievable emissions reduction mandate upside down into a "need not achieve" right that can be exercised, paradoxically, by the very sources that Congress intended to subject to section 112(d)(3). Even more paradoxical, the very sources for which section 112(d)(3) standards were most successful – driving aggregate HAP emissions below 24.9/9.9 tpy – are the very same sources now eligible to flout that successful application and increase emissions above MACT floor levels.

EPA identifies no legal, policy or legislative history rationale or evidence to suggest that Congress wished the statute to be implemented in this upside down fashion, favoring HAP emission increases over maximum achievable emission reductions. It is no answer to say, as EPA does, that it hopes sources will be incentivized by the proposal to reduce HAP emissions incrementally to just below the 25/10 tpy thresholds. We address the arbitrariness of EPA's hopes and speculations *infra*. For present purposes, however, it suffices to note that neither the statute nor its legislative history speaks in terms of incentives, much less deregulatory incentives. Nor do the Act or Congressional explanations speak in terms of voluntary source actions serving as a substitute or alternative to section 112(d)(3) maximum achievable emission reductions.

But then – even though the proposal fails even to discuss section 112(d)(3) – EPA knows all this. The agency's definitive, governing legal interpretation of CAA section 112(d)(3) states that:

> facilities that are major sources for HAPs on the "first compliance date" are required to comply permanently with the MACT standard to ensure that maximum achievable reductions in toxic emissions are achieved and maintained.

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[6] Unfortunately, EPA has refused to furnish the basic, necessary factual data or projections, or exercise the agency's section 114 data collection authority, to determine the relative possibilities across *any* source category, much less all MACT source categories, that some, many, most or all sources currently subject to MACT standards might escape the obligation to achieve maximum achievable emission reductions.

[7] As discussed *infra*, one additional harmful consequence of EPA's proposal is that some or many sources could escape federal HAP regulation altogether, since they may pursue state-enforceable-only PTE limits that are not governed by federal regulations and that may not be enforced by EPA, or citizens acting pursuant to the Act's citizen suit provisions.

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> EPA believes that this once in, always in policy follows most naturally from the language and structure of the statute. In many cases, application of MACT will reduce a major emitter's emissions to levels substantially below the major thresholds. Without a once in, always in policy, these facilities could "backslide" from MACT control levels by obtaining potential-to-emit limits, escaping applicability of the MACT standard, and increasing emissions to the major-source threshold (10/25 tons per year). Thus, the maximum achievable emissions reductions that Congress mandated for major sources would not be achieved. 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.

1995 Seitz Memo, at 9 (emphasis added). The agency's own longstanding interpretation of the Act echoes the very points made above about sections 112(d)(2) and (3). As EPA itself understands, the statute's language and defining MACT criteria evince Congressional intent to require permanent and continuous compliance with the maximum achievable emission reduction obligations, in the name of accomplishing the public health and environmental protections against HAP emissions expected by Congress.

It is revealing to contrast the 1995 Seitz Memo's statement that its legal interpretation "follows most naturally from the language and structure of the statute" with the absolute silence about this legal interpretation and statement in the proposal. In fact, on at least two separate occasions, EPA officials remarked internally on earlier draft proposals' silence concerning this legal interpretation and the agency's longstanding belief that it "follows most naturally from the language and structure of the statute."

In the attached EPA Regional memorandum entitled "Regional Comments on Draft OIAI Policy Revisions," dated December 13, 2005 (hereinafter "2005 Regional Memo"), seven of ten EPA regional offices chided the headquarters office responsible for developing the draft proposal, pointing out that proposal failed to explain "why EPA no longer believes that the OIAI policy flows naturally from the statute." *Id.* at 3. Indeed, the Regional memo criticized the draft proposal for resting on the very same, non-responsive assertion reflected in the final proposal, that "there is nothing in the CAA that compels the conclusion that a source cannot attain area source status after the first substantive compliance date of a MACT standard." *Cf. id.* to 72 Fed. Reg. at 72.

The proposal's non-responsive, non-explanation is arbitrary at two levels, first, by failing to explain the agency's reversal in legal positions that the governing interpretation now no longer "follows most naturally from the language and structure of the statute"; and second, by failing to respond to internal, eminently reasonable requests that the agency explain its reversal in position "[i]n order to provide an adequate rulemaking record." 2005 Regional Memo at 3; *see also* CAA § 307(d)(3)(C) (requiring a proposal's

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"statement of basis and purpose" to include "the major legal interpretations and policy considerations underlying the proposed rule").

Next, not long before the ultimate rulemaking proposal's signature, on September 14, 2006, an official in the Office of the Administrator wrote an email to the staff person in the Office of Air & Radiation responsible for the proposal and made the following observation:

> Have we made a point of addressing the substantive issues [the Regions] raised? For example, in the 1995 memo we claimed the policy outlined then flowed "most naturally" from the language and structure of the statute. Now we claim that "there is nothing in the statute which compels the conclusion that a source cannot attain area source status after the compliance date of a MACT standard". The Regions raised the question of whether we have an adequate rulemaking record to support that change. Do we? Assuming we are sued on this when it goes final, how confident are we in being able to prevail against a legal challenge?

Email from W. Nickerson of EPA to R. Colyer of EPA (Sept. 14, 2006) (hereinafter "Nickerson Email") (attached). The published proposal makes clear that these concerns were swept aside in favor of the same non-responsive, non-explanatory statement that had justifiably rankled the Regional offices. *See* 782 Fed. Reg. at 72.

It is especially ironic that EPA should quote the *Mobil Oil Corp. v. EPA* decision in the preamble to the proposal, 72 Fed. Reg. at 73/1, since nowhere does the agency "explain[] the departure from its prior view." *Id.* (citing *Mobil Oil Corp.*, 871 F.2d at 152). Indeed, the agency refused to explain the departure from its prior view even after being urged to do so on two separate occasions by the collective experts in EPA's regional offices and an official in the Office of the Administrator itself.

As the D.C. Circuit has reiterated in the face of continuing EPA lawlessness and defiance of court precedents, the Clean Air Act requires MACT "floors based on the emission level actually <u>achieved</u> by the best performers (those with the lowest emission levels)." *Sierra Club v. EPA*, No. 03-1202 (Mar. 13, 2007), slip op. at 11. As discussed earlier, EPA's proposal defies this obligation and turns this understanding on its head by treating the 25/10 major source thresholds as the MACT floors substituting for the lowest emission levels reflecting the "emission level actually <u>achieved</u> by the best performers."

Under EPA's upside-down, unlawful new approach to section 112(d)(3), it would be entirely permissible for <u>no</u> source in an industrial category originally subject to MACT to emit at the floor level derived (or supposed to be derived) from the "average emission limitation achieved by the best performing 12 percent of existing sources" (per CAA § 112(d)(3)), and instead for <u>every</u> source originally in the MACT source category to emit

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above the floor level at 24.9/9.9 tpy of HAP. This violates the plain language of section 112(d)(3), the string of D.C. Circuit precedents from *Cement Kiln* to *National Lime* to the 2007 *Sierra Club* decision, and it is arbitrary and capricious.

* * * * *

Section 112(d)(6) provides that "The Administrator shall review, and revise as necessary (taking into account developments in practices, processes, and control technologies), emission standards promulgated under this section no less often than every 8 years." Congress intended such reviews to examine technology developments, with strengthening revisions to section 112 standards driven by "developments in practices, processes, and control technologies." EPA's proposal renders such recurring reviews ultimately meaningless, because any technology developments or strengthening revisions concerning section 112 standards are pointless past the 25/10 tpy thresholds. These thresholds now serve as the defining outer limits of technology development and emission reductions under EPA's proposal. This is plainly at odds with Congressional intent in adopting section 112(d)(6), and EPA offers no explanation at all for the technology-forcing intent behind section 112(d)(6) and how its proposal effectuates that intent. In short, the proposal does not and section 112(d)(6) represents yet another reason why EPA's proposal is unlawful, arbitrary and capricious.

* * * * *

The plain language of section 112(d)(7) serves as an independent barrier to the backsliding that EPA's proposal would cause for all existing MACT standards and residual risk requirements. That section states:

> No emission standard <u>or other requirement promulgated under this section</u> shall be interpreted, construed or applied to diminish or replace the requirements of a more stringent emission limitation or other applicable requirement established pursuant to section 111, part C or D, <u>or other authority of this Act</u> or a standard issued under State authority.

CAA § 112(d)(7) (emphasis added). This language clearly indicates that no "requirement promulgated under this section," such as the instant proposal amending the Part 63 General Provisions, may "diminish or replace the requirements of a more stringent emission limitation or other applicable requirement established pursuant to. . . other authority of this Act," namely including section 112 itself. The plain language and structure of "<u>other</u> authority of this Act" means other than the preceding two statutory examples, section 111 and the part C or D PSD-NSR requirements. The "other authorit[ies] of this Act" that may not be diminished by the proposal thus include not just the part 61 NESHAPs that preceded the 1990 amendments, but also the section 112 emission standards adopted pursuant to the 1990 amendments.

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EPA cannot claim and has never claimed that section 112(d)(7) operates retrospectively only with respect to pre-1990 rules, since EPA has not been allowed to adopt section 112 standards since 1990 that diminish or replace section 111 or part C or D requirements adopted after 1990. Nor has EPA ever argued, nor could it, that section 112(d)(7) does not bar the diminution or replacement of more stringent requirements adopted under the Act's former NESHAP program. By the same token, EPA may not adopt section 112 requirements (like the instant proposal) that weaken more stringent emission limitations or other applicable requirements in any section 112 requirements, since those too are "other authorit[ies] of this Act." By EPA's own admission[8], the proposal "diminish[es] or replace[s] the requirements of a more stringent emission limitation or other applicable requirement" in existing section 112 standards.

2. Section 112(f).

Following the phase I MACT approach in section 112, the second phase residual risk program in section 112(f) requires the following:

> If Congress does not act on any recommendation submitted under paragraph (1), the Administrator shall, within 8 years after promulgation of standards for each category or subcategory of sources pursuant to subsection (d) of this section, promulgate standards for such category or subcategory if promulgation of such standards is required in order to provide an ample margin of safety to protect public health in accordance with this section (as in effect before November 15, 1990) or to prevent, taking into consideration costs, energy, safety, and other relevant factors, an adverse environmental effect. Emission standards promulgated under this subsection shall provide an ample margin of safety to protect public health in accordance with this section (as in effect before November 15, 1990), unless the Administrator determines that a more stringent standard is necessary to prevent, taking into consideration costs, energy, safety, and other relevant factors, an adverse environmental effect. If standards promulgated pursuant to subsection (d) and applicable to a category or subcategory of sources emitting a pollutant (or pollutants) classified as a known, probable or possible human carcinogen do not reduce lifetime excess cancer risks to the individual most exposed to emissions from a source in the category or subcategory to less than one in one million, the Administrator shall promulgate standards under this subsection for such source category.

CAA § 112(f)(2)(A).

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[8] *See, e.g.*, 72 Fed. Reg. at 73/2, 80; Jan. 29, 2007, Q & A Briefing Paper, at 1,2, 3, 9; *see generally* 2005 Regional Memo.

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Regarding area sources and residual risk requirements, the Act provides:

> The Administrator shall not be required to conduct any review under this subsection or promulgate emission limitations under this subsection for any category or subcategory of area sources that is listed pursuant to subsection (c)(3) and for which an emission standard is promulgated pursuant to subsection (d)(5).

CAA § 112(f)(5). Moreover, for area sources not even covered by section 112(d)(3) or section 112(d)(5) emission standards, EPA is not required to conduct residual risk reviews or adopt residual risk standards. *Id.*; CAA §§ 112(d)(3) & (f)(2).

As EPA has recognized, Congress adopted section 112's two-phase approach out of two separate concerns that public health and the environment would not be adequately protected against HAPs: first, based on the concern that the pre-1990 Amendments' exclusive health-based approach to air toxics control had been an abysmal failure in EPA's hands; and second, out of concern that even application of technology-based MACT standards would not adequately protect the public with an ample margin of safety:

> Section 112 of the Act replaces the previous system of pollutant-by-pollutant health-based regulation that proved ineffective at controlling the high volumes and concentrations of HAP in air emissions. The provision directs that this deficiency be redressed by imposing technology-based controls on sources emitting HAP, and that these technology-based standards may later be reduced <u>further to address residual risk that may remain even after imposition of technology-based controls</u>.

62 Fed. Reg. 49,052, 49,055 (Sept. 18, 1997) (emphasis added). Thus, the residual risk provisions are intended to achieve <u>additional</u> controls and reductions beyond what full application of the MACT standards would accomplish through technology alone.

As EPA explained in its Residual Risk Report to Congress, "Current controls on major sources, which include State actions and federal requirements in addition to requiring MACT on major sources, do not necessarily guarantee that HAP emissions will be reduced sufficiently to protect public health. EPA believes that methods to reduce emissions beyond MACT exist." EPA, RESIDUAL RISK REPORT TO CONGRESS ES-6 (1999) (hereinafter "RESIDUAL RISK REPORT"). EPA explained further:

> The MACT determinations, like other broadly applicable emissions control standards, are based on decisions about the most effective, feasible, and reliable controls available.

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> However, MACT standards in a particular source category do not necessarily represent the most stringent state-of-the-art controls available to that industry. Cost and other considerations may result in the most stringent controls not being selected as the national MACT standard. This is because the CAA states that MACT standards for existing sources:
>
> ". . . shall require the maximum degree of reduction in emissions of the hazardous air pollutants... that the Administrator, taking into consideration the cost of achieving such emission reduction, and any non-air quality health and environmental impacts ... determines is achievable . . ."
>
> Accordingly, controls capable of achieving greater HAP reductions may have been ruled out at the time of the MACT determination because of cost or other considerations. However, such costs may later be determined to be reasonable if analysis indicates significant residual risks. It is also possible that, over time, market conditions or technological improvements in certain control technologies could reduce the cost of currently expensive controls to less expensive levels, making their adoption more feasible.

Id. at 79-80.

EPA's proposal does not even deign to discuss – or admit – the harmful consequences of the overturning of the governing legal interpretation on the statutory residual risk requirements and, in turn, on provision of an ample margin of safety to protect public health and prevention of adverse environmental effects. The reason for this silence is clear albeit indefensible, since EPA knows well that the proposal will result in sources being removed from the statutory obligations for the assessment and control of residual risk following application of MACT.

As discussed elsewhere in these comments, the 2005 Regional Memo attacked the draft proposal's failure to discuss its impact on the statutory residual risk program. *See infra*. Similarly, the Office of the Administrator echoed that very question in September 2006, when the draft proposal still failed to address residual risk:

> What impact would a change to minor source status have on the applicability of residual risk standards? Shouldn't we directly address that point in the preamble, similar to how we address the potential applicability of area source standards?

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Nickerson Email. The published proposal makes clear these criticism and urgings were ignored, yet another testament to the arbitrary nature of EPA's proposal.

The answers to these questions are to be found in a draft "Q&A" briefing paper, dated January 29, 2007, (hereinafter "January 2007 Draft Briefing Paper") (attached) prepared for the Administrator's appearance at a Senate Environment and Public Works Committee oversight hearing on February 6, 2007, where he discussed the proposal. The answers and background to the residual risk question in this briefing paper are very instructive:

> **Question**: Wouldn't this Rule get sources out of the health-based part of the air toxics program called residual risk?
>
> **Answer:**
>
> - It depends on the source and the standard applicable to it.
> - Under the proposed change, major sources that become area sources subject to less stringent GACT standards (as opposed to MACT standards) would not be subject to residual risk standards.
>
> **Background:**
>
> - EPA has the discretion to subject area sources to less stringent GACT standards.
> - The Agency is not required to conduct a residual risk analysis for area sources not required to meet MACT standards.

January 2007 Draft Briefing Paper, at 9.

What this adds up to is the conclusion that adoption of the proposal would lead to area sources no longer subject to MACT standards being relieved from the residual risk analysis and standards that Congress intended following application of MACT. Then some of these very same sources that Congress and EPA believed should be subject to MACT and subsequent residual risk requirements could be subject instead to "less stringent GACT standards" and <u>also</u> able to escape residual risk standards. The only former major sources potentially subject to residual risk standards would be the exceedingly small universe of area sources that EPA subjects to actual MACT standards. *See, e.g.*, RESIDUAL RISK REPORT, Appendix C (identifying handful of area source categories to which MACT has been applied).

The proposal thus contravenes the very language, structure and legislative history (*see infra*) of section 112's residual risk program, and flouts Congressional

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concern for the remaining residual risks posed by HAPs even after application of technology-based MACT standards. The proposal completely undermines Congressional concern with the "the risk to public health remaining, or likely to remain, from sources subject to regulation under this section after the application of standards under subsection (d)." CAA § 112(f)(1)(A); *see also* § 112(f)(2). EPA's proposal allows the illegal removal of "sources subject to regulation under this section after the application of standards under subsection (d)," thereby preventing application of residual risk analysis and standards to sources whose risks concerned Congress even at levels below the major source thresholds. There is no indication that Congress was unconcerned with the risks posed by sources whose emissions following application of MACT fell below 25/10 tpy, and indeed the logical and predictable application of MACT has brought numerous source emissions down below those thresholds, just as Congress intended. The plain language and clear structure of the Act provide for the application of section 112(f)(2) to those sources so that "technology-based standards may later be reduced further to address residual risk that may remain even after imposition of technology-based controls." 62 Fed. Reg. at 49,055.

Similar to the minimal 24.9/9.9 tpy floor level established for section 112(d)(3) purposes, the proposal creates a *de facto* and *de jure* lower limit for application of the Act's residual risk provisions at 25/10 tpy, even though Congress adopted a decidedly lower – and more protective – test for residual risk review and standards: following achievement of maximum achievable emission reductions.

3. Section 112(i)(3).

The plain language of section 112(i)'s compliance schedule provisions renders EPA's proposal unlawful. Section 112(i)(3)(A) states:

> After the effective date of any emissions standard, limitation or regulation promulgated under this section and applicable to a source, no person may operate such source in violation of such standard, limitation or regulation except, in the case of an existing source, the Administrator shall establish a compliance date or dates for each category or subcategory of existing sources, which shall provide for compliance as expeditiously as practicable, but in no event later than 3 years after the effective date of such standard, except as provided in subparagraph (B) and paragraphs (4) through (8).

In turn, section 112(d)(10) contains the following effective date provision for section 112(d) standards: "Effective date. Emission standards or other regulations promulgated under this subsection shall be effective upon promulgation."

Together these provisions provide that "[a]fter the effective date of any emissions standard, limitation or regulation promulgated" under section 112 (including section

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112(d)(3) MACT standards), "no person may operate such source in violation of such standard, limitation or regulation." This very clearly indicates that all sources covered by a MACT standard after its effective date may not operate by exceeding the emissions standard or limitation, or otherwise failing to follow any portion of the regulation including its monitoring, recordkeeping, reporting or testing requirements. It is irrelevant whether a source's post-control emissions status under the MACT standard is above or below 25/10 tpy, since the statute emphasizes Congressional intent to subject all sources to section 112 standards after their effective dates by using the extremely broad language "no person." Thus, EPA's proposal is unlawful by purporting to allow sources with actual emissions below 25/10 tpy to operate in violation of "such standard, limitation or regulation," as well as section 112(i)(3)(A), if after compliance dates those sources adopt PTE limits consistent with the proposal.[9]

EPA's proposal, incredibly, does not even discuss, much less overcome, the plain prohibition in section 112(i)(3)(A). Accordingly, EPA has failed to make the extraordinary showing necessary to overcome plain statutory language where Congress has clearly spoken. There is only one exception allowed by section 112(i)(3)(A) from the normal rule prohibiting operation except in compliance with "any emission standard, limitation or regulation" effective promulgation. And that is "in the case of an existing

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[9] Proposed section 63.1(c)(6) makes plain the proposal's intention to relieve sources of section 112 major source requirements once the permit containing an area source PTE limit becomes effective. *See* 72 Fed. Reg. at 80. As discussed above, this is unlawful.

It is revealing that EPA proposes amendments to the Part 63 General Provisions since this is where EPA regulations codify the section 112(i) compliance schedule and operation prohibition making compliance with MACT standards mandatory and permanent after such standards' compliance dates. "After the effective date of a relevant standard established under this part pursuant to section 112(d) or 112(h) of the Act, the owner or operator of an existing source shall comply with such standard by the compliance date established by the Administrator in the applicable subpart(s) of this part." 40 C.F.R. § 63.6(c)(1). Proposed sections 63.1(c)(6) and 63.6(c)(5) override § 63.6(c)(1) and thus violate CAA § 112(i).

Some industry commenters have suggested that EPA's legal interpretation in the 1995 Seitz Memo was mere policy that the agency could abandon – or refuse to follow – at any time. This is wrong for at least three reasons. First, the 1995 Seitz Memo represents EPA's definitive legal interpretation of the obligation to maintain compliance with section 112 emission standards, limitations and requirements following the compliance date of section 112 standards. Under longstanding caselaw, such original, definitive legal interpretations need not be adopted through rulemaking, but any subsequent changes to those interpretations must be carried out through notice and comment rulemaking. *See generally Paralyzed Veterans of America v. D.C. Arena LP*, 117 F.3d 579 (D.C. Cir. 1997).

Second, EPA's own attempt to characterize the 1995 Seitz Memo as a mere "policy position," 72 Fed. Reg. at 71, is revisionist error since EPA also versed its rationale for the position in the language of section 112(d)(3) and stated that the interpretation "follows most naturally from the language and structure of the statute." 1995 Seitz Memo at 9.

Finally, EPA's regulations already do codify and establish a continuing source compliance obligation with section 112 standards starting from the standards' compliance dates, with no ability to escape those continuous compliance obligations by adopting PTE limits afterwards. *See* 40 C.F.R. § 63.6(c)(1) ("After the effective date of a relevant standard established under this part pursuant to section 112(d) or 112(h) of the Act, the owner or operator of an existing source <u>shall comply</u> with such standard by the compliance date established by the Administrator in the applicable subpart(s) of this part.") (emphasis added).

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source, the Administrator shall establish a compliance date or dates for each category or subcategory of existing sources, which shall provide for compliance as expeditiously as practicable, but in no event later than 3 years after the effective date of such standard," subject to additional exceptions that EPA does not and cannot invoke to justify its proposal. CAA § 112(i)(3)(A) (providing additional exceptions, *e.g.*, for Presidential exemption, new sources and coke ovens). Had Congress wished to allow escape from the plain and broad prohibition in section 112(i)(3)(A) for sources whose actual emissions were brought below 25/10 tpy by virtue of MACT (or other measures) "after the effective date of any [section 112] emission standard, limitation or regulation," it easily could have done so here as it did for other situations. But Congress has spoken clearly, both with respect to the background prohibition and the specific exceptions, and it is not up to EPA to craft new exceptions as the agency does in its proposal.

One specific exception to the section 112(i)(3)(A) background prohibition is particularly instructive, and provides further proof that the EPA's proposal is unlawful. Section 112(i)(3)(A)(5)'s early reduction provision contains an exemption from MACT for sources reducing 90-95% of HAP emissions "provided that such reduction is achieved before the otherwise applicable standard under subsection (d) is first proposed." This provision reflects Congressional intent contradicting the EPA proposal in two important respects: (1) it indicates, as noted above, that Congress knew how to craft specific statutory exemptions from the background prohibition, providing evidence that EPA's effort to create a far broader exemption in its proposal squarely contravenes section 112(i); and (2) the particular features of the section 112(i)(3)(A)(5)'s early reduction exception are highly revealing: first, the exception is rooted in 90-95% reductions that would logically and invariably reduce some major source actual emissions to below 25/10 tpy, allowing them to avail themselves of the EPA proposal (were it legal); yet second, section 112(i)(3)(A)(5) makes clear that its reprieve from MACT for early reducers was only to last 6 years from the standard's compliance date. In other words, Congress fully expected these sources to remain subject to MACT, regardless whether they had reduced their emissions 90-95%.

As discussed throughout these comments, this clear compliance schedule approach is perfectly consistent with Congressional intent to reject EPA's past failures and delays in addressing HAPs; to ensure the maximum degree of reductions of those HAPs; to ensure regular 8-year technology reviews and updates; and to ensure further reductions in risk to public health and adverse environmental impacts following application of the Act's technology-based standards. EPA's proposal is inconsistent with each of these structural elements, their implementing language, and the plain language of section 112(i)(3)(A).

4. Section 112(a).

As noted earlier, EPA pretends that the only relevant or governing statutory provisions concerning the lawfulness of its proposal are the "major source" and "area source" definitions in sections 112(a)(1) and (a)(2). *See generally* 72 Fed. Reg. at 72-73 (discussing only these two statutory provisions). But the section 112(a) major source and

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area source definitions are simply numeric triggers for determining the sources subject to coverage by MACT standards when EPA promulgates such standards. It is apparent that the major/area source distinction was established for purposes of prioritizing agency resources and the fair allocation of regulatory burdens. Legislative history and the agency's own statements recognize that major sources were understood to encompass larger industrial sources like chemical plants, oil refineries, and steel mills, while area sources covered smaller sources like dry cleaning operations. *See infra.*

Congress simply adopted the same size-based threshold approach for coverage that it has always used in Clean Air Act stationary source programs, defining larger sources (major) or smaller sources (minor, area) based upon tons per year. How else would Congress draw lines between larger and smaller sources? How else would statutory drafters indicate their intent to initially apply regulations to sources based upon their size upon promulgation of standards, ensuring permanent compliance with the standards by no later than compliance dates, and still guard against future agency chicanery attempting to exempt sources once they reduced their emissions too much? Why would Congress conceivably have adopted maximum achievable emission reduction obligations, prohibiting violation of those obligations "after the effective date of those standards" (§ 112(i)(3)(A)), and foreseen the need to avoid using size-based definitions the way Congress had always done under the Act, on the contingency that some future administration 17 years after the 1990 Amendments, after all the MACT standards had been adopted, would suddenly decide that Congress intended those size thresholds to authorize violations of the emission standards and compliance schedules in the name of increased emissions? EPA does not answer these questions.

But the answer to these questions does not furnish the answer to the question whether Congress intended section 112(d) and 112(f) standards to be cast aside by sources whose coverage under those sections produced the welcome outcome of their emissions falling below the 25/10 tpy thresholds. EPA's proposal pretends that Congress actually regarded that outcome as not just unwelcome but unwarranted, deciding instead that the "maximum degree of reductions in emissions" should instead stop short at 24.9/9.9 tpy.

EPA's proposal refuses even to grapple with the interaction between section 112(a)'s definition and section 112(d):

> In the 1995 memorandum, EPA stated, as a matter of policy, that without the OIAI policy, facilities could backslide from MACT levels of control and increase their emissions to a level slightly below the major source thresholds. The 1995 memorandum further asserts that if this occurred, the ''maximum achievable emissions reductions that Congress mandated for major sources would not be achieved.'' We agree that Congress mandated that sources that meet the definition of ''major source'' in section 112(a) be required to comply with MACT, but a

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> source that takes a PTE limit that limits its PTE to below the major source HAP thresholds does not, as explained above, meet the statutory definition of ''major source,'' and therefore should not be subject to the requirements applicable to a major source.

72 Fed. Reg. at 73/2. But this explanation squarely misses – and evades – the point. Congress mandated the achievement of maximum achievable emissions reductions, something that the agency's governing legal interpretation recognizes can only be achieved by requiring continuing compliance with MACT standards, (something that section 112(i)(3) independently demands, we should add). EPA possesses no authority to set aside those legal obligations with its policy preference that sources "should not be subject" to those requirements. *Id.*

EPA's apparent view is that the words "considering controls" in section 112(a)(1) provides the statutory authority to eviscerate any meaningful understanding of section 112(d), render inoperative section 112(f) to sources meant to be covered by Congress, contradict the plain language of section 112(i)(3)(A), make meaningless section 112(d)(6)'s technology review obligation, and run afoul of the entire structure of section 112. 72 Fed. Reg. at 72-73. But that is reading far too much into those two words and, worse, creating multiple, direct conflicts with other statutory provisions and the structure of section 112, an interpretative stratagem that judicial precedents reject in favor of interpretations that provide coherent, unifying meanings to all terms in a statute. As EPA itself recognized in the 1995 Seitz Memo and continues to recognize implicitly even in the instant proposal, it is possible to give meaning to both section 112(d) and the "considering controls" language in section 112(a)(1) and the structure of section 112 by reading the "consider[ed] controls" to be those adopted prior to the compliance dates of MACT standards, while still ensuring that those standards deliver – and continue to deliver – the "maximum degree of reduction in emissions" (§ 112(d)(2)) intended by Congress "after the effective date of any emissions standard, limitation or regulation" under section 112 (§ 112(i)(3)(A)).

5. Section 112(c).

Section 112(d)(1) provides that "The Administrator shall promulgate regulations establishing emission standards for each category or subcategory of major sources and area sources of hazardous air pollutants listed for regulation pursuant to subsection (c) in accordance with the schedules provided in subsections (c) and (e)." Section 112(c)(1), in turn, required EPA to list by not later than November 15, 1991, all categories and subcategories of major sources and area sources of listed HAPs.

Section 112(c)(3) then required EPA to:

> list under this subsection each category or subcategory of area sources which the Administrator finds presents a threat of adverse effects to human health or the environment (by

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> such sources individually or in the aggregate) warranting regulation under this section. The Administrator shall, not later than 5 years after November 15, 1990, and pursuant to subsection (k)(3)(B) of this section, list, based on actual or estimated aggregate emissions of a listed pollutant or pollutants, sufficient categories or subcategories of area sources to ensure that area sources representing 90 percent of the area source emissions of the 30 hazardous air pollutants that present the greatest threat to public health in the largest number of urban areas are subject to regulation under this section. Such regulations shall be promulgated not later than 10 years after November 15, 1990.

Finally, section 112(e) required that "[t]he Administrator shall promulgate regulations establishing emission standards for categories and subcategories of sources initially listed for regulation pursuant to subsection (c)(1) as expeditiously as practicable," assuring that increasing percentages of total section 112(d) emission standards were adopted by 1992, 1994, 1997 and 2000.

Several conclusions flow from this statutory language, structure and schedules that are directly at odds with EPA's proposal.

Congress intended the section 112(d) emission standards requiring the maximum degree of reduction in emissions (*see supra*) to be adopted for the categories and subcategories of major and area HAP sources listed by EPA as of November 15, 1991. Major sources of HAP emissions subject to these section 112(d) emission standards were required to achieve the maximum degree of reductions by the MACT compliance dates. There is no indication in the statute or its legislative history that Congress intended major sources in categories or subcategories on the 112(c) list by November 1991, that were then subject to MACT by the statutory deadlines from 1992 to 2000, to be able subsequently to evade the achievement and maintenance of maximum achievable reductions.

It is incoherent and at odds with this carefully tailored statutory schedule to assert, as EPA's proposal does implicitly, that Congress intended to allow EPA in 2007 to abandon the MACT standards' coverage of major sources that were intended to achieve maximum achievable emissions reductions in accordance with that tailored statutory schedule.

The incoherency in EPA's position is most stark when considering the operation of the area source standards and schedules in section 112(c)(3). Congress stipulated that as of a date certain, by no later than November 15, 1995, EPA should "list, based on actual or estimated aggregate emissions of a listed pollutant or pollutants, sufficient categories or subcategories of area sources to ensure that area sources representing 90 percent of the area source emissions of the 30 hazardous air pollutants that present the greatest threat to public health in the largest number of urban areas are

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subject to regulation," with such regulation required by no later than November 15, 2000. This structure and schedule make no sense if sources subject to MACT standards could be constantly jumping back and forth between major source and area source status, with the universe of area sources in a given source category growing – and the relative threat posed by the shifting percentage contributions of different area source categories – over time by virtue of the very operation of MACT standards adopted in 1992, 1994, 1997 and 2000. Under EPA's newfound interpretation of the statute, major sources subject to MACT standards adopted between 1992 and 1994 would invariably change the composition of the urban area sources "representing 90 percent of the area source emissions of the 30 hazardous air pollutants that present the greatest threat to public health," and then standards adopted between 1994 and 2000 would change that composition yet again as EPA moved toward the November 15, 2000 deadline to adopt the urban area source standards.

EPA's issuance of the instant proposal in 2007 accentuates the arbitrariness of EPA's interpretation even further, since the overall universe of area sources, both urban and non-urban, could shift radically following all sources with actual emissions below 25/10 tpy suddenly qualifying for area source status. But this significant compositional change would occur long after the November 15, 1995 urban area source listing deadline, long after the November 15, 2000 urban area source regulation deadline, and long after EPA's issuance of its existing 15 area source standards. These existing 15 area source standards, of course, did not take into account the influx of additional (now-major) sources that could become area sources within the category, thus failing to take into account the generally available control technologies or management practices of these additional sources. EPA's proposal, of course, expresses no intention to reopen and amend those existing 15 area source standards to take into account the additional sources.

Thus, in 2008 or later following adoption of the proposal and widespread source adoption of PTE limits at 24.9/9.9 tpy, EPA's section 112(c)(3) urban area source list will not remotely reflect "90 percent of the area source emissions of the 30 hazardous air pollutants that present the greatest threat to public health in the largest number of urban areas," due to the ever shifting, expansion of area source numbers previously covered under EPA's 100+ MACT standards. Nor will the urban area source standard cover the "90 percent of the area source emissions of the 30 hazardous air pollutants that present the greatest threat to public health in the largest number of urban areas," again due to the operation of EPA's proposed approach. As the May 4, 2007, comments by the Institute of Clean Air Companies show, for example, some 100 now-major source printers subject to MACT will be able to become area sources and adopt PTE limits accommodating a greater than 50 percent increase in their current actual emissions. *See* ICAC comments at 10 & Appendix A. Nor does the larger point turn on the precision of the ICAC figures, should EPA choose to quibble with them. The point is that EPA's proposed disruption to the universe of area sources not now covered by MACT standards or (urban or non-urban) area source standards flies in the face of the structure and schedules that Congress created in sections 112(c) and 112(e).

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Echoing the Congressional concern for risk notwithstanding application of section 112(d) standards that one sees in the residual risk provisions in section 112(f), section 112(c)(9)(b) also indicates Congressional intent for all originally covered sources to remain subject to MACT standards until EPA could make demonstrated risk determinations, not merely when sources reduced emissions below 25/10 tpy.

Indeed, a simple hypothetical illustrates the unlawfulness of EPA's proposal in light of the statutory structure of section 112(c)(9)(B). Take a source category with 100 sources, and the MACT standard reduces HAP emissions from each source below the 25/10tpy thresholds down to 5-10 tpy each of a combination of HAPs. Nonetheless, the remaining quantities and types of HAPs from some (or many) of these sources are such that EPA cannot make the determination that "no source in the category" will emit such "quantities which may cause a lifetime risk of cancer greater than one in one million to the individual in the population who is most exposed to emissions of such pollutants from the source." CAA § 112(c)(9)(B)(i). Accordingly, EPA may not delete the source category from the section 112(c) source category list.

Under EPA's proposal, however, every one of those sources could escape MACT coverage, notwithstanding that some (or many) of the sources pose lifetime cancer risks that Congress deemed to be unacceptable and ineligible for regulatory relief. This outcome directly undermines the careful regard that Congress showed for carcinogens, and the rigorous safeguards that it adopted ("no source in the category"). Under the proper way that EPA has always interpreted the statute, those 5-10 tpy carcinogenic sources would remain subject to MACT standards, which would undergo a technology review and update every 8-years, and EPA also would exercise its residual risk authorities. Under EPA's newfound reading, the statute would require none of that and the law would allow those sources to increase their emissions 2.5-5x without any federal regulation or consequences.

6. Section 112(k).

The structure and prescriptions of section 112(k)'s area source program are fairly similar to features of the section 112(c)(3) urban air toxics program, and the structural and scheduling incoherencies produced by EPA's proposal with respect to section 112(c)(3) apply with equal force to section 112(k).

Following a similar schedule from no later than November 1993 to November 1995 to November 1999, the Act instructed EPA to first report research results, then prepare a comprehensive control strategy, then implement that strategy assuring by no later than 1999 that "sources accounting for 90 per centum or more of the aggregate emissions of each of the 30 identified hazardous air pollutants are subject to [section 112(d)] standards." As discussed above, this structure and schedule make no sense if sources subject to MACT standards could be constantly jumping back and forth between major source and area source status, with the universe of area sources in a given source category growing – and the relative threat posed by the shifting percentage contributions of different area source categories – over time by virtue of the very operation of MACT

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standards adopted in 1992, 1994, 1997 and 2000. Under EPA's newfound interpretation of the statute, major sources subject to MACT standards adopted between 1992 and 1994 would invariably change the composition of the area sources "accounting for 90 per centum or more of the aggregate emissions of each of the 30 identified hazardous air pollutants," and then MACT standards adopted between 1994 and 2000 would change that composition yet again as EPA moved toward the November 15, 1999 deadline to assure compliance by all the covered area sources.

Indeed, at this very moment, EPA does not know and has not projected what area sources would "account[] for 90 per centum or more of the aggregate emissions of each of the 30 identified hazardous air pollutants" were EPA's proposal to be adopted. And to state the obvious, EPA is well past the statutory deadlines for meeting the requirements of section 112(k) following this proposal. The reason is that Congress expected the section 112(k) provisions to be implemented in tandem with section 112(d) MACT standards being adopted and requiring continuous and permanent compliance by all covered sources with the promulgated emissions standards. There is zero statutory indication that Congress intended a constantly shifting and chaotic regulatory landscape in which EPA does not even have a good understanding of which sources are major sources or area sources in a given source category. Because under EPA's proposal, of course, once a source escapes MACT and Title V, that source falls off EPA's federal regulatory radar, with state permits that require no monitoring, recordkeeping or reporting involving EPA.

7. Title V.

One especially pernicious outcome of EPA's proposal is the knowing removal of many sources now covered by Title V from that program, with the resulting loss in federal monitoring, recordkeeping, reporting, deviation reporting, and federal and citizen enforcement. Title V adopts the major source definition from section 112 in section 501(2)(A). But Title V also provides independent evidence contradicting EPA's proposal, while supporting Congressional intent to subject sources to section 112 standards regardless whether their post MACT-control emissions fall below 25/10 tpy.

Section 502(a) provides that:

> After the effective date of any permit program approved or promulgated under this title, it shall be unlawful . . . to operate an affected source (as provided in title IV), a major source, any other source (including an area source) subject to standards or regulations under section 111 or 112. . . except in compliance with a permit issued by a permitting authority under this title.

CAA § 502(a). This passage reveals a clear Congressional line drawn between "a major source" (which section 501(2)(A) indicates is a "major source as defined in section [112]"), on one hand, and "any other source (including an area source) subject to

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standards or regulations under section 111 or 112." This reveals Congressional awareness that sources subject to standards or regulation under section 112 might not be major sources as defined under section 112, but Congress still wanted those sources to remain subject to section 112 standards or regulations. And the parenthetical language – "(including an area source") – makes clear that there were other sources, namely former major sources, that Congress intended to remain subject to section 112 standards or regulations. The EPA proposal flies in the face of this understanding.

B. Legislative History.

1. Congressional Intent for Section 112: Maximum Reduction Achievable

The legislative history of the Clean Air Act Amendments of 1990 dramatically underscores that the proposed interpretation unlawfully departs from the structure and intent of the Act. The legislative history establishes that Congress wanted the greatest reduction in HAPs achievable and that Congress envisioned a two-step process for reducing HAP emissions: MACT would be installed initially, with a subsequent evaluation of residual risk and a further "ratcheting down" of emissions, if necessary, to provide an ample margin of safety to protect public health or to prevent adverse environmental effects. In sharp contrast to the significant backsliding that will result if the proposed interpretation is finalized, Congress intended sources of HAPs to install MACT and then further reduce – not increase – emissions.

Prior to the Clean Air Act Amendments of 1990, EPA regulated HAPs under a purely risk-based regime that worked poorly and disappointed Congress. *See* S.Rep. No. 101-228, at 3 (1989) (Senate Report) ("Very little has been done since the passage of the 1970 [CAA] to identify and control hazardous air pollutants."). From 1970 to 1990, EPA listed only eight HAPs, establishing emission standards for seven of them. *Id.* at 131; H.R.Rep. No. 101-490, pt. 1, at 322 (1990) (House Report). The ineffectiveness of the risk-based approach created a "broad consensus that the program to regulate [HAPs] under section 112 of the Clean Air Act should be restructured to provide EPA with authority to regulate ... with technology-based standards." Senate Report, at 133. In response, Congress passed the Clean Air Act Amendments of 1990, to "strengthen and expand the Clean Air Act" through a "technology-based" program, *see* House Report, at 144, namely, the MACT program.

Significantly, given the failures of the prior approach to reducing HAPs, Congress intended that EPA be "aggressive" in enforcing MACT standards:

> Title III of the bill moves forward our controls on air toxics by requiring Maximum Achievable Control Technology, or MACT. This is an important development. It is essential that EPA promulgate meaningful MACT standards on time. We have postponed the [residual risk] health test under section 112 of current law in the expectation that MACT

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> will be effective. A weak MACT standard would cause more sources to trigger the residual risk standard. This would postpone needed health protection and would increase the costs of toxics controls. The best solution is an aggressive MACT program that protects public health and the environment.

LEGISLATIVE HISTORY, VOL. I, at 790 (statement of Sen. George J. Mitchell, Member, S. Comm. on Environment and Public Works) (emphasis added); *see also* Henry A. Waxman, *An Overview of the Clean Air Act Amendments of 1990, in* THE CLEAN AIR ACT AMENDMENTS OF 1990: A SYMPOSIUM (Environmental Law 1991) ("Title III of the 1990 Amendments revises section 112 to establish an aggressive new program for the regulation of hazardous air pollutants.")

The purpose of this "aggressive" MACT program is as follows:

> The purpose of [section 112] is to assure that each and every source will employ the control methods which assure the greatest reduction in emissions which are achievable for that source taking cost and other factors into account. Although this is not a case-by-case determination, there is sufficient flexibility in the standard-setting process to assure that the goal—the maximum reduction achievable—and not some alternative, and arbitrary, target is actually achieved.

Senate Report, at 170 (emphasis added).

Congress expected that MACT would "achieve emissions reductions that average 90 to 95 percent from current levels." *See, e.g.*, 136 Cong. Rec., 101st Cong, 2d Sess., at S27 (Jan. 23, 1990) (Statement of Sen. Chafee). The proposed interpretation, which permits sources to abandon MACT in favor of much more lenient synthetic minor limitations, cannot be squared with Congress' express intent to "employ the control methods which assure the greatest reduction in emissions which are achievable". The proposed interpretation allows sources to operate well below the 90 to 95 percent reduction required by Congress and constitutes an unlawful "alternative and arbitrary target." Senate Report, at 170.

Congress' intent that MACT would be the first of two phases of emissions reduction was explained in the legislative record by Senator Dave Durenberger, a member of the Senate Committee on Environment and Public Works. According to Senator Durenberger:

> The bill addresses the air toxics problem with a two-phase program. In the first phase, which ... works like the Clean Water Act, all major sources of 191 listed substances will

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> be required to meet an emissions standard based on the application of the maximum available control technology (MACT). ...
>
> The second phase of the program is designed to eliminate adverse health effects which may continue to be present even after best available control technology is installed. There is no guarantee that that best available control technology will reduce emissions by an amount sufficient to provide safe levels of exposure. In the case of carcinogens there is no safe level of exposure. ... The second phase of the program is designed to reduce these residual or leftover risks.

S. COMM. ON ENVIRONMENT AND PUBLIC WORKS, 103RD CONG., LEGISLATIVE HISTORY OF THE CLEAN AIR ACT AMENDMENTS OF 1990, S. PRT. 103-38 (hereinafter "LEGISLATIVE HISTORY"), VOL. IV, at 5007 (1993) (emphasis added).

Congress' intent that MACT and residual risk regulations would operate as successive limitations on HAP emissions – with no room for backsliding – is further emphasized by the Conference Committee Report. According to the Conference Committee, even after a near complete reduction in toxic air emissions from a source, air pollutants may still cause adverse health consequences, necessitating even stronger emission limitations. The Conference Committee explained:

> [O]nce in place, MACT should reduce toxic air emissions by 90%. Unfortunately, in certain circumstances hazardous air pollutants may continue to impose significant adverse health effects even after MACT is in place. * * *
>
> This bill, therefore, provides a safety net for residual risk. The bill requires that if after MACT is in place, a significant risk remains, EPA must tighten the standards 8 years after the initial promulgation of the MACT standard.

LEGISLATIVE HISTORY, VOL. I, at 1030 (Clean Air Conference Report) (emphasis added).

As is clearly stated in the Conference Report, Congress foresaw that – even after MACT standards are "in place" – sources may be subjected to a "tightening" of standards. The proposed interpretation allows a major source that has been required to install MACT to accept synthetic minor limits and skirt both MACT and any subsequent standards promulgated to address residual risk. Such backsliding is incompatible with the notion that MACT standards will remain "in place" and may be subject only to "tightening". *See id.*; *see also* LEGISLATIVE HISTORY, VOL. I, at 876 (statement of Sen. Dave Durenberger, Member, S. Comm. on Environment and Public Works) ("Subsection 112(f) requires the Administrator, after specified periods, to determine the whether

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MACT standards have reduced emissions from major sources sufficiently to protect public health with an ample margin of safety ... The Administrator is to replace the technology standards for a source category, only if it is necessary to protect health with a more stringent standard.") (emphasis added).

2. Qualitative Differences Between Major and Area Sources

The legislative history of the Clean Air Act also indicates that Congress perceived qualitative differences to exist between major and area sources. Under Section 112, MACT standards are intended to apply to major sources, "large industrial facilities like chemical plants, oil refineries and steel plants." LEGISLATIVE HISTORY, VOL. IV, at 4846 (statement of Sen. John H. Chafee, Member, S. Comm. on Environment and Public Works). By contrast, "[a]rea sources are the small, but possibly numerous sources, of toxic air pollutants." *Id.*, Vol. I at 863 (statement of Sen. Durenberger). "Area sources include dry cleaners, wood stoves, gas stations and cars, buses and trucks." *Id.*, VOL. IV, at 4846 (Chafee); *see also id.* at 5001 (identifying dry cleaners, wood stoves, gas stations and cars, buses and trucks as area sources). EPA, in its March 1999 RESIDUAL RISK REPORT TO CONGRESS, also reiterated the qualitative differences between major and area sources, observing:

> Major sources of HAPs, which include large industrial complexes such as chemical plants, oil refineries, marine tank vessel loading operations, aerospace manufacturers, steel mills, and a number of surface coating operations, are some of the sources being controlled for toxic air pollution. Where warranted, smaller sources (area sources) of air toxics such as dry cleaning operations, solvent cleaning activities, commercial sterilizers, secondary lead smelters, and chromium electroplating facilities are also controlled.

RESIDUAL RISK REPORT at 10.

The proposed interpretation ignores the qualitative differences between major and area sources and allows major industrial facilities to abandon MACT controls in favor of synthetic minor limitations. To permit chemical plants, oil refineries and steel plants to emit 24.9/9.9 tpy of HAP and therefore consider such facilities to be area sources—regulated under the same regime as drycleaners—unlawfully disregards legislative history and Congressional intent.

II. The EPA Regional Offices' Objections.

The illegality and imprudence of the proposal to abandon EPA's longstanding interpretation is further underscored by feedback that has been provided to agency headquarters by EPA's Regional Offices. In contrast to EPA headquarters and EPA's Office of Air Quality Planning and Standards (OAQPS), the Regions actually execute the agency's Title V permitting program and liaise with the states on the implementation of

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state air quality programs. Accordingly, with respect to the mechanics of state permitting processes, trends in PTE limits adopted by facilities, the practicable enforceability of permit limits, the rigorousness of monitoring requirements, etc., the Regions have far greater expertise.

Before publishing the currently proposed OIAI interpretation, OAQPS provided successive drafts of the proposed interpretation to the Regional Offices. Regional comments on the drafts were provided to OAQPS on December 13, 2005 (2005 Regional Memo), and again on March 10, 2006 (2006 Regional Memo). The two memoranda regarding "Regional Comments on Draft OIAI Policy Revisions" are attached to these comments.

Substantial concerns raised by the Regions that have been ignored by the OAQPS in its proposed interpretation include the following:

- The proposed interpretation reverses an established agency interpretation without adequate justification. As the Regions observed in the 2005 Regional Memo: "In 1995, EPA believed that the OIAI policy follows 'most naturally' from the language and structure of the statute, and that allowing facilities to backslide would undermine the maximum achievable emissions reductions mandated by Congress." 2005 Regional Memo at 3. The Regions chided that OAQPS, to justify the proposed "drastic change in interpretation," must "clearly articulate why EPA no longer believes that the OIAI policy flows naturally from the statute." *Id.*

  In its proposed interpretation, EPA states that "Today's proposed rule is wholly consistent with the plain language of section 112(a)", *see* 72 Fed. Reg. 72, and "nothing in the structure of the Act counsel's against today's proposed approach," 72 Fed. Reg. 73. The proposed interpretation also avers that "[t]he 1995 policy memorandum creates a dividing line between major and area sources that does not exist on the face of the statute." These conclusory (and unsupportable) statements do not constitute a reasoned <u>explanation</u> as to why the proposed interpretation is superior to the interpretation established by the 1995 Seitz Memo. Because the proposed interpretation reverses well-established agency precedent, <u>the agency must do more than offer a basis for its proposed interpretation; it must explain and justify the reversal of its previous view</u> that the 1995 OIAI policy follows "most naturally" from the language and structure of the statute. No such explanation or justification is provided in the current record.

- The proposed interpretation will increase HAP emissions as MACT control levels are abandoned. The Regions observed in their 2005 submittal to OAQPS that, under the proposed interpretation, "the reductions that were intended to be achieved through the MACT standards would be offset by synthetic minor limits that allow sources to emit HAPs at levels higher than those allowed by the MACT standard." 2005 Regional Memo at 3. The Regions have indicated that under the proposed interpretation, "many sources would take limits less stringent than

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MACT requirements, if allowed," and that such limitations would be taken at levels that are well above current MACT emissions levels and just below the major source threshold of 25/10 tpy. *Id.* at 4. The net result is that HAP emissions reductions "that were intended to be achieved through the MACT standards would be offset by synthetic minor limits ..." *Id.* at 3.

In the preamble, EPA acknowledges that the proposed interpretation would allow MACT-compliant sources, "in becoming area sources, [to] increase their current emissions to a level just below the major source thresholds." 72 Fed Reg. 73. EPA headquarters has also acknowledged this possibility in internal documents, providing the following telling explanation: "For example, a source that with MACT controls has the potential to emit 15 tpy of a combination of HAPs could, under the proposed approach, raise its potential to emit (and thus its actual emissions) to 24 tons per year." *See* January 2007 Draft Briefing Paper at 2.[10]

The agency concludes, however, based on several theoretical considerations,[11] that "it is more likely that sources will adopt PTE limitations at or near their current levels of emissions, which is the level needed to meet the MACT standard(s)." *Id.* This conclusion has already been rejected by the Regions as "unfounded and overly optimistic." 2005 Regional Memo at 4. "Regional experience indicates that sources requesting synthetic minor limits to avoid a MACT standard typically request, and are freely given, limits of at least 24 tpy for a combination of HAPs and a 9 tpy for a single HAP." *Id.*

The actual experience and expertise of the Regions with regard to synthetic minor limits substantiates concerns that the proposed interpretation will eviscerate the technology-forcing MACT regime and result in a net increase in HAP emissions, the cost of which will "be borne by the communities surrounding the sources." 2005 Regional Memo, at 3-4. EPA has provided nothing in the record to contradict the assessment of the Regions, who have voiced "significant concerns

[10] Curiously, this obvious example of how a facility could manipulate the proposed interpretation to increase emissions is not set forth in the preamble to the proposed interpretation. The preamble to the proposed interpretation does, however include an example of a major source that, under the proposed interpretation, may have increased incentives to reduce HAP emissions. *See* 72 Fed. Reg. 71-72. According to the Regions, this example is "unlikely a common situation, and therefore should not be used as an example in the preamble to justify the rulemaking." 2005 Regional Memo at 10.

[11] EPA Headquarters has conceded that its assertion that major sources, in adopting PTE limits to be reclassified as area sources, will likely adopt PTE limitations at or near their current levels of emissions (as opposed to just below the 25/10 tpy threshold), is purely conjecture and has been contradicted by the Regional Offices. *See* January 2007 Draft Briefing Paper at 2 ("Our reasons for anticipating that few sources would backslide apply to many but not all sources. For example, some MACT controls involve equipment or techniques that could be 'dialed down' in terms of hours of operation or maintenance. Also, the Regions in their memo stated that sources typically don't build in much cushion when taking limits to keep them below major source levels. It is therefore important not to overstate the reasons that we expect backsliding to be the exception rather than the rule. We're asking for public comment and information to test our theories."). *See also* discussion *infra* of section 307(d)(3).

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about the increase in emissions of hazardous air pollutants that will likely occur from the revisions to the OIAI policy ..." 2006 Regional Memo at 2.[12]

- Under the proposed interpretation, a facility, by changing from a major source to an area source, and back again, could effectively avoid regulation for many years. In the 2005 Regional Memo the Regions outlined how a facility, under the proposed interpretation, could essentially escape regulation:

> Take, for example, a facility that is covered by a MACT standard, and has three years from the date that the rule is promulgated to come into compliance. Three years go by, and just before the end of that time period, the facility announces its area source status. If an area source regulation exists, there may also be some equivalent waiting period before the facility is required to comply with the area source requirements. If the facility later announces that it is, after all, a major source, then it may again enter a grace period, possibly up to another 3 years, before it is subject to the MACT standard requirements. Thus, by continually going back and forth between major and area source status, a facility could be a major source for most of its operating life and never have to comply with the MACT standard requirements.

  Id. at 4. The proposed interpretation, as currently written, does not rule out the worst-case scenario of emissions regulation avoidance suggested by the Regions. The proposed interpretation has acknowledged the possibility of, and requested comments on the appropriateness of, providing sources with a compliance deadline extension both: (a) at the time that a major source accepts PTE limitations and becomes an area source, *see* 72 Fed. Reg. 76-77; and (b) at the time when such a source, having already accepted PTE limitations to become an area source, increases emissions and transforms itself back to a major source, *see id.* at 74-76. Such lenient compliance timeframes will allow facilities to escape MACT requirements for many years.

- The proposed interpretation does not address residual risks. Section 112(f) of the Act requires EPA to examine HAP risks remaining after implementation of the MACT standards. CAA § 112(f); *see supra* Section I.B. The evaluation of residual risk, and the promulgation of emissions limitations stricter than those established by MACT (where necessary to provide an ample margin of safety to

[12] An email from W. Nickerson of EPA to R. Colyer of EPA, dated Sept. 14, 2006, acknowledged the Regions' perspective, stating: "The Regions also suggested that in their experience sources requesting synthetic minor limits are often given limits of 9 or 24 tpy. Yet the preamble claims sources are likely to adopt PTE limitations at or near their current levels of emissions. Do we disagree with the regional experience, or do we think that even if sources obtain permit limits of 9/24 tpy that their emissions will probably remain unchanged?"

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protect public health or to prevent any adverse environmental effect), is a second, critical phase in the two phase regulatory regime devised by Congress to address HAPs. *Id.* After reviewing a draft of the proposed interpretation, the Regions stated that "It is unclear from the preamble of this draft rulemaking how EPA envisions this draft rulemaking will affect or interact with the residual risk efforts currently underway at EPA. ... This interface should be discussed in the preamble." 2005 Regional Memo at 5.

Despite the insistence by the Regions that the preamble to the proposed rulemaking address the relationship between the proposed interpretation and the statute's residual risk requirements, no mention of residual risk is included in the Federal Register notice for the proposed interpretation.[13] This omission is particularly remarkable because EPA headquarters has, in fact, considered the interaction between the proposed interpretation and residual risk requirements and determined that "The Agency is not required to conduct a residual risk analysis for area sources not required to meet MACT standards." January 2007 Draft Briefing paper at 9; *see also* Nickerson Email ("What impact would a change to minor source status have on the applicability of residual risk standards? Shouldn't we directly address that point in the preamble, similar to how we address the potential applicability of area source standards?")

The proposed interpretation will therefore operate to nullify the residual risk component of the statute, a result that is unlawful, contrary to Congressional intent, and dangerous to communities and the environment located in proximity to sources of HAP emissions.

- The proposed interpretation does not address monitoring or enforceability of synthetic minor limits. The Regions, in the 2005 Regional Memo, provided headquarters with a lengthy explanation of the obvious monitoring and enforceability problems engendered by the proposed interpretation, stating:

> There are several concerns regarding the enforceability of these synthetic minor limits. First, EPA should not endorse the use of PTE limits enforceable by states only to avoid applicability of federal rules, such as the MACT standards. Second, there are concerns about the lack of clear-cut requirements regarding practicable enforceability and fear that significant time and energy will be spent debating the enforceability of synthetic minor limits with permitting authorities. Third, significant resources will need to be expended defending the enforceability of these limits in responding to title V public petitions in instances where a source is required to obtain a title V permit revision to incorporate the synthetic minor limits. Finally, the draft

[13] The phrase "residual risk" does not appear anywhere in the proposed interpretation; similarly, there is no citation anywhere in the proposed interpretation to the residual risk section of the Act, section 112(f).

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> proposed rule does not provide clear guidelines regarding appropriate monitoring for these synthetic minor limits. Many of the environmental benefits that are achieved by comprehensive monitoring and reporting requirements of the MACT standards will be lost in the process.

2005 Regional Memo at 6. On a related point, the Regions also complained that the proposed interpretation "does not address how a source should be treated if it accepts synthetic minor limits to get out of a MACT standard and later violates those limits." *Id.* at 5.

Nothing in the preamble to the proposed interpretation or the proposed interpretation itself addresses any of the enforceability and monitoring concerns raised by the Regions. The proposed interpretation does not discuss practicable enforceability,[14] does not address whether a source that accepts synthetic minor limits to get out of a MACT standard and later violates those limits must revert back to major status and MACT compliance, and ignores the suggestion that the proposed interpretation should include guidelines on appropriate monitoring requirements for synthetic minor limits. To the extent that monitoring is discussed, it is raised as one of several major source requirements that a source—taking advantage of the proposed interpretation to become an area source—may be excused from. According to the preamble: "The major source requirements to which the source would no longer be subject, include, but are not limited to, compliance assurance monitoring and title V requirements (assuming the source is not otherwise subject to title V permitting)." 72 Fed. Reg. at 74; *see also* Nickerson Email ("If a major source takes a PTE limit and becomes a minor source, all major source requirements would cease to apply, correct?").

The net result of EPA's refusal to address the monitoring and enforceability issues raised by the Regions with respect to synthetic minor limits will be a complete unraveling of the MACT program: major sources of HAPs, which have heretofore been subjected to MACT-driven emissions reductions and rigorous monitoring and recordkeeping requirements, will be allowed to accept synthetic minor limits which will not be monitored, or, as a practical matter, enforceable.

- Finally, the proposed interpretation does not adequately address the mechanics of permitting. In their 2005 submittal to OAQPS, the Regions identified a laundry list of practical issues that were not addressed by the draft proposed rulemaking. The Regions observed, for example, that the draft proposed interpretation does not address "what mechanism is envisioned and viable for sources to obtain synthetic minor limits" or "the permitting process that a source must go through in order to have MACT requirement removed from its Title V permit once it takes synthetic limits." 2005 Regional Memo at 5. The Regions also noted that the

[14] The phrase or concept of "practicable enforceability" does not appear anywhere in the proposed interpretation or proposed regulatory language.

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proposed interpretation does not require any notification to EPA when a major source becomes an area source. *Id.* at 6.

The proposed interpretation arbitrarily ignores all of the foregoing permitting issues flagged by the Regions.

The disconnect between the concerns raised by the Regions and the issues addressed by the proposed interpretation (and discussed in the preamble thereto) is not surprising, given that EPA headquarters and OAQPS have engaged in a "trend of excluding Regional Offices from involvement in rule and policy development efforts." *Id.* at 1. The Regional Offices have openly expressed disappointment "that OAQPS formulated revisions to the OIAI policy without seeking Regional input and was reluctant to share the draft policy with the Regional offices." *Id.*

III. EPA's Justifications For the Proposal and Other Issues.

In this section of our comments, we respond to justifications, assertions and questions advanced by the agency in its proposal preamble and two letters from EPA to the Honorable John D. Dingell.

EPA indicates that "In addition to the feedback from STAPPA concerning the OIAI policy, EPA has heard from others who have taken the position that the OIAI policy serves as a disincentive for sources to reduce emissions of HAP beyond the levels actually required by an applicable standard." 72 Fed. Reg. at 71/3. First, it bears noting that STAPPA/ALAPCO have not submitted any comments on the P2 Proposal or the instant proposal supporting any changes to the OIAI interpretation that would allow emission increases <u>above</u> levels required by MACT floors or beyond-the-floor standards in MACT standards. Second, the proposal preamble, administrative record, and internal EPA briefing paper make clear that the *only* entities submitting comments to EPA requesting the proposed changes to the OIAI interpretation were regulated industries. *See* January 2007 Draft Briefing Paper, at 6. And by EPA's own admission, even the industrial complaints were purely anecdotal and, we should add, self-serving.

EPA argues that "the OIAI policy, as written, does not encourage sources to explore the use of different control techniques, P2, or new and emerging technologies that would result in lower emissions." 72 Fed. Reg. at 72/1. But as the proposal itself recognizes one page earlier, EPA issued a so-called P2 proposal in May 2003 to encourage those same activities but only when affected sources "completely eliminate[] all HAP emissions" or "use[] P2 to reduce HAP emissions <u>to the level required by the MACT standard, or below</u>." *Id.* at 71/2 (emphasis added). The instant proposal, by contrast, includes none of those restrictions or requirements and instead allows sources to increase emissions above levels required by the MACT standard, and to escape MACT by reducing HAPs to just below the 25/10 thresholds, both in violation of the Act. One could incentivize a child by giving her a $10 weekly allowance from pocket change, or one could incentivize a child by giving her $1,000 from robbing a 7-11. That does not make the latter incentive lawful or a good idea.

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EPA decries the inequities befalling sources that do not manage to adopt PTE limits prior to the original compliance date of MACT standards versus the better fortunes of those that do. But that is the very nature of compliance deadlines or deadlines in general. And it was a firm choice made by Congress in adopting the compliance schedules in section 112(i)(3) and the maximum achievable emission reduction regime of section 112(d); it is not an inequity at all, since the statutory provisions and EPA rules are apparent and known to all in advance. And it is certainly not something for EPA to correct through assertion of its policy preferences.

In discussing the major source and area source definitions in section 112(a), EPA says "[n]otably absent from these definitions is any reference to the compliance date of a MACT standard." 72 Fed. Reg. at 72/2. That is a nonsensical approach to statutory interpretation. None of the source definitions in the Act contain references to compliance dates, and none of the compliance date provisions of the Act are included in definitional sections. That has quite simply never been the way that Congress has drafted the Act. Rather, compliance deadlines are established in separate subsections addressing compliance schedules, as with section 112(i)(3), or within statutory sections addressing entire programs. Indeed, that structural fact makes our point and refutes EPA's pained construction; it would be a bizarre departure indeed for Congress to define sources or other definitions by reference to compliance dates, when compliance dates operate independently, pursuant to compliance schedules in sections addressing the implementation of standards, not definitions.

EPA argues that its "proposed rule is wholly consistent with the plain language of section 112(a)(1)." 72 Fed. Reg. at 72/3. We dispute that the proposal is "wholly consistent" with the plain language of section 112(a)(1) since numerous other statutory provisions make clear that Congress did not intend the "controls" referenced in section 112(a)(1) to be unlawful or to serve as authorization to violate sections 112(c), 112(d), 112(f) and the remaining structural elements of the Act that the proposal contradicts.

Far from being wholly consistent with section 112(a)(1), EPA's newfound interpretation is untenable and unlawful because it would itself credit ("consider") unlawful controls that violate the Act and governing court precedent. Thus, for example, if EPA calculated MACT floors requiring only 1% or 10% or 50% reductions when the statute and D.C. Circuit precedent demanded 95% reductions, those unlawful floors would undisputedly produce "controls." Similarly, controls would be produced out of the vacated or remanded MACT standards at issue in the *Cement Kiln*, *National Lime*, and *Sierra Club* brick kiln decisions, among others. All of those controls would be considered under EPA's "plain language" reading of the statute.

If any of the unlawful standards just discussed produced actual HAP emissions at sources below the 25/10 tpy thresholds, and some of them undoubtedly would have or could have, EPA's interpretation would consider them controls creditable under its proposal. The proposal produces and relies upon the same unlawful outcome in allowing unlawful MACT controls to be "consider[ed] controls," after MACT standards have been

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adopted or even before remanded standards have been re-issued, producing the same statutory violations. But EPA's proposal would not only violate the section 112(d) provisions and caselaw as the just discussed cases did, it would also further violate section 112(d)(7), section 112(f), section 112(i)(3) and the host of statutory provisions and structural features discussed herein. EPA might consider these unlawful controls wholly consistent with its proposal, but that still demonstrates the proposal itself is unlawful.

Yet even EPA is willing to take its own logic only so far, demonstrating that it only believes some unlawful controls may be considered within its interpretation of section 112(a)(1). The agency notes in the March 30th letter to Congressman Dingell and January 2007 Draft Briefing Paper that creditable PTE limits must be practicably enforceable (and federal PTE limits must be additionally federally enforceable) in order to be considered controls within the "plain language" of section 112(a)(1). *See infra.* Yet that section says nothing about practicable enforceability. Rather, EPA – and the D.C. Circuit in *National Mining Association v. EPA* – recognized the term to be ambiguous with respect to the question of which controls would be considered. EPA does not consider unlawful, impracticably enforceable controls to be creditable as PTE limits, yet EPA does consider unlawful controls to be creditable when they merely contravene sections 112(d)(2), 112(d)(3), 112(d)(7), 112(f), 112(i)(3), other statutory provisions, the legislative history and structure of the Act. In addition to violating these provisions, EPA's interpretation is therefore internally inconsistent and arbitrary, establishing resoundingly that the proposed rule is *not* "wholly consistent with the plain language of section 112(a)(1)."

But even assuming *arguendo* that EPA's assertion is correct, that alone would not make the proposal lawful. As discussed throughout these comments, EPA's proposal violates multiple provisions of the Act, contravenes legislative history, flouts the structure and purposes of the section 112 program, and is arbitrary and capricious. It is cold comfort indeed for EPA that it is only able to claim consistency with a single specific statutory provision.

EPA argues that "[i]f this rule is finalized, we believe it is unlikely that such sources would, in becoming area sources, increase their current emissions to a level just below the major source thresholds. While this may occur in some instances, it is more likely that sources will adopt PTE limitations at or near their current levels of emissions, which is the level needed to meet the MACT standard(s)." 72 Fed. Reg. at 73/1. EPA then offers five factors supporting its belief.

Before addressing these agency beliefs, it bears noting that *even if EPA is correct*, the proposal is still unlawful because EPA may not even *authorize* "violation of such standard, limitation or regulation" in defiance of section 112(i)(3), nor may EPA authorize violation of the anti-backsliding requirements of section 112(d)(7), nor authorize emissions above the "maximum achievable emissions reduction" levels mandated by Congress. The fact that HAP emissions will increase under the proposed is both an indication of the rule's indefensibility on policy, public health and environmental

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grounds, in addition to an inescapable outcome of the rule's unlawfulness. But again, even if EPA were correct in some, many, most or all instances that the rule would not result in emissions increases over the short-term or long-term, the rule would still be unlawful because it would violate the statutory provisions addressed herein, relieving sources of mandatory legal obligations to remain subject to section 112 programs; Title V and compliance assurance monitoring; remain subject to EPA and citizen and EPA enforcement; and continue to meet required monitoring, recordkeeping, reporting, testing, and other section 112 requirements. Each of these obligations is independent of the legal obligation to maintain emissions reductions consistent with section 112 standards.

Next, an overarching point true of all five EPA factors in the proposal is that they are based on mere assertions that even EPA acknowledges are "theories" (Dec. 29, 2007 Q&A briefing paper, at 2), with no factual support or substantiation in the record. The agency admits time and again in an internal briefing paper for the Administrator that it lacks basic factual information, and that it expects the *public* to provide *EPA* with information that the agency should have collected (through section 114 authority), analyzed, and discussed for the public in the proposal prior to its issuance. Indeed, this briefing paper acknowledges that EPA is "asking for public comment and information to test our theories," and "soliciting public comment and information to help us better assess the net effect of the proposal." *Id.* The five EPA theories about why the proposal would not result in emissions increases are thus deserving of no respect or deference.

First, EPA argues that:

> [M]any sources attaining area source status do so because of the control devices that they installed to meet the MACT standards. Such control systems are designed to operate a certain way and cannot be operated at a level which achieves only a partial emission reduction, *i.e.*, the devices either operate effectively or they do not. Thus, we expect that sources that have attained area source status by virtue of a particular control technology will maintain their current level of emissions.

72 Fed. Reg. at 73/2. In addition to being irrelevant legally, as noted above, EPA does not and cannot claim that all sources granted illegal deregulatory relief by the proposal would be constrained from increasing emissions by virtue of control system constraints. Indeed the administrative record accompanying EPA's proposal fails to provide any factual support for these claims, making clear that EPA's arguments are pure, self-serving assertion.

Worse, an internal briefing paper prepared for the Administrator makes clear that these public, self-serving claims are merely agency "theories," and that the Administrator was counseled not to "overstate" this reason before Congress: "[s]ome MACT controls involve equipment or techniques that could be 'dialed down' in terms of hours of operation or maintenance. . . . It is therefore important not to overstate the reasons that

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we expect backsliding to be the exception rather than the rule. We're asking for public comment and information to test our theories." Again, this explanation explains the arbitrariness of EPA resorting to public comment to supply the most basic factual information that the agency was required by section 307(d) to prepare prior to issuing its proposal.

Moreover, comments submitted by the Institute for Clean Air Companies demonstrate that EPA is simply wrong to argue that sources would be constrained from increasing emissions by virtue of control system constraints. We add the following points here to their comments.

The proposal fails to discuss alterations of air pollution control systems as to collection efficiency. Sources that heat in-factory air in northern climates that operate coating operations, for example, have an incentive to reduce the amount of exhausted air as much as possible, since they are discharging heated inside air. Decisions on the operation of uncontrolled gas collection equipment directed to control equipment may cause increases in uncaptured fugitive emissions of VOC/HAPs that are poorly tracked when exhauster volumes reduce facial velocities and thus overall collection system efficiencies. This is but one example of economically influenced system variability that may not always mean that emissions are controlled.

MACT standards that feature work practice controls to address fugitive emissions (like door leaks at coke ovens) are another special case. Where such work practice control requirements are necessary is often where it is not technically feasible to measure stack emissions or where any emission calculations contain considerably more uncertainty (i.e. fugitive HAP emissions/LDAR programs). A source may be able to show lower emissions one way or another, but if the requirement for the work practice controls is eliminated as EPA's proposal would do, large emission increases can occur that will not necessarily be tracked. Such LDAR programs and work management practices, with widely varying actual control efficiency that depends on management commitment, time, energy and money, are precisely the types of control approaches that can be "dialed back" (to use EPA's on term) and result in emissions increases.

Another concern fostered by EPA's proposal is sources that engage in solvent switching to non-HAP and potentially non-VOC solvents or chemical intermediates. While these sources may be able to portray themselves below HAP thresholds, they will do so in a manner that may have the potential to increase airborne toxicant risks or that cause unexpected cross-media pollutant transfers. A source may be able to convert from use of a solvent like Xylene to petroleum naphtha or other non-HAP solvent, or even a non-HAP, non-VOC chlorinated solvent without actually controlling emissions. There will be less toxicology data available on the new solvent than the one replaced.

EPA's second factor why it believes sources will not increase emissions under the proposal is that "in many cases, sources will maintain the level of emission reduction associated with the MACT standard because that level is needed to comply with other requirements of the Act, such as RACT controls on emissions of volatile organic

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compounds, which are also HAP. Sources may also need to maintain their current level of control for other reasons, including, for example, for emissions netting and emissions trading purposes." 72 Fed. Reg. at 73/3.

In addition to being irrelevant legally, as noted above, EPA does not and cannot claim that all sources granted illegal deregulatory relief by the proposal would be constrained from increasing emissions by virtue of other legal requirements. Indeed the administrative record accompanying EPA's proposal fails to provide any factual support for these claims, making clear that EPA's arguments are pure, self-serving assertion. MACT standards cover over 100 source categories, yet EPA does not identify *any* specific VOC controls or other requirements for *any* industries that would limit emissions increases above current section 112 levels. Indeed, as discussed earlier, the only specific limitation on VOC emission increases *per se* that we are aware of is the major modification and major source thresholds under the PSD and nonattainment NSR programs, and those *de minimis* thresholds – requiring no controls – are *40 tons per year or higher*, hardly a constraint on increases up to 25/10 tpy. We are aware of *no* RACT requirements or netting or trading requirements that would prevent HAP increases from any or all sources currently subject to MACT. And it appears from the administrative record that EPA too could identify none, much less the full range of such restrictions that would support EPA's raw assertion that "in many cases" such requirements exist. *Id.*

Third, EPA next argues that "if this rule is finalized, those sources that seek to maintain area source status will likely take PTE limits at or near their current MACT emission levels to ensure that their emissions remain below the major source thresholds. Sources have no incentive to establish their PTE limit too close to the major source thresholds because repeated or frequent exceedances above the PTE could provide the permitting authority reason to revoke the PTE and bring an enforcement action." 72 Fed. Reg. at 73/3.

EPA's own materials reveal the wrongheadedness of this unsupported argument, as well as the agency's own awareness that it is wrong. This argument is thoroughly rejected in the 2005 Regional Memo by the EPA officials most knowledgeable about source adoption of PTE limits through federally enforceable or state-only permits. Indeed, internal EPA materials written both before and after the proposal was issued express serious and understandable reservations about EPA's third argument above in light of the Regions' ridicule.

In a September 14, 2006 email, William Nickerson in the Administrator's office wrote:

> The Regions also suggested that in their experience sources requesting synthetic minor limits are often given limits of 9 or 24 tpy. Yet the preamble claims sources are likely to adopt PTE limitations at or near their current level of emissions. Do we disagree with the regional experience, or

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> do we think that even if sources obtain permit limits of 9/24 that their emissions will probably remain unchanged?

Nickerson Email. It is apparent that the preamble advanced neither one of those responses, instead adopting a posture of blithe indifference and complete dismissal of the Regions' experience.

Even more telling is the internal briefing paper prepared for the Administrator after the proposal was signed, which makes clear that agency officials understand the Regions are correct. Yet the proposal was not changed to reflect this awareness, since the agency decided to contradict its own experts (with no basis for doing so, the briefing paper makes clear) in the name of adding one more argument to the laundry list of factors designed to reassure, which is to say dupe, the public:

> **Question:** Wouldn't the proposed change also allow many sources to increase their emissions of toxic air pollutants?
>
> **Answer:**
>
> • The proposed rule would make it theoretically possible for some area sources to increase their emissions, but we anticipate that few sources would "backslide."
> • We have several reasons for believing that the approach would not result in many facilities increasing their emissions:
> ....
> • Sources would generally want to retain a "cushion" with respect to major source thresholds.
> ....
>
> **Background:**
> ....
> • .... Also, the Regions in their memo stated that sources typically don't build in much cushion when taking limits to keep them below major source levels. It is therefore important not to overstate the reasons that we expect backsliding to be the exception rather than the rule. We're asking for public comment and information to test our theories.

January 2007 Draft Briefing Paper at 2.

Our own experience with PTE limits fully matches that of the Regions, which makes perfect sense for obvious reasons. Contrary to the proposal's claims, sources have every reason in the world to take PTE limits near the major source thresholds because this grants them the *maximum legal cushion* available, thereby granting them maximum

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operational flexibility to increase emissions *or* create *operational cushions* of their own choosing. This is in fact perfectly rational, albeit a dirtier and more harmful outcome for the public. Indeed, if sources were to take "PTE limits at or near their current MACT emission levels," 72 Fed. Reg. at 73/1, they would be denying themselves bigger *legal cushions and operational cushions*, thereby making it more likely, not less, that "repeated or frequent exceedances above the PTE" (*id.*) limit would themselves prompt enforcement actions for such violations.

Thus, the illogical rationale in the preamble gets it exactly backwards considering the very factors that EPA mentions. It is little surprise then that actual, rational source behavior does not accord with EPA's "theories," and that Regional experience and the facts on the ground are so squarely at odds with EPA headquarters' deregulatory, self-serving "theories."

EPA's fourth factor for denying that the proposal will result in emissions increases is that "permitting authorities will likely encourage emission reduction maintenance and impose more stringent PTE terms and conditions on the source the closer the source's PTE is to the major source thresholds. Such terms and conditions may include shorter compliance periods and perhaps more robust monitoring, recordkeeping, and reporting to ensure that the source does not exceed its PTE." *Id.*

By its own terms this argument about what is "likely" is rank speculation, with no factual support or state agreement in the administrative record. Again, the briefing paper for the Administrator undermines this rationale, admitting that EPA was moving forward with the proposal without any states having requested EPA's proposed change in direction. January 2007 Draft Briefing Paper at 6. In fact, the National Association of Clean Air Agencies has submitted comments opposing EPA's proposal, as have other state and local officials.

More fundamentally, this argument is very revealing at several levels. First, EPA is projecting that states will be more responsible than the agency is being by issuing this proposal. As the briefing paper for the Administrator acknowledges, EPA refused to propose any anti-backsliding provisions, yet the agency's reason for claiming lack of concern about backsliding is that it hopes the states will take care of it since EPA has not. January 2007 Draft Briefing Paper at 3. Second, EPA's argument implicitly admits that it expects emissions increases to result from sources whose PTE (due to MACT controls, *e.g.*) is farther from the major source threshold. Even EPA would only expect states to "impose more stringent PTE terms and conditions on the source the closer the source's PTE is to the major source thresholds."

EPA completely disregards several factors that directly contradict its speculation: state and local governments are under pressure from local businesses and governors' offices that may prevent them from acting as EPA speculates; state and local laws may not allow officials to deny sources' requests to adopt PTE limits near the major source thresholds; and state or local no-more-stringent-than laws may prohibit officials from

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adopting restrictions that industry would predictably argue are more stringent than federal law.

EPA's fifth and final argument is that:

> many sources that take a PTE limitation to become an area source will ultimately be subject to area source standards issued pursuant to section 112. To date, EPA has issued emission standards for approximately 20 area source categories. Over the next three years, EPA is required to develop area source standards for approximately 50 additional categories. While the level at which those standards will be set is not known at this time, the standards will reflect at least generally available control technology and some may be set at MACT-based levels, which would mean that many sources could be required to maintain their current emission levels. *See, e.g.*, 42 U.S.C. 7412(d)(2), (d)(5), 7412(k)(3)(B).

72 Fed. Reg. at 73/3.

First, it bears noting EPA's admission that not all sources deregulated from MACT by the proposal would be subject to area source standards. Second, EPA admits there would be significant delays between the proposal's deregulatory effect and the future compliance dates of which ever forthcoming area source standards did cover the deregulated former MACT sources. Third, GACT is a less stringent, less protective statutory standard than MACT, meaning that backsliding would be all but certain by definition for area source standards adopting GACT rather than MACT. As evidence, there is not a single area source GACT standard today that is as stringent as the counterpart MACT standard. This is precisely why EPA hedges its own argument above by admitting that area sources subject to GACT standards would not be among those maintaining their current emission levels.[15] Fourth, EPA has set area source MACT standards for exceedingly few source categories to date, and there is no reason to believe that pattern will change. Thus, EPA's weak argument that some area source standards "may be set at MACT-based levels" is contrary to EPA's historic record, unsubstantiated, and no basis for allowing sources to exceed MACT emission levels through the instant proposal.

Neither the proposal's preamble nor the proposed rule language either mentions practicable enforceability or impose any sufficiency criteria *whatsoever* on permits that may permissibly limit PTE. *See* 72 Fed. Reg. at 80/1 (proposed 40 C.F.R. § 63.1(c)(6)). Thus the proposal by its own terms runs afoul of the *National Mining Association* decision, which requires creditable limits on PTE to be effective, with sufficient

[15] In a statement of breathtaking understatement, the proposal itself later admits that any "area source standard is not likely to be more stringent than the major source MACT standard that the source was already meeting." 72 Fed. Reg. at 76/1.

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monitoring, recordkeeping and reporting to ensure their effectiveness and enforceability. In addition, it demonstrates that EPA was fundamentally attempting to deceive a member of Congress by claiming that the proposal requires PTE limits to be enforceable as a practical matter. Mar. 30 EPA Letter to Rep. Dingell at 13. This misdirection is particularly galling considering that the EPA Regional offices strongly urged EPA headquarters to include practicable enforceability criteria in the rulemaking proposal, 2005 Regional Memo at 6, a request that headquarters pointedly ignored (despite it being raised twice by the Regions), only to trot out the ignored concept when it was politically useful to assuage – and mislead – a concerned member of Congress.

EPA's March 30th responses attempted to deceive Congressman Dingell through similar misdirection and evasiveness by implying in response to numerous questions that creditable PTE limits under the policy needed to be federally enforceable by EPA and citizens. Mar. 30 EPA Letter to Rep. Dingell at 12-13. But no such requirement appears in the preamble or proposed regulatory language. And as EPA well knows, many if not most state-enforceable only permit programs do not grant citizens the right to enforce state permit conditions and certainly do not grant EPA the right to enforce such permits in state or federal court. By calculated omission, in the preamble and proposed regulatory language (proposed 40 C.F.R. § 63.1(c)(6)), the proposal would allow state-enforceable only permits to limit HAP emissions.

Finally, despite EPA's similarly misleading responses to Congressman Dingell in its March 30th letter, the proposal imposes no legal, sufficiency criteria on the creditable permit conditions that may limit PTE. 72 Fed. Reg. at 80 ((proposed 40 C.F.R. § 63.1(c)(6) (requiring only that sources "obtain[] a permit limiting its potential to emit (PTE) hazardous air pollutants"). EPA's March 30th letter describes a laundry list of purported recordkeeping, reporting and monitoring "requirements" that permits adopting PTE limits "must" contain. Mar. 30 EPA Letter to Rep. Dingell at 12. But the EPA letter is tellingly devoid of regulatory – or proposed regulatory – citations. And the reason for this omission is simple. The proposal does not adopt, reference or even mention any such requirements, either for federally enforceable or state-enforceable only PTE limits. Nor do other federal regulations contain any such requirements for federally enforceable or state-enforceable only PTE limits.

The EPA criteria guiding establishment of federally enforceable limits, either in EPA- or state-issued federally enforceable permits, are purely a product of EPA guidance rather than regulations. *See id.* at 13. But even that guidance does not repeat the lengthy, fanciful claims about sources' recordkeeping, reporting and monitoring requirements that EPA related to Congressman Dingell in the letter. *Id.* at 12. And of greater importance to the instant rulemaking, EPA's proposal and administrative record fail to require even the minimally necessary legal criteria that would allow any permits to limit PTE in service of the proposal's unlawful enterprise.

One problem with insufficient PTE limits is illustrated by sources that *today* report just their annual emissions, on a calendar 12-month basis, in permits purporting to limit PTE. There is not necessarily any regular reporting of 12-month rolling annual

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emissions. All of the emission calculations in support of PTE limits may be purely paper calculations, based on AP-42 emissions factors or entirely non-representative of actual source emissions – that is, never supported by an actual stack test.

For emission source categories having percentage reduction requirements, there is frequently little or no information available on the uncontrolled process emission rates. Annual emission reporting for HAP emissions may be largely a paper exercise because of failures to incorporate uncontrolled/poorly controlled (and unknown) emissions during process or control equipment malfunctions, upsets, and planned or unplanned maintenance. Finally, sources often claim confidential business information privileges concerning operational data necessary to support citizen determinations of emission rates. EPA's proposal completely ignores all of these considerations and the numerous additional problems with PTE limits in the real world.

Another enforceability consideration concerns the recurring reality that sources subject to evaluation concerning their major source status under EPA's proposal frequently have several emissions units. If one emissions unit has a significant violation of a PTE limit, but the emissions from the one unit are not sufficient in and of themselves to be over the 10/25 source-wide threshold, the enforcement inquiry becomes twofold. The source may have violated a PTE limit for that emission unit, which may be determinate but also unknowable to citizens or EPA due to inadequate monitoring, reporting and recordkeeping practices. But the even more difficult question then becomes whether the source in the aggregate exceeded source-wide HAP thresholds. EPA's proposal – or even EPA guidance –fails to address this most basic of enforceability questions.

Even were EPA's enterprise legal, the agency may not relieve sources of their obligation to comply with section 112 standards by obtaining PTE limits that are unenforceable and ineffective in limiting PTE. Without legal criteria governing emission limits, averaging times, testing, monitoring, recordkeeping, reporting and the need to safeguard the integrity of federal Clean Air Act requirements through EPA and citizen enforcement opportunities over permit conditions,[16] then EPA may not even adopt the mechanism it has chosen for its proposal. The proposal fails to address, much less ensure, the effectiveness of PTE limits as a practical and enforceable matter, thereby violating *National Mining Association*, the Act, and prohibitions on arbitrary agency action.

EPA argues that even if HAP increases from sources occur in response to this rule, "the increases will likely be offset by emission reductions at other sources that should occur as a result of this proposal." 72 Fed. Reg. at 74/1. This is arbitrary. First, as is apparent in this passage, the preamble, administrative record, and internal EPA documents, this prediction of what is "likely" is based only on "belief" and "theories"; it

[16] Because the instant proposal is unlawful on multiple grounds for the reasons discussed herein and must be abandoned, and because we understand that EPA is preparing a separate rulemaking proposal for comment concerning PTE limits generally, we will reserve our comments concerning the need for federal enforceability of PTE limits until that separate proposal.

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lacks any factual or empirical foundation; and in fact is contradicted by the more knowledgeable, expert views of EPA's Regional officials, who believe that the proposal will result in emissions increases rather than decreases. Second, section 112 is a source-specific, technology-based program, followed by a source-specific residual risk program. Section 112 does not allow the "trading" or "offset[ing]" of emissions or obligations between sources, it never has, and EPA does not and cannot identify any legal authority to support such a suggestion.

Even though we believe that EPA lacks the legal authority to adopt the proposed section 63.1(c)(6) for the reasons stated herein, we agree that if EPA adopts the unlawful proposal that it must requires sources switching from major to area back to major source status again must comply immediately with the MACT standard. 72 Fed. Reg. at 74/3. To allow otherwise would reward sources for gamesmanship or otherwise allow periods of excess emissions and noncompliance.

We firmly oppose EPA's suggested proposal to allow "sources that switch status from major source to area source and then revert back to major source status, be allowed additional time for compliance if the major source standard has changed such that the source must undergo a physical change, install additional controls and/or implement new control measures." 72 Fed. Reg. at 75/1. It is fully within the control of these sources to decide and control when they will increase emissions to "revert back to major source status," so it is equally within their control – and responsibility – to comply with the revised MACT standard by the time of said reversion. There is no defensible reason in law or policy why the public should suffer the consequences of increased HAP emissions from sources that simultaneously wish to increase their HAP emissions and forego the controls required by the revised MACT standard. Sources should bear the burden of that source decision, not the public.

For similar reasons, we strongly reject the suggestions that EPA "should instead allow all sources that revert back to major source status a specific period of time in which to comply with the MACT standard, which would be consistent with the approach provided for in 40 CFR 63.6(c)(5)." 72 Fed. Reg. at 75/1-2. Again, it is fully within the control of these sources to decide and control when they will increase emissions to "revert back to major source status," so it is equally within their control – and responsibility – to comply with the MACT standard by the time of said reversion. The remainder of the different compliance time-frame and extension options discussed by EPA (*id.* at 75-76) violate sections 112(i)(3) and 112(d)(7) of the Act, since sources remain subject to MACT standards and may not backslide from those obligations either in terms of compliance obligations or through compliance extensions.

In addition to the justification for the proposed interpretation provided in the Federal Register notice, *see generally* 72 Fed. Reg. 69, EPA has provided additional justification for the proposed interpretation in correspondence with Congressman John Dingell. The correspondence to Congressman Dingell, dated March 7, 2007, and March 30, 2007 – not unlike the preamble to proposed interpretation – fails to establish a legitimate basis for the proposed interpretation.

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In both letters to Congressman Dingell EPA avers that the proposed interpretation is based on ten years of experience implementing the air toxics program. *See* Letter from W. Wehrum to Congressman J. Dingell, dated March 7, 2007 (hereinafter "Wehrum Letter; March 7, 2007"), at 1; Letter from W. Wehrum to Congressman J. Dingell, dated March 30, 2007 (hereinafter "Wehrum Letter; March 30, 2007"), at cover page. This is a meaningless assertion and provides no justification for the proposed interpretation. EPA must specify and substantiate what, exactly, in its experience implementing the air toxics program justifies the proposed interpretation. As is discussed above, the Regions – with superior, on-the-ground experience and expertise regarding the implementation of the air toxics program and permitting programs – have "significant concerns about the increase in emissions of hazardous air pollutants that will likely occur from the revisions to the OIAI policy," 2006 Regional Memo at 2, and "simply do not agree with the change," January 2007 Draft Briefing Paper at 5.

One rationale presented by EPA in its March 7, 2007, correspondence to Congressman Dingell suggests that while that application of MACT standards (which are generally expressed in terms of percent emission reduction or some metric other than absolute emission levels) may or may not reduce emissions at a facility below the major source threshold, the proposed interpretation could, in fact, induce sources to limit emissions to levels below the major source threshold through the required adoption of area source PTE limitations. *See* Letter From W. Wehrum to Congressman Dingell, dated March 7, 2007 (hereinafter "Wehrum Letter; March 7, 2007"), at 2. EPA intends for this observation to suggest an absolute, net decrease in emissions from the proposed interpretation. This rationale is flawed in myriad respects.

First, it is completely theoretical and it is not backed by any data or record evidence. Second, it assumes that area source PTE limitations will be enforceable and enforced; the Regions have indicated that synthetic minor limits will be difficult to enforce because of the relaxed monitoring and recordkeeping requirements and, where a synthetic minor limit is issued by a state permitting authority, such a limit cannot be enforced by federal authorities (or, in most cases, by citizens). *See* discussion of practicable enforceability, *infra*. The rationale also ignores the impact that the proposed interpretation will have upon MACT-compliant sources currently below the 25/10 tpy threshold, which will have an incentive to accept synthetic minor limits and increase emissions, and flouts the purpose of the MACT program, which is to aggressively use technology-based emissions limitations to reduce HAP emission to the lowest levels possible.

EPA's correspondence to Congressman Dingell also attempts to justify the proposed interpretation by stating that "sources that may increase their actual emissions as a result of taking a limit on their potential to emit in lieu of complying with an otherwise applicable major source NESHAP won't necessarily be able to maintain the emission increase [because] [s]uch sources would still be required to comply with any applicable area source NESHAP." Wehrum Letter; March 7, 2007, at 3. This rationale, again, is only theoretical and supported by absolutely no data or record evidence.

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Further, area source NESHAPs do not presently exist for the overwhelming majority of area source categories, additional area source NESHAPs may not be promulgated or applicable for many years, and such standards generally only require generally available control technology (GACT) which is much laxer that MACT. EPA can not rely upon the uncertain prospect of future standards, "the level at which ... is not known at this time," *see* 72 Fed. Reg. 73, as a meaningful hedge against the Regions' position that the proposed interpretation will increase HAP emissions.

EPA's March 30, 2007, letter to Congressman Dingell includes a "targeted analysis of the potential impact of sources that are subject to the MACT standard for the synthetic organic chemical manufacturing industry (SOCMI)." Wehrum Letter; March 30, 2007, at 1. This analysis concludes that, based upon an increase of emissions by MACT-compliant sources that currently emit below the 25/10 tpy major source threshold, the proposed interpretation could increase HAP emissions by 358 tpy. The analysis also indicates that emissions reductions – credited to facilities currently above the 25/10 tpy threshold cutting emissions – were possible at 377 tpy. *See id.* at 1-2. As an initial matter, this analysis is of limited value as EPA itself acknowledged that it "cannot characterize the SOCMI as representative of the nationwide impact from all MACT source categories." Wehrum Letter; March 30, 2007, at 2.

In any event, EPA's targeted SCOMI analysis – which is discussed below – does not justify the proposed interpretation, but rather (once corrected) provides substantial evidence against it. EPA's estimate for a SOCMI HAP emissions increase identified 55 facilities that could increase emissions under the proposed interpretation but assumed that fewer than half would be able to do because "Over half of these 55 sources are located in ozone nonattainment areas and would be unable to increase volatile organic compound emissions [because] almost all organic HAP are VOC." *Id.* at 2. However, EPA's claim that HAP increases won't occur from SOCMI sources in non-attainment areas is wholly without basis, given that non-attainment permitting requirements are triggered by HAP VOC emissions at 40 tpy and above, 40 C.F.R. § 51.165(a)(1)(x)(A), and the ceiling for synthetic minor limitations is 24.9/9.9. tpy. Given that EPA's estimate of increased SOCMI HAP emissions incorrectly excluded more than half of the facilities that would be entitled to increase emissions under the proposed interpretation, adjusting for this mistake[17] suggests an emissions increase of more than 716 tpy. This substantial increase in emissions dwarfs the emissions reductions (377 tpy) predicted by EPA, bolstering assessments by the Regions and others that backsliding engendered by the proposed interpretation will increase the emission of hazardous air pollutants.

Congressman Dingell inquired with EPA about the preamble statement that "EPA has heard from others who have taken the position that the OIAI policy serves as a disincentive for sources to reduce emissions of HAP beyond the levels actually required by an applicable standard," *see* 72 Fed. Reg. 69 and requested documentation on the

[17] VOC emissions limitations for SOCMI facilities located in ozone nonattainment areas is the only non-MACT emissions limitation identified by EPA for such facilities. EPA's analysis did not identify any other federal, state, or SIP limitation that would apply to HAP emissions from SOCMI facilities; similarly, we are not aware of any such limitations.

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communications between EPA and "others" reflecting this position. EPA's March 30, 2007 letter includes a table identifying the others from whom "EPA has heard" and attached the relevant conveyances. Wehrum Letter; March 30, 2007, at 4-5, Attachment 2. An analysis of the conveyances attached to the March 30, 2007 letter underscores that the only entities submitting comments to EPA requesting the proposed changes to the OIAI interpretation were regulated industries. *See* Wehrum Letter; March 30, 2007, at 4-5, Attachment 2. Moreover, as discussed above, by EPA's own admission, even the industrial complaints were purely anecdotal.

In its March 30, 2007 correspondence to Congressman Dingell, EPA attempted to provide additional support for its assertion that MACT control devices are designed such that they cannot be operated at a level which achieves only a partial emissions reduction;[18] EPA did so by discussing in general terms several different types of control technology and the potential impediments to abandoning the use of such control technology. *See* Wehrum Letter; March 30, 2007, at 5-7. EPA's discussion of how various control technologies may operate is anecdotal and unsubstantiated by evidence in the record. Indeed, after reviewing data from the NEI, EPA acknowledged that "hundreds of [MACT-compliant HAP] sources do not report what they use to control emissions and many others do not specify the types of control devices used," and that it could not provide "meaningful estimates of percentages" of the types of controls being used by MACT-compliant sources in each MACT source category. *Id.* at 5. EPA did, however, make this telling admission:

> All control devices incur operating and maintenance costs, and unless it is an integral part of the process (e.g., condensers or boilers) any control device can be turned off for a given period of time, unless regulatory requirements require otherwise. In addition, an owner or operator could choose not to vent some smaller streams of air toxics to control devices in order to save some money if a PTE allows that.

Id. at 7; *see also* January 2007 Draft Briefing Paper at 2 ("[S]ome MACT controls involve equipment or techniques that could be 'dialed down' in terms of hours of operation or maintenance."). Although EPA has stated that its proposed interpretation is intended to create incentives for pollution prevention, the Agency's admission that control devices incur operating and maintenance costs that can be spared by turning off or dialing down pollution control technology highlights that the proposed interpretation's strongest incentive is the monetary reward that awaits entities that backslide against current pollution controls.

EPA has also attempted in its correspondence with Congressman Dingell to bolster its preamble assertion that sources opting to abandon MACT in favor of area

[18] EPA has raised this assertion in support of its theory that MACT-compliant sources that emit below the 25/10 tpy threshold won't accept synthetic limits and increase emissions if the proposed interpretation is implemented.

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source status will likely take PTE limits at or near their current MACT emission level by suggesting that sources closer to major source thresholds "are more likely to be subject to compliance evaluations by the state and EPA." Wehrum Letter; March 30, 2007, at 9. In support of this assertion EPA cites its April 2001 "Stationary Source Compliance Monitoring Strategy". This document, however "is intended solely as guidance"; it "is not a regulation [and] does not impose legally binding requirements on EPA, States, or the regulated community." EPA, STATIONARY SOURCE COMPLIANCE MONITORING STRATEGY (2001), at 2. As with its other reasons for suggesting that MACT-compliant sources will adopt PTE limitations at their current emission level when transitioning to area source status, this reason is purely theoretical; it is not established by data, other record evidence, or even anecdote. Again, EPA has provided no basis for doubting the expert assessment of the Regions that the proposed interpretation will likely result in the increased HAP emissions. *See* 2006 Regional Memo at 2.

Congressman Dingell has confronted EPA with the possibility that HAP sources, upon transition to area source status though the adoption of PTE limits, will (in exchange for likely increasing emissions) be rewarded with lax or nonexistent recordkeeping, reporting, and monitoring requirements and will likely be spared the prospect of citizen and federal enforcement. EPA responded to this suggestion with a laundry list of disingenuous assurances, claiming in its March 30, 2007 letter, for example, that "[area] sources must retain all records ... with respect to ensuring the PTE limitation is not exceeded" and that "[t]he permit establishing a PTE should provide specific reporting requirements ... and include the specific associate compliance monitoring". Wehrum Letter; March 30, 2007, at 12; *see also id.* at 13. These assurances are bald assertions which cannot be supported. EPA cites no state or federal rules requiring such record keeping, reporting and monitoring for area sources and the proposed interpretation does not require such measures.[19] Indeed, the Regions complained that the proposed interpretation raised serious concerns "about the lack of clear-cut requirements regarding practicable enforceability" meaning "[m]any of the environmental benefits that are achieved by comprehensive monitoring and reporting requirements of the MACT standards will be lost". 2005 Regional Memo at 6. EPA further sought to assuage Congressman Dingell by identifying the requirements of the Title V permits, without admitting that area sources are not necessarily subject to Title V and indeed EPA has gone out of its way under this administration to exempt area sources from Title V.[20] Finally, EPA made that obvious point that both citizens and EPA can enforce federally-enforceable PTE limitations but failed to mention that neither citizens nor EPA can enforce state PTE limitations.

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[19] EPA does cite two documents which purportedly outline "[c]urrent requirements related to PTE limits for Hap emissions." Wehrum Letter; March 30, 2007, at 13. These documents are mere guidance; the "requirements" are not a product of regulations or the regulatory process, they are not codified, and they are not enforceable by EPA with respect to a state permitting authority and/or a source operating under a state-issued PTE limitation.

[20] 72 Fed. Reg. 74/2. ("The major source requirements to which the source would no longer be subject, include, but are not limited to, compliance assurance monitoring and title V requirements (assuming the source is not otherwise subject to title V permitting).").

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In its March 7, 2007 letter to Congressman Dingell EPA seeks to justify its proposed interpretation by asserting that: "We … have substantial supporting information and policy justification for the Proposed Rule and are using the notice and comment process to ask interested parties to submit other relevant information and data." Wehrum Letter; March 7, 2007, at 3. This assertion is betrayed, however, by the previous sentence in EPA's letter where it concedes: "Comprehensive information on hazardous air pollutant sources is not available and we do not have information on what individual sources will do in response to the Proposed Rule." What could possibly be more critical to the development of a HAP rulemaking than information on HAP sources? This remarkable (and fatal) confession by EPA emphasizes that the agency – apart from a few anecdotes supplied by industry and a few improbable theories which defy logic and have been empirically denied by the Regions – has absolutely no justification for the proposed interpretation.

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May 4, 2007

U.S. Environmental Protection Agency
EPA West (Air Docket)
1200 Pennsylvania Avenue, Northwest,
B102, Mail Code 6102T
Washington, DC 20460.

Re: Docket ID No. EPA–HQ–OAR–2004–0094.

To Whom it May Concern:

On behalf of the 1.2 million members of the Natural Resources Defense Council, we are writing to provide comments on EPA's rulemaking proposal for the "National Emission Standards for Hazardous Air Pollutants: General Provisions," published at 72 Fed. Reg. 69 (Jan. 3, 2007).

I. EPA's Proposal Contravenes the Language, Structure and Legislative History of the Clean Air Act.

EPA's proposal pretends that the only relevant or governing statutory provisions concerning the lawfulness of its proposal are the "major source" and "area source" definitions in sections 112(a)(1) and (a)(2). *See generally* 72 Fed. Reg. at 72-73 (discussing only these two statutory provisions). EPA further asserts – without any statutory analysis, support or rationale – that its proposal "is consistent with the language and structure of the Act." *Id.* at 73 (failing to discuss any further statutory language or any structure of the Act).[1]

As we discuss below, EPA's proposal contravenes multiple provisions of the Act and the very structure, intent and legislative history of section 112 itself. The proposal defies the history and reasons for Congressional adoption of section 112 in the 1990 Clean Air Act Amendments; defies the statute's carefully tailored phase I technology-

[1] Indeed, EPA's conclusory statement that "[n]othing in the structure of the Act counsels against today's proposed approach" (72 Fed. Reg. at 73/1) is followed incredibly and arbitrarily by absolutely no support for that proposition, instead repeating EPA's own conclusions that the only relevant considerations are the differing definitions of major source and area source. *Id.* Sheepishly unable to back up its first conclusory statement, the agency pivots immediately to discussing the statutorily irrelevant observation that its 1995 legal interpretation was only intended to be "transitional." *Id.* None of this, of course, supports the raw assertion that "[n]othing in the structure of the Act counsels against today's proposed approach." This explanation is especially arbitrary considering that the proposal does not even deign to address, much less grapple with, the statutory provisions and structure that led EPA in that 1995 interpretation to conclude that the longstanding, existing interpretation "follows most naturally from the language and structure of the Act." "Potential to Emit for MACT Standards – Guidance on Timing Issues," Memo from John Seitz, Director, Office of Air Quality Planning and Standards, to EPA Regional Air Division Directors (May 16, 1995).

based MACT approach and phase II residual risk approach; squarely contravenes section 112's compliance schedules; and creates a radically different regime in which no industrial source of HAPs in the country would be required by federal law to reduce facility-wide HAP emissions below 24.9 tons per year (tpy) of a combination of HAPs or 9.9 tpy of a single HAP.[2]

EPA pretends that this is the *laissez-faire,* unconcerned regulatory approach that Congress intended for the most toxic air pollutants known to man, including carcinogens and other substances that are deadly in parts per million or parts per billion concentrations. Instead, according to the inescapable internal logic of EPA's proposal, Congress intended every industrial source of HAPs in the country to have the legal right to emit 49,800 pounds per year of deadly toxins, with no obligation to reduce those emissions further or to assess the risk to public health remaining at this or lower emission levels or to provide an ample margin of safety to protect public health or prevent adverse environmental effects beyond those levels.[3]

As demonstrated by the preceding paragraph, the proposal utterly fails to discuss the additional statutory provisions discussed below, and fails further to discuss the legislative history that prompted adoption of section 112 in 1990 or the structural elements that Congress selected to implement the two-phase MACT and residual risk regime. Because section 307(d)(3)(C) requires EPA rulemaking proposals to contain a "statement of basis and purpose" including "the major legal interpretations and policy considerations underlying the proposed rule," two conclusions follow: (1) EPA believes that the section 112(a) major source and area source definitions are the only relevant statutory provisions embodying the "major legal interpretations" to support its proposal, and (2) should EPA decide to rely on additional or different legal authority to support any final rule adopting the proposal, the agency will be required to promulgate a supplemental proposal seeking comment on any new major legal interpretations, factual data and analysis, and policy considerations.[4]

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[2] For ease of reference, these comments will refer to these thresholds subsequently as 24.9/9.9 tpy or 25/10 tpy, as appropriate. Also for ease of reference, these comments should be read to oppose each and every proposed regulatory provision that implements EPA's proposal, including the proposed amendments to the part 63 General Provisions, and the corresponding amendments to the accompanying General Provisions applicability tables. *See* 72 Fed. Reg. at 80-92.

[3] *See* discussions of sections 112(d) and 112(f) *infra.* Indeed, EPA's proposal would also result in significant increases in criteria pollutants such as VOCs and particulate matter since, as EPA has long touted, "[t]he MACT regulations are also resulting in substantial co-control of criteria air pollutants." EPA, RESIDUAL RISK REPORT TO CONGRESS 10 (1999).

[4] Additionally, EPA's proposal contravenes section 307(d)(3)(A) & (B), by failing to include "the factual data on which the proposed rule is based," and "the methodology used in obtaining the data and in analyzing the data." EPA admitted in a March 30, 2007 letter to the Honorable John D. Dingell that at the time the agency developed the proposed rule, "we were not able to identify any information which we felt was suitable for use in performing a realistic and reliable analysis. We, therefore, decided to use the proposed rule as a vehicle for obtaining information that is suitable for that purpose. Any such information received in response to the proposal will be considered in taking final action on the proposed rule." Letter from William Wehrum, Acting Assistant Administrator, EPA Office of Air and Radiation, to the Honorable John Dingell (Mar. 30, 2007), at 3. And in a January 29, 2007, draft "Q & A" briefing paper prepared for the Administrator's appearance at a Senate Environment and Public Works Committee oversight hearing on February 6, 2007, where he discussed the proposal, EPA states "[w]e're asking for public comment and

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As discussed below, EPA's proposal contravenes numerous provisions of the Act and the structure, intent and legislative history of section 112 and may not be adopted as a matter of law.

A. Clean Air Act Provisions.

1. Section 112(d).

The proposal fundamentally contravenes the carefully crafted Congressional authorities in CAA section 112 meant to ensure that industrial HAP emitters would achieve:

> the maximum degree of reduction in emissions of the hazardous air pollutants subject to this section (including a prohibition on such emissions, where achievable) that the Administrator, taking into consideration the cost of achieving such emission reduction, and any non-air quality health and environmental impacts and energy requirements, determines is achievable for new or existing sources in the category or subcategory to which such emission standard applies through application of measures, processes, methods, systems or techniques including, but not limited to, measures which -
>
> (A) reduce the volume of, or eliminate emissions of, such pollutants through process changes, substitution of materials or other modifications,
>
> (B) enclose systems or processes to eliminate emissions,
>
> (C) collect, capture or treat such pollutants when released from a process, stack, storage or fugitive emissions point,
>
> (D) are design, equipment, work practice, or operational standards (including requirements for operator training or certification) as provided in subsection (h), or
>
> (E) are a combination of the above.

CAA § 112(d)(2) (emphases added). This insistence on maximum achievable emissions reductions, echoed in the defining criteria in section 112(d)(3) (*see infra*), contradicts the defining characteristic of EPA's proposal, which is to allow every source previously or potentially subject to MACT standards to maintain HAP emissions just below the 25/10 tpy thresholds, no matter whether those emissions levels are significantly greater than MACT floors reflecting the maximum degree of reduction in emissions derived

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information to test out theories." Section 307(d)(3) demands more than "theories" to support CAA rulemaking proposals, and it does not allow the agency to shirk its rulemaking responsibilities with the backwards request that the public provide EPA with the factual data, methodologies and analysis that must underlie the agency's proposals.

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according to the section 112(d)(3) criteria. As discussed above, EPA offers no explanation for how the proposal's approach, which operates legally and practically as a 24.9/9.9 tpy minimum floor level, comports with this language in section 112(d)(2).

EPA also fails to explain, nor can it, how the proposal comports with the insistence in section 112(d)(2) that emission standards for new and existing sources of HAP emissions "includ[e] a prohibition on such emissions, where achievable." Under EPA's proposal, MACT standards would never compel a prohibition on HAP emissions from any source, since EPA's proposal now reads sources' legal right to emit up to 24.9/9.9 tpy of HAP to trump both the Act's "maximum degree of reduction" and "prohibition" commands. The inescapable legal and logical outcome of EPA's proposal would be to have MACT standards on the books that are the legal equivalent of empty vessels, mere paper requirements for MACT floors based on the maximum degree of reduction of HAP emissions, with no sources in the real world actually subject to that obligation at levels below 25 tpy.

Worse, no sources are ever compelled to "prohibit[]" or "eliminate" HAP emissions since, under EPA's proposal, those sources may always choose to adopt PTE limits to escape the obligation to eliminate their HAP emissions. EPA's proposal thus reads section 112(d)(2)'s references to the "prohibition" and "eliminat[ion]" of emissions out of the statute. The proposal eliminates any legal obligation or possibility of MACT standards eliminating HAP emissions, since the proposal would always allow a source instead to "become an area source at any time by obtaining a permit limiting its potential to emit (PTE) hazardous air pollutants, as defined in this subpart, to below the major source thresholds established in 40 CFR 63.2."[5] This maneuver violates basic canons of statutory construction: "a statute ought, upon the whole, to be so construed that, if it can be prevented, no clause, sentence, or word shall be superfluous, void, or insignificant." TRW Inc. v. Andrews, 534 U.S. 19, 31 (2001) (internal quotations omitted). EPA does not and cannot advance an interpretation of these terms that prevents them from being legally meaningless paper requirements that do not function to prohibit or eliminate HAP emissions. Indeed, any elimination requirement would not be a requirement at all, since proposed section 63.1(c)(6) would always allow any source to evade any elimination or prohibition requirement. Nor does EPA offer any reason in policy, legislative history or the statute's structure why Congress would create such an arbitrary, ineffectual and self-defeating statutory approach.

A fundamental conflict between EPA's proposal and the statute lies in the proposal's treatment of section 112(d)(3). For new sources, section 112(d)(3) provides:

> The maximum degree of reduction in emissions that is deemed achievable for new sources in a category or subcategory shall not be less stringent than the emission

[5] 72 Fed. Reg. at 80 (proposed section 63.1(c)(6)). This contradiction is most stark for a single source category or source subject to a single MACT standard, but it is also fully possible for sources or source categories subject to multiple MACT standards.

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> control that is achieved in practice by the best controlled similar source, as determined by the Administrator.

For existing sources, emission standards "shall not be less stringent, and may be more stringent than. . . the average emission limitation achieved by the best performing 12 percent of the existing sources" or "the average emission limitation achieved by the best performing 5 sources (for which the Administrator has or could reasonably obtain emissions information) in the category or subcategory for categories or subcategories with fewer than 30 sources." CAA § 112(d)(3)(A).

EPA's proposal contravenes section 112(d)(3) by failing to require each of these forms of maximum achievable emission reductions:

- new sources are allowed to limit their emission reductions to as high as 24.9/9.9 tpy rather than the "emission control that is achieved in practice by the best controlled similar source";

- existing sources in categories/subcategories with more than 30 sources are allowed to limit their emission reductions to as high as 24.9/9.9 tpy rather than "the average emission limitation achieved by the best performing 12 percent of the existing sources"; and

- existing sources in categories/subcategories with fewer than 30 sources are allowed to limit their emission reductions to as high as 24.9/9.9 tpy rather than "the average emission limitation achieved by the best performing 5 sources."

Thus does EPA's proposal completely disregard and confound the statutory criteria mandating the maximum achievable emission reductions of HAPs under section 112.

EPA's proposal and administrative record materials inexplicably fail even to explain how the proposal is consistent with these provisions of section 112(d)(3). One obvious explanation is that the agency realizes its proposal contradicts section 112(d)(3), and cannot even muster a plausible alternative interpretation. This most obvious explanation is also the most likely one, as discussed below in the context of the 1995 Memo by John Seitz. *See generally*, "Potential to Emit for MACT Standards – Guidance on Timing Issues," Memo from John Seitz, Director, Office of Air Quality Planning and Standards, to EPA Regional Air Division Directors (May 16, 1995) (hereinafter "1995 Seitz Memo").

The proposal's silence makes it impossible to know fully how and why the agency might believe its new interpretation is consistent with section 112(d)(3). One possible explanation, nowhere suggested by the proposal or record, however, is that EPA might contend that it could discharge its section 112(d)(3) statutory obligations as it has done (with varying degrees of success) in issuing the existing suite of MACT standards, and then argue that whatever results may flow from the proposal's adoption – in terms of covered sources escaping MACT controls – is something that Congress intended to allow

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and immaterial to the operation of section 112(d)(3). Thus, if sources subject to maximum achievable emission reduction obligations subsequently increases their emissions above those maximum achievable reduction levels, that is irrelevant. Similarly, if the MACT standards ended up amounting in practice to empty obligations covering an empty source category with no actual sources required to obtain maximum achievable emission reductions – a distinct possibility[6] – that too is irrelevant.

Any such explanation would contravene the language, structure and legislative history of section 112 as discussed throughout these comments. The very language of section 112(d)(2) and (3) speaks in terms of "maximum" reductions that Congress expected sources to "achieve," not just minimal enough reductions that sources need not even achieve as a matter of federal law.[7] EPA's proposal turns the maximum achievable emissions reduction mandate upside down into a "need not achieve" right that can be exercised, paradoxically, by the very sources that Congress intended to subject to section 112(d)(3). Even more paradoxical, the very sources for which section 112(d)(3) standards were most successful – driving aggregate HAP emissions below 24.9/9.9 tpy – are the very same sources now eligible to flout that successful application and increase emissions above MACT floor levels.

EPA identifies no legal, policy or legislative history rationale or evidence to suggest that Congress wished the statute to be implemented in this upside down fashion, favoring HAP emission increases over maximum achievable emission reductions. It is no answer to say, as EPA does, that it hopes sources will be incentivized by the proposal to reduce HAP emissions incrementally to just below the 25/10 tpy thresholds. We address the arbitrariness of EPA's hopes and speculations *infra*. For present purposes, however, it suffices to note that neither the statute nor its legislative history speaks in terms of incentives, much less deregulatory incentives. Nor do the Act or Congressional explanations speak in terms of voluntary source actions serving as a substitute or alternative to section 112(d)(3) maximum achievable emission reductions.

But then – even though the proposal fails even to discuss section 112(d)(3) – EPA knows all this. The agency's definitive, governing legal interpretation of CAA section 112(d)(3) states that:

> facilities that are major sources for HAPs on the "first compliance date" are required to comply permanently with the MACT standard to ensure that maximum achievable reductions in toxic emissions are achieved and maintained.

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[6] Unfortunately, EPA has refused to furnish the basic, necessary factual data or projections, or exercise the agency's section 114 data collection authority, to determine the relative possibilities across *any* source category, much less all MACT source categories, that some, many, most or all sources currently subject to MACT standards might escape the obligation to achieve maximum achievable emission reductions.

[7] As discussed *infra*, one additional harmful consequence of EPA's proposal is that some or many sources could escape federal HAP regulation altogether, since they may pursue state-enforceable-only PTE limits that are not governed by federal regulations and that may not be enforced by EPA, or citizens acting pursuant to the Act's citizen suit provisions.

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> EPA believes that this once in, always in policy follows most naturally from the language and structure of the statute. In many cases, application of MACT will reduce a major emitter's emissions to levels substantially below the major thresholds. Without a once in, always in policy, these facilities could "backslide" from MACT control levels by obtaining potential-to-emit limits, escaping applicability of the MACT standard, and increasing emissions to the major-source threshold (10/25 tons per year). Thus, the maximum achievable emissions reductions that Congress mandated for major sources would not be achieved. 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.

1995 Seitz Memo, at 9 (emphasis added). The agency's own longstanding interpretation of the Act echoes the very points made above about sections 112(d)(2) and (3). As EPA itself understands, the statute's language and defining MACT criteria evince Congressional intent to require permanent and continuous compliance with the maximum achievable emission reduction obligations, in the name of accomplishing the public health and environmental protections against HAP emissions expected by Congress.

It is revealing to contrast the 1995 Seitz Memo's statement that its legal interpretation "follows most naturally from the language and structure of the statute" with the absolute silence about this legal interpretation and statement in the proposal. In fact, on at least two separate occasions, EPA officials remarked internally on earlier draft proposals' silence concerning this legal interpretation and the agency's longstanding belief that it "follows most naturally from the language and structure of the statute."

In the attached EPA Regional memorandum entitled "Regional Comments on Draft OIAI Policy Revisions," dated December 13, 2005 (hereinafter "2005 Regional Memo"), seven of ten EPA regional offices chided the headquarters office responsible for developing the draft proposal, pointing out that proposal failed to explain "why EPA no longer believes that the OIAI policy flows naturally from the statute." *Id.* at 3. Indeed, the Regional memo criticized the draft proposal for resting on the very same, non-responsive assertion reflected in the final proposal, that "there is nothing in the CAA that compels the conclusion that a source cannot attain area source status after the first substantive compliance date of a MACT standard." *Cf. id.* to 72 Fed. Reg. at 72.

The proposal's non-responsive, non-explanation is arbitrary at two levels, first, by failing to explain the agency's reversal in legal positions that the governing interpretation now no longer "follows most naturally from the language and structure of the statute"; and second, by failing to respond to internal, eminently reasonable requests that the agency explain its reversal in position "[i]n order to provide an adequate rulemaking record." 2005 Regional Memo at 3; *see also* CAA § 307(d)(3)(C) (requiring a proposal's

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"statement of basis and purpose" to include "the major legal interpretations and policy considerations underlying the proposed rule").

Next, not long before the ultimate rulemaking proposal's signature, on September 14, 2006, an official in the Office of the Administrator wrote an email to the staff person in the Office of Air & Radiation responsible for the proposal and made the following observation:

> Have we made a point of addressing the substantive issues [the Regions] raised? For example, in the 1995 memo we claimed the policy outlined then flowed "most naturally" from the language and structure of the statute. Now we claim that "there is nothing in the statute which compels the conclusion that a source cannot attain area source status after the compliance date of a MACT standard". The Regions raised the question of whether we have an adequate rulemaking record to support that change. Do we? Assuming we are sued on this when it goes final, how confident are we in being able to prevail against a legal challenge?

Email from W. Nickerson of EPA to R. Colyer of EPA (Sept. 14, 2006) (hereinafter "Nickerson Email") (attached). The published proposal makes clear that these concerns were swept aside in favor of the same non-responsive, non-explanatory statement that had justifiably rankled the Regional offices. *See* 782 Fed. Reg. at 72.

It is especially ironic that EPA should quote the *Mobil Oil Corp. v. EPA* decision in the preamble to the proposal, 72 Fed. Reg. at 73/1, since nowhere does the agency "explain[] the departure from its prior view." *Id.* (citing *Mobil Oil Corp.*, 871 F.2d at 152). Indeed, the agency refused to explain the departure from its prior view even after being urged to do so on two separate occasions by the collective experts in EPA's regional offices and an official in the Office of the Administrator itself.

As the D.C. Circuit has reiterated in the face of continuing EPA lawlessness and defiance of court precedents, the Clean Air Act requires MACT "floors based on the emission level actually <u>achieved</u> by the best performers (those with the lowest emission levels)." *Sierra Club v. EPA*, No. 03-1202 (Mar. 13, 2007), slip op. at 11. As discussed earlier, EPA's proposal defies this obligation and turns this understanding on its head by treating the 25/10 major source thresholds as the MACT floors substituting for the lowest emission levels reflecting the "emission level actually <u>achieved</u> by the best performers."

Under EPA's upside-down, unlawful new approach to section 112(d)(3), it would be entirely permissible for <u>no</u> source in an industrial category originally subject to MACT to emit at the floor level derived (or supposed to be derived) from the "average emission limitation achieved by the best performing 12 percent of existing sources" (per CAA § 112(d)(3)), and instead for <u>every</u> source originally in the MACT source category to emit

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above the floor level at 24.9/9.9 tpy of HAP. This violates the plain language of section 112(d)(3), the string of D.C. Circuit precedents from *Cement Kiln* to *National Lime* to the 2007 *Sierra Club* decision, and it is arbitrary and capricious.

* * * * *

Section 112(d)(6) provides that "The Administrator shall review, and revise as necessary (taking into account developments in practices, processes, and control technologies), emission standards promulgated under this section no less often than every 8 years." Congress intended such reviews to examine technology developments, with strengthening revisions to section 112 standards driven by "developments in practices, processes, and control technologies." EPA's proposal renders such recurring reviews ultimately meaningless, because any technology developments or strengthening revisions concerning section 112 standards are pointless past the 25/10 tpy thresholds. These thresholds now serve as the defining outer limits of technology development and emission reductions under EPA's proposal. This is plainly at odds with Congressional intent in adopting section 112(d)(6), and EPA offers no explanation at all for the technology-forcing intent behind section 112(d)(6) and how its proposal effectuates that intent. In short, the proposal does not and section 112(d)(6) represents yet another reason why EPA's proposal is unlawful, arbitrary and capricious.

* * * * *

The plain language of section 112(d)(7) serves as an independent barrier to the backsliding that EPA's proposal would cause for all existing MACT standards and residual risk requirements. That section states:

> No emission standard <u>or other requirement promulgated under this section</u> shall be interpreted, construed or applied to diminish or replace the requirements of a more stringent emission limitation or other applicable requirement established pursuant to section 111, part C or D, <u>or other authority of this Act</u> or a standard issued under State authority.

CAA § 112(d)(7) (emphasis added). This language clearly indicates that no "requirement promulgated under this section," such as the instant proposal amending the Part 63 General Provisions, may "diminish or replace the requirements of a more stringent emission limitation or other applicable requirement established pursuant to. . . other authority of this Act," namely including section 112 itself. The plain language and structure of "<u>other</u> authority of this Act" means other than the preceding two statutory examples, section 111 and the part C or D PSD-NSR requirements. The "other authorit[ies] of this Act" that may not be diminished by the proposal thus include not just the part 61 NESHAPs that preceded the 1990 amendments, but also the section 112 emission standards adopted pursuant to the 1990 amendments.

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EPA cannot claim and has never claimed that section 112(d)(7) operates retrospectively only with respect to pre-1990 rules, since EPA has not been allowed to adopt section 112 standards since 1990 that diminish or replace section 111 or part C or D requirements adopted after 1990. Nor has EPA ever argued, nor could it, that section 112(d)(7) does not bar the diminution or replacement of more stringent requirements adopted under the Act's former NESHAP program. By the same token, EPA may not adopt section 112 requirements (like the instant proposal) that weaken more stringent emission limitations or other applicable requirements in any section 112 requirements, since those too are "other authorit[ies] of this Act." By EPA's own admission[8], the proposal "diminish[es] or replace[s] the requirements of a more stringent emission limitation or other applicable requirement" in existing section 112 standards.

2. Section 112(f).

Following the phase I MACT approach in section 112, the second phase residual risk program in section 112(f) requires the following:

> If Congress does not act on any recommendation submitted under paragraph (1), the Administrator shall, within 8 years after promulgation of standards for each category or subcategory of sources pursuant to subsection (d) of this section, promulgate standards for such category or subcategory if promulgation of such standards is required in order to provide an ample margin of safety to protect public health in accordance with this section (as in effect before November 15, 1990) or to prevent, taking into consideration costs, energy, safety, and other relevant factors, an adverse environmental effect. Emission standards promulgated under this subsection shall provide an ample margin of safety to protect public health in accordance with this section (as in effect before November 15, 1990), unless the Administrator determines that a more stringent standard is necessary to prevent, taking into consideration costs, energy, safety, and other relevant factors, an adverse environmental effect. If standards promulgated pursuant to subsection (d) and applicable to a category or subcategory of sources emitting a pollutant (or pollutants) classified as a known, probable or possible human carcinogen do not reduce lifetime excess cancer risks to the individual most exposed to emissions from a source in the category or subcategory to less than one in one million, the Administrator shall promulgate standards under this subsection for such source category.

CAA § 112(f)(2)(A).

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[8] *See, e.g.*, 72 Fed. Reg. at 73/2, 80; Jan. 29, 2007, Q & A Briefing Paper, at 1,2, 3, 9; *see generally* 2005 Regional Memo.

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Regarding area sources and residual risk requirements, the Act provides:

> The Administrator shall not be required to conduct any review under this subsection or promulgate emission limitations under this subsection for any category or subcategory of area sources that is listed pursuant to subsection (c)(3) and for which an emission standard is promulgated pursuant to subsection (d)(5).

CAA § 112(f)(5). Moreover, for area sources not even covered by section 112(d)(3) or section 112(d)(5) emission standards, EPA is not required to conduct residual risk reviews or adopt residual risk standards. *Id.*; CAA §§ 112(d)(3) & (f)(2).

As EPA has recognized, Congress adopted section 112's two-phase approach out of two separate concerns that public health and the environment would not be adequately protected against HAPs: first, based on the concern that the pre-1990 Amendments' exclusive health-based approach to air toxics control had been an abysmal failure in EPA's hands; and second, out of concern that even application of technology-based MACT standards would not adequately protect the public with an ample margin of safety:

> Section 112 of the Act replaces the previous system of pollutant-by-pollutant health-based regulation that proved ineffective at controlling the high volumes and concentrations of HAP in air emissions. The provision directs that this deficiency be redressed by imposing technology-based controls on sources emitting HAP, and that these technology-based standards may later be reduced <u>further to address residual risk that may remain even after imposition of technology-based controls</u>.

62 Fed. Reg. 49,052, 49,055 (Sept. 18, 1997) (emphasis added). Thus, the residual risk provisions are intended to achieve <u>additional</u> controls and reductions beyond what full application of the MACT standards would accomplish through technology alone.

As EPA explained in its Residual Risk Report to Congress, "Current controls on major sources, which include State actions and federal requirements in addition to requiring MACT on major sources, do not necessarily guarantee that HAP emissions will be reduced sufficiently to protect public health. EPA believes that methods to reduce emissions beyond MACT exist." EPA, RESIDUAL RISK REPORT TO CONGRESS ES-6 (1999) (hereinafter "RESIDUAL RISK REPORT"). EPA explained further:

> The MACT determinations, like other broadly applicable emissions control standards, are based on decisions about the most effective, feasible, and reliable controls available.

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> However, MACT standards in a particular source category do not necessarily represent the most stringent state-of-the-art controls available to that industry. Cost and other considerations may result in the most stringent controls not being selected as the national MACT standard. This is because the CAA states that MACT standards for existing sources:
>
> ". . . shall require the maximum degree of reduction in emissions of the hazardous air pollutants... that the Administrator, taking into consideration the cost of achieving such emission reduction, and any non-air quality health and environmental impacts ... determines is achievable . . ."
>
> Accordingly, controls capable of achieving greater HAP reductions may have been ruled out at the time of the MACT determination because of cost or other considerations. However, such costs may later be determined to be reasonable if analysis indicates significant residual risks. It is also possible that, over time, market conditions or technological improvements in certain control technologies could reduce the cost of currently expensive controls to less expensive levels, making their adoption more feasible.

Id. at 79-80.

EPA's proposal does not even deign to discuss – or admit – the harmful consequences of the overturning of the governing legal interpretation on the statutory residual risk requirements and, in turn, on provision of an ample margin of safety to protect public health and prevention of adverse environmental effects. The reason for this silence is clear albeit indefensible, since EPA knows well that the proposal will result in sources being removed from the statutory obligations for the assessment and control of residual risk following application of MACT.

As discussed elsewhere in these comments, the 2005 Regional Memo attacked the draft proposal's failure to discuss its impact on the statutory residual risk program. *See infra*. Similarly, the Office of the Administrator echoed that very question in September 2006, when the draft proposal still failed to address residual risk:

> What impact would a change to minor source status have on the applicability of residual risk standards? Shouldn't we directly address that point in the preamble, similar to how we address the potential applicability of area source standards?

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Nickerson Email. The published proposal makes clear these criticism and urgings were ignored, yet another testament to the arbitrary nature of EPA's proposal.

The answers to these questions are to be found in a draft "Q&A" briefing paper, dated January 29, 2007, (hereinafter "January 2007 Draft Briefing Paper") (attached) prepared for the Administrator's appearance at a Senate Environment and Public Works Committee oversight hearing on February 6, 2007, where he discussed the proposal. The answers and background to the residual risk question in this briefing paper are very instructive:

> **Question**: Wouldn't this Rule get sources out of the health-based part of the air toxics program called residual risk?
>
> **Answer:**
>
> - It depends on the source and the standard applicable to it.
> - Under the proposed change, major sources that become area sources subject to less stringent GACT standards (as opposed to MACT standards) would not be subject to residual risk standards.
>
> **Background:**
>
> - EPA has the discretion to subject area sources to less stringent GACT standards.
> - The Agency is not required to conduct a residual risk analysis for area sources not required to meet MACT standards.

January 2007 Draft Briefing Paper, at 9.

What this adds up to is the conclusion that adoption of the proposal would lead to area sources no longer subject to MACT standards being relieved from the residual risk analysis and standards that Congress intended following application of MACT. Then some of these very same sources that Congress and EPA believed should be subject to MACT and subsequent residual risk requirements could be subject instead to "less stringent GACT standards" and <u>also</u> able to escape residual risk standards. The only former major sources potentially subject to residual risk standards would be the exceedingly small universe of area sources that EPA subjects to actual MACT standards. *See, e.g.*, RESIDUAL RISK REPORT, Appendix C (identifying handful of area source categories to which MACT has been applied).

The proposal thus contravenes the very language, structure and legislative history (*see infra*) of section 112's residual risk program, and flouts Congressional

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concern for the remaining residual risks posed by HAPs even after application of technology-based MACT standards. The proposal completely undermines Congressional concern with the "the risk to public health remaining, or likely to remain, from sources subject to regulation under this section after the application of standards under subsection (d)." CAA § 112(f)(1)(A); *see also* § 112(f)(2). EPA's proposal allows the illegal removal of "sources subject to regulation under this section after the application of standards under subsection (d)," thereby preventing application of residual risk analysis and standards to sources whose risks concerned Congress even at levels below the major source thresholds. There is no indication that Congress was unconcerned with the risks posed by sources whose emissions following application of MACT fell below 25/10 tpy, and indeed the logical and predictable application of MACT has brought numerous source emissions down below those thresholds, just as Congress intended. The plain language and clear structure of the Act provide for the application of section 112(f)(2) to those sources so that "technology-based standards may later be reduced further to address residual risk that may remain even after imposition of technology-based controls." 62 Fed. Reg. at 49,055.

Similar to the minimal 24.9/9.9 tpy floor level established for section 112(d)(3) purposes, the proposal creates a *de facto* and *de jure* lower limit for application of the Act's residual risk provisions at 25/10 tpy, even though Congress adopted a decidedly lower – and more protective – test for residual risk review and standards: following achievement of maximum achievable emission reductions.

3. Section 112(i)(3).

The plain language of section 112(i)'s compliance schedule provisions renders EPA's proposal unlawful. Section 112(i)(3)(A) states:

> After the effective date of any emissions standard, limitation or regulation promulgated under this section and applicable to a source, no person may operate such source in violation of such standard, limitation or regulation except, in the case of an existing source, the Administrator shall establish a compliance date or dates for each category or subcategory of existing sources, which shall provide for compliance as expeditiously as practicable, but in no event later than 3 years after the effective date of such standard, except as provided in subparagraph (B) and paragraphs (4) through (8).

In turn, section 112(d)(10) contains the following effective date provision for section 112(d) standards: "Effective date. Emission standards or other regulations promulgated under this subsection shall be effective upon promulgation."

Together these provisions provide that "[a]fter the effective date of any emissions standard, limitation or regulation promulgated" under section 112 (including section

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112(d)(3) MACT standards), "no person may operate such source in violation of such standard, limitation or regulation." This very clearly indicates that all sources covered by a MACT standard after its effective date may not operate by exceeding the emissions standard or limitation, or otherwise failing to follow any portion of the regulation including its monitoring, recordkeeping, reporting or testing requirements. It is irrelevant whether a source's post-control emissions status under the MACT standard is above or below 25/10 tpy, since the statute emphasizes Congressional intent to subject all sources to section 112 standards after their effective dates by using the extremely broad language "no person." Thus, EPA's proposal is unlawful by purporting to allow sources with actual emissions below 25/10 tpy to operate in violation of "such standard, limitation or regulation," as well as section 112(i)(3)(A), if after compliance dates those sources adopt PTE limits consistent with the proposal.[9]

EPA's proposal, incredibly, does not even discuss, much less overcome, the plain prohibition in section 112(i)(3)(A). Accordingly, EPA has failed to make the extraordinary showing necessary to overcome plain statutory language where Congress has clearly spoken. There is only one exception allowed by section 112(i)(3)(A) from the normal rule prohibiting operation except in compliance with "any emission standard, limitation or regulation" effective promulgation. And that is "in the case of an existing

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[9] Proposed section 63.1(c)(6) makes plain the proposal's intention to relieve sources of section 112 major source requirements once the permit containing an area source PTE limit becomes effective. *See* 72 Fed. Reg. at 80. As discussed above, this is unlawful.

It is revealing that EPA proposes amendments to the Part 63 General Provisions since this is where EPA regulations codify the section 112(i) compliance schedule and operation prohibition making compliance with MACT standards mandatory and permanent after such standards' compliance dates. "After the effective date of a relevant standard established under this part pursuant to section 112(d) or 112(h) of the Act, the owner or operator of an existing source shall comply with such standard by the compliance date established by the Administrator in the applicable subpart(s) of this part." 40 C.F.R. § 63.6(c)(1). Proposed sections 63.1(c)(6) and 63.6(c)(5) override § 63.6(c)(1) and thus violate CAA § 112(i).

Some industry commenters have suggested that EPA's legal interpretation in the 1995 Seitz Memo was mere policy that the agency could abandon – or refuse to follow – at any time. This is wrong for at least three reasons. First, the 1995 Seitz Memo represents EPA's definitive legal interpretation of the obligation to maintain compliance with section 112 emission standards, limitations and requirements following the compliance date of section 112 standards. Under longstanding caselaw, such original, definitive legal interpretations need not be adopted through rulemaking, but any subsequent changes to those interpretations must be carried out through notice and comment rulemaking. *See generally Paralyzed Veterans of America v. D.C. Arena LP*, 117 F.3d 579 (D.C. Cir. 1997).

Second, EPA's own attempt to characterize the 1995 Seitz Memo as a mere "policy position," 72 Fed. Reg. at 71, is revisionist error since EPA also versed its rationale for the position in the language of section 112(d)(3) and stated that the interpretation "follows most naturally from the language and structure of the statute." 1995 Seitz Memo at 9.

Finally, EPA's regulations already do codify and establish a continuing source compliance obligation with section 112 standards starting from the standards' compliance dates, with no ability to escape those continuous compliance obligations by adopting PTE limits afterwards. *See* 40 C.F.R. § 63.6(c)(1) ("After the effective date of a relevant standard established under this part pursuant to section 112(d) or 112(h) of the Act, the owner or operator of an existing source <u>shall comply</u> with such standard by the compliance date established by the Administrator in the applicable subpart(s) of this part.") (emphasis added).

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source, the Administrator shall establish a compliance date or dates for each category or subcategory of existing sources, which shall provide for compliance as expeditiously as practicable, but in no event later than 3 years after the effective date of such standard," subject to additional exceptions that EPA does not and cannot invoke to justify its proposal. CAA § 112(i)(3)(A) (providing additional exceptions, *e.g.*, for Presidential exemption, new sources and coke ovens). Had Congress wished to allow escape from the plain and broad prohibition in section 112(i)(3)(A) for sources whose actual emissions were brought below 25/10 tpy by virtue of MACT (or other measures) "after the effective date of any [section 112] emission standard, limitation or regulation," it easily could have done so here as it did for other situations. But Congress has spoken clearly, both with respect to the background prohibition and the specific exceptions, and it is not up to EPA to craft new exceptions as the agency does in its proposal.

One specific exception to the section 112(i)(3)(A) background prohibition is particularly instructive, and provides further proof that the EPA's proposal is unlawful. Section 112(i)(3)(A)(5)'s early reduction provision contains an exemption from MACT for sources reducing 90-95% of HAP emissions "provided that such reduction is achieved before the otherwise applicable standard under subsection (d) is first proposed." This provision reflects Congressional intent contradicting the EPA proposal in two important respects: (1) it indicates, as noted above, that Congress knew how to craft specific statutory exemptions from the background prohibition, providing evidence that EPA's effort to create a far broader exemption in its proposal squarely contravenes section 112(i); and (2) the particular features of the section 112(i)(3)(A)(5)'s early reduction exception are highly revealing: first, the exception is rooted in 90-95% reductions that would logically and invariably reduce some major source actual emissions to below 25/10 tpy, allowing them to avail themselves of the EPA proposal (were it legal); yet second, section 112(i)(3)(A)(5) makes clear that its reprieve from MACT for early reducers was only to last 6 years from the standard's compliance date. In other words, Congress fully expected these sources to remain subject to MACT, regardless whether they had reduced their emissions 90-95%.

As discussed throughout these comments, this clear compliance schedule approach is perfectly consistent with Congressional intent to reject EPA's past failures and delays in addressing HAPs; to ensure the maximum degree of reductions of those HAPs; to ensure regular 8-year technology reviews and updates; and to ensure further reductions in risk to public health and adverse environmental impacts following application of the Act's technology-based standards. EPA's proposal is inconsistent with each of these structural elements, their implementing language, and the plain language of section 112(i)(3)(A).

4. Section 112(a).

As noted earlier, EPA pretends that the only relevant or governing statutory provisions concerning the lawfulness of its proposal are the "major source" and "area source" definitions in sections 112(a)(1) and (a)(2). *See generally* 72 Fed. Reg. at 72-73 (discussing only these two statutory provisions). But the section 112(a) major source and

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area source definitions are simply numeric triggers for determining the sources subject to coverage by MACT standards when EPA promulgates such standards. It is apparent that the major/area source distinction was established for purposes of prioritizing agency resources and the fair allocation of regulatory burdens. Legislative history and the agency's own statements recognize that major sources were understood to encompass larger industrial sources like chemical plants, oil refineries, and steel mills, while area sources covered smaller sources like dry cleaning operations. *See infra.*

Congress simply adopted the same size-based threshold approach for coverage that it has always used in Clean Air Act stationary source programs, defining larger sources (major) or smaller sources (minor, area) based upon tons per year. How else would Congress draw lines between larger and smaller sources? How else would statutory drafters indicate their intent to initially apply regulations to sources based upon their size upon promulgation of standards, ensuring permanent compliance with the standards by no later than compliance dates, and still guard against future agency chicanery attempting to exempt sources once they reduced their emissions too much? Why would Congress conceivably have adopted maximum achievable emission reduction obligations, prohibiting violation of those obligations "after the effective date of those standards" (§ 112(i)(3)(A)), and foreseen the need to avoid using size-based definitions the way Congress had always done under the Act, on the contingency that some future administration 17 years after the 1990 Amendments, after all the MACT standards had been adopted, would suddenly decide that Congress intended those size thresholds to authorize violations of the emission standards and compliance schedules in the name of increased emissions? EPA does not answer these questions.

But the answer to these questions does not furnish the answer to the question whether Congress intended section 112(d) and 112(f) standards to be cast aside by sources whose coverage under those sections produced the welcome outcome of their emissions falling below the 25/10 tpy thresholds. EPA's proposal pretends that Congress actually regarded that outcome as not just unwelcome but unwarranted, deciding instead that the "maximum degree of reductions in emissions" should instead stop short at 24.9/9.9 tpy.

EPA's proposal refuses even to grapple with the interaction between section 112(a)'s definition and section 112(d):

> In the 1995 memorandum, EPA stated, as a matter of policy, that without the OIAI policy, facilities could backslide from MACT levels of control and increase their emissions to a level slightly below the major source thresholds. The 1995 memorandum further asserts that if this occurred, the ''maximum achievable emissions reductions that Congress mandated for major sources would not be achieved.'' We agree that Congress mandated that sources that meet the definition of ''major source'' in section 112(a) be required to comply with MACT, but a

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> source that takes a PTE limit that limits its PTE to below the major source HAP thresholds does not, as explained above, meet the statutory definition of ''major source,'' and therefore should not be subject to the requirements applicable to a major source.

72 Fed. Reg. at 73/2. But this explanation squarely misses – and evades – the point. Congress mandated the achievement of maximum achievable emissions reductions, something that the agency's governing legal interpretation recognizes can only be achieved by requiring continuing compliance with MACT standards, (something that section 112(i)(3) independently demands, we should add). EPA possesses no authority to set aside those legal obligations with its policy preference that sources "should not be subject" to those requirements. *Id.*

EPA's apparent view is that the words "considering controls" in section 112(a)(1) provides the statutory authority to eviscerate any meaningful understanding of section 112(d), render inoperative section 112(f) to sources meant to be covered by Congress, contradict the plain language of section 112(i)(3)(A), make meaningless section 112(d)(6)'s technology review obligation, and run afoul of the entire structure of section 112. 72 Fed. Reg. at 72-73. But that is reading far too much into those two words and, worse, creating multiple, direct conflicts with other statutory provisions and the structure of section 112, an interpretative stratagem that judicial precedents reject in favor of interpretations that provide coherent, unifying meanings to all terms in a statute. As EPA itself recognized in the 1995 Seitz Memo and continues to recognize implicitly even in the instant proposal, it is possible to give meaning to both section 112(d) and the "considering controls" language in section 112(a)(1) and the structure of section 112 by reading the "consider[ed] controls" to be those adopted prior to the compliance dates of MACT standards, while still ensuring that those standards deliver – and continue to deliver – the "maximum degree of reduction in emissions" (§ 112(d)(2)) intended by Congress "after the effective date of any emissions standard, limitation or regulation" under section 112 (§ 112(i)(3)(A)).

5. Section 112(c).

Section 112(d)(1) provides that "The Administrator shall promulgate regulations establishing emission standards for each category or subcategory of major sources and area sources of hazardous air pollutants listed for regulation pursuant to subsection (c) in accordance with the schedules provided in subsections (c) and (e)." Section 112(c)(1), in turn, required EPA to list by not later than November 15, 1991, all categories and subcategories of major sources and area sources of listed HAPs.

Section 112(c)(3) then required EPA to:

> list under this subsection each category or subcategory of area sources which the Administrator finds presents a threat of adverse effects to human health or the environment (by

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> such sources individually or in the aggregate) warranting regulation under this section. The Administrator shall, not later than 5 years after November 15, 1990, and pursuant to subsection (k)(3)(B) of this section, list, based on actual or estimated aggregate emissions of a listed pollutant or pollutants, sufficient categories or subcategories of area sources to ensure that area sources representing 90 percent of the area source emissions of the 30 hazardous air pollutants that present the greatest threat to public health in the largest number of urban areas are subject to regulation under this section. Such regulations shall be promulgated not later than 10 years after November 15, 1990.

Finally, section 112(e) required that "[t]he Administrator shall promulgate regulations establishing emission standards for categories and subcategories of sources initially listed for regulation pursuant to subsection (c)(1) as expeditiously as practicable," assuring that increasing percentages of total section 112(d) emission standards were adopted by 1992, 1994, 1997 and 2000.

Several conclusions flow from this statutory language, structure and schedules that are directly at odds with EPA's proposal.

Congress intended the section 112(d) emission standards requiring the maximum degree of reduction in emissions (*see supra*) to be adopted for the categories and subcategories of major and area HAP sources listed by EPA as of November 15, 1991. Major sources of HAP emissions subject to these section 112(d) emission standards were required to achieve the maximum degree of reductions by the MACT compliance dates. There is no indication in the statute or its legislative history that Congress intended major sources in categories or subcategories on the 112(c) list by November 1991, that were then subject to MACT by the statutory deadlines from 1992 to 2000, to be able subsequently to evade the achievement and maintenance of maximum achievable reductions.

It is incoherent and at odds with this carefully tailored statutory schedule to assert, as EPA's proposal does implicitly, that Congress intended to allow EPA in 2007 to abandon the MACT standards' coverage of major sources that were intended to achieve maximum achievable emissions reductions in accordance with that tailored statutory schedule.

The incoherency in EPA's position is most stark when considering the operation of the area source standards and schedules in section 112(c)(3). Congress stipulated that as of a date certain, by no later than November 15, 1995, EPA should "list, based on actual or estimated aggregate emissions of a listed pollutant or pollutants, sufficient categories or subcategories of area sources to ensure that area sources representing 90 percent of the area source emissions of the 30 hazardous air pollutants that present the greatest threat to public health in the largest number of urban areas are

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subject to regulation," with such regulation required by no later than November 15, 2000. This structure and schedule make no sense if sources subject to MACT standards could be constantly jumping back and forth between major source and area source status, with the universe of area sources in a given source category growing – and the relative threat posed by the shifting percentage contributions of different area source categories – over time by virtue of the very operation of MACT standards adopted in 1992, 1994, 1997 and 2000. Under EPA's newfound interpretation of the statute, major sources subject to MACT standards adopted between 1992 and 1994 would invariably change the composition of the urban area sources "representing 90 percent of the area source emissions of the 30 hazardous air pollutants that present the greatest threat to public health," and then standards adopted between 1994 and 2000 would change that composition yet again as EPA moved toward the November 15, 2000 deadline to adopt the urban area source standards.

EPA's issuance of the instant proposal in 2007 accentuates the arbitrariness of EPA's interpretation even further, since the overall universe of area sources, both urban and non-urban, could shift radically following all sources with actual emissions below 25/10 tpy suddenly qualifying for area source status. But this significant compositional change would occur long after the November 15, 1995 urban area source listing deadline, long after the November 15, 2000 urban area source regulation deadline, and long after EPA's issuance of its existing 15 area source standards. These existing 15 area source standards, of course, did not take into account the influx of additional (now-major) sources that could become area sources within the category, thus failing to take into account the generally available control technologies or management practices of these additional sources. EPA's proposal, of course, expresses no intention to reopen and amend those existing 15 area source standards to take into account the additional sources.

Thus, in 2008 or later following adoption of the proposal and widespread source adoption of PTE limits at 24.9/9.9 tpy, EPA's section 112(c)(3) urban area source list will not remotely reflect "90 percent of the area source emissions of the 30 hazardous air pollutants that present the greatest threat to public health in the largest number of urban areas," due to the ever shifting, expansion of area source numbers previously covered under EPA's 100+ MACT standards. Nor will the urban area source standard cover the "90 percent of the area source emissions of the 30 hazardous air pollutants that present the greatest threat to public health in the largest number of urban areas," again due to the operation of EPA's proposed approach. As the May 4, 2007, comments by the Institute of Clean Air Companies show, for example, some 100 now-major source printers subject to MACT will be able to become area sources and adopt PTE limits accommodating a greater than 50 percent increase in their current actual emissions. *See* ICAC comments at 10 & Appendix A. Nor does the larger point turn on the precision of the ICAC figures, should EPA choose to quibble with them. The point is that EPA's proposed disruption to the universe of area sources not now covered by MACT standards or (urban or non-urban) area source standards flies in the face of the structure and schedules that Congress created in sections 112(c) and 112(e).

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Echoing the Congressional concern for risk notwithstanding application of section 112(d) standards that one sees in the residual risk provisions in section 112(f), section 112(c)(9)(b) also indicates Congressional intent for all originally covered sources to remain subject to MACT standards until EPA could make demonstrated risk determinations, not merely when sources reduced emissions below 25/10 tpy.

Indeed, a simple hypothetical illustrates the unlawfulness of EPA's proposal in light of the statutory structure of section 112(c)(9)(B). Take a source category with 100 sources, and the MACT standard reduces HAP emissions from each source below the 25/10tpy thresholds down to 5-10 tpy each of a combination of HAPs. Nonetheless, the remaining quantities and types of HAPs from some (or many) of these sources are such that EPA cannot make the determination that "no source in the category" will emit such "quantities which may cause a lifetime risk of cancer greater than one in one million to the individual in the population who is most exposed to emissions of such pollutants from the source." CAA § 112(c)(9)(B)(i). Accordingly, EPA may not delete the source category from the section 112(c) source category list.

Under EPA's proposal, however, every one of those sources could escape MACT coverage, notwithstanding that some (or many) of the sources pose lifetime cancer risks that Congress deemed to be unacceptable and ineligible for regulatory relief. This outcome directly undermines the careful regard that Congress showed for carcinogens, and the rigorous safeguards that it adopted ("no source in the category"). Under the proper way that EPA has always interpreted the statute, those 5-10 tpy carcinogenic sources would remain subject to MACT standards, which would undergo a technology review and update every 8-years, and EPA also would exercise its residual risk authorities. Under EPA's newfound reading, the statute would require none of that and the law would allow those sources to increase their emissions 2.5-5x without any federal regulation or consequences.

6. Section 112(k).

The structure and prescriptions of section 112(k)'s area source program are fairly similar to features of the section 112(c)(3) urban air toxics program, and the structural and scheduling incoherencies produced by EPA's proposal with respect to section 112(c)(3) apply with equal force to section 112(k).

Following a similar schedule from no later than November 1993 to November 1995 to November 1999, the Act instructed EPA to first report research results, then prepare a comprehensive control strategy, then implement that strategy assuring by no later than 1999 that "sources accounting for 90 per centum or more of the aggregate emissions of each of the 30 identified hazardous air pollutants are subject to [section 112(d)] standards." As discussed above, this structure and schedule make no sense if sources subject to MACT standards could be constantly jumping back and forth between major source and area source status, with the universe of area sources in a given source category growing – and the relative threat posed by the shifting percentage contributions of different area source categories – over time by virtue of the very operation of MACT

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standards adopted in 1992, 1994, 1997 and 2000. Under EPA's newfound interpretation of the statute, major sources subject to MACT standards adopted between 1992 and 1994 would invariably change the composition of the area sources "accounting for 90 per centum or more of the aggregate emissions of each of the 30 identified hazardous air pollutants," and then MACT standards adopted between 1994 and 2000 would change that composition yet again as EPA moved toward the November 15, 1999 deadline to assure compliance by all the covered area sources.

Indeed, at this very moment, EPA does not know and has not projected what area sources would "account[] for 90 per centum or more of the aggregate emissions of each of the 30 identified hazardous air pollutants" were EPA's proposal to be adopted. And to state the obvious, EPA is well past the statutory deadlines for meeting the requirements of section 112(k) following this proposal. The reason is that Congress expected the section 112(k) provisions to be implemented in tandem with section 112(d) MACT standards being adopted and requiring continuous and permanent compliance by all covered sources with the promulgated emissions standards. There is zero statutory indication that Congress intended a constantly shifting and chaotic regulatory landscape in which EPA does not even have a good understanding of which sources are major sources or area sources in a given source category. Because under EPA's proposal, of course, once a source escapes MACT and Title V, that source falls off EPA's federal regulatory radar, with state permits that require no monitoring, recordkeeping or reporting involving EPA.

7. Title V.

One especially pernicious outcome of EPA's proposal is the knowing removal of many sources now covered by Title V from that program, with the resulting loss in federal monitoring, recordkeeping, reporting, deviation reporting, and federal and citizen enforcement. Title V adopts the major source definition from section 112 in section 501(2)(A). But Title V also provides independent evidence contradicting EPA's proposal, while supporting Congressional intent to subject sources to section 112 standards regardless whether their post MACT-control emissions fall below 25/10 tpy.

Section 502(a) provides that:

> After the effective date of any permit program approved or promulgated under this title, it shall be unlawful . . . to operate an affected source (as provided in title IV), a major source, any other source (including an area source) subject to standards or regulations under section 111 or 112. . . except in compliance with a permit issued by a permitting authority under this title.

CAA § 502(a). This passage reveals a clear Congressional line drawn between "a major source" (which section 501(2)(A) indicates is a "major source as defined in section [112]"), on one hand, and "any other source (including an area source) subject to

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standards or regulations under section 111 or 112." This reveals Congressional awareness that sources subject to standards or regulation under section 112 might not be major sources as defined under section 112, but Congress still wanted those sources to remain subject to section 112 standards or regulations. And the parenthetical language – "(including an area source") – makes clear that there were other sources, namely former major sources, that Congress intended to remain subject to section 112 standards or regulations. The EPA proposal flies in the face of this understanding.

B. Legislative History.

1. Congressional Intent for Section 112: Maximum Reduction Achievable

The legislative history of the Clean Air Act Amendments of 1990 dramatically underscores that the proposed interpretation unlawfully departs from the structure and intent of the Act. The legislative history establishes that Congress wanted the greatest reduction in HAPs achievable and that Congress envisioned a two-step process for reducing HAP emissions: MACT would be installed initially, with a subsequent evaluation of residual risk and a further "ratcheting down" of emissions, if necessary, to provide an ample margin of safety to protect public health or to prevent adverse environmental effects. In sharp contrast to the significant backsliding that will result if the proposed interpretation is finalized, Congress intended sources of HAPs to install MACT and then further reduce – not increase – emissions.

Prior to the Clean Air Act Amendments of 1990, EPA regulated HAPs under a purely risk-based regime that worked poorly and disappointed Congress. *See* S.Rep. No. 101-228, at 3 (1989) (Senate Report) ("Very little has been done since the passage of the 1970 [CAA] to identify and control hazardous air pollutants."). From 1970 to 1990, EPA listed only eight HAPs, establishing emission standards for seven of them. *Id.* at 131; H.R.Rep. No. 101-490, pt. 1, at 322 (1990) (House Report). The ineffectiveness of the risk-based approach created a "broad consensus that the program to regulate [HAPs] under section 112 of the Clean Air Act should be restructured to provide EPA with authority to regulate ... with technology-based standards." Senate Report, at 133. In response, Congress passed the Clean Air Act Amendments of 1990, to "strengthen and expand the Clean Air Act" through a "technology-based" program, *see* House Report, at 144, namely, the MACT program.

Significantly, given the failures of the prior approach to reducing HAPs, Congress intended that EPA be "aggressive" in enforcing MACT standards:

> Title III of the bill moves forward our controls on air toxics by requiring Maximum Achievable Control Technology, or MACT. This is an important development. It is essential that EPA promulgate meaningful MACT standards on time. We have postponed the [residual risk] health test under section 112 of current law in the expectation that MACT

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> will be effective. A weak MACT standard would cause more sources to trigger the residual risk standard. This would postpone needed health protection and would increase the costs of toxics controls. The best solution is an aggressive MACT program that protects public health and the environment.

LEGISLATIVE HISTORY, VOL. I, at 790 (statement of Sen. George J. Mitchell, Member, S. Comm. on Environment and Public Works) (emphasis added); *see also* Henry A. Waxman, *An Overview of the Clean Air Act Amendments of 1990, in* THE CLEAN AIR ACT AMENDMENTS OF 1990: A SYMPOSIUM (Environmental Law 1991) ("Title III of the 1990 Amendments revises section 112 to establish an aggressive new program for the regulation of hazardous air pollutants.")

The purpose of this "aggressive" MACT program is as follows:

> The purpose of [section 112] is to assure that each and every source will employ the control methods which assure the greatest reduction in emissions which are achievable for that source taking cost and other factors into account. Although this is not a case-by-case determination, there is sufficient flexibility in the standard-setting process to assure that the goal—the maximum reduction achievable—and not some alternative, and arbitrary, target is actually achieved.

Senate Report, at 170 (emphasis added).

Congress expected that MACT would "achieve emissions reductions that average 90 to 95 percent from current levels." *See, e.g.*, 136 Cong. Rec., 101st Cong, 2d Sess., at S27 (Jan. 23, 1990) (Statement of Sen. Chafee). The proposed interpretation, which permits sources to abandon MACT in favor of much more lenient synthetic minor limitations, cannot be squared with Congress' express intent to "employ the control methods which assure the greatest reduction in emissions which are achievable". The proposed interpretation allows sources to operate well below the 90 to 95 percent reduction required by Congress and constitutes an unlawful "alternative and arbitrary target." Senate Report, at 170.

Congress' intent that MACT would be the first of two phases of emissions reduction was explained in the legislative record by Senator Dave Durenberger, a member of the Senate Committee on Environment and Public Works. According to Senator Durenberger:

> The bill addresses the air toxics problem with a two-phase program. In the first phase, which ... works like the Clean Water Act, all major sources of 191 listed substances will

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> be required to meet an emissions standard based on the application of the maximum available control technology (MACT). ...
>
> The second phase of the program is designed to eliminate adverse health effects which may continue to be present even after best available control technology is installed. There is no guarantee that that best available control technology will reduce emissions by an amount sufficient to provide safe levels of exposure. In the case of carcinogens there is no safe level of exposure. ... The second phase of the program is designed to reduce these residual or leftover risks.

S. COMM. ON ENVIRONMENT AND PUBLIC WORKS, 103RD CONG., LEGISLATIVE HISTORY OF THE CLEAN AIR ACT AMENDMENTS OF 1990, S. PRT. 103-38 (hereinafter "LEGISLATIVE HISTORY"), VOL. IV, at 5007 (1993) (emphasis added).

Congress' intent that MACT and residual risk regulations would operate as successive limitations on HAP emissions – with no room for backsliding – is further emphasized by the Conference Committee Report. According to the Conference Committee, even after a near complete reduction in toxic air emissions from a source, air pollutants may still cause adverse health consequences, necessitating even stronger emission limitations. The Conference Committee explained:

> [O]nce in place, MACT should reduce toxic air emissions by 90%. Unfortunately, in certain circumstances hazardous air pollutants may continue to impose significant adverse health effects even after MACT is in place. * * *
>
> This bill, therefore, provides a safety net for residual risk. The bill requires that if after MACT is in place, a significant risk remains, EPA must tighten the standards 8 years after the initial promulgation of the MACT standard.

LEGISLATIVE HISTORY, VOL. I, at 1030 (Clean Air Conference Report) (emphasis added).

As is clearly stated in the Conference Report, Congress foresaw that – even after MACT standards are "in place" – sources may be subjected to a "tightening" of standards. The proposed interpretation allows a major source that has been required to install MACT to accept synthetic minor limits and skirt both MACT and any subsequent standards promulgated to address residual risk. Such backsliding is incompatible with the notion that MACT standards will remain "in place" and may be subject only to "tightening". *See id.*; *see also* LEGISLATIVE HISTORY, VOL. I, at 876 (statement of Sen. Dave Durenberger, Member, S. Comm. on Environment and Public Works) ("Subsection 112(f) requires the Administrator, after specified periods, to determine the whether

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MACT standards have reduced emissions from major sources sufficiently to protect public health with an ample margin of safety ... The Administrator is to replace the technology standards for a source category, only if it is necessary to protect health with a more stringent standard.") (emphasis added).

2. Qualitative Differences Between Major and Area Sources

The legislative history of the Clean Air Act also indicates that Congress perceived qualitative differences to exist between major and area sources. Under Section 112, MACT standards are intended to apply to major sources, "large industrial facilities like chemical plants, oil refineries and steel plants." LEGISLATIVE HISTORY, VOL. IV, at 4846 (statement of Sen. John H. Chafee, Member, S. Comm. on Environment and Public Works). By contrast, "[a]rea sources are the small, but possibly numerous sources, of toxic air pollutants." *Id.*, Vol. I at 863 (statement of Sen. Durenberger). "Area sources include dry cleaners, wood stoves, gas stations and cars, buses and trucks." *Id.*, VOL. IV, at 4846 (Chafee); *see also id.* at 5001 (identifying dry cleaners, wood stoves, gas stations and cars, buses and trucks as area sources). EPA, in its March 1999 RESIDUAL RISK REPORT TO CONGRESS, also reiterated the qualitative differences between major and area sources, observing:

> Major sources of HAPs, which include large industrial complexes such as chemical plants, oil refineries, marine tank vessel loading operations, aerospace manufacturers, steel mills, and a number of surface coating operations, are some of the sources being controlled for toxic air pollution. Where warranted, smaller sources (area sources) of air toxics such as dry cleaning operations, solvent cleaning activities, commercial sterilizers, secondary lead smelters, and chromium electroplating facilities are also controlled.

RESIDUAL RISK REPORT at 10.

The proposed interpretation ignores the qualitative differences between major and area sources and allows major industrial facilities to abandon MACT controls in favor of synthetic minor limitations. To permit chemical plants, oil refineries and steel plants to emit 24.9/9.9 tpy of HAP and therefore consider such facilities to be area sources—regulated under the same regime as drycleaners—unlawfully disregards legislative history and Congressional intent.

II. The EPA Regional Offices' Objections.

The illegality and imprudence of the proposal to abandon EPA's longstanding interpretation is further underscored by feedback that has been provided to agency headquarters by EPA's Regional Offices. In contrast to EPA headquarters and EPA's Office of Air Quality Planning and Standards (OAQPS), the Regions actually execute the agency's Title V permitting program and liaise with the states on the implementation of

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state air quality programs. Accordingly, with respect to the mechanics of state permitting processes, trends in PTE limits adopted by facilities, the practicable enforceability of permit limits, the rigorousness of monitoring requirements, etc., the Regions have far greater expertise.

Before publishing the currently proposed OIAI interpretation, OAQPS provided successive drafts of the proposed interpretation to the Regional Offices. Regional comments on the drafts were provided to OAQPS on December 13, 2005 (2005 Regional Memo), and again on March 10, 2006 (2006 Regional Memo). The two memoranda regarding "Regional Comments on Draft OIAI Policy Revisions" are attached to these comments.

Substantial concerns raised by the Regions that have been ignored by the OAQPS in its proposed interpretation include the following:

- The proposed interpretation reverses an established agency interpretation without adequate justification. As the Regions observed in the 2005 Regional Memo: "In 1995, EPA believed that the OIAI policy follows 'most naturally' from the language and structure of the statute, and that allowing facilities to backslide would undermine the maximum achievable emissions reductions mandated by Congress." 2005 Regional Memo at 3. The Regions chided that OAQPS, to justify the proposed "drastic change in interpretation," must "clearly articulate why EPA no longer believes that the OIAI policy flows naturally from the statute." *Id.*

  In its proposed interpretation, EPA states that "Today's proposed rule is wholly consistent with the plain language of section 112(a)", *see* 72 Fed. Reg. 72, and "nothing in the structure of the Act counsel's against today's proposed approach," 72 Fed. Reg. 73. The proposed interpretation also avers that "[t]he 1995 policy memorandum creates a dividing line between major and area sources that does not exist on the face of the statute." These conclusory (and unsupportable) statements do not constitute a reasoned <u>explanation</u> as to why the proposed interpretation is superior to the interpretation established by the 1995 Seitz Memo. Because the proposed interpretation reverses well-established agency precedent, <u>the agency must do more than offer a basis for its proposed interpretation; it must explain and justify the reversal of its previous view</u> that the 1995 OIAI policy follows "most naturally" from the language and structure of the statute. No such explanation or justification is provided in the current record.

- The proposed interpretation will increase HAP emissions as MACT control levels are abandoned. The Regions observed in their 2005 submittal to OAQPS that, under the proposed interpretation, "the reductions that were intended to be achieved through the MACT standards would be offset by synthetic minor limits that allow sources to emit HAPs at levels higher than those allowed by the MACT standard." 2005 Regional Memo at 3. The Regions have indicated that under the proposed interpretation, "many sources would take limits less stringent than

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MACT requirements, if allowed," and that such limitations would be taken at levels that are well above current MACT emissions levels and just below the major source threshold of 25/10 tpy. *Id.* at 4. The net result is that HAP emissions reductions "that were intended to be achieved through the MACT standards would be offset by synthetic minor limits ..." *Id.* at 3.

In the preamble, EPA acknowledges that the proposed interpretation would allow MACT-compliant sources, "in becoming area sources, [to] increase their current emissions to a level just below the major source thresholds." 72 Fed Reg. 73. EPA headquarters has also acknowledged this possibility in internal documents, providing the following telling explanation: "For example, a source that with MACT controls has the potential to emit 15 tpy of a combination of HAPs could, under the proposed approach, raise its potential to emit (and thus its actual emissions) to 24 tons per year." *See* January 2007 Draft Briefing Paper at 2.[10]

The agency concludes, however, based on several theoretical considerations,[11] that "it is more likely that sources will adopt PTE limitations at or near their current levels of emissions, which is the level needed to meet the MACT standard(s)." *Id.* This conclusion has already been rejected by the Regions as "unfounded and overly optimistic." 2005 Regional Memo at 4. "Regional experience indicates that sources requesting synthetic minor limits to avoid a MACT standard typically request, and are freely given, limits of at least 24 tpy for a combination of HAPs and a 9 tpy for a single HAP." *Id.*

The actual experience and expertise of the Regions with regard to synthetic minor limits substantiates concerns that the proposed interpretation will eviscerate the technology-forcing MACT regime and result in a net increase in HAP emissions, the cost of which will "be borne by the communities surrounding the sources." 2005 Regional Memo, at 3-4. EPA has provided nothing in the record to contradict the assessment of the Regions, who have voiced "significant concerns

[10] Curiously, this obvious example of how a facility could manipulate the proposed interpretation to increase emissions is not set forth in the preamble to the proposed interpretation. The preamble to the proposed interpretation does, however include an example of a major source that, under the proposed interpretation, may have increased incentives to reduce HAP emissions. *See* 72 Fed. Reg. 71-72. According to the Regions, this example is "unlikely a common situation, and therefore should not be used as an example in the preamble to justify the rulemaking." 2005 Regional Memo at 10.

[11] EPA Headquarters has conceded that its assertion that major sources, in adopting PTE limits to be reclassified as area sources, will likely adopt PTE limitations at or near their current levels of emissions (as opposed to just below the 25/10 tpy threshold), is purely conjecture and has been contradicted by the Regional Offices. *See* January 2007 Draft Briefing Paper at 2 ("Our reasons for anticipating that few sources would backslide apply to many but not all sources. For example, some MACT controls involve equipment or techniques that could be 'dialed down' in terms of hours of operation or maintenance. Also, the Regions in their memo stated that sources typically don't build in much cushion when taking limits to keep them below major source levels. It is therefore important not to overstate the reasons that we expect backsliding to be the exception rather than the rule. We're asking for public comment and information to test our theories."). *See also* discussion *infra* of section 307(d)(3).

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about the increase in emissions of hazardous air pollutants that will likely occur from the revisions to the OIAI policy ..." 2006 Regional Memo at 2.[12]

- Under the proposed interpretation, a facility, by changing from a major source to an area source, and back again, could effectively avoid regulation for many years. In the 2005 Regional Memo the Regions outlined how a facility, under the proposed interpretation, could essentially escape regulation:

> Take, for example, a facility that is covered by a MACT standard, and has three years from the date that the rule is promulgated to come into compliance. Three years go by, and just before the end of that time period, the facility announces its area source status. If an area source regulation exists, there may also be some equivalent waiting period before the facility is required to comply with the area source requirements. If the facility later announces that it is, after all, a major source, then it may again enter a grace period, possibly up to another 3 years, before it is subject to the MACT standard requirements. Thus, by continually going back and forth between major and area source status, a facility could be a major source for most of its operating life and never have to comply with the MACT standard requirements.

  Id. at 4. The proposed interpretation, as currently written, does not rule out the worst-case scenario of emissions regulation avoidance suggested by the Regions. The proposed interpretation has acknowledged the possibility of, and requested comments on the appropriateness of, providing sources with a compliance deadline extension both: (a) at the time that a major source accepts PTE limitations and becomes an area source, *see* 72 Fed. Reg. 76-77; and (b) at the time when such a source, having already accepted PTE limitations to become an area source, increases emissions and transforms itself back to a major source, *see id.* at 74-76. Such lenient compliance timeframes will allow facilities to escape MACT requirements for many years.

- The proposed interpretation does not address residual risks. Section 112(f) of the Act requires EPA to examine HAP risks remaining after implementation of the MACT standards. CAA § 112(f); *see supra* Section I.B. The evaluation of residual risk, and the promulgation of emissions limitations stricter than those established by MACT (where necessary to provide an ample margin of safety to

[12] An email from W. Nickerson of EPA to R. Colyer of EPA, dated Sept. 14, 2006, acknowledged the Regions' perspective, stating: "The Regions also suggested that in their experience sources requesting synthetic minor limits are often given limits of 9 or 24 tpy. Yet the preamble claims sources are likely to adopt PTE limitations at or near their current levels of emissions. Do we disagree with the regional experience, or do we think that even if sources obtain permit limits of 9/24 tpy that their emissions will probably remain unchanged?"

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protect public health or to prevent any adverse environmental effect), is a second, critical phase in the two phase regulatory regime devised by Congress to address HAPs. *Id.* After reviewing a draft of the proposed interpretation, the Regions stated that "It is unclear from the preamble of this draft rulemaking how EPA envisions this draft rulemaking will affect or interact with the residual risk efforts currently underway at EPA. ... This interface should be discussed in the preamble." 2005 Regional Memo at 5.

Despite the insistence by the Regions that the preamble to the proposed rulemaking address the relationship between the proposed interpretation and the statute's residual risk requirements, no mention of residual risk is included in the Federal Register notice for the proposed interpretation.[13] This omission is particularly remarkable because EPA headquarters has, in fact, considered the interaction between the proposed interpretation and residual risk requirements and determined that "The Agency is not required to conduct a residual risk analysis for area sources not required to meet MACT standards." January 2007 Draft Briefing paper at 9; *see also* Nickerson Email ("What impact would a change to minor source status have on the applicability of residual risk standards? Shouldn't we directly address that point in the preamble, similar to how we address the potential applicability of area source standards?")

The proposed interpretation will therefore operate to nullify the residual risk component of the statute, a result that is unlawful, contrary to Congressional intent, and dangerous to communities and the environment located in proximity to sources of HAP emissions.

- The proposed interpretation does not address monitoring or enforceability of synthetic minor limits. The Regions, in the 2005 Regional Memo, provided headquarters with a lengthy explanation of the obvious monitoring and enforceability problems engendered by the proposed interpretation, stating:

> There are several concerns regarding the enforceability of these synthetic minor limits. First, EPA should not endorse the use of PTE limits enforceable by states only to avoid applicability of federal rules, such as the MACT standards. Second, there are concerns about the lack of clear-cut requirements regarding practicable enforceability and fear that significant time and energy will be spent debating the enforceability of synthetic minor limits with permitting authorities. Third, significant resources will need to be expended defending the enforceability of these limits in responding to title V public petitions in instances where a source is required to obtain a title V permit revision to incorporate the synthetic minor limits. Finally, the draft

[13] The phrase "residual risk" does not appear anywhere in the proposed interpretation; similarly, there is no citation anywhere in the proposed interpretation to the residual risk section of the Act, section 112(f).

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> proposed rule does not provide clear guidelines regarding appropriate monitoring for these synthetic minor limits. Many of the environmental benefits that are achieved by comprehensive monitoring and reporting requirements of the MACT standards will be lost in the process.

2005 Regional Memo at 6. On a related point, the Regions also complained that the proposed interpretation "does not address how a source should be treated if it accepts synthetic minor limits to get out of a MACT standard and later violates those limits." *Id.* at 5.

Nothing in the preamble to the proposed interpretation or the proposed interpretation itself addresses any of the enforceability and monitoring concerns raised by the Regions. The proposed interpretation does not discuss practicable enforceability,[14] does not address whether a source that accepts synthetic minor limits to get out of a MACT standard and later violates those limits must revert back to major status and MACT compliance, and ignores the suggestion that the proposed interpretation should include guidelines on appropriate monitoring requirements for synthetic minor limits. To the extent that monitoring is discussed, it is raised as one of several major source requirements that a source—taking advantage of the proposed interpretation to become an area source—may be excused from. According to the preamble: "The major source requirements to which the source would no longer be subject, include, but are not limited to, compliance assurance monitoring and title V requirements (assuming the source is not otherwise subject to title V permitting)." 72 Fed. Reg. at 74; *see also* Nickerson Email ("If a major source takes a PTE limit and becomes a minor source, all major source requirements would cease to apply, correct?").

The net result of EPA's refusal to address the monitoring and enforceability issues raised by the Regions with respect to synthetic minor limits will be a complete unraveling of the MACT program: major sources of HAPs, which have heretofore been subjected to MACT-driven emissions reductions and rigorous monitoring and recordkeeping requirements, will be allowed to accept synthetic minor limits which will not be monitored, or, as a practical matter, enforceable.

- Finally, the proposed interpretation does not adequately address the mechanics of permitting. In their 2005 submittal to OAQPS, the Regions identified a laundry list of practical issues that were not addressed by the draft proposed rulemaking. The Regions observed, for example, that the draft proposed interpretation does not address "what mechanism is envisioned and viable for sources to obtain synthetic minor limits" or "the permitting process that a source must go through in order to have MACT requirement removed from its Title V permit once it takes synthetic limits." 2005 Regional Memo at 5. The Regions also noted that the

[14] The phrase or concept of "practicable enforceability" does not appear anywhere in the proposed interpretation or proposed regulatory language.

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proposed interpretation does not require any notification to EPA when a major source becomes an area source. *Id.* at 6.

The proposed interpretation arbitrarily ignores all of the foregoing permitting issues flagged by the Regions.

The disconnect between the concerns raised by the Regions and the issues addressed by the proposed interpretation (and discussed in the preamble thereto) is not surprising, given that EPA headquarters and OAQPS have engaged in a "trend of excluding Regional Offices from involvement in rule and policy development efforts." *Id.* at 1. The Regional Offices have openly expressed disappointment "that OAQPS formulated revisions to the OIAI policy without seeking Regional input and was reluctant to share the draft policy with the Regional offices." *Id.*

III. EPA's Justifications For the Proposal and Other Issues.

In this section of our comments, we respond to justifications, assertions and questions advanced by the agency in its proposal preamble and two letters from EPA to the Honorable John D. Dingell.

EPA indicates that "In addition to the feedback from STAPPA concerning the OIAI policy, EPA has heard from others who have taken the position that the OIAI policy serves as a disincentive for sources to reduce emissions of HAP beyond the levels actually required by an applicable standard." 72 Fed. Reg. at 71/3. First, it bears noting that STAPPA/ALAPCO have not submitted any comments on the P2 Proposal or the instant proposal supporting any changes to the OIAI interpretation that would allow emission increases <u>above</u> levels required by MACT floors or beyond-the-floor standards in MACT standards. Second, the proposal preamble, administrative record, and internal EPA briefing paper make clear that the *only* entities submitting comments to EPA requesting the proposed changes to the OIAI interpretation were regulated industries. *See* January 2007 Draft Briefing Paper, at 6. And by EPA's own admission, even the industrial complaints were purely anecdotal and, we should add, self-serving.

EPA argues that "the OIAI policy, as written, does not encourage sources to explore the use of different control techniques, P2, or new and emerging technologies that would result in lower emissions." 72 Fed. Reg. at 72/1. But as the proposal itself recognizes one page earlier, EPA issued a so-called P2 proposal in May 2003 to encourage those same activities but only when affected sources "completely eliminate[] all HAP emissions" or "use[] P2 to reduce HAP emissions <u>to the level required by the MACT standard, or below</u>." *Id.* at 71/2 (emphasis added). The instant proposal, by contrast, includes none of those restrictions or requirements and instead allows sources to increase emissions above levels required by the MACT standard, and to escape MACT by reducing HAPs to just below the 25/10 thresholds, both in violation of the Act. One could incentivize a child by giving her a $10 weekly allowance from pocket change, or one could incentivize a child by giving her $1,000 from robbing a 7-11. That does not make the latter incentive lawful or a good idea.

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EPA decries the inequities befalling sources that do not manage to adopt PTE limits prior to the original compliance date of MACT standards versus the better fortunes of those that do. But that is the very nature of compliance deadlines or deadlines in general. And it was a firm choice made by Congress in adopting the compliance schedules in section 112(i)(3) and the maximum achievable emission reduction regime of section 112(d); it is not an inequity at all, since the statutory provisions and EPA rules are apparent and known to all in advance. And it is certainly not something for EPA to correct through assertion of its policy preferences.

In discussing the major source and area source definitions in section 112(a), EPA says "[n]otably absent from these definitions is any reference to the compliance date of a MACT standard." 72 Fed. Reg. at 72/2. That is a nonsensical approach to statutory interpretation. None of the source definitions in the Act contain references to compliance dates, and none of the compliance date provisions of the Act are included in definitional sections. That has quite simply never been the way that Congress has drafted the Act. Rather, compliance deadlines are established in separate subsections addressing compliance schedules, as with section 112(i)(3), or within statutory sections addressing entire programs. Indeed, that structural fact makes our point and refutes EPA's pained construction; it would be a bizarre departure indeed for Congress to define sources or other definitions by reference to compliance dates, when compliance dates operate independently, pursuant to compliance schedules in sections addressing the implementation of standards, not definitions.

EPA argues that its "proposed rule is wholly consistent with the plain language of section 112(a)(1)." 72 Fed. Reg. at 72/3. We dispute that the proposal is "wholly consistent" with the plain language of section 112(a)(1) since numerous other statutory provisions make clear that Congress did not intend the "controls" referenced in section 112(a)(1) to be unlawful or to serve as authorization to violate sections 112(c), 112(d), 112(f) and the remaining structural elements of the Act that the proposal contradicts.

Far from being wholly consistent with section 112(a)(1), EPA's newfound interpretation is untenable and unlawful because it would itself credit ("consider") unlawful controls that violate the Act and governing court precedent. Thus, for example, if EPA calculated MACT floors requiring only 1% or 10% or 50% reductions when the statute and D.C. Circuit precedent demanded 95% reductions, those unlawful floors would undisputedly produce "controls." Similarly, controls would be produced out of the vacated or remanded MACT standards at issue in the *Cement Kiln*, *National Lime*, and *Sierra Club* brick kiln decisions, among others. All of those controls would be considered under EPA's "plain language" reading of the statute.

If any of the unlawful standards just discussed produced actual HAP emissions at sources below the 25/10 tpy thresholds, and some of them undoubtedly would have or could have, EPA's interpretation would consider them controls creditable under its proposal. The proposal produces and relies upon the same unlawful outcome in allowing unlawful MACT controls to be "consider[ed] controls," after MACT standards have been

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adopted or even before remanded standards have been re-issued, producing the same statutory violations. But EPA's proposal would not only violate the section 112(d) provisions and caselaw as the just discussed cases did, it would also further violate section 112(d)(7), section 112(f), section 112(i)(3) and the host of statutory provisions and structural features discussed herein. EPA might consider these unlawful controls wholly consistent with its proposal, but that still demonstrates the proposal itself is unlawful.

Yet even EPA is willing to take its own logic only so far, demonstrating that it only believes some unlawful controls may be considered within its interpretation of section 112(a)(1). The agency notes in the March 30th letter to Congressman Dingell and January 2007 Draft Briefing Paper that creditable PTE limits must be practicably enforceable (and federal PTE limits must be additionally federally enforceable) in order to be considered controls within the "plain language" of section 112(a)(1). *See infra.* Yet that section says nothing about practicable enforceability. Rather, EPA – and the D.C. Circuit in *National Mining Association v. EPA* – recognized the term to be ambiguous with respect to the question of which controls would be considered. EPA does not consider unlawful, impracticably enforceable controls to be creditable as PTE limits, yet EPA does consider unlawful controls to be creditable when they merely contravene sections 112(d)(2), 112(d)(3), 112(d)(7), 112(f), 112(i)(3), other statutory provisions, the legislative history and structure of the Act. In addition to violating these provisions, EPA's interpretation is therefore internally inconsistent and arbitrary, establishing resoundingly that the proposed rule is *not* "wholly consistent with the plain language of section 112(a)(1)."

But even assuming *arguendo* that EPA's assertion is correct, that alone would not make the proposal lawful. As discussed throughout these comments, EPA's proposal violates multiple provisions of the Act, contravenes legislative history, flouts the structure and purposes of the section 112 program, and is arbitrary and capricious. It is cold comfort indeed for EPA that it is only able to claim consistency with a single specific statutory provision.

EPA argues that "[i]f this rule is finalized, we believe it is unlikely that such sources would, in becoming area sources, increase their current emissions to a level just below the major source thresholds. While this may occur in some instances, it is more likely that sources will adopt PTE limitations at or near their current levels of emissions, which is the level needed to meet the MACT standard(s)." 72 Fed. Reg. at 73/1. EPA then offers five factors supporting its belief.

Before addressing these agency beliefs, it bears noting that *even if EPA is correct*, the proposal is still unlawful because EPA may not even *authorize* "violation of such standard, limitation or regulation" in defiance of section 112(i)(3), nor may EPA authorize violation of the anti-backsliding requirements of section 112(d)(7), nor authorize emissions above the "maximum achievable emissions reduction" levels mandated by Congress. The fact that HAP emissions will increase under the proposed is both an indication of the rule's indefensibility on policy, public health and environmental

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grounds, in addition to an inescapable outcome of the rule's unlawfulness. But again, even if EPA were correct in some, many, most or all instances that the rule would not result in emissions increases over the short-term or long-term, the rule would still be unlawful because it would violate the statutory provisions addressed herein, relieving sources of mandatory legal obligations to remain subject to section 112 programs; Title V and compliance assurance monitoring; remain subject to EPA and citizen and EPA enforcement; and continue to meet required monitoring, recordkeeping, reporting, testing, and other section 112 requirements. Each of these obligations is independent of the legal obligation to maintain emissions reductions consistent with section 112 standards.

Next, an overarching point true of all five EPA factors in the proposal is that they are based on mere assertions that even EPA acknowledges are "theories" (Dec. 29, 2007 Q&A briefing paper, at 2), with no factual support or substantiation in the record. The agency admits time and again in an internal briefing paper for the Administrator that it lacks basic factual information, and that it expects the *public* to provide *EPA* with information that the agency should have collected (through section 114 authority), analyzed, and discussed for the public in the proposal prior to its issuance. Indeed, this briefing paper acknowledges that EPA is "asking for public comment and information to test our theories," and "soliciting public comment and information to help us better assess the net effect of the proposal." *Id.* The five EPA theories about why the proposal would not result in emissions increases are thus deserving of no respect or deference.

First, EPA argues that:

> [M]any sources attaining area source status do so because of the control devices that they installed to meet the MACT standards. Such control systems are designed to operate a certain way and cannot be operated at a level which achieves only a partial emission reduction, *i.e.*, the devices either operate effectively or they do not. Thus, we expect that sources that have attained area source status by virtue of a particular control technology will maintain their current level of emissions.

72 Fed. Reg. at 73/2. In addition to being irrelevant legally, as noted above, EPA does not and cannot claim that all sources granted illegal deregulatory relief by the proposal would be constrained from increasing emissions by virtue of control system constraints. Indeed the administrative record accompanying EPA's proposal fails to provide any factual support for these claims, making clear that EPA's arguments are pure, self-serving assertion.

Worse, an internal briefing paper prepared for the Administrator makes clear that these public, self-serving claims are merely agency "theories," and that the Administrator was counseled not to "overstate" this reason before Congress: "[s]ome MACT controls involve equipment or techniques that could be 'dialed down' in terms of hours of operation or maintenance. . . . It is therefore important not to overstate the reasons that

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we expect backsliding to be the exception rather than the rule. We're asking for public comment and information to test our theories." Again, this explanation explains the arbitrariness of EPA resorting to public comment to supply the most basic factual information that the agency was required by section 307(d) to prepare prior to issuing its proposal.

Moreover, comments submitted by the Institute for Clean Air Companies demonstrate that EPA is simply wrong to argue that sources would be constrained from increasing emissions by virtue of control system constraints. We add the following points here to their comments.

The proposal fails to discuss alterations of air pollution control systems as to collection efficiency. Sources that heat in-factory air in northern climates that operate coating operations, for example, have an incentive to reduce the amount of exhausted air as much as possible, since they are discharging heated inside air. Decisions on the operation of uncontrolled gas collection equipment directed to control equipment may cause increases in uncaptured fugitive emissions of VOC/HAPs that are poorly tracked when exhauster volumes reduce facial velocities and thus overall collection system efficiencies. This is but one example of economically influenced system variability that may not always mean that emissions are controlled.

MACT standards that feature work practice controls to address fugitive emissions (like door leaks at coke ovens) are another special case. Where such work practice control requirements are necessary is often where it is not technically feasible to measure stack emissions or where any emission calculations contain considerably more uncertainty (i.e. fugitive HAP emissions/LDAR programs). A source may be able to show lower emissions one way or another, but if the requirement for the work practice controls is eliminated as EPA's proposal would do, large emission increases can occur that will not necessarily be tracked. Such LDAR programs and work management practices, with widely varying actual control efficiency that depends on management commitment, time, energy and money, are precisely the types of control approaches that can be "dialed back" (to use EPA's on term) and result in emissions increases.

Another concern fostered by EPA's proposal is sources that engage in solvent switching to non-HAP and potentially non-VOC solvents or chemical intermediates. While these sources may be able to portray themselves below HAP thresholds, they will do so in a manner that may have the potential to increase airborne toxicant risks or that cause unexpected cross-media pollutant transfers. A source may be able to convert from use of a solvent like Xylene to petroleum naphtha or other non-HAP solvent, or even a non-HAP, non-VOC chlorinated solvent without actually controlling emissions. There will be less toxicology data available on the new solvent than the one replaced.

EPA's second factor why it believes sources will not increase emissions under the proposal is that "in many cases, sources will maintain the level of emission reduction associated with the MACT standard because that level is needed to comply with other requirements of the Act, such as RACT controls on emissions of volatile organic

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compounds, which are also HAP. Sources may also need to maintain their current level of control for other reasons, including, for example, for emissions netting and emissions trading purposes." 72 Fed. Reg. at 73/3.

In addition to being irrelevant legally, as noted above, EPA does not and cannot claim that all sources granted illegal deregulatory relief by the proposal would be constrained from increasing emissions by virtue of other legal requirements. Indeed the administrative record accompanying EPA's proposal fails to provide any factual support for these claims, making clear that EPA's arguments are pure, self-serving assertion. MACT standards cover over 100 source categories, yet EPA does not identify *any* specific VOC controls or other requirements for *any* industries that would limit emissions increases above current section 112 levels. Indeed, as discussed earlier, the only specific limitation on VOC emission increases *per se* that we are aware of is the major modification and major source thresholds under the PSD and nonattainment NSR programs, and those *de minimis* thresholds – requiring no controls – are *40 tons per year or higher*, hardly a constraint on increases up to 25/10 tpy. We are aware of *no* RACT requirements or netting or trading requirements that would prevent HAP increases from any or all sources currently subject to MACT. And it appears from the administrative record that EPA too could identify none, much less the full range of such restrictions that would support EPA's raw assertion that "in many cases" such requirements exist. *Id.*

Third, EPA next argues that "if this rule is finalized, those sources that seek to maintain area source status will likely take PTE limits at or near their current MACT emission levels to ensure that their emissions remain below the major source thresholds. Sources have no incentive to establish their PTE limit too close to the major source thresholds because repeated or frequent exceedances above the PTE could provide the permitting authority reason to revoke the PTE and bring an enforcement action." 72 Fed. Reg. at 73/3.

EPA's own materials reveal the wrongheadedness of this unsupported argument, as well as the agency's own awareness that it is wrong. This argument is thoroughly rejected in the 2005 Regional Memo by the EPA officials most knowledgeable about source adoption of PTE limits through federally enforceable or state-only permits. Indeed, internal EPA materials written both before and after the proposal was issued express serious and understandable reservations about EPA's third argument above in light of the Regions' ridicule.

In a September 14, 2006 email, William Nickerson in the Administrator's office wrote:

> The Regions also suggested that in their experience sources requesting synthetic minor limits are often given limits of 9 or 24 tpy. Yet the preamble claims sources are likely to adopt PTE limitations at or near their current level of emissions. Do we disagree with the regional experience, or

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> do we think that even if sources obtain permit limits of 9/24 that their emissions will probably remain unchanged?

Nickerson Email. It is apparent that the preamble advanced neither one of those responses, instead adopting a posture of blithe indifference and complete dismissal of the Regions' experience.

Even more telling is the internal briefing paper prepared for the Administrator after the proposal was signed, which makes clear that agency officials understand the Regions are correct. Yet the proposal was not changed to reflect this awareness, since the agency decided to contradict its own experts (with no basis for doing so, the briefing paper makes clear) in the name of adding one more argument to the laundry list of factors designed to reassure, which is to say dupe, the public:

> **Question:** Wouldn't the proposed change also allow many sources to increase their emissions of toxic air pollutants?
>
> **Answer:**
>
> • The proposed rule would make it theoretically possible for some area sources to increase their emissions, but we anticipate that few sources would "backslide."
> • We have several reasons for believing that the approach would not result in many facilities increasing their emissions:
> ....
> • Sources would generally want to retain a "cushion" with respect to major source thresholds.
> ....
>
> **Background:**
> ....
> • .... Also, the Regions in their memo stated that sources typically don't build in much cushion when taking limits to keep them below major source levels. It is therefore important not to overstate the reasons that we expect backsliding to be the exception rather than the rule. We're asking for public comment and information to test our theories.

January 2007 Draft Briefing Paper at 2.

Our own experience with PTE limits fully matches that of the Regions, which makes perfect sense for obvious reasons. Contrary to the proposal's claims, sources have every reason in the world to take PTE limits near the major source thresholds because this grants them the *maximum legal cushion* available, thereby granting them maximum

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operational flexibility to increase emissions *or* create *operational cushions* of their own choosing. This is in fact perfectly rational, albeit a dirtier and more harmful outcome for the public. Indeed, if sources were to take "PTE limits at or near their current MACT emission levels," 72 Fed. Reg. at 73/1, they would be denying themselves bigger *legal cushions and operational cushions*, thereby making it more likely, not less, that "repeated or frequent exceedances above the PTE" (*id.*) limit would themselves prompt enforcement actions for such violations.

Thus, the illogical rationale in the preamble gets it exactly backwards considering the very factors that EPA mentions. It is little surprise then that actual, rational source behavior does not accord with EPA's "theories," and that Regional experience and the facts on the ground are so squarely at odds with EPA headquarters' deregulatory, self-serving "theories."

EPA's fourth factor for denying that the proposal will result in emissions increases is that "permitting authorities will likely encourage emission reduction maintenance and impose more stringent PTE terms and conditions on the source the closer the source's PTE is to the major source thresholds. Such terms and conditions may include shorter compliance periods and perhaps more robust monitoring, recordkeeping, and reporting to ensure that the source does not exceed its PTE." *Id.*

By its own terms this argument about what is "likely" is rank speculation, with no factual support or state agreement in the administrative record. Again, the briefing paper for the Administrator undermines this rationale, admitting that EPA was moving forward with the proposal without any states having requested EPA's proposed change in direction. January 2007 Draft Briefing Paper at 6. In fact, the National Association of Clean Air Agencies has submitted comments opposing EPA's proposal, as have other state and local officials.

More fundamentally, this argument is very revealing at several levels. First, EPA is projecting that states will be more responsible than the agency is being by issuing this proposal. As the briefing paper for the Administrator acknowledges, EPA refused to propose any anti-backsliding provisions, yet the agency's reason for claiming lack of concern about backsliding is that it hopes the states will take care of it since EPA has not. January 2007 Draft Briefing Paper at 3. Second, EPA's argument implicitly admits that it expects emissions increases to result from sources whose PTE (due to MACT controls, *e.g.*) is farther from the major source threshold. Even EPA would only expect states to "impose more stringent PTE terms and conditions on the source the closer the source's PTE is to the major source thresholds."

EPA completely disregards several factors that directly contradict its speculation: state and local governments are under pressure from local businesses and governors' offices that may prevent them from acting as EPA speculates; state and local laws may not allow officials to deny sources' requests to adopt PTE limits near the major source thresholds; and state or local no-more-stringent-than laws may prohibit officials from

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adopting restrictions that industry would predictably argue are more stringent than federal law.

EPA's fifth and final argument is that:

> many sources that take a PTE limitation to become an area source will ultimately be subject to area source standards issued pursuant to section 112. To date, EPA has issued emission standards for approximately 20 area source categories. Over the next three years, EPA is required to develop area source standards for approximately 50 additional categories. While the level at which those standards will be set is not known at this time, the standards will reflect at least generally available control technology and some may be set at MACT-based levels, which would mean that many sources could be required to maintain their current emission levels. *See, e.g.*, 42 U.S.C. 7412(d)(2), (d)(5), 7412(k)(3)(B).

72 Fed. Reg. at 73/3.

First, it bears noting EPA's admission that not all sources deregulated from MACT by the proposal would be subject to area source standards. Second, EPA admits there would be significant delays between the proposal's deregulatory effect and the future compliance dates of which ever forthcoming area source standards did cover the deregulated former MACT sources. Third, GACT is a less stringent, less protective statutory standard than MACT, meaning that backsliding would be all but certain by definition for area source standards adopting GACT rather than MACT. As evidence, there is not a single area source GACT standard today that is as stringent as the counterpart MACT standard. This is precisely why EPA hedges its own argument above by admitting that area sources subject to GACT standards would not be among those maintaining their current emission levels.[15] Fourth, EPA has set area source MACT standards for exceedingly few source categories to date, and there is no reason to believe that pattern will change. Thus, EPA's weak argument that some area source standards "may be set at MACT-based levels" is contrary to EPA's historic record, unsubstantiated, and no basis for allowing sources to exceed MACT emission levels through the instant proposal.

Neither the proposal's preamble nor the proposed rule language either mentions practicable enforceability or impose any sufficiency criteria *whatsoever* on permits that may permissibly limit PTE. *See* 72 Fed. Reg. at 80/1 (proposed 40 C.F.R. § 63.1(c)(6)). Thus the proposal by its own terms runs afoul of the *National Mining Association* decision, which requires creditable limits on PTE to be effective, with sufficient

[15] In a statement of breathtaking understatement, the proposal itself later admits that any "area source standard is not likely to be more stringent than the major source MACT standard that the source was already meeting." 72 Fed. Reg. at 76/1.

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monitoring, recordkeeping and reporting to ensure their effectiveness and enforceability. In addition, it demonstrates that EPA was fundamentally attempting to deceive a member of Congress by claiming that the proposal requires PTE limits to be enforceable as a practical matter. Mar. 30 EPA Letter to Rep. Dingell at 13. This misdirection is particularly galling considering that the EPA Regional offices strongly urged EPA headquarters to include practicable enforceability criteria in the rulemaking proposal, 2005 Regional Memo at 6, a request that headquarters pointedly ignored (despite it being raised twice by the Regions), only to trot out the ignored concept when it was politically useful to assuage – and mislead – a concerned member of Congress.

EPA's March 30th responses attempted to deceive Congressman Dingell through similar misdirection and evasiveness by implying in response to numerous questions that creditable PTE limits under the policy needed to be federally enforceable by EPA and citizens. Mar. 30 EPA Letter to Rep. Dingell at 12-13. But no such requirement appears in the preamble or proposed regulatory language. And as EPA well knows, many if not most state-enforceable only permit programs do not grant citizens the right to enforce state permit conditions and certainly do not grant EPA the right to enforce such permits in state or federal court. By calculated omission, in the preamble and proposed regulatory language (proposed 40 C.F.R. § 63.1(c)(6)), the proposal would allow state-enforceable only permits to limit HAP emissions.

Finally, despite EPA's similarly misleading responses to Congressman Dingell in its March 30th letter, the proposal imposes no legal, sufficiency criteria on the creditable permit conditions that may limit PTE. 72 Fed. Reg. at 80 ((proposed 40 C.F.R. § 63.1(c)(6) (requiring only that sources "obtain[] a permit limiting its potential to emit (PTE) hazardous air pollutants"). EPA's March 30th letter describes a laundry list of purported recordkeeping, reporting and monitoring "requirements" that permits adopting PTE limits "must" contain. Mar. 30 EPA Letter to Rep. Dingell at 12. But the EPA letter is tellingly devoid of regulatory – or proposed regulatory – citations. And the reason for this omission is simple. The proposal does not adopt, reference or even mention any such requirements, either for federally enforceable or state-enforceable only PTE limits. Nor do other federal regulations contain any such requirements for federally enforceable or state-enforceable only PTE limits.

The EPA criteria guiding establishment of federally enforceable limits, either in EPA- or state-issued federally enforceable permits, are purely a product of EPA guidance rather than regulations. *See id.* at 13. But even that guidance does not repeat the lengthy, fanciful claims about sources' recordkeeping, reporting and monitoring requirements that EPA related to Congressman Dingell in the letter. *Id.* at 12. And of greater importance to the instant rulemaking, EPA's proposal and administrative record fail to require even the minimally necessary legal criteria that would allow any permits to limit PTE in service of the proposal's unlawful enterprise.

One problem with insufficient PTE limits is illustrated by sources that *today* report just their annual emissions, on a calendar 12-month basis, in permits purporting to limit PTE. There is not necessarily any regular reporting of 12-month rolling annual

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emissions. All of the emission calculations in support of PTE limits may be purely paper calculations, based on AP-42 emissions factors or entirely non-representative of actual source emissions – that is, never supported by an actual stack test.

For emission source categories having percentage reduction requirements, there is frequently little or no information available on the uncontrolled process emission rates. Annual emission reporting for HAP emissions may be largely a paper exercise because of failures to incorporate uncontrolled/poorly controlled (and unknown) emissions during process or control equipment malfunctions, upsets, and planned or unplanned maintenance. Finally, sources often claim confidential business information privileges concerning operational data necessary to support citizen determinations of emission rates. EPA's proposal completely ignores all of these considerations and the numerous additional problems with PTE limits in the real world.

Another enforceability consideration concerns the recurring reality that sources subject to evaluation concerning their major source status under EPA's proposal frequently have several emissions units. If one emissions unit has a significant violation of a PTE limit, but the emissions from the one unit are not sufficient in and of themselves to be over the 10/25 source-wide threshold, the enforcement inquiry becomes twofold. The source may have violated a PTE limit for that emission unit, which may be determinate but also unknowable to citizens or EPA due to inadequate monitoring, reporting and recordkeeping practices. But the even more difficult question then becomes whether the source in the aggregate exceeded source-wide HAP thresholds. EPA's proposal – or even EPA guidance –fails to address this most basic of enforceability questions.

Even were EPA's enterprise legal, the agency may not relieve sources of their obligation to comply with section 112 standards by obtaining PTE limits that are unenforceable and ineffective in limiting PTE. Without legal criteria governing emission limits, averaging times, testing, monitoring, recordkeeping, reporting and the need to safeguard the integrity of federal Clean Air Act requirements through EPA and citizen enforcement opportunities over permit conditions,[16] then EPA may not even adopt the mechanism it has chosen for its proposal. The proposal fails to address, much less ensure, the effectiveness of PTE limits as a practical and enforceable matter, thereby violating *National Mining Association*, the Act, and prohibitions on arbitrary agency action.

EPA argues that even if HAP increases from sources occur in response to this rule, "the increases will likely be offset by emission reductions at other sources that should occur as a result of this proposal." 72 Fed. Reg. at 74/1. This is arbitrary. First, as is apparent in this passage, the preamble, administrative record, and internal EPA documents, this prediction of what is "likely" is based only on "belief" and "theories"; it

[16] Because the instant proposal is unlawful on multiple grounds for the reasons discussed herein and must be abandoned, and because we understand that EPA is preparing a separate rulemaking proposal for comment concerning PTE limits generally, we will reserve our comments concerning the need for federal enforceability of PTE limits until that separate proposal.

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lacks any factual or empirical foundation; and in fact is contradicted by the more knowledgeable, expert views of EPA's Regional officials, who believe that the proposal will result in emissions increases rather than decreases. Second, section 112 is a source-specific, technology-based program, followed by a source-specific residual risk program. Section 112 does not allow the "trading" or "offset[ing]" of emissions or obligations between sources, it never has, and EPA does not and cannot identify any legal authority to support such a suggestion.

Even though we believe that EPA lacks the legal authority to adopt the proposed section 63.1(c)(6) for the reasons stated herein, we agree that if EPA adopts the unlawful proposal that it must requires sources switching from major to area back to major source status again must comply immediately with the MACT standard. 72 Fed. Reg. at 74/3. To allow otherwise would reward sources for gamesmanship or otherwise allow periods of excess emissions and noncompliance.

We firmly oppose EPA's suggested proposal to allow "sources that switch status from major source to area source and then revert back to major source status, be allowed additional time for compliance if the major source standard has changed such that the source must undergo a physical change, install additional controls and/or implement new control measures." 72 Fed. Reg. at 75/1. It is fully within the control of these sources to decide and control when they will increase emissions to "revert back to major source status," so it is equally within their control – and responsibility – to comply with the revised MACT standard by the time of said reversion. There is no defensible reason in law or policy why the public should suffer the consequences of increased HAP emissions from sources that simultaneously wish to increase their HAP emissions and forego the controls required by the revised MACT standard. Sources should bear the burden of that source decision, not the public.

For similar reasons, we strongly reject the suggestions that EPA "should instead allow all sources that revert back to major source status a specific period of time in which to comply with the MACT standard, which would be consistent with the approach provided for in 40 CFR 63.6(c)(5)." 72 Fed. Reg. at 75/1-2. Again, it is fully within the control of these sources to decide and control when they will increase emissions to "revert back to major source status," so it is equally within their control – and responsibility – to comply with the MACT standard by the time of said reversion. The remainder of the different compliance time-frame and extension options discussed by EPA (*id.* at 75-76) violate sections 112(i)(3) and 112(d)(7) of the Act, since sources remain subject to MACT standards and may not backslide from those obligations either in terms of compliance obligations or through compliance extensions.

In addition to the justification for the proposed interpretation provided in the Federal Register notice, *see generally* 72 Fed. Reg. 69, EPA has provided additional justification for the proposed interpretation in correspondence with Congressman John Dingell. The correspondence to Congressman Dingell, dated March 7, 2007, and March 30, 2007 – not unlike the preamble to proposed interpretation – fails to establish a legitimate basis for the proposed interpretation.

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In both letters to Congressman Dingell EPA avers that the proposed interpretation is based on ten years of experience implementing the air toxics program. *See* Letter from W. Wehrum to Congressman J. Dingell, dated March 7, 2007 (hereinafter "Wehrum Letter; March 7, 2007"), at 1; Letter from W. Wehrum to Congressman J. Dingell, dated March 30, 2007 (hereinafter "Wehrum Letter; March 30, 2007"), at cover page. This is a meaningless assertion and provides no justification for the proposed interpretation. EPA must specify and substantiate what, exactly, in its experience implementing the air toxics program justifies the proposed interpretation. As is discussed above, the Regions – with superior, on-the-ground experience and expertise regarding the implementation of the air toxics program and permitting programs – have "significant concerns about the increase in emissions of hazardous air pollutants that will likely occur from the revisions to the OIAI policy," 2006 Regional Memo at 2, and "simply do not agree with the change," January 2007 Draft Briefing Paper at 5.

One rationale presented by EPA in its March 7, 2007, correspondence to Congressman Dingell suggests that while that application of MACT standards (which are generally expressed in terms of percent emission reduction or some metric other than absolute emission levels) may or may not reduce emissions at a facility below the major source threshold, the proposed interpretation could, in fact, induce sources to limit emissions to levels below the major source threshold through the required adoption of area source PTE limitations. *See* Letter From W. Wehrum to Congressman Dingell, dated March 7, 2007 (hereinafter "Wehrum Letter; March 7, 2007"), at 2. EPA intends for this observation to suggest an absolute, net decrease in emissions from the proposed interpretation. This rationale is flawed in myriad respects.

First, it is completely theoretical and it is not backed by any data or record evidence. Second, it assumes that area source PTE limitations will be enforceable and enforced; the Regions have indicated that synthetic minor limits will be difficult to enforce because of the relaxed monitoring and recordkeeping requirements and, where a synthetic minor limit is issued by a state permitting authority, such a limit cannot be enforced by federal authorities (or, in most cases, by citizens). *See* discussion of practicable enforceability, *infra*. The rationale also ignores the impact that the proposed interpretation will have upon MACT-compliant sources currently below the 25/10 tpy threshold, which will have an incentive to accept synthetic minor limits and increase emissions, and flouts the purpose of the MACT program, which is to aggressively use technology-based emissions limitations to reduce HAP emission to the lowest levels possible.

EPA's correspondence to Congressman Dingell also attempts to justify the proposed interpretation by stating that "sources that may increase their actual emissions as a result of taking a limit on their potential to emit in lieu of complying with an otherwise applicable major source NESHAP won't necessarily be able to maintain the emission increase [because] [s]uch sources would still be required to comply with any applicable area source NESHAP." Wehrum Letter; March 7, 2007, at 3. This rationale, again, is only theoretical and supported by absolutely no data or record evidence.

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Further, area source NESHAPs do not presently exist for the overwhelming majority of area source categories, additional area source NESHAPs may not be promulgated or applicable for many years, and such standards generally only require generally available control technology (GACT) which is much laxer that MACT. EPA can not rely upon the uncertain prospect of future standards, "the level at which ... is not known at this time," *see* 72 Fed. Reg. 73, as a meaningful hedge against the Regions' position that the proposed interpretation will increase HAP emissions.

EPA's March 30, 2007, letter to Congressman Dingell includes a "targeted analysis of the potential impact of sources that are subject to the MACT standard for the synthetic organic chemical manufacturing industry (SOCMI)." Wehrum Letter; March 30, 2007, at 1. This analysis concludes that, based upon an increase of emissions by MACT-compliant sources that currently emit below the 25/10 tpy major source threshold, the proposed interpretation could increase HAP emissions by 358 tpy. The analysis also indicates that emissions reductions – credited to facilities currently above the 25/10 tpy threshold cutting emissions – were possible at 377 tpy. *See id.* at 1-2. As an initial matter, this analysis is of limited value as EPA itself acknowledged that it "cannot characterize the SOCMI as representative of the nationwide impact from all MACT source categories." Wehrum Letter; March 30, 2007, at 2.

In any event, EPA's targeted SCOMI analysis – which is discussed below – does not justify the proposed interpretation, but rather (once corrected) provides substantial evidence against it. EPA's estimate for a SOCMI HAP emissions increase identified 55 facilities that could increase emissions under the proposed interpretation but assumed that fewer than half would be able to do because "Over half of these 55 sources are located in ozone nonattainment areas and would be unable to increase volatile organic compound emissions [because] almost all organic HAP are VOC." *Id.* at 2. However, EPA's claim that HAP increases won't occur from SOCMI sources in non-attainment areas is wholly without basis, given that non-attainment permitting requirements are triggered by HAP VOC emissions at 40 tpy and above, 40 C.F.R. § 51.165(a)(1)(x)(A), and the ceiling for synthetic minor limitations is 24.9/9.9. tpy. Given that EPA's estimate of increased SOCMI HAP emissions incorrectly excluded more than half of the facilities that would be entitled to increase emissions under the proposed interpretation, adjusting for this mistake[17] suggests an emissions increase of more than 716 tpy. This substantial increase in emissions dwarfs the emissions reductions (377 tpy) predicted by EPA, bolstering assessments by the Regions and others that backsliding engendered by the proposed interpretation will increase the emission of hazardous air pollutants.

Congressman Dingell inquired with EPA about the preamble statement that "EPA has heard from others who have taken the position that the OIAI policy serves as a disincentive for sources to reduce emissions of HAP beyond the levels actually required by an applicable standard," *see* 72 Fed. Reg. 69 and requested documentation on the

[17] VOC emissions limitations for SOCMI facilities located in ozone nonattainment areas is the only non-MACT emissions limitation identified by EPA for such facilities. EPA's analysis did not identify any other federal, state, or SIP limitation that would apply to HAP emissions from SOCMI facilities; similarly, we are not aware of any such limitations.

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communications between EPA and "others" reflecting this position. EPA's March 30, 2007 letter includes a table identifying the others from whom "EPA has heard" and attached the relevant conveyances. Wehrum Letter; March 30, 2007, at 4-5, Attachment 2. An analysis of the conveyances attached to the March 30, 2007 letter underscores that the only entities submitting comments to EPA requesting the proposed changes to the OIAI interpretation were regulated industries. *See* Wehrum Letter; March 30, 2007, at 4-5, Attachment 2. Moreover, as discussed above, by EPA's own admission, even the industrial complaints were purely anecdotal.

In its March 30, 2007 correspondence to Congressman Dingell, EPA attempted to provide additional support for its assertion that MACT control devices are designed such that they cannot be operated at a level which achieves only a partial emissions reduction;[18] EPA did so by discussing in general terms several different types of control technology and the potential impediments to abandoning the use of such control technology. *See* Wehrum Letter; March 30, 2007, at 5-7. EPA's discussion of how various control technologies may operate is anecdotal and unsubstantiated by evidence in the record. Indeed, after reviewing data from the NEI, EPA acknowledged that "hundreds of [MACT-compliant HAP] sources do not report what they use to control emissions and many others do not specify the types of control devices used," and that it could not provide "meaningful estimates of percentages" of the types of controls being used by MACT-compliant sources in each MACT source category. *Id.* at 5. EPA did, however, make this telling admission:

> All control devices incur operating and maintenance costs, and unless it is an integral part of the process (e.g., condensers or boilers) any control device can be turned off for a given period of time, unless regulatory requirements require otherwise. In addition, an owner or operator could choose not to vent some smaller streams of air toxics to control devices in order to save some money if a PTE allows that.

Id. at 7; *see also* January 2007 Draft Briefing Paper at 2 ("[S]ome MACT controls involve equipment or techniques that could be 'dialed down' in terms of hours of operation or maintenance."). Although EPA has stated that its proposed interpretation is intended to create incentives for pollution prevention, the Agency's admission that control devices incur operating and maintenance costs that can be spared by turning off or dialing down pollution control technology highlights that the proposed interpretation's strongest incentive is the monetary reward that awaits entities that backslide against current pollution controls.

EPA has also attempted in its correspondence with Congressman Dingell to bolster its preamble assertion that sources opting to abandon MACT in favor of area

[18] EPA has raised this assertion in support of its theory that MACT-compliant sources that emit below the 25/10 tpy threshold won't accept synthetic limits and increase emissions if the proposed interpretation is implemented.

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source status will likely take PTE limits at or near their current MACT emission level by suggesting that sources closer to major source thresholds "are more likely to be subject to compliance evaluations by the state and EPA." Wehrum Letter; March 30, 2007, at 9. In support of this assertion EPA cites its April 2001 "Stationary Source Compliance Monitoring Strategy". This document, however "is intended solely as guidance"; it "is not a regulation [and] does not impose legally binding requirements on EPA, States, or the regulated community." EPA, STATIONARY SOURCE COMPLIANCE MONITORING STRATEGY (2001), at 2. As with its other reasons for suggesting that MACT-compliant sources will adopt PTE limitations at their current emission level when transitioning to area source status, this reason is purely theoretical; it is not established by data, other record evidence, or even anecdote. Again, EPA has provided no basis for doubting the expert assessment of the Regions that the proposed interpretation will likely result in the increased HAP emissions. *See* 2006 Regional Memo at 2.

Congressman Dingell has confronted EPA with the possibility that HAP sources, upon transition to area source status though the adoption of PTE limits, will (in exchange for likely increasing emissions) be rewarded with lax or nonexistent recordkeeping, reporting, and monitoring requirements and will likely be spared the prospect of citizen and federal enforcement. EPA responded to this suggestion with a laundry list of disingenuous assurances, claiming in its March 30, 2007 letter, for example, that "[area] sources must retain all records ... with respect to ensuring the PTE limitation is not exceeded" and that "[t]he permit establishing a PTE should provide specific reporting requirements ... and include the specific associate compliance monitoring". Wehrum Letter; March 30, 2007, at 12; *see also id.* at 13. These assurances are bald assertions which cannot be supported. EPA cites no state or federal rules requiring such record keeping, reporting and monitoring for area sources and the proposed interpretation does not require such measures.[19] Indeed, the Regions complained that the proposed interpretation raised serious concerns "about the lack of clear-cut requirements regarding practicable enforceability" meaning "[m]any of the environmental benefits that are achieved by comprehensive monitoring and reporting requirements of the MACT standards will be lost". 2005 Regional Memo at 6. EPA further sought to assuage Congressman Dingell by identifying the requirements of the Title V permits, without admitting that area sources are not necessarily subject to Title V and indeed EPA has gone out of its way under this administration to exempt area sources from Title V.[20] Finally, EPA made that obvious point that both citizens and EPA can enforce federally-enforceable PTE limitations but failed to mention that neither citizens nor EPA can enforce state PTE limitations.

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[19] EPA does cite two documents which purportedly outline "[c]urrent requirements related to PTE limits for Hap emissions." Wehrum Letter; March 30, 2007, at 13. These documents are mere guidance; the "requirements" are not a product of regulations or the regulatory process, they are not codified, and they are not enforceable by EPA with respect to a state permitting authority and/or a source operating under a state-issued PTE limitation.

[20] 72 Fed. Reg. 74/2. ("The major source requirements to which the source would no longer be subject, include, but are not limited to, compliance assurance monitoring and title V requirements (assuming the source is not otherwise subject to title V permitting).").

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In its March 7, 2007 letter to Congressman Dingell EPA seeks to justify its proposed interpretation by asserting that: "We … have substantial supporting information and policy justification for the Proposed Rule and are using the notice and comment process to ask interested parties to submit other relevant information and data." Wehrum Letter; March 7, 2007, at 3. This assertion is betrayed, however, by the previous sentence in EPA's letter where it concedes: "Comprehensive information on hazardous air pollutant sources is not available and we do not have information on what individual sources will do in response to the Proposed Rule." What could possibly be more critical to the development of a HAP rulemaking than information on HAP sources? This remarkable (and fatal) confession by EPA emphasizes that the agency – apart from a few anecdotes supplied by industry and a few improbable theories which defy logic and have been empirically denied by the Regions – has absolutely no justification for the proposed interpretation.

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May 4, 2007

U.S. Environmental Protection Agency
EPA West (Air Docket)
1200 Pennsylvania Avenue, Northwest,
B102, Mail Code 6102T
Washington, DC 20460.

Re: Docket ID No. EPA–HQ–OAR–2004–0094.

To Whom it May Concern:

On behalf of the 1.2 million members of the Natural Resources Defense Council, we are writing to provide comments on EPA's rulemaking proposal for the "National Emission Standards for Hazardous Air Pollutants: General Provisions," published at 72 Fed. Reg. 69 (Jan. 3, 2007).

I. EPA's Proposal Contravenes the Language, Structure and Legislative History of the Clean Air Act.

EPA's proposal pretends that the only relevant or governing statutory provisions concerning the lawfulness of its proposal are the "major source" and "area source" definitions in sections 112(a)(1) and (a)(2). *See generally* 72 Fed. Reg. at 72-73 (discussing only these two statutory provisions). EPA further asserts – without any statutory analysis, support or rationale – that its proposal "is consistent with the language and structure of the Act." *Id.* at 73 (failing to discuss any further statutory language or any structure of the Act).[1]

As we discuss below, EPA's proposal contravenes multiple provisions of the Act and the very structure, intent and legislative history of section 112 itself. The proposal defies the history and reasons for Congressional adoption of section 112 in the 1990 Clean Air Act Amendments; defies the statute's carefully tailored phase I technology-

[1] Indeed, EPA's conclusory statement that "[n]othing in the structure of the Act counsels against today's proposed approach" (72 Fed. Reg. at 73/1) is followed incredibly and arbitrarily by absolutely no support for that proposition, instead repeating EPA's own conclusions that the only relevant considerations are the differing definitions of major source and area source. *Id.* Sheepishly unable to back up its first conclusory statement, the agency pivots immediately to discussing the statutorily irrelevant observation that its 1995 legal interpretation was only intended to be "transitional." *Id.* None of this, of course, supports the raw assertion that "[n]othing in the structure of the Act counsels against today's proposed approach." This explanation is especially arbitrary considering that the proposal does not even deign to address, much less grapple with, the statutory provisions and structure that led EPA in that 1995 interpretation to conclude that the longstanding, existing interpretation "follows most naturally from the language and structure of the Act." "Potential to Emit for MACT Standards – Guidance on Timing Issues," Memo from John Seitz, Director, Office of Air Quality Planning and Standards, to EPA Regional Air Division Directors (May 16, 1995).

based MACT approach and phase II residual risk approach; squarely contravenes section 112's compliance schedules; and creates a radically different regime in which no industrial source of HAPs in the country would be required by federal law to reduce facility-wide HAP emissions below 24.9 tons per year (tpy) of a combination of HAPs or 9.9 tpy of a single HAP.[2]

EPA pretends that this is the *laissez-faire,* unconcerned regulatory approach that Congress intended for the most toxic air pollutants known to man, including carcinogens and other substances that are deadly in parts per million or parts per billion concentrations. Instead, according to the inescapable internal logic of EPA's proposal, Congress intended every industrial source of HAPs in the country to have the legal right to emit 49,800 pounds per year of deadly toxins, with no obligation to reduce those emissions further or to assess the risk to public health remaining at this or lower emission levels or to provide an ample margin of safety to protect public health or prevent adverse environmental effects beyond those levels.[3]

As demonstrated by the preceding paragraph, the proposal utterly fails to discuss the additional statutory provisions discussed below, and fails further to discuss the legislative history that prompted adoption of section 112 in 1990 or the structural elements that Congress selected to implement the two-phase MACT and residual risk regime. Because section 307(d)(3)(C) requires EPA rulemaking proposals to contain a "statement of basis and purpose" including "the major legal interpretations and policy considerations underlying the proposed rule," two conclusions follow: (1) EPA believes that the section 112(a) major source and area source definitions are the only relevant statutory provisions embodying the "major legal interpretations" to support its proposal, and (2) should EPA decide to rely on additional or different legal authority to support any final rule adopting the proposal, the agency will be required to promulgate a supplemental proposal seeking comment on any new major legal interpretations, factual data and analysis, and policy considerations.[4]

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[2] For ease of reference, these comments will refer to these thresholds subsequently as 24.9/9.9 tpy or 25/10 tpy, as appropriate. Also for ease of reference, these comments should be read to oppose each and every proposed regulatory provision that implements EPA's proposal, including the proposed amendments to the part 63 General Provisions, and the corresponding amendments to the accompanying General Provisions applicability tables. *See* 72 Fed. Reg. at 80-92.

[3] *See* discussions of sections 112(d) and 112(f) *infra.* Indeed, EPA's proposal would also result in significant increases in criteria pollutants such as VOCs and particulate matter since, as EPA has long touted, "[t]he MACT regulations are also resulting in substantial co-control of criteria air pollutants." EPA, RESIDUAL RISK REPORT TO CONGRESS 10 (1999).

[4] Additionally, EPA's proposal contravenes section 307(d)(3)(A) & (B), by failing to include "the factual data on which the proposed rule is based," and "the methodology used in obtaining the data and in analyzing the data." EPA admitted in a March 30, 2007 letter to the Honorable John D. Dingell that at the time the agency developed the proposed rule, "we were not able to identify any information which we felt was suitable for use in performing a realistic and reliable analysis. We, therefore, decided to use the proposed rule as a vehicle for obtaining information that is suitable for that purpose. Any such information received in response to the proposal will be considered in taking final action on the proposed rule." Letter from William Wehrum, Acting Assistant Administrator, EPA Office of Air and Radiation, to the Honorable John Dingell (Mar. 30, 2007), at 3. And in a January 29, 2007, draft "Q & A" briefing paper prepared for the Administrator's appearance at a Senate Environment and Public Works Committee oversight hearing on February 6, 2007, where he discussed the proposal, EPA states "[w]e're asking for public comment and

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As discussed below, EPA's proposal contravenes numerous provisions of the Act and the structure, intent and legislative history of section 112 and may not be adopted as a matter of law.

A. Clean Air Act Provisions.

1. Section 112(d).

The proposal fundamentally contravenes the carefully crafted Congressional authorities in CAA section 112 meant to ensure that industrial HAP emitters would achieve:

> the maximum degree of reduction in emissions of the hazardous air pollutants subject to this section (including a prohibition on such emissions, where achievable) that the Administrator, taking into consideration the cost of achieving such emission reduction, and any non-air quality health and environmental impacts and energy requirements, determines is achievable for new or existing sources in the category or subcategory to which such emission standard applies through application of measures, processes, methods, systems or techniques including, but not limited to, measures which -
>
> (A) reduce the volume of, or eliminate emissions of, such pollutants through process changes, substitution of materials or other modifications,
>
> (B) enclose systems or processes to eliminate emissions,
>
> (C) collect, capture or treat such pollutants when released from a process, stack, storage or fugitive emissions point,
>
> (D) are design, equipment, work practice, or operational standards (including requirements for operator training or certification) as provided in subsection (h), or
>
> (E) are a combination of the above.

CAA § 112(d)(2) (emphases added). This insistence on maximum achievable emissions reductions, echoed in the defining criteria in section 112(d)(3) (*see infra*), contradicts the defining characteristic of EPA's proposal, which is to allow every source previously or potentially subject to MACT standards to maintain HAP emissions just below the 25/10 tpy thresholds, no matter whether those emissions levels are significantly greater than MACT floors reflecting the maximum degree of reduction in emissions derived

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information to test out theories." Section 307(d)(3) demands more than "theories" to support CAA rulemaking proposals, and it does not allow the agency to shirk its rulemaking responsibilities with the backwards request that the public provide EPA with the factual data, methodologies and analysis that must underlie the agency's proposals.

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according to the section 112(d)(3) criteria. As discussed above, EPA offers no explanation for how the proposal's approach, which operates legally and practically as a 24.9/9.9 tpy minimum floor level, comports with this language in section 112(d)(2).

EPA also fails to explain, nor can it, how the proposal comports with the insistence in section 112(d)(2) that emission standards for new and existing sources of HAP emissions "includ[e] a prohibition on such emissions, where achievable." Under EPA's proposal, MACT standards would never compel a prohibition on HAP emissions from any source, since EPA's proposal now reads sources' legal right to emit up to 24.9/9.9 tpy of HAP to trump both the Act's "maximum degree of reduction" and "prohibition" commands. The inescapable legal and logical outcome of EPA's proposal would be to have MACT standards on the books that are the legal equivalent of empty vessels, mere paper requirements for MACT floors based on the maximum degree of reduction of HAP emissions, with no sources in the real world actually subject to that obligation at levels below 25 tpy.

Worse, no sources are ever compelled to "prohibit[]" or "eliminate" HAP emissions since, under EPA's proposal, those sources may always choose to adopt PTE limits to escape the obligation to eliminate their HAP emissions. EPA's proposal thus reads section 112(d)(2)'s references to the "prohibition" and "eliminat[ion]" of emissions out of the statute. The proposal eliminates any legal obligation or possibility of MACT standards eliminating HAP emissions, since the proposal would always allow a source instead to "become an area source at any time by obtaining a permit limiting its potential to emit (PTE) hazardous air pollutants, as defined in this subpart, to below the major source thresholds established in 40 CFR 63.2."[5] This maneuver violates basic canons of statutory construction: "a statute ought, upon the whole, to be so construed that, if it can be prevented, no clause, sentence, or word shall be superfluous, void, or insignificant." TRW Inc. v. Andrews, 534 U.S. 19, 31 (2001) (internal quotations omitted). EPA does not and cannot advance an interpretation of these terms that prevents them from being legally meaningless paper requirements that do not function to prohibit or eliminate HAP emissions. Indeed, any elimination requirement would not be a requirement at all, since proposed section 63.1(c)(6) would always allow any source to evade any elimination or prohibition requirement. Nor does EPA offer any reason in policy, legislative history or the statute's structure why Congress would create such an arbitrary, ineffectual and self-defeating statutory approach.

A fundamental conflict between EPA's proposal and the statute lies in the proposal's treatment of section 112(d)(3). For new sources, section 112(d)(3) provides:

> The maximum degree of reduction in emissions that is deemed achievable for new sources in a category or subcategory shall not be less stringent than the emission

[5] 72 Fed. Reg. at 80 (proposed section 63.1(c)(6)). This contradiction is most stark for a single source category or source subject to a single MACT standard, but it is also fully possible for sources or source categories subject to multiple MACT standards.

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> control that is achieved in practice by the best controlled similar source, as determined by the Administrator.

For existing sources, emission standards "shall not be less stringent, and may be more stringent than. . . the average emission limitation achieved by the best performing 12 percent of the existing sources" or "the average emission limitation achieved by the best performing 5 sources (for which the Administrator has or could reasonably obtain emissions information) in the category or subcategory for categories or subcategories with fewer than 30 sources." CAA § 112(d)(3)(A).

EPA's proposal contravenes section 112(d)(3) by failing to require each of these forms of maximum achievable emission reductions:

- new sources are allowed to limit their emission reductions to as high as 24.9/9.9 tpy rather than the "emission control that is achieved in practice by the best controlled similar source";

- existing sources in categories/subcategories with more than 30 sources are allowed to limit their emission reductions to as high as 24.9/9.9 tpy rather than "the average emission limitation achieved by the best performing 12 percent of the existing sources"; and

- existing sources in categories/subcategories with fewer than 30 sources are allowed to limit their emission reductions to as high as 24.9/9.9 tpy rather than "the average emission limitation achieved by the best performing 5 sources."

Thus does EPA's proposal completely disregard and confound the statutory criteria mandating the maximum achievable emission reductions of HAPs under section 112.

EPA's proposal and administrative record materials inexplicably fail even to explain how the proposal is consistent with these provisions of section 112(d)(3). One obvious explanation is that the agency realizes its proposal contradicts section 112(d)(3), and cannot even muster a plausible alternative interpretation. This most obvious explanation is also the most likely one, as discussed below in the context of the 1995 Memo by John Seitz. *See generally*, "Potential to Emit for MACT Standards – Guidance on Timing Issues," Memo from John Seitz, Director, Office of Air Quality Planning and Standards, to EPA Regional Air Division Directors (May 16, 1995) (hereinafter "1995 Seitz Memo").

The proposal's silence makes it impossible to know fully how and why the agency might believe its new interpretation is consistent with section 112(d)(3). One possible explanation, nowhere suggested by the proposal or record, however, is that EPA might contend that it could discharge its section 112(d)(3) statutory obligations as it has done (with varying degrees of success) in issuing the existing suite of MACT standards, and then argue that whatever results may flow from the proposal's adoption – in terms of covered sources escaping MACT controls – is something that Congress intended to allow

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and immaterial to the operation of section 112(d)(3). Thus, if sources subject to maximum achievable emission reduction obligations subsequently increases their emissions above those maximum achievable reduction levels, that is irrelevant. Similarly, if the MACT standards ended up amounting in practice to empty obligations covering an empty source category with no actual sources required to obtain maximum achievable emission reductions – a distinct possibility[6] – that too is irrelevant.

Any such explanation would contravene the language, structure and legislative history of section 112 as discussed throughout these comments. The very language of section 112(d)(2) and (3) speaks in terms of "maximum" reductions that Congress expected sources to "achieve," not just minimal enough reductions that sources need not even achieve as a matter of federal law.[7] EPA's proposal turns the maximum achievable emissions reduction mandate upside down into a "need not achieve" right that can be exercised, paradoxically, by the very sources that Congress intended to subject to section 112(d)(3). Even more paradoxical, the very sources for which section 112(d)(3) standards were most successful – driving aggregate HAP emissions below 24.9/9.9 tpy – are the very same sources now eligible to flout that successful application and increase emissions above MACT floor levels.

EPA identifies no legal, policy or legislative history rationale or evidence to suggest that Congress wished the statute to be implemented in this upside down fashion, favoring HAP emission increases over maximum achievable emission reductions. It is no answer to say, as EPA does, that it hopes sources will be incentivized by the proposal to reduce HAP emissions incrementally to just below the 25/10 tpy thresholds. We address the arbitrariness of EPA's hopes and speculations *infra*. For present purposes, however, it suffices to note that neither the statute nor its legislative history speaks in terms of incentives, much less deregulatory incentives. Nor do the Act or Congressional explanations speak in terms of voluntary source actions serving as a substitute or alternative to section 112(d)(3) maximum achievable emission reductions.

But then – even though the proposal fails even to discuss section 112(d)(3) – EPA knows all this. The agency's definitive, governing legal interpretation of CAA section 112(d)(3) states that:

> facilities that are major sources for HAPs on the "first compliance date" are required to comply permanently with the MACT standard to ensure that maximum achievable reductions in toxic emissions are achieved and maintained.

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[6] Unfortunately, EPA has refused to furnish the basic, necessary factual data or projections, or exercise the agency's section 114 data collection authority, to determine the relative possibilities across *any* source category, much less all MACT source categories, that some, many, most or all sources currently subject to MACT standards might escape the obligation to achieve maximum achievable emission reductions.

[7] As discussed *infra*, one additional harmful consequence of EPA's proposal is that some or many sources could escape federal HAP regulation altogether, since they may pursue state-enforceable-only PTE limits that are not governed by federal regulations and that may not be enforced by EPA, or citizens acting pursuant to the Act's citizen suit provisions.

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> EPA believes that this once in, always in policy follows most naturally from the language and structure of the statute. In many cases, application of MACT will reduce a major emitter's emissions to levels substantially below the major thresholds. Without a once in, always in policy, these facilities could "backslide" from MACT control levels by obtaining potential-to-emit limits, escaping applicability of the MACT standard, and increasing emissions to the major-source threshold (10/25 tons per year). Thus, the maximum achievable emissions reductions that Congress mandated for major sources would not be achieved. 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.

1995 Seitz Memo, at 9 (emphasis added). The agency's own longstanding interpretation of the Act echoes the very points made above about sections 112(d)(2) and (3). As EPA itself understands, the statute's language and defining MACT criteria evince Congressional intent to require permanent and continuous compliance with the maximum achievable emission reduction obligations, in the name of accomplishing the public health and environmental protections against HAP emissions expected by Congress.

It is revealing to contrast the 1995 Seitz Memo's statement that its legal interpretation "follows most naturally from the language and structure of the statute" with the absolute silence about this legal interpretation and statement in the proposal. In fact, on at least two separate occasions, EPA officials remarked internally on earlier draft proposals' silence concerning this legal interpretation and the agency's longstanding belief that it "follows most naturally from the language and structure of the statute."

In the attached EPA Regional memorandum entitled "Regional Comments on Draft OIAI Policy Revisions," dated December 13, 2005 (hereinafter "2005 Regional Memo"), seven of ten EPA regional offices chided the headquarters office responsible for developing the draft proposal, pointing out that proposal failed to explain "why EPA no longer believes that the OIAI policy flows naturally from the statute." *Id.* at 3. Indeed, the Regional memo criticized the draft proposal for resting on the very same, non-responsive assertion reflected in the final proposal, that "there is nothing in the CAA that compels the conclusion that a source cannot attain area source status after the first substantive compliance date of a MACT standard." *Cf. id.* to 72 Fed. Reg. at 72.

The proposal's non-responsive, non-explanation is arbitrary at two levels, first, by failing to explain the agency's reversal in legal positions that the governing interpretation now no longer "follows most naturally from the language and structure of the statute"; and second, by failing to respond to internal, eminently reasonable requests that the agency explain its reversal in position "[i]n order to provide an adequate rulemaking record." 2005 Regional Memo at 3; *see also* CAA § 307(d)(3)(C) (requiring a proposal's

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"statement of basis and purpose" to include "the major legal interpretations and policy considerations underlying the proposed rule").

Next, not long before the ultimate rulemaking proposal's signature, on September 14, 2006, an official in the Office of the Administrator wrote an email to the staff person in the Office of Air & Radiation responsible for the proposal and made the following observation:

> Have we made a point of addressing the substantive issues [the Regions] raised? For example, in the 1995 memo we claimed the policy outlined then flowed "most naturally" from the language and structure of the statute. Now we claim that "there is nothing in the statute which compels the conclusion that a source cannot attain area source status after the compliance date of a MACT standard". The Regions raised the question of whether we have an adequate rulemaking record to support that change. Do we? Assuming we are sued on this when it goes final, how confident are we in being able to prevail against a legal challenge?

Email from W. Nickerson of EPA to R. Colyer of EPA (Sept. 14, 2006) (hereinafter "Nickerson Email") (attached). The published proposal makes clear that these concerns were swept aside in favor of the same non-responsive, non-explanatory statement that had justifiably rankled the Regional offices. *See* 782 Fed. Reg. at 72.

It is especially ironic that EPA should quote the *Mobil Oil Corp. v. EPA* decision in the preamble to the proposal, 72 Fed. Reg. at 73/1, since nowhere does the agency "explain[] the departure from its prior view." *Id.* (citing *Mobil Oil Corp.*, 871 F.2d at 152). Indeed, the agency refused to explain the departure from its prior view even after being urged to do so on two separate occasions by the collective experts in EPA's regional offices and an official in the Office of the Administrator itself.

As the D.C. Circuit has reiterated in the face of continuing EPA lawlessness and defiance of court precedents, the Clean Air Act requires MACT "floors based on the emission level actually <u>achieved</u> by the best performers (those with the lowest emission levels)." *Sierra Club v. EPA*, No. 03-1202 (Mar. 13, 2007), slip op. at 11. As discussed earlier, EPA's proposal defies this obligation and turns this understanding on its head by treating the 25/10 major source thresholds as the MACT floors substituting for the lowest emission levels reflecting the "emission level actually <u>achieved</u> by the best performers."

Under EPA's upside-down, unlawful new approach to section 112(d)(3), it would be entirely permissible for <u>no</u> source in an industrial category originally subject to MACT to emit at the floor level derived (or supposed to be derived) from the "average emission limitation achieved by the best performing 12 percent of existing sources" (per CAA § 112(d)(3)), and instead for <u>every</u> source originally in the MACT source category to emit

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above the floor level at 24.9/9.9 tpy of HAP. This violates the plain language of section 112(d)(3), the string of D.C. Circuit precedents from *Cement Kiln* to *National Lime* to the 2007 *Sierra Club* decision, and it is arbitrary and capricious.

* * * * *

Section 112(d)(6) provides that "The Administrator shall review, and revise as necessary (taking into account developments in practices, processes, and control technologies), emission standards promulgated under this section no less often than every 8 years." Congress intended such reviews to examine technology developments, with strengthening revisions to section 112 standards driven by "developments in practices, processes, and control technologies." EPA's proposal renders such recurring reviews ultimately meaningless, because any technology developments or strengthening revisions concerning section 112 standards are pointless past the 25/10 tpy thresholds. These thresholds now serve as the defining outer limits of technology development and emission reductions under EPA's proposal. This is plainly at odds with Congressional intent in adopting section 112(d)(6), and EPA offers no explanation at all for the technology-forcing intent behind section 112(d)(6) and how its proposal effectuates that intent. In short, the proposal does not and section 112(d)(6) represents yet another reason why EPA's proposal is unlawful, arbitrary and capricious.

* * * * *

The plain language of section 112(d)(7) serves as an independent barrier to the backsliding that EPA's proposal would cause for all existing MACT standards and residual risk requirements. That section states:

> No emission standard <u>or other requirement promulgated under this section</u> shall be interpreted, construed or applied to diminish or replace the requirements of a more stringent emission limitation or other applicable requirement established pursuant to section 111, part C or D, <u>or other authority of this Act</u> or a standard issued under State authority.

CAA § 112(d)(7) (emphasis added). This language clearly indicates that no "requirement promulgated under this section," such as the instant proposal amending the Part 63 General Provisions, may "diminish or replace the requirements of a more stringent emission limitation or other applicable requirement established pursuant to. . . other authority of this Act," namely including section 112 itself. The plain language and structure of "<u>other</u> authority of this Act" means other than the preceding two statutory examples, section 111 and the part C or D PSD-NSR requirements. The "other authorit[ies] of this Act" that may not be diminished by the proposal thus include not just the part 61 NESHAPs that preceded the 1990 amendments, but also the section 112 emission standards adopted pursuant to the 1990 amendments.

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EPA cannot claim and has never claimed that section 112(d)(7) operates retrospectively only with respect to pre-1990 rules, since EPA has not been allowed to adopt section 112 standards since 1990 that diminish or replace section 111 or part C or D requirements adopted after 1990. Nor has EPA ever argued, nor could it, that section 112(d)(7) does not bar the diminution or replacement of more stringent requirements adopted under the Act's former NESHAP program. By the same token, EPA may not adopt section 112 requirements (like the instant proposal) that weaken more stringent emission limitations or other applicable requirements in any section 112 requirements, since those too are "other authorit[ies] of this Act." By EPA's own admission[8], the proposal "diminish[es] or replace[s] the requirements of a more stringent emission limitation or other applicable requirement" in existing section 112 standards.

2. Section 112(f).

Following the phase I MACT approach in section 112, the second phase residual risk program in section 112(f) requires the following:

> If Congress does not act on any recommendation submitted under paragraph (1), the Administrator shall, within 8 years after promulgation of standards for each category or subcategory of sources pursuant to subsection (d) of this section, promulgate standards for such category or subcategory if promulgation of such standards is required in order to provide an ample margin of safety to protect public health in accordance with this section (as in effect before November 15, 1990) or to prevent, taking into consideration costs, energy, safety, and other relevant factors, an adverse environmental effect. Emission standards promulgated under this subsection shall provide an ample margin of safety to protect public health in accordance with this section (as in effect before November 15, 1990), unless the Administrator determines that a more stringent standard is necessary to prevent, taking into consideration costs, energy, safety, and other relevant factors, an adverse environmental effect. If standards promulgated pursuant to subsection (d) and applicable to a category or subcategory of sources emitting a pollutant (or pollutants) classified as a known, probable or possible human carcinogen do not reduce lifetime excess cancer risks to the individual most exposed to emissions from a source in the category or subcategory to less than one in one million, the Administrator shall promulgate standards under this subsection for such source category.

CAA § 112(f)(2)(A).

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[8] *See, e.g.*, 72 Fed. Reg. at 73/2, 80; Jan. 29, 2007, Q & A Briefing Paper, at 1,2, 3, 9; *see generally* 2005 Regional Memo.

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Regarding area sources and residual risk requirements, the Act provides:

> The Administrator shall not be required to conduct any review under this subsection or promulgate emission limitations under this subsection for any category or subcategory of area sources that is listed pursuant to subsection (c)(3) and for which an emission standard is promulgated pursuant to subsection (d)(5).

CAA § 112(f)(5). Moreover, for area sources not even covered by section 112(d)(3) or section 112(d)(5) emission standards, EPA is not required to conduct residual risk reviews or adopt residual risk standards. *Id.*; CAA §§ 112(d)(3) & (f)(2).

As EPA has recognized, Congress adopted section 112's two-phase approach out of two separate concerns that public health and the environment would not be adequately protected against HAPs: first, based on the concern that the pre-1990 Amendments' exclusive health-based approach to air toxics control had been an abysmal failure in EPA's hands; and second, out of concern that even application of technology-based MACT standards would not adequately protect the public with an ample margin of safety:

> Section 112 of the Act replaces the previous system of pollutant-by-pollutant health-based regulation that proved ineffective at controlling the high volumes and concentrations of HAP in air emissions. The provision directs that this deficiency be redressed by imposing technology-based controls on sources emitting HAP, and that these technology-based standards may later be reduced <u>further to address residual risk that may remain even after imposition of technology-based controls</u>.

62 Fed. Reg. 49,052, 49,055 (Sept. 18, 1997) (emphasis added). Thus, the residual risk provisions are intended to achieve <u>additional</u> controls and reductions beyond what full application of the MACT standards would accomplish through technology alone.

As EPA explained in its Residual Risk Report to Congress, "Current controls on major sources, which include State actions and federal requirements in addition to requiring MACT on major sources, do not necessarily guarantee that HAP emissions will be reduced sufficiently to protect public health. EPA believes that methods to reduce emissions beyond MACT exist." EPA, RESIDUAL RISK REPORT TO CONGRESS ES-6 (1999) (hereinafter "RESIDUAL RISK REPORT"). EPA explained further:

> The MACT determinations, like other broadly applicable emissions control standards, are based on decisions about the most effective, feasible, and reliable controls available.

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> However, MACT standards in a particular source category do not necessarily represent the most stringent state-of-the-art controls available to that industry. Cost and other considerations may result in the most stringent controls not being selected as the national MACT standard. This is because the CAA states that MACT standards for existing sources:
>
> ". . . shall require the maximum degree of reduction in emissions of the hazardous air pollutants... that the Administrator, taking into consideration the cost of achieving such emission reduction, and any non-air quality health and environmental impacts ... determines is achievable . . ."
>
> Accordingly, controls capable of achieving greater HAP reductions may have been ruled out at the time of the MACT determination because of cost or other considerations. However, such costs may later be determined to be reasonable if analysis indicates significant residual risks. It is also possible that, over time, market conditions or technological improvements in certain control technologies could reduce the cost of currently expensive controls to less expensive levels, making their adoption more feasible.

Id. at 79-80.

EPA's proposal does not even deign to discuss – or admit – the harmful consequences of the overturning of the governing legal interpretation on the statutory residual risk requirements and, in turn, on provision of an ample margin of safety to protect public health and prevention of adverse environmental effects. The reason for this silence is clear albeit indefensible, since EPA knows well that the proposal will result in sources being removed from the statutory obligations for the assessment and control of residual risk following application of MACT.

As discussed elsewhere in these comments, the 2005 Regional Memo attacked the draft proposal's failure to discuss its impact on the statutory residual risk program. *See infra*. Similarly, the Office of the Administrator echoed that very question in September 2006, when the draft proposal still failed to address residual risk:

> What impact would a change to minor source status have on the applicability of residual risk standards? Shouldn't we directly address that point in the preamble, similar to how we address the potential applicability of area source standards?

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Nickerson Email. The published proposal makes clear these criticism and urgings were ignored, yet another testament to the arbitrary nature of EPA's proposal.

The answers to these questions are to be found in a draft "Q&A" briefing paper, dated January 29, 2007, (hereinafter "January 2007 Draft Briefing Paper") (attached) prepared for the Administrator's appearance at a Senate Environment and Public Works Committee oversight hearing on February 6, 2007, where he discussed the proposal. The answers and background to the residual risk question in this briefing paper are very instructive:

> **Question**: Wouldn't this Rule get sources out of the health-based part of the air toxics program called residual risk?
>
> **Answer:**
>
> - It depends on the source and the standard applicable to it.
> - Under the proposed change, major sources that become area sources subject to less stringent GACT standards (as opposed to MACT standards) would not be subject to residual risk standards.
>
> **Background:**
>
> - EPA has the discretion to subject area sources to less stringent GACT standards.
> - The Agency is not required to conduct a residual risk analysis for area sources not required to meet MACT standards.

January 2007 Draft Briefing Paper, at 9.

What this adds up to is the conclusion that adoption of the proposal would lead to area sources no longer subject to MACT standards being relieved from the residual risk analysis and standards that Congress intended following application of MACT. Then some of these very same sources that Congress and EPA believed should be subject to MACT and subsequent residual risk requirements could be subject instead to "less stringent GACT standards" and <u>also</u> able to escape residual risk standards. The only former major sources potentially subject to residual risk standards would be the exceedingly small universe of area sources that EPA subjects to actual MACT standards. *See, e.g.*, RESIDUAL RISK REPORT, Appendix C (identifying handful of area source categories to which MACT has been applied).

The proposal thus contravenes the very language, structure and legislative history (*see infra*) of section 112's residual risk program, and flouts Congressional

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concern for the remaining residual risks posed by HAPs even after application of technology-based MACT standards. The proposal completely undermines Congressional concern with the "the risk to public health remaining, or likely to remain, from sources subject to regulation under this section after the application of standards under subsection (d)." CAA § 112(f)(1)(A); *see also* § 112(f)(2). EPA's proposal allows the illegal removal of "sources subject to regulation under this section after the application of standards under subsection (d)," thereby preventing application of residual risk analysis and standards to sources whose risks concerned Congress even at levels below the major source thresholds. There is no indication that Congress was unconcerned with the risks posed by sources whose emissions following application of MACT fell below 25/10 tpy, and indeed the logical and predictable application of MACT has brought numerous source emissions down below those thresholds, just as Congress intended. The plain language and clear structure of the Act provide for the application of section 112(f)(2) to those sources so that "technology-based standards may later be reduced further to address residual risk that may remain even after imposition of technology-based controls." 62 Fed. Reg. at 49,055.

Similar to the minimal 24.9/9.9 tpy floor level established for section 112(d)(3) purposes, the proposal creates a *de facto* and *de jure* lower limit for application of the Act's residual risk provisions at 25/10 tpy, even though Congress adopted a decidedly lower – and more protective – test for residual risk review and standards: following achievement of maximum achievable emission reductions.

3. Section 112(i)(3).

The plain language of section 112(i)'s compliance schedule provisions renders EPA's proposal unlawful. Section 112(i)(3)(A) states:

> After the effective date of any emissions standard, limitation or regulation promulgated under this section and applicable to a source, no person may operate such source in violation of such standard, limitation or regulation except, in the case of an existing source, the Administrator shall establish a compliance date or dates for each category or subcategory of existing sources, which shall provide for compliance as expeditiously as practicable, but in no event later than 3 years after the effective date of such standard, except as provided in subparagraph (B) and paragraphs (4) through (8).

In turn, section 112(d)(10) contains the following effective date provision for section 112(d) standards: "Effective date. Emission standards or other regulations promulgated under this subsection shall be effective upon promulgation."

Together these provisions provide that "[a]fter the effective date of any emissions standard, limitation or regulation promulgated" under section 112 (including section

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112(d)(3) MACT standards), "no person may operate such source in violation of such standard, limitation or regulation." This very clearly indicates that all sources covered by a MACT standard after its effective date may not operate by exceeding the emissions standard or limitation, or otherwise failing to follow any portion of the regulation including its monitoring, recordkeeping, reporting or testing requirements. It is irrelevant whether a source's post-control emissions status under the MACT standard is above or below 25/10 tpy, since the statute emphasizes Congressional intent to subject all sources to section 112 standards after their effective dates by using the extremely broad language "no person." Thus, EPA's proposal is unlawful by purporting to allow sources with actual emissions below 25/10 tpy to operate in violation of "such standard, limitation or regulation," as well as section 112(i)(3)(A), if after compliance dates those sources adopt PTE limits consistent with the proposal.[9]

EPA's proposal, incredibly, does not even discuss, much less overcome, the plain prohibition in section 112(i)(3)(A). Accordingly, EPA has failed to make the extraordinary showing necessary to overcome plain statutory language where Congress has clearly spoken. There is only one exception allowed by section 112(i)(3)(A) from the normal rule prohibiting operation except in compliance with "any emission standard, limitation or regulation" effective promulgation. And that is "in the case of an existing

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[9] Proposed section 63.1(c)(6) makes plain the proposal's intention to relieve sources of section 112 major source requirements once the permit containing an area source PTE limit becomes effective. *See* 72 Fed. Reg. at 80. As discussed above, this is unlawful.

It is revealing that EPA proposes amendments to the Part 63 General Provisions since this is where EPA regulations codify the section 112(i) compliance schedule and operation prohibition making compliance with MACT standards mandatory and permanent after such standards' compliance dates. "After the effective date of a relevant standard established under this part pursuant to section 112(d) or 112(h) of the Act, the owner or operator of an existing source shall comply with such standard by the compliance date established by the Administrator in the applicable subpart(s) of this part." 40 C.F.R. § 63.6(c)(1). Proposed sections 63.1(c)(6) and 63.6(c)(5) override § 63.6(c)(1) and thus violate CAA § 112(i).

Some industry commenters have suggested that EPA's legal interpretation in the 1995 Seitz Memo was mere policy that the agency could abandon – or refuse to follow – at any time. This is wrong for at least three reasons. First, the 1995 Seitz Memo represents EPA's definitive legal interpretation of the obligation to maintain compliance with section 112 emission standards, limitations and requirements following the compliance date of section 112 standards. Under longstanding caselaw, such original, definitive legal interpretations need not be adopted through rulemaking, but any subsequent changes to those interpretations must be carried out through notice and comment rulemaking. *See generally Paralyzed Veterans of America v. D.C. Arena LP*, 117 F.3d 579 (D.C. Cir. 1997).

Second, EPA's own attempt to characterize the 1995 Seitz Memo as a mere "policy position," 72 Fed. Reg. at 71, is revisionist error since EPA also versed its rationale for the position in the language of section 112(d)(3) and stated that the interpretation "follows most naturally from the language and structure of the statute." 1995 Seitz Memo at 9.

Finally, EPA's regulations already do codify and establish a continuing source compliance obligation with section 112 standards starting from the standards' compliance dates, with no ability to escape those continuous compliance obligations by adopting PTE limits afterwards. *See* 40 C.F.R. § 63.6(c)(1) ("After the effective date of a relevant standard established under this part pursuant to section 112(d) or 112(h) of the Act, the owner or operator of an existing source <u>shall comply</u> with such standard by the compliance date established by the Administrator in the applicable subpart(s) of this part.") (emphasis added).

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source, the Administrator shall establish a compliance date or dates for each category or subcategory of existing sources, which shall provide for compliance as expeditiously as practicable, but in no event later than 3 years after the effective date of such standard," subject to additional exceptions that EPA does not and cannot invoke to justify its proposal. CAA § 112(i)(3)(A) (providing additional exceptions, *e.g.*, for Presidential exemption, new sources and coke ovens). Had Congress wished to allow escape from the plain and broad prohibition in section 112(i)(3)(A) for sources whose actual emissions were brought below 25/10 tpy by virtue of MACT (or other measures) "after the effective date of any [section 112] emission standard, limitation or regulation," it easily could have done so here as it did for other situations. But Congress has spoken clearly, both with respect to the background prohibition and the specific exceptions, and it is not up to EPA to craft new exceptions as the agency does in its proposal.

One specific exception to the section 112(i)(3)(A) background prohibition is particularly instructive, and provides further proof that the EPA's proposal is unlawful. Section 112(i)(3)(A)(5)'s early reduction provision contains an exemption from MACT for sources reducing 90-95% of HAP emissions "provided that such reduction is achieved before the otherwise applicable standard under subsection (d) is first proposed." This provision reflects Congressional intent contradicting the EPA proposal in two important respects: (1) it indicates, as noted above, that Congress knew how to craft specific statutory exemptions from the background prohibition, providing evidence that EPA's effort to create a far broader exemption in its proposal squarely contravenes section 112(i); and (2) the particular features of the section 112(i)(3)(A)(5)'s early reduction exception are highly revealing: first, the exception is rooted in 90-95% reductions that would logically and invariably reduce some major source actual emissions to below 25/10 tpy, allowing them to avail themselves of the EPA proposal (were it legal); yet second, section 112(i)(3)(A)(5) makes clear that its reprieve from MACT for early reducers was only to last 6 years from the standard's compliance date. In other words, Congress fully expected these sources to remain subject to MACT, regardless whether they had reduced their emissions 90-95%.

As discussed throughout these comments, this clear compliance schedule approach is perfectly consistent with Congressional intent to reject EPA's past failures and delays in addressing HAPs; to ensure the maximum degree of reductions of those HAPs; to ensure regular 8-year technology reviews and updates; and to ensure further reductions in risk to public health and adverse environmental impacts following application of the Act's technology-based standards. EPA's proposal is inconsistent with each of these structural elements, their implementing language, and the plain language of section 112(i)(3)(A).

4. Section 112(a).

As noted earlier, EPA pretends that the only relevant or governing statutory provisions concerning the lawfulness of its proposal are the "major source" and "area source" definitions in sections 112(a)(1) and (a)(2). *See generally* 72 Fed. Reg. at 72-73 (discussing only these two statutory provisions). But the section 112(a) major source and

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area source definitions are simply numeric triggers for determining the sources subject to coverage by MACT standards when EPA promulgates such standards. It is apparent that the major/area source distinction was established for purposes of prioritizing agency resources and the fair allocation of regulatory burdens. Legislative history and the agency's own statements recognize that major sources were understood to encompass larger industrial sources like chemical plants, oil refineries, and steel mills, while area sources covered smaller sources like dry cleaning operations. *See infra.*

Congress simply adopted the same size-based threshold approach for coverage that it has always used in Clean Air Act stationary source programs, defining larger sources (major) or smaller sources (minor, area) based upon tons per year. How else would Congress draw lines between larger and smaller sources? How else would statutory drafters indicate their intent to initially apply regulations to sources based upon their size upon promulgation of standards, ensuring permanent compliance with the standards by no later than compliance dates, and still guard against future agency chicanery attempting to exempt sources once they reduced their emissions too much? Why would Congress conceivably have adopted maximum achievable emission reduction obligations, prohibiting violation of those obligations "after the effective date of those standards" (§ 112(i)(3)(A)), and foreseen the need to avoid using size-based definitions the way Congress had always done under the Act, on the contingency that some future administration 17 years after the 1990 Amendments, after all the MACT standards had been adopted, would suddenly decide that Congress intended those size thresholds to authorize violations of the emission standards and compliance schedules in the name of increased emissions? EPA does not answer these questions.

But the answer to these questions does not furnish the answer to the question whether Congress intended section 112(d) and 112(f) standards to be cast aside by sources whose coverage under those sections produced the welcome outcome of their emissions falling below the 25/10 tpy thresholds. EPA's proposal pretends that Congress actually regarded that outcome as not just unwelcome but unwarranted, deciding instead that the "maximum degree of reductions in emissions" should instead stop short at 24.9/9.9 tpy.

EPA's proposal refuses even to grapple with the interaction between section 112(a)'s definition and section 112(d):

> In the 1995 memorandum, EPA stated, as a matter of policy, that without the OIAI policy, facilities could backslide from MACT levels of control and increase their emissions to a level slightly below the major source thresholds. The 1995 memorandum further asserts that if this occurred, the ''maximum achievable emissions reductions that Congress mandated for major sources would not be achieved.'' We agree that Congress mandated that sources that meet the definition of ''major source'' in section 112(a) be required to comply with MACT, but a

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> source that takes a PTE limit that limits its PTE to below the major source HAP thresholds does not, as explained above, meet the statutory definition of ''major source,'' and therefore should not be subject to the requirements applicable to a major source.

72 Fed. Reg. at 73/2. But this explanation squarely misses – and evades – the point. Congress mandated the achievement of maximum achievable emissions reductions, something that the agency's governing legal interpretation recognizes can only be achieved by requiring continuing compliance with MACT standards, (something that section 112(i)(3) independently demands, we should add). EPA possesses no authority to set aside those legal obligations with its policy preference that sources "should not be subject" to those requirements. *Id.*

EPA's apparent view is that the words "considering controls" in section 112(a)(1) provides the statutory authority to eviscerate any meaningful understanding of section 112(d), render inoperative section 112(f) to sources meant to be covered by Congress, contradict the plain language of section 112(i)(3)(A), make meaningless section 112(d)(6)'s technology review obligation, and run afoul of the entire structure of section 112. 72 Fed. Reg. at 72-73. But that is reading far too much into those two words and, worse, creating multiple, direct conflicts with other statutory provisions and the structure of section 112, an interpretative stratagem that judicial precedents reject in favor of interpretations that provide coherent, unifying meanings to all terms in a statute. As EPA itself recognized in the 1995 Seitz Memo and continues to recognize implicitly even in the instant proposal, it is possible to give meaning to both section 112(d) and the "considering controls" language in section 112(a)(1) and the structure of section 112 by reading the "consider[ed] controls" to be those adopted prior to the compliance dates of MACT standards, while still ensuring that those standards deliver – and continue to deliver – the "maximum degree of reduction in emissions" (§ 112(d)(2)) intended by Congress "after the effective date of any emissions standard, limitation or regulation" under section 112 (§ 112(i)(3)(A)).

5. Section 112(c).

Section 112(d)(1) provides that "The Administrator shall promulgate regulations establishing emission standards for each category or subcategory of major sources and area sources of hazardous air pollutants listed for regulation pursuant to subsection (c) in accordance with the schedules provided in subsections (c) and (e)." Section 112(c)(1), in turn, required EPA to list by not later than November 15, 1991, all categories and subcategories of major sources and area sources of listed HAPs.

Section 112(c)(3) then required EPA to:

> list under this subsection each category or subcategory of area sources which the Administrator finds presents a threat of adverse effects to human health or the environment (by

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> such sources individually or in the aggregate) warranting regulation under this section. The Administrator shall, not later than 5 years after November 15, 1990, and pursuant to subsection (k)(3)(B) of this section, list, based on actual or estimated aggregate emissions of a listed pollutant or pollutants, sufficient categories or subcategories of area sources to ensure that area sources representing 90 percent of the area source emissions of the 30 hazardous air pollutants that present the greatest threat to public health in the largest number of urban areas are subject to regulation under this section. Such regulations shall be promulgated not later than 10 years after November 15, 1990.

Finally, section 112(e) required that "[t]he Administrator shall promulgate regulations establishing emission standards for categories and subcategories of sources initially listed for regulation pursuant to subsection (c)(1) as expeditiously as practicable," assuring that increasing percentages of total section 112(d) emission standards were adopted by 1992, 1994, 1997 and 2000.

Several conclusions flow from this statutory language, structure and schedules that are directly at odds with EPA's proposal.

Congress intended the section 112(d) emission standards requiring the maximum degree of reduction in emissions (*see supra*) to be adopted for the categories and subcategories of major and area HAP sources listed by EPA as of November 15, 1991. Major sources of HAP emissions subject to these section 112(d) emission standards were required to achieve the maximum degree of reductions by the MACT compliance dates. There is no indication in the statute or its legislative history that Congress intended major sources in categories or subcategories on the 112(c) list by November 1991, that were then subject to MACT by the statutory deadlines from 1992 to 2000, to be able subsequently to evade the achievement and maintenance of maximum achievable reductions.

It is incoherent and at odds with this carefully tailored statutory schedule to assert, as EPA's proposal does implicitly, that Congress intended to allow EPA in 2007 to abandon the MACT standards' coverage of major sources that were intended to achieve maximum achievable emissions reductions in accordance with that tailored statutory schedule.

The incoherency in EPA's position is most stark when considering the operation of the area source standards and schedules in section 112(c)(3). Congress stipulated that as of a date certain, by no later than November 15, 1995, EPA should "list, based on actual or estimated aggregate emissions of a listed pollutant or pollutants, sufficient categories or subcategories of area sources to ensure that area sources representing 90 percent of the area source emissions of the 30 hazardous air pollutants that present the greatest threat to public health in the largest number of urban areas are

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subject to regulation," with such regulation required by no later than November 15, 2000. This structure and schedule make no sense if sources subject to MACT standards could be constantly jumping back and forth between major source and area source status, with the universe of area sources in a given source category growing – and the relative threat posed by the shifting percentage contributions of different area source categories – over time by virtue of the very operation of MACT standards adopted in 1992, 1994, 1997 and 2000. Under EPA's newfound interpretation of the statute, major sources subject to MACT standards adopted between 1992 and 1994 would invariably change the composition of the urban area sources "representing 90 percent of the area source emissions of the 30 hazardous air pollutants that present the greatest threat to public health," and then standards adopted between 1994 and 2000 would change that composition yet again as EPA moved toward the November 15, 2000 deadline to adopt the urban area source standards.

EPA's issuance of the instant proposal in 2007 accentuates the arbitrariness of EPA's interpretation even further, since the overall universe of area sources, both urban and non-urban, could shift radically following all sources with actual emissions below 25/10 tpy suddenly qualifying for area source status. But this significant compositional change would occur long after the November 15, 1995 urban area source listing deadline, long after the November 15, 2000 urban area source regulation deadline, and long after EPA's issuance of its existing 15 area source standards. These existing 15 area source standards, of course, did not take into account the influx of additional (now-major) sources that could become area sources within the category, thus failing to take into account the generally available control technologies or management practices of these additional sources. EPA's proposal, of course, expresses no intention to reopen and amend those existing 15 area source standards to take into account the additional sources.

Thus, in 2008 or later following adoption of the proposal and widespread source adoption of PTE limits at 24.9/9.9 tpy, EPA's section 112(c)(3) urban area source list will not remotely reflect "90 percent of the area source emissions of the 30 hazardous air pollutants that present the greatest threat to public health in the largest number of urban areas," due to the ever shifting, expansion of area source numbers previously covered under EPA's 100+ MACT standards. Nor will the urban area source standard cover the "90 percent of the area source emissions of the 30 hazardous air pollutants that present the greatest threat to public health in the largest number of urban areas," again due to the operation of EPA's proposed approach. As the May 4, 2007, comments by the Institute of Clean Air Companies show, for example, some 100 now-major source printers subject to MACT will be able to become area sources and adopt PTE limits accommodating a greater than 50 percent increase in their current actual emissions. *See* ICAC comments at 10 & Appendix A. Nor does the larger point turn on the precision of the ICAC figures, should EPA choose to quibble with them. The point is that EPA's proposed disruption to the universe of area sources not now covered by MACT standards or (urban or non-urban) area source standards flies in the face of the structure and schedules that Congress created in sections 112(c) and 112(e).

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Echoing the Congressional concern for risk notwithstanding application of section 112(d) standards that one sees in the residual risk provisions in section 112(f), section 112(c)(9)(b) also indicates Congressional intent for all originally covered sources to remain subject to MACT standards until EPA could make demonstrated risk determinations, not merely when sources reduced emissions below 25/10 tpy.

Indeed, a simple hypothetical illustrates the unlawfulness of EPA's proposal in light of the statutory structure of section 112(c)(9)(B). Take a source category with 100 sources, and the MACT standard reduces HAP emissions from each source below the 25/10tpy thresholds down to 5-10 tpy each of a combination of HAPs. Nonetheless, the remaining quantities and types of HAPs from some (or many) of these sources are such that EPA cannot make the determination that "no source in the category" will emit such "quantities which may cause a lifetime risk of cancer greater than one in one million to the individual in the population who is most exposed to emissions of such pollutants from the source." CAA § 112(c)(9)(B)(i). Accordingly, EPA may not delete the source category from the section 112(c) source category list.

Under EPA's proposal, however, every one of those sources could escape MACT coverage, notwithstanding that some (or many) of the sources pose lifetime cancer risks that Congress deemed to be unacceptable and ineligible for regulatory relief. This outcome directly undermines the careful regard that Congress showed for carcinogens, and the rigorous safeguards that it adopted ("no source in the category"). Under the proper way that EPA has always interpreted the statute, those 5-10 tpy carcinogenic sources would remain subject to MACT standards, which would undergo a technology review and update every 8-years, and EPA also would exercise its residual risk authorities. Under EPA's newfound reading, the statute would require none of that and the law would allow those sources to increase their emissions 2.5-5x without any federal regulation or consequences.

6. Section 112(k).

The structure and prescriptions of section 112(k)'s area source program are fairly similar to features of the section 112(c)(3) urban air toxics program, and the structural and scheduling incoherencies produced by EPA's proposal with respect to section 112(c)(3) apply with equal force to section 112(k).

Following a similar schedule from no later than November 1993 to November 1995 to November 1999, the Act instructed EPA to first report research results, then prepare a comprehensive control strategy, then implement that strategy assuring by no later than 1999 that "sources accounting for 90 per centum or more of the aggregate emissions of each of the 30 identified hazardous air pollutants are subject to [section 112(d)] standards." As discussed above, this structure and schedule make no sense if sources subject to MACT standards could be constantly jumping back and forth between major source and area source status, with the universe of area sources in a given source category growing – and the relative threat posed by the shifting percentage contributions of different area source categories – over time by virtue of the very operation of MACT

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standards adopted in 1992, 1994, 1997 and 2000. Under EPA's newfound interpretation of the statute, major sources subject to MACT standards adopted between 1992 and 1994 would invariably change the composition of the area sources "accounting for 90 per centum or more of the aggregate emissions of each of the 30 identified hazardous air pollutants," and then MACT standards adopted between 1994 and 2000 would change that composition yet again as EPA moved toward the November 15, 1999 deadline to assure compliance by all the covered area sources.

Indeed, at this very moment, EPA does not know and has not projected what area sources would "account[] for 90 per centum or more of the aggregate emissions of each of the 30 identified hazardous air pollutants" were EPA's proposal to be adopted. And to state the obvious, EPA is well past the statutory deadlines for meeting the requirements of section 112(k) following this proposal. The reason is that Congress expected the section 112(k) provisions to be implemented in tandem with section 112(d) MACT standards being adopted and requiring continuous and permanent compliance by all covered sources with the promulgated emissions standards. There is zero statutory indication that Congress intended a constantly shifting and chaotic regulatory landscape in which EPA does not even have a good understanding of which sources are major sources or area sources in a given source category. Because under EPA's proposal, of course, once a source escapes MACT and Title V, that source falls off EPA's federal regulatory radar, with state permits that require no monitoring, recordkeeping or reporting involving EPA.

7. Title V.

One especially pernicious outcome of EPA's proposal is the knowing removal of many sources now covered by Title V from that program, with the resulting loss in federal monitoring, recordkeeping, reporting, deviation reporting, and federal and citizen enforcement. Title V adopts the major source definition from section 112 in section 501(2)(A). But Title V also provides independent evidence contradicting EPA's proposal, while supporting Congressional intent to subject sources to section 112 standards regardless whether their post MACT-control emissions fall below 25/10 tpy.

Section 502(a) provides that:

> After the effective date of any permit program approved or promulgated under this title, it shall be unlawful . . . to operate an affected source (as provided in title IV), a major source, any other source (including an area source) subject to standards or regulations under section 111 or 112. . . except in compliance with a permit issued by a permitting authority under this title.

CAA § 502(a). This passage reveals a clear Congressional line drawn between "a major source" (which section 501(2)(A) indicates is a "major source as defined in section [112]"), on one hand, and "any other source (including an area source) subject to

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standards or regulations under section 111 or 112." This reveals Congressional awareness that sources subject to standards or regulation under section 112 might not be major sources as defined under section 112, but Congress still wanted those sources to remain subject to section 112 standards or regulations. And the parenthetical language – "(including an area source") – makes clear that there were other sources, namely former major sources, that Congress intended to remain subject to section 112 standards or regulations. The EPA proposal flies in the face of this understanding.

B. Legislative History.

1. Congressional Intent for Section 112: Maximum Reduction Achievable

The legislative history of the Clean Air Act Amendments of 1990 dramatically underscores that the proposed interpretation unlawfully departs from the structure and intent of the Act. The legislative history establishes that Congress wanted the greatest reduction in HAPs achievable and that Congress envisioned a two-step process for reducing HAP emissions: MACT would be installed initially, with a subsequent evaluation of residual risk and a further "ratcheting down" of emissions, if necessary, to provide an ample margin of safety to protect public health or to prevent adverse environmental effects. In sharp contrast to the significant backsliding that will result if the proposed interpretation is finalized, Congress intended sources of HAPs to install MACT and then further reduce – not increase – emissions.

Prior to the Clean Air Act Amendments of 1990, EPA regulated HAPs under a purely risk-based regime that worked poorly and disappointed Congress. *See* S.Rep. No. 101-228, at 3 (1989) (Senate Report) ("Very little has been done since the passage of the 1970 [CAA] to identify and control hazardous air pollutants."). From 1970 to 1990, EPA listed only eight HAPs, establishing emission standards for seven of them. *Id.* at 131; H.R.Rep. No. 101-490, pt. 1, at 322 (1990) (House Report). The ineffectiveness of the risk-based approach created a "broad consensus that the program to regulate [HAPs] under section 112 of the Clean Air Act should be restructured to provide EPA with authority to regulate ... with technology-based standards." Senate Report, at 133. In response, Congress passed the Clean Air Act Amendments of 1990, to "strengthen and expand the Clean Air Act" through a "technology-based" program, *see* House Report, at 144, namely, the MACT program.

Significantly, given the failures of the prior approach to reducing HAPs, Congress intended that EPA be "aggressive" in enforcing MACT standards:

> Title III of the bill moves forward our controls on air toxics by requiring Maximum Achievable Control Technology, or MACT. This is an important development. It is essential that EPA promulgate meaningful MACT standards on time. We have postponed the [residual risk] health test under section 112 of current law in the expectation that MACT

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> will be effective. A weak MACT standard would cause more sources to trigger the residual risk standard. This would postpone needed health protection and would increase the costs of toxics controls. The best solution is an aggressive MACT program that protects public health and the environment.

LEGISLATIVE HISTORY, VOL. I, at 790 (statement of Sen. George J. Mitchell, Member, S. Comm. on Environment and Public Works) (emphasis added); *see also* Henry A. Waxman, *An Overview of the Clean Air Act Amendments of 1990, in* THE CLEAN AIR ACT AMENDMENTS OF 1990: A SYMPOSIUM (Environmental Law 1991) ("Title III of the 1990 Amendments revises section 112 to establish an aggressive new program for the regulation of hazardous air pollutants.")

The purpose of this "aggressive" MACT program is as follows:

> The purpose of [section 112] is to assure that each and every source will employ the control methods which assure the greatest reduction in emissions which are achievable for that source taking cost and other factors into account. Although this is not a case-by-case determination, there is sufficient flexibility in the standard-setting process to assure that the goal—the maximum reduction achievable—and not some alternative, and arbitrary, target is actually achieved.

Senate Report, at 170 (emphasis added).

Congress expected that MACT would "achieve emissions reductions that average 90 to 95 percent from current levels." *See, e.g.*, 136 Cong. Rec., 101st Cong, 2d Sess., at S27 (Jan. 23, 1990) (Statement of Sen. Chafee). The proposed interpretation, which permits sources to abandon MACT in favor of much more lenient synthetic minor limitations, cannot be squared with Congress' express intent to "employ the control methods which assure the greatest reduction in emissions which are achievable". The proposed interpretation allows sources to operate well below the 90 to 95 percent reduction required by Congress and constitutes an unlawful "alternative and arbitrary target." Senate Report, at 170.

Congress' intent that MACT would be the first of two phases of emissions reduction was explained in the legislative record by Senator Dave Durenberger, a member of the Senate Committee on Environment and Public Works. According to Senator Durenberger:

> The bill addresses the air toxics problem with a two-phase program. In the first phase, which ... works like the Clean Water Act, all major sources of 191 listed substances will

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> be required to meet an emissions standard based on the application of the maximum available control technology (MACT). ...
>
> The second phase of the program is designed to eliminate adverse health effects which may continue to be present even after best available control technology is installed. There is no guarantee that that best available control technology will reduce emissions by an amount sufficient to provide safe levels of exposure. In the case of carcinogens there is no safe level of exposure. ... The second phase of the program is designed to reduce these residual or leftover risks.

S. COMM. ON ENVIRONMENT AND PUBLIC WORKS, 103RD CONG., LEGISLATIVE HISTORY OF THE CLEAN AIR ACT AMENDMENTS OF 1990, S. PRT. 103-38 (hereinafter "LEGISLATIVE HISTORY"), VOL. IV, at 5007 (1993) (emphasis added).

Congress' intent that MACT and residual risk regulations would operate as successive limitations on HAP emissions – with no room for backsliding – is further emphasized by the Conference Committee Report. According to the Conference Committee, even after a near complete reduction in toxic air emissions from a source, air pollutants may still cause adverse health consequences, necessitating even stronger emission limitations. The Conference Committee explained:

> [O]nce in place, MACT should reduce toxic air emissions by 90%. Unfortunately, in certain circumstances hazardous air pollutants may continue to impose significant adverse health effects even after MACT is in place. * * *
>
> This bill, therefore, provides a safety net for residual risk. The bill requires that if after MACT is in place, a significant risk remains, EPA must tighten the standards 8 years after the initial promulgation of the MACT standard.

LEGISLATIVE HISTORY, VOL. I, at 1030 (Clean Air Conference Report) (emphasis added).

As is clearly stated in the Conference Report, Congress foresaw that – even after MACT standards are "in place" – sources may be subjected to a "tightening" of standards. The proposed interpretation allows a major source that has been required to install MACT to accept synthetic minor limits and skirt both MACT and any subsequent standards promulgated to address residual risk. Such backsliding is incompatible with the notion that MACT standards will remain "in place" and may be subject only to "tightening". *See id.*; *see also* LEGISLATIVE HISTORY, VOL. I, at 876 (statement of Sen. Dave Durenberger, Member, S. Comm. on Environment and Public Works) ("Subsection 112(f) requires the Administrator, after specified periods, to determine the whether

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MACT standards have reduced emissions from major sources sufficiently to protect public health with an ample margin of safety ... The Administrator is to replace the technology standards for a source category, only if it is necessary to protect health with a more stringent standard.") (emphasis added).

2. Qualitative Differences Between Major and Area Sources

The legislative history of the Clean Air Act also indicates that Congress perceived qualitative differences to exist between major and area sources. Under Section 112, MACT standards are intended to apply to major sources, "large industrial facilities like chemical plants, oil refineries and steel plants." LEGISLATIVE HISTORY, VOL. IV, at 4846 (statement of Sen. John H. Chafee, Member, S. Comm. on Environment and Public Works). By contrast, "[a]rea sources are the small, but possibly numerous sources, of toxic air pollutants." *Id.*, Vol. I at 863 (statement of Sen. Durenberger). "Area sources include dry cleaners, wood stoves, gas stations and cars, buses and trucks." *Id.*, VOL. IV, at 4846 (Chafee); *see also id.* at 5001 (identifying dry cleaners, wood stoves, gas stations and cars, buses and trucks as area sources). EPA, in its March 1999 RESIDUAL RISK REPORT TO CONGRESS, also reiterated the qualitative differences between major and area sources, observing:

> Major sources of HAPs, which include large industrial complexes such as chemical plants, oil refineries, marine tank vessel loading operations, aerospace manufacturers, steel mills, and a number of surface coating operations, are some of the sources being controlled for toxic air pollution. Where warranted, smaller sources (area sources) of air toxics such as dry cleaning operations, solvent cleaning activities, commercial sterilizers, secondary lead smelters, and chromium electroplating facilities are also controlled.

RESIDUAL RISK REPORT at 10.

The proposed interpretation ignores the qualitative differences between major and area sources and allows major industrial facilities to abandon MACT controls in favor of synthetic minor limitations. To permit chemical plants, oil refineries and steel plants to emit 24.9/9.9 tpy of HAP and therefore consider such facilities to be area sources—regulated under the same regime as drycleaners—unlawfully disregards legislative history and Congressional intent.

II. The EPA Regional Offices' Objections.

The illegality and imprudence of the proposal to abandon EPA's longstanding interpretation is further underscored by feedback that has been provided to agency headquarters by EPA's Regional Offices. In contrast to EPA headquarters and EPA's Office of Air Quality Planning and Standards (OAQPS), the Regions actually execute the agency's Title V permitting program and liaise with the states on the implementation of

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state air quality programs. Accordingly, with respect to the mechanics of state permitting processes, trends in PTE limits adopted by facilities, the practicable enforceability of permit limits, the rigorousness of monitoring requirements, etc., the Regions have far greater expertise.

Before publishing the currently proposed OIAI interpretation, OAQPS provided successive drafts of the proposed interpretation to the Regional Offices. Regional comments on the drafts were provided to OAQPS on December 13, 2005 (2005 Regional Memo), and again on March 10, 2006 (2006 Regional Memo). The two memoranda regarding "Regional Comments on Draft OIAI Policy Revisions" are attached to these comments.

Substantial concerns raised by the Regions that have been ignored by the OAQPS in its proposed interpretation include the following:

- The proposed interpretation reverses an established agency interpretation without adequate justification. As the Regions observed in the 2005 Regional Memo: "In 1995, EPA believed that the OIAI policy follows 'most naturally' from the language and structure of the statute, and that allowing facilities to backslide would undermine the maximum achievable emissions reductions mandated by Congress." 2005 Regional Memo at 3. The Regions chided that OAQPS, to justify the proposed "drastic change in interpretation," must "clearly articulate why EPA no longer believes that the OIAI policy flows naturally from the statute." *Id.*

  In its proposed interpretation, EPA states that "Today's proposed rule is wholly consistent with the plain language of section 112(a)", *see* 72 Fed. Reg. 72, and "nothing in the structure of the Act counsel's against today's proposed approach," 72 Fed. Reg. 73. The proposed interpretation also avers that "[t]he 1995 policy memorandum creates a dividing line between major and area sources that does not exist on the face of the statute." These conclusory (and unsupportable) statements do not constitute a reasoned <u>explanation</u> as to why the proposed interpretation is superior to the interpretation established by the 1995 Seitz Memo. Because the proposed interpretation reverses well-established agency precedent, <u>the agency must do more than offer a basis for its proposed interpretation; it must explain and justify the reversal of its previous view</u> that the 1995 OIAI policy follows "most naturally" from the language and structure of the statute. No such explanation or justification is provided in the current record.

- The proposed interpretation will increase HAP emissions as MACT control levels are abandoned. The Regions observed in their 2005 submittal to OAQPS that, under the proposed interpretation, "the reductions that were intended to be achieved through the MACT standards would be offset by synthetic minor limits that allow sources to emit HAPs at levels higher than those allowed by the MACT standard." 2005 Regional Memo at 3. The Regions have indicated that under the proposed interpretation, "many sources would take limits less stringent than

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MACT requirements, if allowed," and that such limitations would be taken at levels that are well above current MACT emissions levels and just below the major source threshold of 25/10 tpy. *Id.* at 4. The net result is that HAP emissions reductions "that were intended to be achieved through the MACT standards would be offset by synthetic minor limits ..." *Id.* at 3.

In the preamble, EPA acknowledges that the proposed interpretation would allow MACT-compliant sources, "in becoming area sources, [to] increase their current emissions to a level just below the major source thresholds." 72 Fed Reg. 73. EPA headquarters has also acknowledged this possibility in internal documents, providing the following telling explanation: "For example, a source that with MACT controls has the potential to emit 15 tpy of a combination of HAPs could, under the proposed approach, raise its potential to emit (and thus its actual emissions) to 24 tons per year." *See* January 2007 Draft Briefing Paper at 2.[10]

The agency concludes, however, based on several theoretical considerations,[11] that "it is more likely that sources will adopt PTE limitations at or near their current levels of emissions, which is the level needed to meet the MACT standard(s)." *Id.* This conclusion has already been rejected by the Regions as "unfounded and overly optimistic." 2005 Regional Memo at 4. "Regional experience indicates that sources requesting synthetic minor limits to avoid a MACT standard typically request, and are freely given, limits of at least 24 tpy for a combination of HAPs and a 9 tpy for a single HAP." *Id.*

The actual experience and expertise of the Regions with regard to synthetic minor limits substantiates concerns that the proposed interpretation will eviscerate the technology-forcing MACT regime and result in a net increase in HAP emissions, the cost of which will "be borne by the communities surrounding the sources." 2005 Regional Memo, at 3-4. EPA has provided nothing in the record to contradict the assessment of the Regions, who have voiced "significant concerns

[10] Curiously, this obvious example of how a facility could manipulate the proposed interpretation to increase emissions is not set forth in the preamble to the proposed interpretation. The preamble to the proposed interpretation does, however include an example of a major source that, under the proposed interpretation, may have increased incentives to reduce HAP emissions. *See* 72 Fed. Reg. 71-72. According to the Regions, this example is "unlikely a common situation, and therefore should not be used as an example in the preamble to justify the rulemaking." 2005 Regional Memo at 10.

[11] EPA Headquarters has conceded that its assertion that major sources, in adopting PTE limits to be reclassified as area sources, will likely adopt PTE limitations at or near their current levels of emissions (as opposed to just below the 25/10 tpy threshold), is purely conjecture and has been contradicted by the Regional Offices. *See* January 2007 Draft Briefing Paper at 2 ("Our reasons for anticipating that few sources would backslide apply to many but not all sources. For example, some MACT controls involve equipment or techniques that could be 'dialed down' in terms of hours of operation or maintenance. Also, the Regions in their memo stated that sources typically don't build in much cushion when taking limits to keep them below major source levels. It is therefore important not to overstate the reasons that we expect backsliding to be the exception rather than the rule. We're asking for public comment and information to test our theories."). *See also* discussion *infra* of section 307(d)(3).

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about the increase in emissions of hazardous air pollutants that will likely occur from the revisions to the OIAI policy ..." 2006 Regional Memo at 2.[12]

- Under the proposed interpretation, a facility, by changing from a major source to an area source, and back again, could effectively avoid regulation for many years. In the 2005 Regional Memo the Regions outlined how a facility, under the proposed interpretation, could essentially escape regulation:

> Take, for example, a facility that is covered by a MACT standard, and has three years from the date that the rule is promulgated to come into compliance. Three years go by, and just before the end of that time period, the facility announces its area source status. If an area source regulation exists, there may also be some equivalent waiting period before the facility is required to comply with the area source requirements. If the facility later announces that it is, after all, a major source, then it may again enter a grace period, possibly up to another 3 years, before it is subject to the MACT standard requirements. Thus, by continually going back and forth between major and area source status, a facility could be a major source for most of its operating life and never have to comply with the MACT standard requirements.

  Id. at 4. The proposed interpretation, as currently written, does not rule out the worst-case scenario of emissions regulation avoidance suggested by the Regions. The proposed interpretation has acknowledged the possibility of, and requested comments on the appropriateness of, providing sources with a compliance deadline extension both: (a) at the time that a major source accepts PTE limitations and becomes an area source, *see* 72 Fed. Reg. 76-77; and (b) at the time when such a source, having already accepted PTE limitations to become an area source, increases emissions and transforms itself back to a major source, *see id.* at 74-76. Such lenient compliance timeframes will allow facilities to escape MACT requirements for many years.

- The proposed interpretation does not address residual risks. Section 112(f) of the Act requires EPA to examine HAP risks remaining after implementation of the MACT standards. CAA § 112(f); *see supra* Section I.B. The evaluation of residual risk, and the promulgation of emissions limitations stricter than those established by MACT (where necessary to provide an ample margin of safety to

[12] An email from W. Nickerson of EPA to R. Colyer of EPA, dated Sept. 14, 2006, acknowledged the Regions' perspective, stating: "The Regions also suggested that in their experience sources requesting synthetic minor limits are often given limits of 9 or 24 tpy. Yet the preamble claims sources are likely to adopt PTE limitations at or near their current levels of emissions. Do we disagree with the regional experience, or do we think that even if sources obtain permit limits of 9/24 tpy that their emissions will probably remain unchanged?"

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protect public health or to prevent any adverse environmental effect), is a second, critical phase in the two phase regulatory regime devised by Congress to address HAPs. *Id.* After reviewing a draft of the proposed interpretation, the Regions stated that "It is unclear from the preamble of this draft rulemaking how EPA envisions this draft rulemaking will affect or interact with the residual risk efforts currently underway at EPA. ... This interface should be discussed in the preamble." 2005 Regional Memo at 5.

Despite the insistence by the Regions that the preamble to the proposed rulemaking address the relationship between the proposed interpretation and the statute's residual risk requirements, no mention of residual risk is included in the Federal Register notice for the proposed interpretation.[13] This omission is particularly remarkable because EPA headquarters has, in fact, considered the interaction between the proposed interpretation and residual risk requirements and determined that "The Agency is not required to conduct a residual risk analysis for area sources not required to meet MACT standards." January 2007 Draft Briefing paper at 9; *see also* Nickerson Email ("What impact would a change to minor source status have on the applicability of residual risk standards? Shouldn't we directly address that point in the preamble, similar to how we address the potential applicability of area source standards?")

The proposed interpretation will therefore operate to nullify the residual risk component of the statute, a result that is unlawful, contrary to Congressional intent, and dangerous to communities and the environment located in proximity to sources of HAP emissions.

- The proposed interpretation does not address monitoring or enforceability of synthetic minor limits. The Regions, in the 2005 Regional Memo, provided headquarters with a lengthy explanation of the obvious monitoring and enforceability problems engendered by the proposed interpretation, stating:

> There are several concerns regarding the enforceability of these synthetic minor limits. First, EPA should not endorse the use of PTE limits enforceable by states only to avoid applicability of federal rules, such as the MACT standards. Second, there are concerns about the lack of clear-cut requirements regarding practicable enforceability and fear that significant time and energy will be spent debating the enforceability of synthetic minor limits with permitting authorities. Third, significant resources will need to be expended defending the enforceability of these limits in responding to title V public petitions in instances where a source is required to obtain a title V permit revision to incorporate the synthetic minor limits. Finally, the draft

[13] The phrase "residual risk" does not appear anywhere in the proposed interpretation; similarly, there is no citation anywhere in the proposed interpretation to the residual risk section of the Act, section 112(f).

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> proposed rule does not provide clear guidelines regarding appropriate monitoring for these synthetic minor limits. Many of the environmental benefits that are achieved by comprehensive monitoring and reporting requirements of the MACT standards will be lost in the process.

2005 Regional Memo at 6. On a related point, the Regions also complained that the proposed interpretation "does not address how a source should be treated if it accepts synthetic minor limits to get out of a MACT standard and later violates those limits." *Id.* at 5.

Nothing in the preamble to the proposed interpretation or the proposed interpretation itself addresses any of the enforceability and monitoring concerns raised by the Regions. The proposed interpretation does not discuss practicable enforceability,[14] does not address whether a source that accepts synthetic minor limits to get out of a MACT standard and later violates those limits must revert back to major status and MACT compliance, and ignores the suggestion that the proposed interpretation should include guidelines on appropriate monitoring requirements for synthetic minor limits. To the extent that monitoring is discussed, it is raised as one of several major source requirements that a source—taking advantage of the proposed interpretation to become an area source—may be excused from. According to the preamble: "The major source requirements to which the source would no longer be subject, include, but are not limited to, compliance assurance monitoring and title V requirements (assuming the source is not otherwise subject to title V permitting)." 72 Fed. Reg. at 74; *see also* Nickerson Email ("If a major source takes a PTE limit and becomes a minor source, all major source requirements would cease to apply, correct?").

The net result of EPA's refusal to address the monitoring and enforceability issues raised by the Regions with respect to synthetic minor limits will be a complete unraveling of the MACT program: major sources of HAPs, which have heretofore been subjected to MACT-driven emissions reductions and rigorous monitoring and recordkeeping requirements, will be allowed to accept synthetic minor limits which will not be monitored, or, as a practical matter, enforceable.

- Finally, the proposed interpretation does not adequately address the mechanics of permitting. In their 2005 submittal to OAQPS, the Regions identified a laundry list of practical issues that were not addressed by the draft proposed rulemaking. The Regions observed, for example, that the draft proposed interpretation does not address "what mechanism is envisioned and viable for sources to obtain synthetic minor limits" or "the permitting process that a source must go through in order to have MACT requirement removed from its Title V permit once it takes synthetic limits." 2005 Regional Memo at 5. The Regions also noted that the

[14] The phrase or concept of "practicable enforceability" does not appear anywhere in the proposed interpretation or proposed regulatory language.

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proposed interpretation does not require any notification to EPA when a major source becomes an area source. *Id.* at 6.

The proposed interpretation arbitrarily ignores all of the foregoing permitting issues flagged by the Regions.

The disconnect between the concerns raised by the Regions and the issues addressed by the proposed interpretation (and discussed in the preamble thereto) is not surprising, given that EPA headquarters and OAQPS have engaged in a "trend of excluding Regional Offices from involvement in rule and policy development efforts." *Id.* at 1. The Regional Offices have openly expressed disappointment "that OAQPS formulated revisions to the OIAI policy without seeking Regional input and was reluctant to share the draft policy with the Regional offices." *Id.*

III. EPA's Justifications For the Proposal and Other Issues.

In this section of our comments, we respond to justifications, assertions and questions advanced by the agency in its proposal preamble and two letters from EPA to the Honorable John D. Dingell.

EPA indicates that "In addition to the feedback from STAPPA concerning the OIAI policy, EPA has heard from others who have taken the position that the OIAI policy serves as a disincentive for sources to reduce emissions of HAP beyond the levels actually required by an applicable standard." 72 Fed. Reg. at 71/3. First, it bears noting that STAPPA/ALAPCO have not submitted any comments on the P2 Proposal or the instant proposal supporting any changes to the OIAI interpretation that would allow emission increases <u>above</u> levels required by MACT floors or beyond-the-floor standards in MACT standards. Second, the proposal preamble, administrative record, and internal EPA briefing paper make clear that the *only* entities submitting comments to EPA requesting the proposed changes to the OIAI interpretation were regulated industries. *See* January 2007 Draft Briefing Paper, at 6. And by EPA's own admission, even the industrial complaints were purely anecdotal and, we should add, self-serving.

EPA argues that "the OIAI policy, as written, does not encourage sources to explore the use of different control techniques, P2, or new and emerging technologies that would result in lower emissions." 72 Fed. Reg. at 72/1. But as the proposal itself recognizes one page earlier, EPA issued a so-called P2 proposal in May 2003 to encourage those same activities but only when affected sources "completely eliminate[] all HAP emissions" or "use[] P2 to reduce HAP emissions <u>to the level required by the MACT standard, or below</u>." *Id.* at 71/2 (emphasis added). The instant proposal, by contrast, includes none of those restrictions or requirements and instead allows sources to increase emissions above levels required by the MACT standard, and to escape MACT by reducing HAPs to just below the 25/10 thresholds, both in violation of the Act. One could incentivize a child by giving her a $10 weekly allowance from pocket change, or one could incentivize a child by giving her $1,000 from robbing a 7-11. That does not make the latter incentive lawful or a good idea.

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EPA decries the inequities befalling sources that do not manage to adopt PTE limits prior to the original compliance date of MACT standards versus the better fortunes of those that do. But that is the very nature of compliance deadlines or deadlines in general. And it was a firm choice made by Congress in adopting the compliance schedules in section 112(i)(3) and the maximum achievable emission reduction regime of section 112(d); it is not an inequity at all, since the statutory provisions and EPA rules are apparent and known to all in advance. And it is certainly not something for EPA to correct through assertion of its policy preferences.

In discussing the major source and area source definitions in section 112(a), EPA says "[n]otably absent from these definitions is any reference to the compliance date of a MACT standard." 72 Fed. Reg. at 72/2. That is a nonsensical approach to statutory interpretation. None of the source definitions in the Act contain references to compliance dates, and none of the compliance date provisions of the Act are included in definitional sections. That has quite simply never been the way that Congress has drafted the Act. Rather, compliance deadlines are established in separate subsections addressing compliance schedules, as with section 112(i)(3), or within statutory sections addressing entire programs. Indeed, that structural fact makes our point and refutes EPA's pained construction; it would be a bizarre departure indeed for Congress to define sources or other definitions by reference to compliance dates, when compliance dates operate independently, pursuant to compliance schedules in sections addressing the implementation of standards, not definitions.

EPA argues that its "proposed rule is wholly consistent with the plain language of section 112(a)(1)." 72 Fed. Reg. at 72/3. We dispute that the proposal is "wholly consistent" with the plain language of section 112(a)(1) since numerous other statutory provisions make clear that Congress did not intend the "controls" referenced in section 112(a)(1) to be unlawful or to serve as authorization to violate sections 112(c), 112(d), 112(f) and the remaining structural elements of the Act that the proposal contradicts.

Far from being wholly consistent with section 112(a)(1), EPA's newfound interpretation is untenable and unlawful because it would itself credit ("consider") unlawful controls that violate the Act and governing court precedent. Thus, for example, if EPA calculated MACT floors requiring only 1% or 10% or 50% reductions when the statute and D.C. Circuit precedent demanded 95% reductions, those unlawful floors would undisputedly produce "controls." Similarly, controls would be produced out of the vacated or remanded MACT standards at issue in the *Cement Kiln*, *National Lime*, and *Sierra Club* brick kiln decisions, among others. All of those controls would be considered under EPA's "plain language" reading of the statute.

If any of the unlawful standards just discussed produced actual HAP emissions at sources below the 25/10 tpy thresholds, and some of them undoubtedly would have or could have, EPA's interpretation would consider them controls creditable under its proposal. The proposal produces and relies upon the same unlawful outcome in allowing unlawful MACT controls to be "consider[ed] controls," after MACT standards have been

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adopted or even before remanded standards have been re-issued, producing the same statutory violations. But EPA's proposal would not only violate the section 112(d) provisions and caselaw as the just discussed cases did, it would also further violate section 112(d)(7), section 112(f), section 112(i)(3) and the host of statutory provisions and structural features discussed herein. EPA might consider these unlawful controls wholly consistent with its proposal, but that still demonstrates the proposal itself is unlawful.

Yet even EPA is willing to take its own logic only so far, demonstrating that it only believes some unlawful controls may be considered within its interpretation of section 112(a)(1). The agency notes in the March 30th letter to Congressman Dingell and January 2007 Draft Briefing Paper that creditable PTE limits must be practicably enforceable (and federal PTE limits must be additionally federally enforceable) in order to be considered controls within the "plain language" of section 112(a)(1). *See infra.* Yet that section says nothing about practicable enforceability. Rather, EPA – and the D.C. Circuit in *National Mining Association v. EPA* – recognized the term to be ambiguous with respect to the question of which controls would be considered. EPA does not consider unlawful, impracticably enforceable controls to be creditable as PTE limits, yet EPA does consider unlawful controls to be creditable when they merely contravene sections 112(d)(2), 112(d)(3), 112(d)(7), 112(f), 112(i)(3), other statutory provisions, the legislative history and structure of the Act. In addition to violating these provisions, EPA's interpretation is therefore internally inconsistent and arbitrary, establishing resoundingly that the proposed rule is *not* "wholly consistent with the plain language of section 112(a)(1)."

But even assuming *arguendo* that EPA's assertion is correct, that alone would not make the proposal lawful. As discussed throughout these comments, EPA's proposal violates multiple provisions of the Act, contravenes legislative history, flouts the structure and purposes of the section 112 program, and is arbitrary and capricious. It is cold comfort indeed for EPA that it is only able to claim consistency with a single specific statutory provision.

EPA argues that "[i]f this rule is finalized, we believe it is unlikely that such sources would, in becoming area sources, increase their current emissions to a level just below the major source thresholds. While this may occur in some instances, it is more likely that sources will adopt PTE limitations at or near their current levels of emissions, which is the level needed to meet the MACT standard(s)." 72 Fed. Reg. at 73/1. EPA then offers five factors supporting its belief.

Before addressing these agency beliefs, it bears noting that *even if EPA is correct*, the proposal is still unlawful because EPA may not even *authorize* "violation of such standard, limitation or regulation" in defiance of section 112(i)(3), nor may EPA authorize violation of the anti-backsliding requirements of section 112(d)(7), nor authorize emissions above the "maximum achievable emissions reduction" levels mandated by Congress. The fact that HAP emissions will increase under the proposed is both an indication of the rule's indefensibility on policy, public health and environmental

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grounds, in addition to an inescapable outcome of the rule's unlawfulness. But again, even if EPA were correct in some, many, most or all instances that the rule would not result in emissions increases over the short-term or long-term, the rule would still be unlawful because it would violate the statutory provisions addressed herein, relieving sources of mandatory legal obligations to remain subject to section 112 programs; Title V and compliance assurance monitoring; remain subject to EPA and citizen and EPA enforcement; and continue to meet required monitoring, recordkeeping, reporting, testing, and other section 112 requirements. Each of these obligations is independent of the legal obligation to maintain emissions reductions consistent with section 112 standards.

Next, an overarching point true of all five EPA factors in the proposal is that they are based on mere assertions that even EPA acknowledges are "theories" (Dec. 29, 2007 Q&A briefing paper, at 2), with no factual support or substantiation in the record. The agency admits time and again in an internal briefing paper for the Administrator that it lacks basic factual information, and that it expects the *public* to provide *EPA* with information that the agency should have collected (through section 114 authority), analyzed, and discussed for the public in the proposal prior to its issuance. Indeed, this briefing paper acknowledges that EPA is "asking for public comment and information to test our theories," and "soliciting public comment and information to help us better assess the net effect of the proposal." *Id.* The five EPA theories about why the proposal would not result in emissions increases are thus deserving of no respect or deference.

First, EPA argues that:

> [M]any sources attaining area source status do so because of the control devices that they installed to meet the MACT standards. Such control systems are designed to operate a certain way and cannot be operated at a level which achieves only a partial emission reduction, *i.e.*, the devices either operate effectively or they do not. Thus, we expect that sources that have attained area source status by virtue of a particular control technology will maintain their current level of emissions.

72 Fed. Reg. at 73/2. In addition to being irrelevant legally, as noted above, EPA does not and cannot claim that all sources granted illegal deregulatory relief by the proposal would be constrained from increasing emissions by virtue of control system constraints. Indeed the administrative record accompanying EPA's proposal fails to provide any factual support for these claims, making clear that EPA's arguments are pure, self-serving assertion.

Worse, an internal briefing paper prepared for the Administrator makes clear that these public, self-serving claims are merely agency "theories," and that the Administrator was counseled not to "overstate" this reason before Congress: "[s]ome MACT controls involve equipment or techniques that could be 'dialed down' in terms of hours of operation or maintenance. . . . It is therefore important not to overstate the reasons that

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we expect backsliding to be the exception rather than the rule. We're asking for public comment and information to test our theories." Again, this explanation explains the arbitrariness of EPA resorting to public comment to supply the most basic factual information that the agency was required by section 307(d) to prepare prior to issuing its proposal.

Moreover, comments submitted by the Institute for Clean Air Companies demonstrate that EPA is simply wrong to argue that sources would be constrained from increasing emissions by virtue of control system constraints. We add the following points here to their comments.

The proposal fails to discuss alterations of air pollution control systems as to collection efficiency. Sources that heat in-factory air in northern climates that operate coating operations, for example, have an incentive to reduce the amount of exhausted air as much as possible, since they are discharging heated inside air. Decisions on the operation of uncontrolled gas collection equipment directed to control equipment may cause increases in uncaptured fugitive emissions of VOC/HAPs that are poorly tracked when exhauster volumes reduce facial velocities and thus overall collection system efficiencies. This is but one example of economically influenced system variability that may not always mean that emissions are controlled.

MACT standards that feature work practice controls to address fugitive emissions (like door leaks at coke ovens) are another special case. Where such work practice control requirements are necessary is often where it is not technically feasible to measure stack emissions or where any emission calculations contain considerably more uncertainty (i.e. fugitive HAP emissions/LDAR programs). A source may be able to show lower emissions one way or another, but if the requirement for the work practice controls is eliminated as EPA's proposal would do, large emission increases can occur that will not necessarily be tracked. Such LDAR programs and work management practices, with widely varying actual control efficiency that depends on management commitment, time, energy and money, are precisely the types of control approaches that can be "dialed back" (to use EPA's on term) and result in emissions increases.

Another concern fostered by EPA's proposal is sources that engage in solvent switching to non-HAP and potentially non-VOC solvents or chemical intermediates. While these sources may be able to portray themselves below HAP thresholds, they will do so in a manner that may have the potential to increase airborne toxicant risks or that cause unexpected cross-media pollutant transfers. A source may be able to convert from use of a solvent like Xylene to petroleum naphtha or other non-HAP solvent, or even a non-HAP, non-VOC chlorinated solvent without actually controlling emissions. There will be less toxicology data available on the new solvent than the one replaced.

EPA's second factor why it believes sources will not increase emissions under the proposal is that "in many cases, sources will maintain the level of emission reduction associated with the MACT standard because that level is needed to comply with other requirements of the Act, such as RACT controls on emissions of volatile organic

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compounds, which are also HAP. Sources may also need to maintain their current level of control for other reasons, including, for example, for emissions netting and emissions trading purposes." 72 Fed. Reg. at 73/3.

In addition to being irrelevant legally, as noted above, EPA does not and cannot claim that all sources granted illegal deregulatory relief by the proposal would be constrained from increasing emissions by virtue of other legal requirements. Indeed the administrative record accompanying EPA's proposal fails to provide any factual support for these claims, making clear that EPA's arguments are pure, self-serving assertion. MACT standards cover over 100 source categories, yet EPA does not identify *any* specific VOC controls or other requirements for *any* industries that would limit emissions increases above current section 112 levels. Indeed, as discussed earlier, the only specific limitation on VOC emission increases *per se* that we are aware of is the major modification and major source thresholds under the PSD and nonattainment NSR programs, and those *de minimis* thresholds – requiring no controls – are *40 tons per year or higher*, hardly a constraint on increases up to 25/10 tpy. We are aware of *no* RACT requirements or netting or trading requirements that would prevent HAP increases from any or all sources currently subject to MACT. And it appears from the administrative record that EPA too could identify none, much less the full range of such restrictions that would support EPA's raw assertion that "in many cases" such requirements exist. *Id.*

Third, EPA next argues that "if this rule is finalized, those sources that seek to maintain area source status will likely take PTE limits at or near their current MACT emission levels to ensure that their emissions remain below the major source thresholds. Sources have no incentive to establish their PTE limit too close to the major source thresholds because repeated or frequent exceedances above the PTE could provide the permitting authority reason to revoke the PTE and bring an enforcement action." 72 Fed. Reg. at 73/3.

EPA's own materials reveal the wrongheadedness of this unsupported argument, as well as the agency's own awareness that it is wrong. This argument is thoroughly rejected in the 2005 Regional Memo by the EPA officials most knowledgeable about source adoption of PTE limits through federally enforceable or state-only permits. Indeed, internal EPA materials written both before and after the proposal was issued express serious and understandable reservations about EPA's third argument above in light of the Regions' ridicule.

In a September 14, 2006 email, William Nickerson in the Administrator's office wrote:

> The Regions also suggested that in their experience sources requesting synthetic minor limits are often given limits of 9 or 24 tpy. Yet the preamble claims sources are likely to adopt PTE limitations at or near their current level of emissions. Do we disagree with the regional experience, or

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> do we think that even if sources obtain permit limits of 9/24 that their emissions will probably remain unchanged?

Nickerson Email. It is apparent that the preamble advanced neither one of those responses, instead adopting a posture of blithe indifference and complete dismissal of the Regions' experience.

Even more telling is the internal briefing paper prepared for the Administrator after the proposal was signed, which makes clear that agency officials understand the Regions are correct. Yet the proposal was not changed to reflect this awareness, since the agency decided to contradict its own experts (with no basis for doing so, the briefing paper makes clear) in the name of adding one more argument to the laundry list of factors designed to reassure, which is to say dupe, the public:

> **Question:** Wouldn't the proposed change also allow many sources to increase their emissions of toxic air pollutants?
>
> **Answer:**
>
> • The proposed rule would make it theoretically possible for some area sources to increase their emissions, but we anticipate that few sources would "backslide."
> • We have several reasons for believing that the approach would not result in many facilities increasing their emissions:
> ....
> • Sources would generally want to retain a "cushion" with respect to major source thresholds.
> ....
>
> **Background:**
> ....
> • .... Also, the Regions in their memo stated that sources typically don't build in much cushion when taking limits to keep them below major source levels. It is therefore important not to overstate the reasons that we expect backsliding to be the exception rather than the rule. We're asking for public comment and information to test our theories.

January 2007 Draft Briefing Paper at 2.

Our own experience with PTE limits fully matches that of the Regions, which makes perfect sense for obvious reasons. Contrary to the proposal's claims, sources have every reason in the world to take PTE limits near the major source thresholds because this grants them the *maximum legal cushion* available, thereby granting them maximum

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operational flexibility to increase emissions *or* create *operational cushions* of their own choosing. This is in fact perfectly rational, albeit a dirtier and more harmful outcome for the public. Indeed, if sources were to take "PTE limits at or near their current MACT emission levels," 72 Fed. Reg. at 73/1, they would be denying themselves bigger *legal cushions and operational cushions*, thereby making it more likely, not less, that "repeated or frequent exceedances above the PTE" (*id.*) limit would themselves prompt enforcement actions for such violations.

Thus, the illogical rationale in the preamble gets it exactly backwards considering the very factors that EPA mentions. It is little surprise then that actual, rational source behavior does not accord with EPA's "theories," and that Regional experience and the facts on the ground are so squarely at odds with EPA headquarters' deregulatory, self-serving "theories."

EPA's fourth factor for denying that the proposal will result in emissions increases is that "permitting authorities will likely encourage emission reduction maintenance and impose more stringent PTE terms and conditions on the source the closer the source's PTE is to the major source thresholds. Such terms and conditions may include shorter compliance periods and perhaps more robust monitoring, recordkeeping, and reporting to ensure that the source does not exceed its PTE." *Id.*

By its own terms this argument about what is "likely" is rank speculation, with no factual support or state agreement in the administrative record. Again, the briefing paper for the Administrator undermines this rationale, admitting that EPA was moving forward with the proposal without any states having requested EPA's proposed change in direction. January 2007 Draft Briefing Paper at 6. In fact, the National Association of Clean Air Agencies has submitted comments opposing EPA's proposal, as have other state and local officials.

More fundamentally, this argument is very revealing at several levels. First, EPA is projecting that states will be more responsible than the agency is being by issuing this proposal. As the briefing paper for the Administrator acknowledges, EPA refused to propose any anti-backsliding provisions, yet the agency's reason for claiming lack of concern about backsliding is that it hopes the states will take care of it since EPA has not. January 2007 Draft Briefing Paper at 3. Second, EPA's argument implicitly admits that it expects emissions increases to result from sources whose PTE (due to MACT controls, *e.g.*) is farther from the major source threshold. Even EPA would only expect states to "impose more stringent PTE terms and conditions on the source the closer the source's PTE is to the major source thresholds."

EPA completely disregards several factors that directly contradict its speculation: state and local governments are under pressure from local businesses and governors' offices that may prevent them from acting as EPA speculates; state and local laws may not allow officials to deny sources' requests to adopt PTE limits near the major source thresholds; and state or local no-more-stringent-than laws may prohibit officials from

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adopting restrictions that industry would predictably argue are more stringent than federal law.

EPA's fifth and final argument is that:

> many sources that take a PTE limitation to become an area source will ultimately be subject to area source standards issued pursuant to section 112. To date, EPA has issued emission standards for approximately 20 area source categories. Over the next three years, EPA is required to develop area source standards for approximately 50 additional categories. While the level at which those standards will be set is not known at this time, the standards will reflect at least generally available control technology and some may be set at MACT-based levels, which would mean that many sources could be required to maintain their current emission levels. *See, e.g.*, 42 U.S.C. 7412(d)(2), (d)(5), 7412(k)(3)(B).

72 Fed. Reg. at 73/3.

First, it bears noting EPA's admission that not all sources deregulated from MACT by the proposal would be subject to area source standards. Second, EPA admits there would be significant delays between the proposal's deregulatory effect and the future compliance dates of which ever forthcoming area source standards did cover the deregulated former MACT sources. Third, GACT is a less stringent, less protective statutory standard than MACT, meaning that backsliding would be all but certain by definition for area source standards adopting GACT rather than MACT. As evidence, there is not a single area source GACT standard today that is as stringent as the counterpart MACT standard. This is precisely why EPA hedges its own argument above by admitting that area sources subject to GACT standards would not be among those maintaining their current emission levels.[15] Fourth, EPA has set area source MACT standards for exceedingly few source categories to date, and there is no reason to believe that pattern will change. Thus, EPA's weak argument that some area source standards "may be set at MACT-based levels" is contrary to EPA's historic record, unsubstantiated, and no basis for allowing sources to exceed MACT emission levels through the instant proposal.

Neither the proposal's preamble nor the proposed rule language either mentions practicable enforceability or impose any sufficiency criteria *whatsoever* on permits that may permissibly limit PTE. *See* 72 Fed. Reg. at 80/1 (proposed 40 C.F.R. § 63.1(c)(6)). Thus the proposal by its own terms runs afoul of the *National Mining Association* decision, which requires creditable limits on PTE to be effective, with sufficient

[15] In a statement of breathtaking understatement, the proposal itself later admits that any "area source standard is not likely to be more stringent than the major source MACT standard that the source was already meeting." 72 Fed. Reg. at 76/1.

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monitoring, recordkeeping and reporting to ensure their effectiveness and enforceability. In addition, it demonstrates that EPA was fundamentally attempting to deceive a member of Congress by claiming that the proposal requires PTE limits to be enforceable as a practical matter. Mar. 30 EPA Letter to Rep. Dingell at 13. This misdirection is particularly galling considering that the EPA Regional offices strongly urged EPA headquarters to include practicable enforceability criteria in the rulemaking proposal, 2005 Regional Memo at 6, a request that headquarters pointedly ignored (despite it being raised twice by the Regions), only to trot out the ignored concept when it was politically useful to assuage – and mislead – a concerned member of Congress.

EPA's March 30th responses attempted to deceive Congressman Dingell through similar misdirection and evasiveness by implying in response to numerous questions that creditable PTE limits under the policy needed to be federally enforceable by EPA and citizens. Mar. 30 EPA Letter to Rep. Dingell at 12-13. But no such requirement appears in the preamble or proposed regulatory language. And as EPA well knows, many if not most state-enforceable only permit programs do not grant citizens the right to enforce state permit conditions and certainly do not grant EPA the right to enforce such permits in state or federal court. By calculated omission, in the preamble and proposed regulatory language (proposed 40 C.F.R. § 63.1(c)(6)), the proposal would allow state-enforceable only permits to limit HAP emissions.

Finally, despite EPA's similarly misleading responses to Congressman Dingell in its March 30th letter, the proposal imposes no legal, sufficiency criteria on the creditable permit conditions that may limit PTE. 72 Fed. Reg. at 80 ((proposed 40 C.F.R. § 63.1(c)(6) (requiring only that sources "obtain[] a permit limiting its potential to emit (PTE) hazardous air pollutants"). EPA's March 30th letter describes a laundry list of purported recordkeeping, reporting and monitoring "requirements" that permits adopting PTE limits "must" contain. Mar. 30 EPA Letter to Rep. Dingell at 12. But the EPA letter is tellingly devoid of regulatory – or proposed regulatory – citations. And the reason for this omission is simple. The proposal does not adopt, reference or even mention any such requirements, either for federally enforceable or state-enforceable only PTE limits. Nor do other federal regulations contain any such requirements for federally enforceable or state-enforceable only PTE limits.

The EPA criteria guiding establishment of federally enforceable limits, either in EPA- or state-issued federally enforceable permits, are purely a product of EPA guidance rather than regulations. *See id.* at 13. But even that guidance does not repeat the lengthy, fanciful claims about sources' recordkeeping, reporting and monitoring requirements that EPA related to Congressman Dingell in the letter. *Id.* at 12. And of greater importance to the instant rulemaking, EPA's proposal and administrative record fail to require even the minimally necessary legal criteria that would allow any permits to limit PTE in service of the proposal's unlawful enterprise.

One problem with insufficient PTE limits is illustrated by sources that *today* report just their annual emissions, on a calendar 12-month basis, in permits purporting to limit PTE. There is not necessarily any regular reporting of 12-month rolling annual

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emissions. All of the emission calculations in support of PTE limits may be purely paper calculations, based on AP-42 emissions factors or entirely non-representative of actual source emissions – that is, never supported by an actual stack test.

For emission source categories having percentage reduction requirements, there is frequently little or no information available on the uncontrolled process emission rates. Annual emission reporting for HAP emissions may be largely a paper exercise because of failures to incorporate uncontrolled/poorly controlled (and unknown) emissions during process or control equipment malfunctions, upsets, and planned or unplanned maintenance. Finally, sources often claim confidential business information privileges concerning operational data necessary to support citizen determinations of emission rates. EPA's proposal completely ignores all of these considerations and the numerous additional problems with PTE limits in the real world.

Another enforceability consideration concerns the recurring reality that sources subject to evaluation concerning their major source status under EPA's proposal frequently have several emissions units. If one emissions unit has a significant violation of a PTE limit, but the emissions from the one unit are not sufficient in and of themselves to be over the 10/25 source-wide threshold, the enforcement inquiry becomes twofold. The source may have violated a PTE limit for that emission unit, which may be determinate but also unknowable to citizens or EPA due to inadequate monitoring, reporting and recordkeeping practices. But the even more difficult question then becomes whether the source in the aggregate exceeded source-wide HAP thresholds. EPA's proposal – or even EPA guidance –fails to address this most basic of enforceability questions.

Even were EPA's enterprise legal, the agency may not relieve sources of their obligation to comply with section 112 standards by obtaining PTE limits that are unenforceable and ineffective in limiting PTE. Without legal criteria governing emission limits, averaging times, testing, monitoring, recordkeeping, reporting and the need to safeguard the integrity of federal Clean Air Act requirements through EPA and citizen enforcement opportunities over permit conditions,[16] then EPA may not even adopt the mechanism it has chosen for its proposal. The proposal fails to address, much less ensure, the effectiveness of PTE limits as a practical and enforceable matter, thereby violating *National Mining Association*, the Act, and prohibitions on arbitrary agency action.

EPA argues that even if HAP increases from sources occur in response to this rule, "the increases will likely be offset by emission reductions at other sources that should occur as a result of this proposal." 72 Fed. Reg. at 74/1. This is arbitrary. First, as is apparent in this passage, the preamble, administrative record, and internal EPA documents, this prediction of what is "likely" is based only on "belief" and "theories"; it

[16] Because the instant proposal is unlawful on multiple grounds for the reasons discussed herein and must be abandoned, and because we understand that EPA is preparing a separate rulemaking proposal for comment concerning PTE limits generally, we will reserve our comments concerning the need for federal enforceability of PTE limits until that separate proposal.

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lacks any factual or empirical foundation; and in fact is contradicted by the more knowledgeable, expert views of EPA's Regional officials, who believe that the proposal will result in emissions increases rather than decreases. Second, section 112 is a source-specific, technology-based program, followed by a source-specific residual risk program. Section 112 does not allow the "trading" or "offset[ing]" of emissions or obligations between sources, it never has, and EPA does not and cannot identify any legal authority to support such a suggestion.

Even though we believe that EPA lacks the legal authority to adopt the proposed section 63.1(c)(6) for the reasons stated herein, we agree that if EPA adopts the unlawful proposal that it must requires sources switching from major to area back to major source status again must comply immediately with the MACT standard. 72 Fed. Reg. at 74/3. To allow otherwise would reward sources for gamesmanship or otherwise allow periods of excess emissions and noncompliance.

We firmly oppose EPA's suggested proposal to allow "sources that switch status from major source to area source and then revert back to major source status, be allowed additional time for compliance if the major source standard has changed such that the source must undergo a physical change, install additional controls and/or implement new control measures." 72 Fed. Reg. at 75/1. It is fully within the control of these sources to decide and control when they will increase emissions to "revert back to major source status," so it is equally within their control – and responsibility – to comply with the revised MACT standard by the time of said reversion. There is no defensible reason in law or policy why the public should suffer the consequences of increased HAP emissions from sources that simultaneously wish to increase their HAP emissions and forego the controls required by the revised MACT standard. Sources should bear the burden of that source decision, not the public.

For similar reasons, we strongly reject the suggestions that EPA "should instead allow all sources that revert back to major source status a specific period of time in which to comply with the MACT standard, which would be consistent with the approach provided for in 40 CFR 63.6(c)(5)." 72 Fed. Reg. at 75/1-2. Again, it is fully within the control of these sources to decide and control when they will increase emissions to "revert back to major source status," so it is equally within their control – and responsibility – to comply with the MACT standard by the time of said reversion. The remainder of the different compliance time-frame and extension options discussed by EPA (*id.* at 75-76) violate sections 112(i)(3) and 112(d)(7) of the Act, since sources remain subject to MACT standards and may not backslide from those obligations either in terms of compliance obligations or through compliance extensions.

In addition to the justification for the proposed interpretation provided in the Federal Register notice, *see generally* 72 Fed. Reg. 69, EPA has provided additional justification for the proposed interpretation in correspondence with Congressman John Dingell. The correspondence to Congressman Dingell, dated March 7, 2007, and March 30, 2007 – not unlike the preamble to proposed interpretation – fails to establish a legitimate basis for the proposed interpretation.

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In both letters to Congressman Dingell EPA avers that the proposed interpretation is based on ten years of experience implementing the air toxics program. *See* Letter from W. Wehrum to Congressman J. Dingell, dated March 7, 2007 (hereinafter "Wehrum Letter; March 7, 2007"), at 1; Letter from W. Wehrum to Congressman J. Dingell, dated March 30, 2007 (hereinafter "Wehrum Letter; March 30, 2007"), at cover page. This is a meaningless assertion and provides no justification for the proposed interpretation. EPA must specify and substantiate what, exactly, in its experience implementing the air toxics program justifies the proposed interpretation. As is discussed above, the Regions – with superior, on-the-ground experience and expertise regarding the implementation of the air toxics program and permitting programs – have "significant concerns about the increase in emissions of hazardous air pollutants that will likely occur from the revisions to the OIAI policy," 2006 Regional Memo at 2, and "simply do not agree with the change," January 2007 Draft Briefing Paper at 5.

One rationale presented by EPA in its March 7, 2007, correspondence to Congressman Dingell suggests that while that application of MACT standards (which are generally expressed in terms of percent emission reduction or some metric other than absolute emission levels) may or may not reduce emissions at a facility below the major source threshold, the proposed interpretation could, in fact, induce sources to limit emissions to levels below the major source threshold through the required adoption of area source PTE limitations. *See* Letter From W. Wehrum to Congressman Dingell, dated March 7, 2007 (hereinafter "Wehrum Letter; March 7, 2007"), at 2. EPA intends for this observation to suggest an absolute, net decrease in emissions from the proposed interpretation. This rationale is flawed in myriad respects.

First, it is completely theoretical and it is not backed by any data or record evidence. Second, it assumes that area source PTE limitations will be enforceable and enforced; the Regions have indicated that synthetic minor limits will be difficult to enforce because of the relaxed monitoring and recordkeeping requirements and, where a synthetic minor limit is issued by a state permitting authority, such a limit cannot be enforced by federal authorities (or, in most cases, by citizens). *See* discussion of practicable enforceability, *infra*. The rationale also ignores the impact that the proposed interpretation will have upon MACT-compliant sources currently below the 25/10 tpy threshold, which will have an incentive to accept synthetic minor limits and increase emissions, and flouts the purpose of the MACT program, which is to aggressively use technology-based emissions limitations to reduce HAP emission to the lowest levels possible.

EPA's correspondence to Congressman Dingell also attempts to justify the proposed interpretation by stating that "sources that may increase their actual emissions as a result of taking a limit on their potential to emit in lieu of complying with an otherwise applicable major source NESHAP won't necessarily be able to maintain the emission increase [because] [s]uch sources would still be required to comply with any applicable area source NESHAP." Wehrum Letter; March 7, 2007, at 3. This rationale, again, is only theoretical and supported by absolutely no data or record evidence.

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Further, area source NESHAPs do not presently exist for the overwhelming majority of area source categories, additional area source NESHAPs may not be promulgated or applicable for many years, and such standards generally only require generally available control technology (GACT) which is much laxer that MACT. EPA can not rely upon the uncertain prospect of future standards, "the level at which ... is not known at this time," *see* 72 Fed. Reg. 73, as a meaningful hedge against the Regions' position that the proposed interpretation will increase HAP emissions.

EPA's March 30, 2007, letter to Congressman Dingell includes a "targeted analysis of the potential impact of sources that are subject to the MACT standard for the synthetic organic chemical manufacturing industry (SOCMI)." Wehrum Letter; March 30, 2007, at 1. This analysis concludes that, based upon an increase of emissions by MACT-compliant sources that currently emit below the 25/10 tpy major source threshold, the proposed interpretation could increase HAP emissions by 358 tpy. The analysis also indicates that emissions reductions – credited to facilities currently above the 25/10 tpy threshold cutting emissions – were possible at 377 tpy. *See id.* at 1-2. As an initial matter, this analysis is of limited value as EPA itself acknowledged that it "cannot characterize the SOCMI as representative of the nationwide impact from all MACT source categories." Wehrum Letter; March 30, 2007, at 2.

In any event, EPA's targeted SCOMI analysis – which is discussed below – does not justify the proposed interpretation, but rather (once corrected) provides substantial evidence against it. EPA's estimate for a SOCMI HAP emissions increase identified 55 facilities that could increase emissions under the proposed interpretation but assumed that fewer than half would be able to do because "Over half of these 55 sources are located in ozone nonattainment areas and would be unable to increase volatile organic compound emissions [because] almost all organic HAP are VOC." *Id.* at 2. However, EPA's claim that HAP increases won't occur from SOCMI sources in non-attainment areas is wholly without basis, given that non-attainment permitting requirements are triggered by HAP VOC emissions at 40 tpy and above, 40 C.F.R. § 51.165(a)(1)(x)(A), and the ceiling for synthetic minor limitations is 24.9/9.9. tpy. Given that EPA's estimate of increased SOCMI HAP emissions incorrectly excluded more than half of the facilities that would be entitled to increase emissions under the proposed interpretation, adjusting for this mistake[17] suggests an emissions increase of more than 716 tpy. This substantial increase in emissions dwarfs the emissions reductions (377 tpy) predicted by EPA, bolstering assessments by the Regions and others that backsliding engendered by the proposed interpretation will increase the emission of hazardous air pollutants.

Congressman Dingell inquired with EPA about the preamble statement that "EPA has heard from others who have taken the position that the OIAI policy serves as a disincentive for sources to reduce emissions of HAP beyond the levels actually required by an applicable standard," *see* 72 Fed. Reg. 69 and requested documentation on the

[17] VOC emissions limitations for SOCMI facilities located in ozone nonattainment areas is the only non-MACT emissions limitation identified by EPA for such facilities. EPA's analysis did not identify any other federal, state, or SIP limitation that would apply to HAP emissions from SOCMI facilities; similarly, we are not aware of any such limitations.

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communications between EPA and "others" reflecting this position. EPA's March 30, 2007 letter includes a table identifying the others from whom "EPA has heard" and attached the relevant conveyances. Wehrum Letter; March 30, 2007, at 4-5, Attachment 2. An analysis of the conveyances attached to the March 30, 2007 letter underscores that the only entities submitting comments to EPA requesting the proposed changes to the OIAI interpretation were regulated industries. *See* Wehrum Letter; March 30, 2007, at 4-5, Attachment 2. Moreover, as discussed above, by EPA's own admission, even the industrial complaints were purely anecdotal.

In its March 30, 2007 correspondence to Congressman Dingell, EPA attempted to provide additional support for its assertion that MACT control devices are designed such that they cannot be operated at a level which achieves only a partial emissions reduction;[18] EPA did so by discussing in general terms several different types of control technology and the potential impediments to abandoning the use of such control technology. *See* Wehrum Letter; March 30, 2007, at 5-7. EPA's discussion of how various control technologies may operate is anecdotal and unsubstantiated by evidence in the record. Indeed, after reviewing data from the NEI, EPA acknowledged that "hundreds of [MACT-compliant HAP] sources do not report what they use to control emissions and many others do not specify the types of control devices used," and that it could not provide "meaningful estimates of percentages" of the types of controls being used by MACT-compliant sources in each MACT source category. *Id.* at 5. EPA did, however, make this telling admission:

> All control devices incur operating and maintenance costs, and unless it is an integral part of the process (e.g., condensers or boilers) any control device can be turned off for a given period of time, unless regulatory requirements require otherwise. In addition, an owner or operator could choose not to vent some smaller streams of air toxics to control devices in order to save some money if a PTE allows that.

Id. at 7; *see also* January 2007 Draft Briefing Paper at 2 ("[S]ome MACT controls involve equipment or techniques that could be 'dialed down' in terms of hours of operation or maintenance."). Although EPA has stated that its proposed interpretation is intended to create incentives for pollution prevention, the Agency's admission that control devices incur operating and maintenance costs that can be spared by turning off or dialing down pollution control technology highlights that the proposed interpretation's strongest incentive is the monetary reward that awaits entities that backslide against current pollution controls.

EPA has also attempted in its correspondence with Congressman Dingell to bolster its preamble assertion that sources opting to abandon MACT in favor of area

[18] EPA has raised this assertion in support of its theory that MACT-compliant sources that emit below the 25/10 tpy threshold won't accept synthetic limits and increase emissions if the proposed interpretation is implemented.

ED_001627_00001642

source status will likely take PTE limits at or near their current MACT emission level by suggesting that sources closer to major source thresholds "are more likely to be subject to compliance evaluations by the state and EPA." Wehrum Letter; March 30, 2007, at 9. In support of this assertion EPA cites its April 2001 "Stationary Source Compliance Monitoring Strategy". This document, however "is intended solely as guidance"; it "is not a regulation [and] does not impose legally binding requirements on EPA, States, or the regulated community." EPA, STATIONARY SOURCE COMPLIANCE MONITORING STRATEGY (2001), at 2. As with its other reasons for suggesting that MACT-compliant sources will adopt PTE limitations at their current emission level when transitioning to area source status, this reason is purely theoretical; it is not established by data, other record evidence, or even anecdote. Again, EPA has provided no basis for doubting the expert assessment of the Regions that the proposed interpretation will likely result in the increased HAP emissions. *See* 2006 Regional Memo at 2.

Congressman Dingell has confronted EPA with the possibility that HAP sources, upon transition to area source status though the adoption of PTE limits, will (in exchange for likely increasing emissions) be rewarded with lax or nonexistent recordkeeping, reporting, and monitoring requirements and will likely be spared the prospect of citizen and federal enforcement. EPA responded to this suggestion with a laundry list of disingenuous assurances, claiming in its March 30, 2007 letter, for example, that "[area] sources must retain all records ... with respect to ensuring the PTE limitation is not exceeded" and that "[t]he permit establishing a PTE should provide specific reporting requirements ... and include the specific associate compliance monitoring". Wehrum Letter; March 30, 2007, at 12; *see also id.* at 13. These assurances are bald assertions which cannot be supported. EPA cites no state or federal rules requiring such record keeping, reporting and monitoring for area sources and the proposed interpretation does not require such measures.[19] Indeed, the Regions complained that the proposed interpretation raised serious concerns "about the lack of clear-cut requirements regarding practicable enforceability" meaning "[m]any of the environmental benefits that are achieved by comprehensive monitoring and reporting requirements of the MACT standards will be lost". 2005 Regional Memo at 6. EPA further sought to assuage Congressman Dingell by identifying the requirements of the Title V permits, without admitting that area sources are not necessarily subject to Title V and indeed EPA has gone out of its way under this administration to exempt area sources from Title V.[20] Finally, EPA made that obvious point that both citizens and EPA can enforce federally-enforceable PTE limitations but failed to mention that neither citizens nor EPA can enforce state PTE limitations.

---

[19] EPA does cite two documents which purportedly outline "[c]urrent requirements related to PTE limits for Hap emissions." Wehrum Letter; March 30, 2007, at 13. These documents are mere guidance; the "requirements" are not a product of regulations or the regulatory process, they are not codified, and they are not enforceable by EPA with respect to a state permitting authority and/or a source operating under a state-issued PTE limitation.

[20] 72 Fed. Reg. 74/2. ("The major source requirements to which the source would no longer be subject, include, but are not limited to, compliance assurance monitoring and title V requirements (assuming the source is not otherwise subject to title V permitting).").

ED_001627_00001642

In its March 7, 2007 letter to Congressman Dingell EPA seeks to justify its proposed interpretation by asserting that: "We … have substantial supporting information and policy justification for the Proposed Rule and are using the notice and comment process to ask interested parties to submit other relevant information and data." Wehrum Letter; March 7, 2007, at 3. This assertion is betrayed, however, by the previous sentence in EPA's letter where it concedes: "Comprehensive information on hazardous air pollutant sources is not available and we do not have information on what individual sources will do in response to the Proposed Rule." What could possibly be more critical to the development of a HAP rulemaking than information on HAP sources? This remarkable (and fatal) confession by EPA emphasizes that the agency – apart from a few anecdotes supplied by industry and a few improbable theories which defy logic and have been empirically denied by the Regions – has absolutely no justification for the proposed interpretation.

ED_001627_00001642

Cc: Li, Ryland (Shengzhi)[Li.Ryland@epa.gov]
To: Rodman, Sonja[Rodman.Sonja@epa.gov]; Culligan, Kevin[Culligan.Kevin@epa.gov]; Dalcher, Debra[dalcher.debra@epa.gov]; Shrager, Brian[Shrager.Brian@epa.gov]; Lamason, Bill[Lamason.Bill@epa.gov]; McLamb, Marguerite[McLamb.Marguerite@epa.gov]
Sent: Tue 1/30/2018 7:32:24 PM
Subject: Re: EPA "Once In, Always In" HAP Policy

Ex. 5 - Attorney Client

Scott Jordan

Air and Radiation Law Office

Office of General Counsel

202-564-7508

From: Rodman, Sonja
Sent: Tuesday, January 30, 2018 2:30 PM
To: Culligan, Kevin; Dalcher, Debra; Shrager, Brian; Lamason, Bill; McLamb, Marguerite; Jordan, Scott
Cc: Li, Ryland (Shengzhi)
Subject: RE: EPA "Once In, Always In" HAP Policy

The delegation lists are not up to date. Some regions update the tables. Others do not.

Sonja L. Rodman

Air Toxics, Consumer Protection and Indoor Air Practice Group

(202) 564-4079

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From: Culligan, Kevin
Sent: Tuesday, January 30, 2018 2:28 PM
To: Dalcher, Debra <dalcher.debra@epa.gov>; Shrager, Brian <Shrager.Brian@epa.gov>; Lamason, Bill <Lamason.Bill@epa.gov>; McLamb, Marguerite <McLamb.Marguerite@epa.gov>; Jordan, Scott <Jordan.Scott@epa.gov>
Cc: Rodman, Sonja <Rodman.Sonja@epa.gov>
Subject: RE: EPA "Once In, Always In" HAP Policy

It seems like there are two questions here:

Ex. 5 - Attorney Client

Ex. 5 - Attorney Client

Ex. 5 - Attorney Client

From: Dalcher, Debra
Sent: Tuesday, January 30, 2018 2:13 PM
To: Shrager, Brian <Shrager.Brian@epa.gov>; Lamason, Bill <Lamason.Bill@epa.gov>; Culligan, Kevin <Culligan.Kevin@epa.gov>; McLamb, Marguerite <McLamb.Marguerite@epa.gov>; Jordan, Scott <Jordan.Scott@epa.gov>
Cc: Rodman, Sonja <Rodman.Sonja@epa.gov>
Subject: FW: EPA "Once In, Always In" HAP Policy
Importance: High

Can anyone help with this one?

From: Jared Rothstein [mailto:rothsteinj@socma.com]
Sent: Tuesday, January 30, 2018 1:48 PM
To: Torres, Elineth <Torres.Elineth@epa.gov>; Dalcher, Debra <dalcher.debra@epa.gov>
Subject: EPA "Once In, Always In" HAP Policy

Hello Debra and Elineth,

I recently reviewed the U.S. EPA guidance memorandum announcing its withdrawal of its “once in always in” policy for the classification of major sources of hazardous air pollutants under section 112 of the Clean Air Act, and had a couple questions regarding implementation. Do you know which states have the delegated authority to ratify this change in policy? My understanding is that it would only apply to the states that have been delegated by EPA to administer the 112 program. I assume EPA’s position is that the states with delegated authority are obliged to follow the new policy if they want to maintain their delegation, because the new memo says clearly that the old policy is not authorized by the statute? Any information you might have regarding state adoption of the policy would be very helpful.

Thank you!

Jared

Jared A. Rothstein | *Senior Manager, Regulatory Affairs*

Society of Chemical Manufacturers & Affiliates (SOCMA)

1400 Crystal Drive | Suite 630 | Arlington, VA 22202

(571) 348-5122 | rothsteinj@socma.com

To: Jordan, Scott[Jordan.Scott@epa.gov]
From: Zenick, Elliott
Sent: Tue 1/23/2018 3:17:00 PM
Subject: RE: Reg Review is scheduled for 1:00 pm today in room 4045 (final agenda attached)

Thank you.

From: Jordan, Scott
Sent: Tuesday, January 23, 2018 9:16 AM
To: Rodman, Sonja <Rodman.Sonja@epa.gov>; Zenick, Elliott <Zenick.Elliott@epa.gov>
Subject: Fw: Reg Review is scheduled for 1:00 pm today in room 4045 (final agenda attached)

I am sending this email to confirm that I will be calling into Reg Review to discuss (1) the OIAI meeting with David Harlow, and (2) the Wood Heaters meeting between Wehrum and HPBA.

Scott Jordan

Air and Radiation Law Office

Office of General Counsel

202-564-7508

From: Graham, Cheryl
Sent: Tuesday, January 23, 2018 7:33 AM
To: OGC ARLO
Cc: Hooks, Samantha
Subject: Reg Review is scheduled for 1:00 pm today in room 4045 (final agenda attached)

Conference Call Number: Ex. 6 - Personal Privacy access code is Ex. 6 - Personal Privacy

Cheryl R. Graham

From: Jordan, Scott
Importance: Normal
Subject: OIAI - Call with Kevin
Start Date/Time: Wed 1/24/2018 2:00:00 PM
End Date/Time: Wed 1/24/2018 2:30:00 PM

To: Jordan, Scott[Jordan.Scott@epa.gov]
From: Srinivasan, Gautam
Sent: Thur 1/25/2018 6:43:45 PM
Subject: RE: OIAI - Heads up re Harlow Call re one Sentence

Ex. 5 - Attorney Client

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202-564-5647 (o)

202-695-6287 (c)

From: Jordan, Scott
Sent: Thursday, January 25, 2018 1:39 PM
To: Schwab, Justin <Schwab.Justin@epa.gov>; Rodman, Sonja <Rodman.Sonja@epa.gov>; Srinivasan, Gautam <Srinivasan.Gautam@epa.gov>
Subject: OIAI - Heads up re Harlow Call re one Sentence

Justin –

Ex. 5 - Attorney Client

Scott Jordan

Air and Radiation Law Office

Office of General Counsel

202-564-7508

From: Schwab, Justin
Sent: Thursday, January 25, 2018 9:33 AM
To: Rodman, Sonja <Rodman.Sonja@epa.gov>; Srinivasan, Gautam <Srinivasan.Gautam@epa.gov>; Jordan, Scott <Jordan.Scott@epa.gov>
Subject: RE: NEED INPUT BY TOMORROW MORNING: Once-In-Always-In Guidance Memorandum

Ex. 5 - Attorney Client

From: Rodman, Sonja
Sent: Thursday, January 25, 2018 9:25 AM
To: Schwab, Justin <Schwab.Justin@epa.gov>; Srinivasan, Gautam <Srinivasan.Gautam@epa.gov>; Jordan, Scott <Jordan.Scott@epa.gov>
Subject: RE: NEED INPUT BY TOMORROW MORNING: Once-In-Always-In Guidance Memorandum

Look at Scott's. Mine is just a cleaned up version of that. I moved a few of his comments into e-mail.

Sonja L. Rodman

Air Toxics, Consumer Protection and Indoor Air Practice Group

(202) 564-4079

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From: Schwab, Justin
Sent: Thursday, January 25, 2018 9:23 AM
To: Rodman, Sonja <Rodman.Sonja@epa.gov>; Srinivasan, Gautam <Srinivasan.Gautam@epa.gov>; Jordan, Scott <Jordan.Scott@epa.gov>
Subject: RE: NEED INPUT BY TOMORROW MORNING: Once-In-Always-In Guidance Memorandum

I have 2 drafts sent to me recently, one by Scott at 8:40, one by Sonja at 8:57 (to which this message replies).

Which should I review?

From: Rodman, Sonja
Sent: Thursday, January 25, 2018 8:57 AM
To: Schwab, Justin <Schwab.Justin@epa.gov>; Srinivasan, Gautam <Srinivasan.Gautam@epa.gov>; Jordan, Scott <Jordan.Scott@epa.gov>
Subject: FW: NEED INPUT BY TOMORROW MORNING: Once-In-Always-In Guidance Memorandum

Our responses in bold below. Also revised draft attached. I'd like to send this to OAR shortly.

Sonja L. Rodman

Air Toxics, Consumer Protection and Indoor Air Practice Group

(202) 564-4079

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From: Schwab, Justin
Sent: Thursday, January 25, 2018 7:49 AM
To: Srinivasan, Gautam <Srinivasan.Gautam@epa.gov>
Cc: Rodman, Sonja <Rodman.Sonja@epa.gov>; Jordan, Scott <Jordan.Scott@epa.gov>
Subject: Re: NEED INPUT BY TOMORROW MORNING: Once-In-Always-In Guidance Memorandum

Agree.

Sent from my iPhone

On Jan 25, 2018, at 7:42 AM, Srinivasan, Gautam <Srinivasan.Gautam@epa.gov> wrote:

Ex. 5 - Attorney Client

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202-564-5647 (o)

202-695-6287 (c)

On Jan 24, 2018, at 9:53 PM, Schwab, Justin <Schwab.Justin@epa.gov> wrote:

Ex. 5 - Attorney Client

Ex. 5 - Attorney Client

Ex. 5 - Attorney Client

Ex. 5 - Attorney Client

Sent from my iPhone

On Jan 24, 2018, at 7:24 PM, Rodman, Sonja <Rodman.Sonja@epa.gov> wrote:

Justin, I just learned that Bill Wehrum wants to sign the OIAI guidance memo tomorrow afternoon. Is there any way you can get any comments to us first thing in the morning? Sorry, I thought we had more time. If you want to discuss anything tonight please call my personal cell 703-608-8932. Thanks! – Sonja

Sonja L. Rodman

Air Toxics, Consumer Protection and Indoor Air Practice Group

(202) 564-4079

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From: Rodman, Sonja
Sent: Wednesday, January 24, 2018 11:59 AM
To: Schwab, Justin <schwab.justin@epa.gov>
Cc: Jordan, Scott <Jordan.Scott@epa.gov>; Srinivasan, Gautam <Srinivasan.Gautam@epa.gov>
Subject: FOR YOUR REVIEW: Once-In-Always-In Guidance Memorandum

Justin, Attached for your review is the draft guidance memorandum on reclassification of major sources as area sources under CAA section 112. This draft has been heavily edited by David Harlow and includes Bill Wehrum's edits also. It is short – only 4 pages. I am also attaching a draft of the FR notice that will be published to provide notice of the new memo. This is a slightly rougher draft and hasn't been through OAR mgt review yet. Bill would like to get these signed this week. Do you think it will be possible for you to review by tomorrow? Thanks – Sonja

Sonja L. Rodman

Air Toxics, Consumer Protection and Indoor Air Practice Group

(202) 564-4079

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To: Lamason, Bill[Lamason.Bill@epa.gov]; Rodman, Sonja[Rodman.Sonja@epa.gov]; Dalcher, Debra[dalcher.debra@epa.gov]
Sent: Thur 1/25/2018 2:56:50 PM
Subject: RE: Once-In-Always-In Guidance Memorandum

Good catches.

Who has the official document at this point? As we find edits like these (and OGC has one more which Also, I think these are edits that you al

Scott Jordan

Air and Radiation Law Office

Office of General Counsel

202-564-7508

From: Lamason, Bill
Sent: Thursday, January 25, 2018 9:45 AM
To: Rodman, Sonja <Rodman.Sonja@epa.gov>; Dalcher, Debra <dalcher.debra@epa.gov>
Cc: Jordan, Scott <Jordan.Scott@epa.gov>
Subject: RE: Once-In-Always-In Guidance Memorandum

Ex. 5 - Deliberative Process

Ex. 5 - Deliberative Process

Any timing on final OGC edits? Thanks! B

.

Ex. 5 - Deliberative Process

From: Rodman, Sonja
Sent: Thursday, January 25, 2018 9:00 AM
To: Lamason, Bill <Lamason.Bill@epa.gov>; Dalcher, Debra <dalcher.debra@epa.gov>
Cc: Jordan, Scott <Jordan.Scott@epa.gov>
Subject: Once-In-Always-In Guidance Memorandum

Bill & Debra, Here is a version that incorporates Justin's comments and suggested edits (as modified by us). We still need to circle with Justin on a couple of comments that we have not yet incorporated so this isn't the final/final version of his comments but I wanted to get it to you sooner rather than later in case there is anything you think we need to discuss. Thanks! – Sonja

Sonja L. Rodman

Air Toxics, Consumer Protection and Indoor Air Practice Group

(202) 564-4079

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To: Jordan, Scott[Jordan.Scott@epa.gov]
From: Jordan, Scott
Sent: Thur 1/25/2018 8:44:56 PM
Subject: OIAI Memo - Signed PDF
image2018-01-27-164839.pdf

Scott Jordan

Air and Radiation Law Office

Office of General Counsel

202-564-7508

From: Lamason, Bill
Sent: Thursday, January 25, 2018 3:43 PM
To: Eck, Janet <Eck.Janet@epa.gov>; Mills, Kathy <Mills.Kathy@epa.gov>; Culligan, Kevin <Culligan.Kevin@epa.gov>; Jordan, Scott <Jordan.Scott@epa.gov>; Rodman, Sonja <Rodman.Sonja@epa.gov>
Subject: FW: OIAI Reclassification of Major Sources as Area Sources Under Section 112 _01 25 2018.docx

Signed. Waiting on PACS (OAQPS comms) to post desk statement on web. The embargo lifted. B

From: Lewis, Josh
Sent: Thursday, January 25, 2018 3:37 PM
To: Henigin, Mary <Henigin.Mary@epa.gov>; Iglesias, Amber <Iglesias.Amber@epa.gov>; Koerber, Mike <Koerber.Mike@epa.gov>; Lamason, Bill <Lamason.Bill@epa.gov>; Dalcher, Debra <dalcher.debra@epa.gov>; French, Chuck <French.Chuck@epa.gov>; Lassiter, Penny <Lassiter.Penny@epa.gov>
Subject: RE: OIAI Reclassification of Major Sources as Area Sources Under Section 112 _01 25 2018.docx

Thanks again. Here's the pdf. Isabel also has it so she will be sending to OAQPS comms to coordinate web posting

Josh

From: Henigin, Mary
Sent: Thursday, January 25, 2018 3:17 PM
To: Lewis, Josh <Lewis.Josh@epa.gov>; Iglesias, Amber <Iglesias.Amber@epa.gov>
Subject: Fwd: OIAI Reclassification of Major Sources as Area Sources Under Section 112 _01 25 2018.docx

Josh, It is here.

Amber, thanks much

Thank you

Mary

Begin forwarded message:

From: "South, Peter" <South.Peter@epa.gov>
Date: January 25, 2018 at 3:13:56 PM EST
To: "Eck, Janet" <Eck.Janet@epa.gov>, "Koerber, Mike" <Koerber.Mike@epa.gov>, "Henigin, Mary" <Henigin.Mary@epa.gov>
Cc: "Henigin, Mary" <Henigin.Mary@epa.gov>, "Lamason, Bill" <Lamason.Bill@epa.gov>, "Dalcher, Debra" <dalcher.debra@epa.gov>, "French, Chuck" <French.Chuck@epa.gov>, "Lassiter, Penny" <Lassiter.Penny@epa.gov>
Subject: RE: OIAI Reclassification of Major Sources as Area Sources Under Section 112 _01 25 2018.docx

See final version. No edits to text other than Bill's signature block (just formatting changes).

Thanks.

From: Eck, Janet
Sent: Thursday, January 25, 2018 2:37 PM
To: Koerber, Mike <Koerber.Mike@epa.gov>; South, Peter <South.Peter@epa.gov>
Cc: Henigin, Mary <Henigin.Mary@epa.gov>; Lamason, Bill <Lamason.Bill@epa.gov>; Dalcher, Debra <dalcher.debra@epa.gov>; French, Chuck <French.Chuck@epa.gov>; Lassiter, Penny <Lassiter.Penny@epa.gov>
Subject: OIAI Reclassification of Major Sources as Area Sources Under Section 112 _01 25 2018.docx

Attached is the Once In Always In memo that has been approved by OAR. Please forward for their final review and signature. I will put this document into CMS as #OAR-18-000-3788 for their staff to finalize. We will forward the FR notice as soon as it is approved. Thanks.

To: Harlow, David[harlow.david@epa.gov]; Lamason, Bill[Lamason.Bill@epa.gov]; Culligan, Kevin[Culligan.Kevin@epa.gov]; Dalcher, Debra[dalcher.debra@epa.gov]; Rodman, Sonja[Rodman.Sonja@epa.gov]; Lassiter, Penny[Lassiter.Penny@epa.gov]
Bcc: Jordan, Scott[Jordan.Scott@epa.gov]
From: Jordan, Scott
Sent: Wed 1/24/2018 4:54:11 PM
Subject: OIAI - January 25 1995 Seitz Memo re Options for Limiting PTE
Seitz Memo.Options for Limiting PTE under CAA 112 and Title V.Jan 25 1995.pdf

FYI – Attached is the January 25, 1995 Seitz memorandum entitled "Options for Limiting the Potential to Emit (PTE) of a Stationary Source under Section 112 and Title V of the Clean Air Act," which is cited in the OIAI memo on p. 2 as the earlier guidance that governs HOW sources can limit their PTE through federally enforceable limits.

atguidance memo referenced on p.

Scott Jordan

Air and Radiation Law Office

Office of General Counsel

202-564-7508

To: Prabhu, Aditi[Prabhu.Aditi@epa.gov]
Cc: Rodman, Sonja[Rodman.Sonja@epa.gov]; Simons, Andrew[Simons.Andrew@epa.gov]
Bcc: Jordan, Scott[Jordan.Scott@epa.gov]
From: Jordan, Scott
Sent: Wed 1/10/2018 9:14:08 PM
Subject: RE: Interpretive Rules

Ex. 5 - Attorney Client

Ex. 5 - Attorney Client

Ex. 5 - Attorney Client

Scott Jordan

Air and Radiation Law Office

Office of General Counsel

202-564-7508

From: Prabhu, Aditi
Sent: Wednesday, January 10, 2018 3:47 PM
To: Jordan, Scott <Jordan.Scott@epa.gov>
Cc: Rodman, Sonja <Rodman.Sonja@epa.gov>; Simons, Andrew <Simons.Andrew@epa.gov>
Subject: RE: Interpretive Rules

Ex. 5 - Attorney Client

Ex. 5 - Attorney Client

Ex. 5 - Attorney Client

Ex. 5 - Attorney Client

Aditi Prabhu
Office of General Counsel
U.S. Environmental Protection Agency
(202)564-2473

From: Prabhu, Aditi
Sent: Wednesday, January 10, 2018 3:10 PM
To: Jordan, Scott <Jordan.Scott@epa.gov>
Cc: Rodman, Sonja <Rodman.Sonja@epa.gov>; Simons, Andrew <Simons.Andrew@epa.gov>
Subject: RE: Interpretive Rules

Ex. 5 - Attorney Client

Ex. 5 - Attorney Client

Hi Scott – Sorry I haven't had time to delve into this yet. Tomorrow from 10-11 or 1-2 would work for me.

Aditi Prabhu
Office of General Counsel
U.S. Environmental Protection Agency
(202)564-2473

From: Jordan, Scott
Sent: Wednesday, January 10, 2018 3:00 PM
To: Prabhu, Aditi <Prabhu.Aditi@epa.gov>
Cc: Rodman, Sonja <Rodman.Sonja@epa.gov>; Simons, Andrew <Simons.Andrew@epa.gov>
Subject: RE: Interpretive Rules -

Ex. 5 - Attorney Client

Ex. 5 - Attorney Client

Aditi –

I just found out that OAR is setting up a call next Wednesday to discuss our options, so it would be good if we could talk tomorrow about my questions.

Do you have any time available tomorrow? I am currently available any time between 9 and 4, except I have a meeting from 2-3.

Sorry for the short turnaround on this.

Scott Jordan

Air and Radiation Law Office

Office of General Counsel

202-564-7508

From: Jordan, Scott
Sent: Wednesday, January 10, 2018 7:13 AM
To: Talty, Mark <Talty.Mark@epa.gov>
Cc: Rodman, Sonja <Rodman.Sonja@epa.gov>; Simons, Andrew <Simons.Andrew@epa.gov>; Prabhu, Aditi <Prabhu.Aditi@epa.gov>
Subject: RE: Interpretive Rules - Ex. 5 - Attorney Client

Ex. 5 - Attorney Client

Mark – Thanks for passing this on.

Aditi – This is not a fire drill, but it would be good if I could get your input in the next day or so. If you are tied up on other things, please let me know when you can reasonably get to this.

Ex. 5 - Attorney Client

Scott Jordan

Air and Radiation Law Office

Office of General Counsel

202-564-7508

From: Talty, Mark
Sent: Tuesday, January 09, 2018 10:29 AM
To: Jordan, Scott <Jordan.Scott@epa.gov>
Cc: Rodman, Sonja <Rodman.Sonja@epa.gov>; Simons, Andrew <Simons.Andrew@epa.gov>; Prabhu, Aditi <Prabhu.Aditi@epa.gov>
Subject: RE: Interpretive Rules - Final Agency Action? Subject to Judicial Review?

Hi, Scott. Aditi, copied here, Ex. 5 - Attorney Client She'll be able to address both questions for you.

Best regards,

Mark

Mark C. Talty

Cross-Cutting Issues Law Office

Office of General Counsel

U.S. Environmental Protection Agency

(202) 564-1262

talty.mark@epa.gov

From: Jordan, Scott
Sent: Tuesday, January 09, 2018 10:10 AM
To: Talty, Mark <Talty.Mark@epa.gov>
Cc: Rodman, Sonja <Rodman.Sonja@epa.gov>; Simons, Andrew <Simons.Andrew@epa.gov>
Subject: Interpretive Rules - Ex. 5 - Attorney Client

Mark -

As an initial question: Are you the right CCILO person to talk to about Ex. 5 - Attorney Client
Ex. 5 - Attorney Client If so, see my questions below. If not, please let me know the right person to talk to, or forward this email to them.

Ex. 5 - Attorney Client

Ex. 5 - Attorney Client

If you want to discuss any aspect of this today, I am working from home at Ex. 6 - Personal Privacy Ex. 6 - Personal Privacy

Thanks,

Scott Jordan

Air and Radiation Law Office

Office of General Counsel

202-564-7508

To: Prabhu, Aditi[Prabhu.Aditi@epa.gov]; Simons, Andrew[Simons.Andrew@epa.gov]
Cc: Rodman, Sonja[Rodman.Sonja@epa.gov]
Bcc: Jordan, Scott[Jordan.Scott@epa.gov]
From: Jordan, Scott
Sent: Thur 1/18/2018 12:24:51 PM
Subject: Once In Always In - Follow up Question

Aditi and Andy –

Ex. 5 - Attorney Client

Thanks,

Scott Jordan

Air and Radiation Law Office

Office of General Counsel

202-564-7508

To: Jordan, Scott[Jordan.Scott@epa.gov]
From: Vetter, Rick
Sent: Mon 12/4/2017 7:01:32 PM
Subject: RE: OIAI Draft Memo - Sonja's Comments and two thoughts by Scott

Ex. 5 - Attorney Client

Richard H. Vetter

Richard H. Vetter

Attorney Advisor

Air & Radiation Law Office

Office of General Counsel

vetter.rick@epa.gov

919-541-2127

From: Jordan, Scott
Sent: Monday, December 04, 2017 1:04 PM
To: Vetter, Rick <Vetter.Rick@epa.gov>; Rodman, Sonja <Rodman.Sonja@epa.gov>
Subject: RE: OIAI Draft Memo - Sonja's Comments and two thoughts by Scott

Ex. 5 - Attorney Client

Ex. 5 - Attorney Client

Scott Jordan

Air and Radiation Law Office

Office of General Counsel

202-564-7508

From: Vetter, Rick
Sent: Monday, December 04, 2017 12:59 PM
To: Jordan, Scott <Jordan.Scott@epa.gov>; Rodman, Sonja <Rodman.Sonja@epa.gov>
Subject: RE: OIAI Draft Memo - Sonja's Comments and two thoughts by Scott

Scott and Sonja,

Ex. 5 - Attorney Client

Rick

Richard H. Vetter

Richard H. Vetter

Attorney Advisor

Air & Radiation Law Office

Office of General Counsel

vetter.rick@epa.gov

919-541-2127

From: Jordan, Scott
Sent: Monday, December 04, 2017 12:55 PM
To: Rodman, Sonja <Rodman.Sonja@epa.gov>; Dalcher, Debra <dalcher.debra@epa.gov>
Cc: Vetter, Rick <Vetter.Rick@epa.gov>
Subject: RE: OIAI Draft Memo - Sonja's Comments and two thoughts by Scott

Ex. 5 - Attorney Client

Scott Jordan

Air and Radiation Law Office

Office of General Counsel

202-564-7508

From: Rodman, Sonja
Sent: Monday, December 04, 2017 12:40 PM
To: Jordan, Scott <Jordan.Scott@epa.gov>; Dalcher, Debra <dalcher.debra@epa.gov>
Cc: Vetter, Rick <Vetter.Rick@epa.gov>
Subject: RE: OIAI Draft Memo - Two corrections to comments

A few suggested edits from me.

Sonja L. Rodman

Air Toxics, Consumer Protection and Indoor Air Practice Group

(202) 564-4079

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From: Jordan, Scott
Sent: Monday, December 04, 2017 9:28 AM
To: Dalcher, Debra <dalcher.debra@epa.gov>
Cc: Vetter, Rick <Vetter.Rick@epa.gov>; Rodman, Sonja <Rodman.Sonja@epa.gov>
Subject: OIAI Draft Memo - Two corrections to comments

Debra –

Attached is the document containing revisions that I made to two comments.

Ex. 5 - Attorney Client

Scott Jordan

Air and Radiation Law Office

Office of General Counsel

202-564-7508

From: Dalcher, Debra
Sent: Monday, December 04, 2017 8:44 AM
To: Lamason, Bill <Lamason.Bill@epa.gov>; French, Chuck <French.Chuck@epa.gov>; McLamb, Marguerite <McLamb.Marguerite@epa.gov>; Culligan, Kevin <Culligan.Kevin@epa.gov>; Vetter, Rick <Vetter.Rick@epa.gov>; Jordan, Scott <Jordan.Scott@epa.gov>
Cc: Dalcher, Debra <dalcher.debra@epa.gov>
Subject: OIAI_12.4.17 0800 DD.docx
Importance: High

Good Morning Everyone,

Attached is the current version of the memo.

Outstanding Issues:

Ex. 5 - Attorney Client

Ex. 5 - Attorney Client

Ex. 5 - Deliberative Process

Please send comments/edits if you have them…. we have an update meeting with Peter today at 1PM.

Thank you, Debra

To: Dalcher, Debra[dalcher.debra@epa.gov]; Vetter, Rick[Vetter.Rick@epa.gov]; Rodman, Sonja[Rodman.Sonja@epa.gov]; McLamb, Marguerite[McLamb.Marguerite@epa.gov]; Lamason, Bill[Lamason.Bill@epa.gov]; French, Chuck[French.Chuck@epa.gov]
Cc: Shrager, Brian[Shrager.Brian@epa.gov]
From: Jordan, Scott
Sent: Fri 12/8/2017 2:50:32 PM
Subject: OIAI Revision Memo - Scott Comments
OIAI Revision Memo_12.7.17 DD BLS 1200+SJJ12.8.17.docx

;;;
I have marked some suggested edits and comment on the OIAI revision memo. See attached.

Ex. 5 - Attorney Client

Scott Jordan

Air and Radiation Law Office

Office of General Counsel

202-564-7508

From: Dalcher, Debra
Sent: Thursday, December 7, 2017 11:48 AM
To: Jordan, Scott; Vetter, Rick; Rodman, Sonja; McLamb, Marguerite; Lamason, Bill; French, Chuck
Cc: Dalcher, Debra; Shrager, Brian
Subject: OIAI Options Pager & OIAI Revision Memo
Good Morning Everyone,

Attached you will find the current version of the Revision Memo incorporating Scott Jordan's most recent edits/comments/suggestions. After working to accommodate his most recent review Brian Shrager also reviewed (thank you Brian!). I hopefully have addressed his comments and have left his review comments in for informational purposes given I did make changes to OGC reviewed material. Please review those sections carefully and advise if those changes are not acceptable.

Attached is the also the Options Pager we will be using to brief B. Wehrum next week (probably 12/13 but nothing definitive yet). Please review the Options pager and provide

edits as appropriate. The content under the second bullet was changed since everyone last reviewed this document in coordination with K. Culligan. I would like to finalize the Options Pager by COB tomorrow if possible given they will be asking for it on Monday if we meet with Bill on Wednesday (I think). Please look for any inconsistencies between the two documents if possible.

Hopefully we are getting close on the draft memo and can also finalize that draft by Monday COB to allow me time to work on the response to comment like document we reference in the memo ☺.

Thank you everyone! Debra

Bcc: Jordan, Scott[Jordan.Scott@epa.gov]
To: Dalcher, Debra[dalcher.debra@epa.gov]
From: Jordan, Scott
Sent: Fri 1/19/2018 8:29:59 PM
Subject: OIAI - Draft FR Notice with Scott Comments
FRN OIAI Guidance Memorandum 1_19_18+SJJ 1.19.18.docx

Two thoughts:

Ex. 5 - Attorney Client

Scott Jordan

Air and Radiation Law Office

Office of General Counsel

202-564-7508

From: Dalcher, Debra
Sent: Friday, January 19, 2018 2:58 PM
To: Jordan, Scott
Cc: Dalcher, Debra
Subject: Draft FR Notice

1st draft. I sent this a few minutes ago and didn't get my copy so I am resending. Thank you, Debra

To: Jordan, Scott[Jordan.Scott@epa.gov]
From: Jordan, Scott
Sent: Thur 1/11/2018 6:42:25 PM
Subject: OIAI - Draft Legal Points Memo re Legislative Rules vs Interpretive Rules
OIAI.Notes re Interpretive Rules vs Legislative Rules.1.11.18.docx

Scott Jordan

Air and Radiation Law Office

Office of General Counsel

202-564-7508

Cc: Lamason, Bill[Lamason.Bill@epa.gov]; Rodman, Sonja[Rodman.Sonja@epa.gov]
Bcc: Jordan, Scott[Jordan.Scott@epa.gov]
To: Dalcher, Debra[dalcher.debra@epa.gov]
From: Jordan, Scott
Sent: Fri 1/19/2018 1:34:05 PM
Subject: OIAI - Revised Memo post Harlow Meeting - Scott's Comments
OIAI.Revised OIAI memorandum.SJJ+DD.1.18.18+SJJ 1.19.18.docx

[Adding Sonja: Sonja, at what point do you want to review this memo, and when should we be providing OGC front office review? I think the attached version is is ready for your review.]

Ex. 5 - Attorney Client

Scott Jordan

Air and Radiation Law Office

Office of General Counsel

202-564-7508

From: Dalcher, Debra
Sent: Thursday, January 18, 2018 7:04 PM
To: Jordan, Scott
Cc: Dalcher, Debra; Lamason, Bill
Subject: Revised Memo post Marlow Meeting

Scott, please review the attached. Ex. 5 - Attorney Client

Ex. 5 - Attorney Client

Cc: Shrager, Brian[Shrager.Brian@epa.gov]
Bcc: Jordan, Scott[Jordan.Scott@epa.gov]
To: French, Chuck[French.Chuck@epa.gov]; Dalcher, Debra[dalcher.debra@epa.gov]; Vetter, Rick[Vetter.Rick@epa.gov]; Rodman, Sonja[Rodman.Sonja@epa.gov]; McLamb, Marguerite[McLamb.Marguerite@epa.gov]; Lamason, Bill[Lamason.Bill@epa.gov]
From: Jordan, Scott
Sent: Fri 12/8/2017 2:02:37 PM
Subject: Re: OIAI Options Pager - Scott Comments
OIAI Options Pager 12_07_17_OGC Rv Vs_336-cf-edits2+SJ 12.8.17.docx

I added some comments and suggested edits to the document with Chuck's edits. See Attached.

Most of my comments are wordsmithing, but one of my comments is more substantive

Ex. 5 - Attorney Client

Scott Jordan

Air and Radiation Law Office

Office of General Counsel

202-564-7508

From: French, Chuck
Sent: Thursday, December 7, 2017 5:05 PM
To: Dalcher, Debra; Jordan, Scott; Vetter, Rick; Rodman, Sonja; McLamb, Marguerite; Lamason, Bill
Cc: Shrager, Brian
Subject: RE: OIAI Options Pager

Hi Debra,

Attached are some suggested edits.

Let me know if you have questions, thoughts, etc….

Thanks!

Chuck

From: Dalcher, Debra
Sent: Thursday, December 7, 2017 3:41 PM
To: Jordan, Scott <Jordan.Scott@epa.gov>; Vetter, Rick <Vetter.Rick@epa.gov>; Rodman, Sonja <Rodman.Sonja@epa.gov>; McLamb, Marguerite <McLamb.Marguerite@epa.gov>; Lamason, Bill <Lamason.Bill@epa.gov>; French, Chuck <French.Chuck@epa.gov>
Cc: Shrager, Brian <Shrager.Brian@epa.gov>
Subject: OIAI Options Pager

Chuck pointed out that my file name on the options paper is incorrect. I think the one drive will be my downfall ☺

Here is the file with the corrected file name.

Debra

From: Dalcher, Debra
Sent: Thursday, December 07, 2017 11:48 AM
To: Jordan, Scott <Jordan.Scott@epa.gov>; Vetter, Rick <Vetter.Rick@epa.gov>; Rodman, Sonja <Rodman.Sonja@epa.gov>; McLamb, Marguerite <McLamb.Marguerite@epa.gov>; Lamason, Bill <Lamason.Bill@epa.gov>; French, Chuck <French.Chuck@epa.gov>
Cc: Dalcher, Debra <dalcher.debra@epa.gov>; Shrager, Brian <Shrager.Brian@epa.gov>

Subject: OIAI Options Pager & OIAI Revision Memo
Importance: High

Good Morning Everyone,

Attached you will find the current version of the Revision Memo incorporating Scott Jordan's most recent edits/comments/suggestions. After working to accommodate his most recent review Brian Shrager also reviewed (thank you Brian!). I hopefully have addressed his comments and have left his review comments in for informational purposes given I did make changes to OGC reviewed material. Please review those sections carefully and advise if those changes are not acceptable.

Attached is the also the Options Pager we will be using to brief B. Wehrum next week (probably 12/13 but nothing definitive yet). Please review the Options pager and provide edits as appropriate. The content under the second bullet was changed since everyone last reviewed this document in coordination with K. Culligan. I would like to finalize the Options Pager by COB tomorrow if possible given they will be asking for it on Monday if we meet with Bill on Wednesday (I think). Please look for any inconsistencies between the two documents if possible.

Hopefully we are getting close on the draft memo and can also finalize that draft by Monday COB to allow me time to work on the response to comment like document we reference in the memo ☺.

Thank you everyone! Debra

To: Rodman, Sonja[Rodman.Sonja@epa.gov]; Greenglass, Nora[Greenglass.Nora@epa.gov]
Bcc: Jordan, Scott[Jordan.Scott@epa.gov]
From: Jordan, Scott
Sent: Wed 1/31/2018 3:53:40 PM
Subject: Adding Info re Wehrum MM2A Memo to Air Toxics Library

Sonja and Nora –

Ex. 5 - Attorney Client

Let me know if you want to discuss this.

Thanks

Scott Jordan

Air and Radiation Law Office

Office of General Counsel

202-564-7508

Cc: Lamason, Bill[Lamason.Bill@epa.gov]
Bcc: Jordan, Scott[Jordan.Scott@epa.gov]
To: Dalcher, Debra[dalcher.debra@epa.gov]
From: Jordan, Scott
Sent: Tue 12/5/2017 7:52:33 PM
Subject: OIAI memo_12 5 version - with Scott comments
OIAI Revision Memo_12.5.17 DD+SJJ 12.5.17.docx

Debra -

Here are my comments on the draft that you sent this morning. My comments turned out to be more extensive than I was expecting.

Scott Jordan

Air and Radiation Law Office

Office of General Counsel

202-564-7508

From: Dalcher, Debra
Sent: Tuesday, December 5, 2017 10:27 AM
To: Jordan, Scott
Cc: Dalcher, Debra; Lamason, Bill
Subject: OIAI memo_12 5 version

Only sending to you Scott for review. I would like to send out to everyone else later today.

Feel free to review/edit. Thank you, Debra

Revised Memo –

- Incorporated all edits received from Rick, Sonia, and Scott on 12/4 and 12/5.

Ex. 5 - Attorney Client / Deliberative Process

Bcc: Jordan, Scott[Jordan.Scott@epa.gov]
To: Rodman, Sonja[Rodman.Sonja@epa.gov]
From: Jordan, Scott
Sent: Tue 1/23/2018 5:07:39 PM
Subject: Re: OIAI - ARLO Input re Process vs Substance

Ex. 5 - Attorney Client

Scott Jordan

Air and Radiation Law Office

Office of General Counsel

202-564-7508

From: Rodman, Sonja
Sent: Tuesday, January 23, 2018 11:47 AM
To: Jordan, Scott
Subject: RE: OIAI - ARLO Input re Process vs Substance

Ex. 5 - Attorney Client

Sonja L. Rodman

Air Toxics, Consumer Protection and Indoor Air Practice Group

(202) 564-4079

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From: Jordan, Scott
Sent: Tuesday, January 23, 2018 10:57 AM
To: Rodman, Sonja <Rodman.Sonja@epa.gov>
Subject: OIAI - ARLO Input re Process vs Substance

Sonja -

Ex. 5 - Attorney Client

Scott Jordan

Air and Radiation Law Office

Office of General Counsel

202-564-7508

From: Dalcher, Debra
Sent: Monday, January 22, 2018 3:56 PM
To: Jordan, Scott
Cc: Dalcher, Debra; Lamason, Bill; Culligan, Kevin; Rodman, Sonja
Subject: RE: Reclassification of Major Sources as Area Sources Under Section 112_Draft_1 22 18_1pm.docx

Scott,

Ex. 5 - Attorney Client

That is the last of Kevin's comments. None from Penny yet.

Thank you, Debra

From: Dalcher, Debra
Sent: Monday, January 22, 2018 3:02 PM
To: Jordan, Scott <Jordan.Scott@epa.gov>
Cc: Dalcher, Debra <dalcher.debra@epa.gov>
Subject: Reclassification of Major Sources as Area Sources Under Section 112_Draft_1 22 18_1pm.docx

Scott, see attached.

Ex. 5 - Attorney Client

Debra

Cc: Vetter, Rick[Vetter.Rick@epa.gov]; Rodman, Sonja[Rodman.Sonja@epa.gov]
Bcc: Jordan, Scott[Jordan.Scott@epa.gov]
To: Dalcher, Debra[dalcher.debra@epa.gov]
From: Jordan, Scott
Sent: Tue 12/5/2017 1:03:13 PM
Subject: OIAI Draft Memo - Suggested edits to take out "flawed"

Debra -

Ex. 5 - Attorney Client

If you prefer, I would be happy to take your current draft and work these edits in. Just let me know what you want to do.

Thanks,

Scott Jordan

Air and Radiation Law Office

Office of General Counsel

202-564-7508

From: Rodman, Sonja
Sent: Monday, December 4, 2017 12:39 PM
To: Jordan, Scott; Dalcher, Debra

Cc: Vetter, Rick
Subject: RE: OIAI Draft Memo - Two corrections to comments

A few suggested edits from me.

Sonja L. Rodman

Air Toxics, Consumer Protection and Indoor Air Practice Group

(202) 564-4079

CONFIDENTIALITY NOTICE: This message may contain sensitive, privileged information covered by the deliberative process, attorney-client and/or attorney work product privileges. Do not release this message under FOIA without appropriate review. If you are not the intended recipient, or the employee or agent responsible to deliver it to the intended recipient, please contact the sender and delete all copies.

From: Jordan, Scott
Sent: Monday, December 04, 2017 9:28 AM
To: Dalcher, Debra <dalcher.debra@epa.gov>
Cc: Vetter, Rick <Vetter.Rick@epa.gov>; Rodman, Sonja <Rodman.Sonja@epa.gov>
Subject: OIAI Draft Memo - Two corrections to comments

Debra –

Attached is the document containing revisions that I made to two comments.

Ex. 5 - Attorney Client

Scott Jordan

Air and Radiation Law Office

Office of General Counsel

202-564-7508

From: Dalcher, Debra
Sent: Monday, December 04, 2017 8:44 AM
To: Lamason, Bill <Lamason.Bill@epa.gov>; French, Chuck <French.Chuck@epa.gov>; McLamb, Marguerite <McLamb.Marguerite@epa.gov>; Culligan, Kevin <Culligan.Kevin@epa.gov>; Vetter, Rick <Vetter.Rick@epa.gov>; Jordan, Scott <Jordan.Scott@epa.gov>
Cc: Dalcher, Debra <dalcher.debra@epa.gov>
Subject: OIAI_12.4.17 0800 DD.docx
Importance: High

Good Morning Everyone,

Attached is the current version of the memo.

Outstanding Issues:

Ex. 5 - Attorney Client

Please send comments/edits if you have them…. we have an update meeting with Peter today at 1PM.

Thank you, Debra

Cc: Li, Ryland (Shengzhi)[Li.Ryland@epa.gov]
Bcc: Jordan, Scott[Jordan.Scott@epa.gov]
To: Rodman, Sonja[Rodman.Sonja@epa.gov]; Culligan, Kevin[Culligan.Kevin@epa.gov]; Dalcher, Debra[dalcher.debra@epa.gov]; Shrager, Brian[Shrager.Brian@epa.gov]; Lamason, Bill[Lamason.Bill@epa.gov]; McLamb, Marguerite[McLamb.Marguerite@epa.gov]
From: Jordan, Scott
Sent: Tue 1/30/2018 7:57:57 PM
Subject: MM2A - SOCMA Question re State Delegation and Implementation of Plain Language reading

Ex. 5 - Attorney Client

Scott Jordan

Air and Radiation Law Office

Office of General Counsel

202-564-7508

From: Rodman, Sonja
Sent: Tuesday, January 30, 2018 2:30 PM
To: Culligan, Kevin; Dalcher, Debra; Shrager, Brian; Lamason, Bill; McLamb, Marguerite; Jordan, Scott

Cc: Li, Ryland (Shengzhi)
Subject: RE: EPA "Once In, Always In" HAP Policy

Ex. 5 - Attorney Client

Sonja L. Rodman

Air Toxics, Consumer Protection and Indoor Air Practice Group

(202) 564-4079

CONFIDENTIALITY NOTICE: This message may contain sensitive, privileged information covered by the deliberative process, attorney-client and/or attorney work product privileges. Do not release this message under FOIA without appropriate review. If you are not the intended recipient, or the employee or agent responsible to deliver it to the intended recipient, please contact the sender and delete all copies.

From: Culligan, Kevin
Sent: Tuesday, January 30, 2018 2:28 PM
To: Dalcher, Debra <dalcher.debra@epa.gov>; Shrager, Brian <Shrager.Brian@epa.gov>; Lamason, Bill <Lamason.Bill@epa.gov>; McLamb, Marguerite <McLamb.Marguerite@epa.gov>; Jordan, Scott <Jordan.Scott@epa.gov>
Cc: Rodman, Sonja <Rodman.Sonja@epa.gov>
Subject: RE: EPA "Once In, Always In" HAP Policy

It seems like there are two questions here:

Ex. 5 - Attorney Client

Ex. 5 - Attorney Client

From: Dalcher, Debra
Sent: Tuesday, January 30, 2018 2:13 PM
To: Shrager, Brian <Shrager.Brian@epa.gov>; Lamason, Bill <Lamason.Bill@epa.gov>; Culligan, Kevin <Culligan.Kevin@epa.gov>; McLamb, Marguerite <McLamb.Marguerite@epa.gov>; Jordan, Scott <Jordan.Scott@epa.gov>
Cc: Rodman, Sonja <Rodman.Sonja@epa.gov>
Subject: FW: EPA "Once In, Always In" HAP Policy
Importance: High

Can anyone help with this one?

From: Jared Rothstein [mailto:rothsteinj@socma.com]
Sent: Tuesday, January 30, 2018 1:48 PM
To: Torres, Elineth <Torres.Elineth@epa.gov>; Dalcher, Debra <dalcher.debra@epa.gov>
Subject: EPA "Once In, Always In" HAP Policy

Hello Debra and Elineth,

I recently reviewed the U.S. EPA guidance memorandum announcing its withdrawal of its “once in always in” policy for the classification of major sources of hazardous air pollutants under section 112 of the Clean Air Act, and had a couple questions regarding implementation. Do you know which states have the delegated authority to ratify this change in policy? My understanding is that it would only apply to the states that have been delegated by EPA to administer the 112 program. I assume EPA’s position is that the states with delegated authority are obliged to follow the new policy if they want to maintain their delegation, because the new memo says clearly that the old policy is not authorized by the statute? Any information you might have regarding state adoption of the policy would be very helpful.

Thank you!

Jared

Jared A. Rothstein | *Senior Manager, Regulatory Affairs*

Society of Chemical Manufacturers & Affiliates (SOCMA)

1400 Crystal Drive | Suite 630 | Arlington, VA 22202

(571) 348-5122 | rothsteinj@socma.com

To: Dalcher, Debra[dalcher.debra@epa.gov]
Bcc: Jordan, Scott[Jordan.Scott@epa.gov]
From: Jordan, Scott
Sent: Thur 1/18/2018 11:50:41 AM
Subject: OIAI Memo - Current Draft?

Debra –

Can you send me the current draft OAIA memo that you have? I want to start doing some edits on it today, and want to be sure that I am adding my suggested edits to the most current draft.

Thanks,

Scott Jordan

Air and Radiation Law Office

Office of General Counsel

202-564-7508

Bcc: Jordan, Scott[Jordan.Scott@epa.gov]
To: Dalcher, Debra[dalcher.debra@epa.gov]
From: Jordan, Scott
Sent: Tue 1/9/2018 4:22:14 PM
Subject: Re: OIAI Rulemaking Docket

Ex. 5 - Attorney Client

Scott Jordan

Air and Radiation Law Office

Office of General Counsel

202-564-7508

From: Dalcher, Debra
Sent: Tuesday, January 9, 2018 11:12 AM
To: Jordan, Scott
Subject: OIAI Rulemaking Docket

Scott,

Ex. 5 - Attorney Client

If you are not the right person to ask, please let me know.

Thanks, Debra

Debra S. Dalcher

U.S. EPA

Policy and Strategies Group

Sector Policies and Programs Division, OAQPS

109 T.W. Alexander Drive

Research Triangle Park, NC 27711

Phone: 919-541-2443

Cc: Lamason, Bill[Lamason.Bill@epa.gov]; Rodman, Sonja[Rodman.Sonja@epa.gov]
Bcc: Jordan, Scott[Jordan.Scott@epa.gov]
To: Dalcher, Debra[dalcher.debra@epa.gov]; Culligan, Kevin[Culligan.Kevin@epa.gov]; McLamb, Marguerite[McLamb.Marguerite@epa.gov]
From: Jordan, Scott
Sent: Tue 1/9/2018 3:37:34 PM
Subject: OIAI Discussion - Seeking further clarification re "final agency action"

Ex. 5 - Attorney Client

Scott Jordan

Air and Radiation Law Office

Office of General Counsel

202-564-7508

From: Dalcher, Debra
Sent: Monday, January 8, 2018 2:34 PM
To: Jordan, Scott; Culligan, Kevin; McLamb, Marguerite
Cc: Lamason, Bill; Dalcher, Debra
Subject: RE: OIAI Discussion - Open Issues (e.g. Final Agency Action, Synthetic Minor Source Language)

All, Bill was able to reach out to Peter and Scott also spoke with Sonja.

Ex. 5 - Attorney Client

Ex. 5 - Attorney Client

Thank you, Debra

-----Original Appointment-----
From: Dalcher, Debra
Sent: Friday, January 05, 2018 11:20 AM
To: Dalcher, Debra; Jordan, Scott; Culligan, Kevin
Cc: Lamason, Bill; McLamb, Marguerite
Subject: OIAI Discussion - Agenda will be Added / Memo w/SJ Edits Attached
When: Monday, January 08, 2018 11:00 AM-12:00 PM (UTC-05:00) Eastern Time (US & Canada).
Where: RTP-OAQPS-919-541-4332-SPPD/Phone-Line/RTP-OAQPS-BLDG-C

Agenda

Wehrum Version of Memo

Ex. 5 - Attorney Client

Ex. 5 - Attorney Client

Bcc: Jordan, Scott[Jordan.Scott@epa.gov]
To: Rodman, Sonja[Rodman.Sonja@epa.gov]
From: Jordan, Scott
Sent: Tue 1/23/2018 3:56:32 PM
Subject: OIAI - ARLO Input re Process vs Substance
Comment_National_Resources_Defence_Council_(NRDC) May 4 2007 (1).pdf

Sonja -

Ex. 5 - Attorney Client

Scott Jordan

Air and Radiation Law Office

Office of General Counsel

202-564-7508

From: Dalcher, Debra
Sent: Monday, January 22, 2018 3:56 PM
To: Jordan, Scott
Cc: Dalcher, Debra; Lamason, Bill; Culligan, Kevin; Rodman, Sonja
Subject: RE: Reclassification of Major Sources as Area Sources Under Section 112_Draft_1 22 18_1pm.docx

Scott,

Ex. 5 - Attorney Client

That is the last of Kevin's comments. None from Penny yet.

Thank you, Debra

From: Dalcher, Debra
Sent: Monday, January 22, 2018 3:02 PM
To: Jordan, Scott <Jordan.Scott@epa.gov>
Cc: Dalcher, Debra <dalcher.debra@epa.gov>
Subject: Reclassification of Major Sources as Area Sources Under Section 112_Draft_1 22 18_1pm.docx

Scott, see attached.

Ex. 5 - Attorney Client

Ex. 5 - Attorney Client

Debra

From: Jordan, Scott
Location: Bill's Office, Call in on Ex. 6 - Personal Privacy
Importance: Normal
Subject: Accepted: Pre-Peter Meeting to Discuss OIAI Memo - re. Implementation Section (OGC outstanding comments)
Start Date/Time: Mon 12/4/2017 4:00:00 PM
End Date/Time: Mon 12/4/2017 5:00:00 PM

From: Jordan, Scott
Location: RTP-OAQPS-Ex. 6 - Personal Privacy SPPD/Phone-Line/RTP-OAQPS-BLDG-C
Importance: Normal
Subject: Accepted: OIAI Discussion
Start Date/Time: Mon 1/8/2018 4:00:00 PM
End Date/Time: Mon 1/8/2018 5:00:00 PM

Cc: Versace, Paul[Versace.Paul@epa.gov]
Bcc: Jordan, Scott[Jordan.Scott@epa.gov]
To: McLamb, Marguerite[McLamb.Marguerite@epa.gov]; Vetter, Rick[Vetter.Rick@epa.gov]; Rodman, Sonja[Rodman.Sonja@epa.gov]
From: Jordan, Scott
Sent: Thur 11/30/2017 5:02:08 PM
Subject: Re: first cut at revising OIAI memo - Scott's comments

Marguerite - Thanks.

Scott Jordan

Air and Radiation Law Office

Office of General Counsel

202-564-7508

From: McLamb, Marguerite
Sent: Thursday, November 30, 2017 11:57 AM
To: Jordan, Scott; Vetter, Rick; Rodman, Sonja
Cc: Versace, Paul
Subject: RE: first cut at revising OIAI memo - Scott's comments

Scott,

Thanks for sharing your thoughts and insights. I agree that these are important points and am sharing them with folks here. I'll be in touch more soon.

Best,

Marguerite

From: Jordan, Scott
Sent: Thursday, November 30, 2017 11:19 AM
To: Vetter, Rick <Vetter.Rick@epa.gov>; Rodman, Sonja <Rodman.Sonja@epa.gov>
Cc: Versace, Paul <Versace.Paul@epa.gov>; McLamb, Marguerite <McLamb.Marguerite@epa.gov>
Subject: Re: first cut at revising OIAI memo - Scott's comments

Thanks.

Ex. 5 - Attorney Client

We have a meeting set up on this for Monday at 1:00, I will plan to raise my concern in that meeting.

Scott Jordan

Air and Radiation Law Office

Office of General Counsel

202-564-7508

From: Vetter, Rick
Sent: Thursday, November 30, 2017 10:58 AM
To: Jordan, Scott; Rodman, Sonja
Cc: Versace, Paul; McLamb, Marguerite
Subject: RE: first cut at revising OIAI memo - Scott's comments

Ex. 5 - Attorney Client

I can try to work in a footnote explaining the situation if that will help.

Rick

Richard H. Vetter

Richard H. Vetter

Attorney Advisor

Air & Radiation Law Office

Office of General Counsel

vetter.rick@epa.gov

919-541-2127

From: Jordan, Scott
Sent: Thursday, November 30, 2017 8:43 AM
To: Rodman, Sonja <Rodman.Sonja@epa.gov>; Vetter, Rick <Vetter.Rick@epa.gov>
Cc: Versace, Paul <Versace.Paul@epa.gov>; McLamb, Marguerite <McLamb.Marguerite@epa.gov>
Subject: Re: first cut at revising OIAI memo - Scott's comments

First, I have marked a few comments in the attached (which is the redline version that Sonja circulated).

Ex. 5 - Attorney Client

Ex. 5 - Attorney Client

Scott Jordan

Air and Radiation Law Office

Office of General Counsel

202-564-7508

From: Rodman, Sonja
Sent: Tuesday, November 28, 2017 5:16 PM
To: Vetter, Rick; Jordan, Scott
Cc: Versace, Paul
Subject: FW: first cut at revising OIAI memo

Ex. 6 - Personal Privacy

Rick & Scott, First, I apologize for (1) not finding time to sit down with the two of you today and

Ex. 6 - Personal Privacy

and (2) not finding time to look at this. It is my understanding that Peter would like to get a "polished draft" of this to the Administrator next week. The goal of providing a draft will NOT be to present something for signature, but instead to present an example of what we might be able to do and get general guidance on direction.

Ex. 5 - Attorney Client

Ex. 5 - Attorney Client

So sorry to drop this and run. Thanks! - Sonja

Ex. 5 - Attorney Client

Sonja L. Rodman
Air Toxics, Consumer Protection and Indoor Air Practice Group
(202) 564-4079

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Cc: Versace, Paul[Versace.Paul@epa.gov]; McLamb, Marguerite[McLamb.Marguerite@epa.gov]
Bcc: Jordan, Scott[Jordan.Scott@epa.gov]
To: Vetter, Rick[Vetter.Rick@epa.gov]; Rodman, Sonja[Rodman.Sonja@epa.gov]
From: Jordan, Scott
Sent: Thur 11/30/2017 4:18:54 PM
Subject: Re: first cut at revising OIAI memo - Scott's comments

Thanks.

Ex. 5 - Attorney Client

We have a meeting set up on this for Monday at 1:00, I will plan to raise my concern in that meeting.

Scott Jordan

Air and Radiation Law Office

Office of General Counsel

202-564-7508

From: Vetter, Rick
Sent: Thursday, November 30, 2017 10:58 AM
To: Jordan, Scott; Rodman, Sonja
Cc: Versace, Paul; McLamb, Marguerite
Subject: RE: first cut at revising OIAI memo - Scott's comments

Ex. 5 - Attorney Client

Rick

Richard H. Vetter

Richard H. Vetter

Attorney Advisor

Air & Radiation Law Office

Office of General Counsel

vetter.rick@epa.gov

919-541-2127

From: Jordan, Scott
Sent: Thursday, November 30, 2017 8:43 AM
To: Rodman, Sonja <Rodman.Sonja@epa.gov>; Vetter, Rick <Vetter.Rick@epa.gov>
Cc: Versace, Paul <Versace.Paul@epa.gov>; McLamb, Marguerite <McLamb.Marguerite@epa.gov>
Subject: Re: first cut at revising OIAI memo - Scott's comments

First, I have marked a few comments in the attached (which is the redline version that Sonja circulated).

Ex. 5 - Attorney Client

Ex. 5 - Attorney Client

Scott Jordan

Air and Radiation Law Office

Office of General Counsel

202-564-7508

From: Rodman, Sonja
Sent: Tuesday, November 28, 2017 5:16 PM
To: Vetter, Rick; Jordan, Scott
Cc: Versace, Paul
Subject: FW: first cut at revising OIAI memo

Ex. 6 - Personal Privacy

Rick & Scott, First, I apologize for (1) not finding time to sit down with the two of you today and

Ex. 6 - Personal Privacy

and (2) not finding time to look at this. It is my understanding that Peter would like to get a "polished draft" of this to the Administrator next week. The goal of providing a draft will NOT be to present something for signature, but instead to present an example of what we might be able to do and get general guidance on direction.

Ex. 5 - Attorney Client

Ex. 5 - Attorney Client

Ex. 5 - Attorney Client

So sorry to drop this and run. Thanks! - Sonja

Sonja L. Rodman
Air Toxics, Consumer Protection and Indoor Air Practice Group
(202) 564-4079

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-----Original Message-----
From: McLamb, Marguerite
Sent: Tuesday, November 28, 2017 10:14 AM
To: Rodman, Sonja <Rodman.Sonja@epa.gov>
Subject: first cut at revising OIAI memo

Sonja,
Attached is a rough first cut at revising the OIAI memo (RLSO and clean w comments). It's rough -- not cleaned up, formatted, or fully intact yet -- but should convey a general direction for the document enough to give you something to respond to.
I hope you had a great Thanksgiving!
Best,
Marguerite

Ex. 6 - Personal Privacy

****

Marguerite E. McLamb
Policy Advisor
Sector Policies and Programs Division
Office of Air Quality Planning & Standards
U.S. Environmental Protection Agency
Research Triangle Park, NC 27711
Phone: (919) 541-7858
Fax: (919) 541-4991
mclamb.marguerite@epa.gov

To: Rodman, Sonja[Rodman.Sonja@epa.gov]
Bcc: Jordan, Scott[Jordan.Scott@epa.gov]
From: Jordan, Scott
Sent: Thur 1/11/2018 11:49:00 AM
Subject: RE: Interpretive Rules -

Ex. 5 - Attorney Client

Also, do you think it would be worthwhile for the two of us to meet at 10:00, and/or do you want to be on the call with OAQPS at 12:30?

Scott Jordan

Air and Radiation Law Office

Office of General Counsel

202-564-7508

From: Rodman, Sonja
Sent: Wednesday, January 10, 2018 5:26 PM
To: Jordan, Scott <Jordan.Scott@epa.gov>
Cc: Prabhu, Aditi <Prabhu.Aditi@epa.gov>; Simons, Andrew <Simons.Andrew@epa.gov>
Subject: Re: Interpretive Rules

Ex. 5 - Attorney Client

Ex. 5 - Attorney Client

Ex. 5 - Attorney Client

Sent from my iPhone

On Jan 10, 2018, at 4:14 PM, Jordan, Scott <Jordan.Scott@epa.gov> wrote:

Ex. 5 - Attorney Client

Ex. 5 - Attorney Client

Thanks again for your wisdom on this.

Scott Jordan

Air and Radiation Law Office

Office of General Counsel

202-564-7508

From: Prabhu, Aditi
Sent: Wednesday, January 10, 2018 3:47 PM
To: Jordan, Scott <Jordan.Scott@epa.gov>
Cc: Rodman, Sonja <Rodman.Sonja@epa.gov>; Simons, Andrew <Simons.Andrew@epa.gov>
Subject: RE: Interpretive Rules

Ex. 5 - Attorney Client

Ex. 5 - Attorney Client

Ex. 5 - Attorney Client

Ex. 5 - Deliberative Process

We can discuss tomorrow.

Aditi Prabhu
Office of General Counsel
U.S. Environmental Protection Agency
(202)564-2473

From: Prabhu, Aditi
Sent: Wednesday, January 10, 2018 3:10 PM
To: Jordan, Scott <Jordan.Scott@epa.gov>
Cc: Rodman, Sonja <Rodman.Sonja@epa.gov>; Simons, Andrew <Simons.Andrew@epa.gov>
Subject: RE: Interpretive Rules

Ex. 5 - Attorney Client

Ex. 5 - Attorney Client

Hi Scott – Sorry I haven't had time to delve into this yet. Tomorrow from 10-11 or 1-2 would work for me.

Aditi Prabhu
Office of General Counsel
U.S. Environmental Protection Agency
(202)564-2473

From: Jordan, Scott
Sent: Wednesday, January 10, 2018 3:00 PM
To: Prabhu, Aditi <Prabhu.Aditi@epa.gov>
Cc: Rodman, Sonja <Rodman.Sonja@epa.gov>; Simons, Andrew <Simons.Andrew@epa.gov>
Subject: RE: Interpretive Rules

Ex. 5 - Attorney Client

Ex. 5 - Attorney Client

Aditi –

I just found out that OAR is setting up a call next Wednesday to discuss our options, so it would be good if we could talk tomorrow about my questions.

Do you have any time available tomorrow? I am currently available any time between 9 and 4, except I have a meeting from 2-3.

Sorry for the short turnaround on this.

Scott Jordan

Air and Radiation Law Office

Office of General Counsel

202-564-7508

From: Jordan, Scott
Sent: Wednesday, January 10, 2018 7:13 AM
To: Talty, Mark <Talty.Mark@epa.gov>
Cc: Rodman, Sonja <Rodman.Sonja@epa.gov>; Simons, Andrew <Simons.Andrew@epa.gov>; Prabhu, Aditi <Prabhu.Aditi@epa.gov>
Subject: RE: Interpretive Rules - Final Agency Action? Subject to Judicial Review? (re OIAI Policy)

Mark – Thanks for passing this on.

Aditi – This is not a fire drill, but it would be good if I could get your input in the next day or so. If you are tied up on other things, please let me know when you can reasonably get to this.

Ex. 5 - Attorney Client

Scott Jordan

Air and Radiation Law Office

Office of General Counsel

202-564-7508

From: Talty, Mark
Sent: Tuesday, January 09, 2018 10:29 AM
To: Jordan, Scott <Jordan.Scott@epa.gov>
Cc: Rodman, Sonja <Rodman.Sonja@epa.gov>; Simons, Andrew <Simons.Andrew@epa.gov>; Prabhu, Aditi <Prabhu.Aditi@epa.gov>
Subject: RE: Interpretive Rules Ex. 5 - Attorney Client

Hi, Scott. Aditi, copied here, Ex. 5 - Attorney Client
She'll be able to address both questions for you.

Best regards,

Mark

Mark C. Talty

Cross-Cutting Issues Law Office

Office of General Counsel

U.S. Environmental Protection Agency

(202) 564-1262

talty.mark@epa.gov

From: Jordan, Scott
Sent: Tuesday, January 09, 2018 10:10 AM
To: Talty, Mark <Talty.Mark@epa.gov>
Cc: Rodman, Sonja <Rodman.Sonja@epa.gov>; Simons, Andrew <Simons.Andrew@epa.gov>
Subject: Interpretive Rules - Ex. 5 - Attorney Client

Mark -

As an initial question: Are you the right CCILO person to talk to about Ex. 5 - Attorney Client Ex. 5 - Attorney Client If so, see my questions below. If not, please let me know the right person to talk to, or forward this email to them.

Ex. 5 - Attorney Client

Ex. 5 - Attorney Client

If you want to discuss any aspect of this today, I am working from home at Ex. 6 - Personal Privacy

Ex. 6 - Personal Privacy

Thanks,

Scott Jordan

Air and Radiation Law Office

Office of General Counsel

202-564-7508

Bcc: Jordan, Scott[Jordan.Scott@epa.gov]
To: Dalcher, Debra[dalcher.debra@epa.gov]
From: Jordan, Scott
Sent: Fri 1/19/2018 8:06:47 PM
Subject: Fw: just a couple minor comments
OIAI.Revised OIAI memorandum.SJJ+DD.1.18.18+SJJ + DD 1.19.18_SLR.docx

Debra - Here is the document with Sonja's comments. (Sorry for the delay in forwarding this. Her email appeared in my mailbox just a couple of minutes ago.)

I took a quick look at Sonja's comments, and they are minor. We can talk on Monday if you have any questions.

I will be signing off for today shortly to g Ex. 6 - Personal Privacy

Scott Jordan

Air and Radiation Law Office

Office of General Counsel

202-564-7508

From: Rodman, Sonja
Sent: Friday, January 19, 2018 1:42 PM
To: Jordan, Scott
Subject: just a couple minor comments

I think we should provide the FO with an update at the next reg review and ask them when they'd like to review. In my opinion, it would make sense to hold off on sending a draft forward until we have decided with OAR Ex. 5 - Attorney Client

Ex. 5 - Attorney Client

Sonja L. Rodman

Air Toxics, Consumer Protection and Indoor Air Practice Group

(202) 564-4079

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Bcc: Jordan, Scott[Jordan.Scott@epa.gov]
To: Rodman, Sonja[Rodman.Sonja@epa.gov]; Dalcher, Debra[dalcher.debra@epa.gov]
From: Jordan, Scott
Sent: Fri 1/19/2018 2:43:00 PM
Subject: Fw: OIAI - Revised Memo post Harlow Meeting - Scott's Comments
OIAI.Revised OIAI memorandum.SJJ+DD.1.18.18+SJJ + DD 1.19.18.docx

Debra - Thanks.

Sonja - Please review this version. Debra has made some minor edits based on the comments I inserted this morning.

Scott Jordan

Air and Radiation Law Office

Office of General Counsel

202-564-7508

From: Dalcher, Debra
Sent: Friday, January 19, 2018 9:37 AM
To: Jordan, Scott; Dalcher, Debra
Subject: Re: OIAI - Revised Memo post Harlow Meeting - Scott's Comments

Ex. 5 - Attorney Client

Edits are welcome. Keep me in the loop on OGC front office review please. Thank you, Debra

---

From: Jordan, Scott
Sent: Friday, January 19, 2018 8:34:04 AM
To: Dalcher, Debra
Cc: Lamason, Bill; Rodman, Sonja
Subject: OIAI - Revised Memo post Harlow Meeting - Scott's Comments

[Adding Sonja: Sonja, at what point do you want to review this memo, and when should we be providing OGC front office review? I think the attached version is is ready for your review.]

Ex. 5 - Attorney Client

Scott Jordan

Air and Radiation Law Office

Office of General Counsel

202-564-7508

From: Dalcher, Debra
Sent: Thursday, January 18, 2018 7:04 PM
To: Jordan, Scott
Cc: Dalcher, Debra; Lamason, Bill
Subject: Revised Memo post Marlow Meeting

Scott, please review the attached. Ex. 5 - Attorney Client

Ex. 5 - Attorney Client

Thank you, Debra

To: Jordan, Scott[Jordan.Scott@epa.gov]
From: Jordan, Scott
Sent: Fri 1/19/2018 2:03:59 PM
Subject: Once In Always In

See emails below

Ex. 5 - Attorney Client

Scott Jordan

Air and Radiation Law Office

Office of General Counsel

202-564-7508

From: Prabhu, Aditi
Sent: Thursday, January 18, 2018 2:21 PM
To: Rodman, Sonja; Jordan, Scott
Cc: Simons, Andrew
Subject: RE: Once In Always In - Follow up Question

Ex. 5 - Attorney Client

Ex. 5 - Attorney Client

Aditi Prabhu
Office of General Counsel
U.S. Environmental Protection Agency
(202)564-2473

From: Rodman, Sonja
Sent: Thursday, January 18, 2018 11:29 AM
To: Jordan, Scott <Jordan.Scott@epa.gov>
Cc: Prabhu, Aditi <Prabhu.Aditi@epa.gov>; Simons, Andrew <Simons.Andrew@epa.gov>
Subject: Re: Once In Always In - Follow up Question

Ex. 5 - Attorney Client

Sent from my iPhone

On Jan 18, 2018, at 11:19 AM, Rodman, Sonja <Rodman.Sonja@epa.gov> wrote:

Ex. 5 - Attorney Client

Sent from my iPhone

On Jan 18, 2018, at 7:24 AM, Jordan, Scott <Jordan.Scott@epa.gov> wrote:

Aditi and Andy –

Ex. 5 - Attorney Client

Thanks,

Scott Jordan

Air and Radiation Law Office

Office of General Counsel

202-564-7508

From: Jordan, Scott
Location: Call in Ex. 6 - Personal Privacy
Importance: Normal
Subject: Accepted: OIAI Memo - Supporting Doc Development
Start Date/Time: Wed 12/13/2017 4:30:00 PM
End Date/Time: Wed 12/13/2017 5:00:00 PM

Cc: Shrager, Brian[Shrager.Brian@epa.gov]
Bcc: Jordan, Scott[Jordan.Scott@epa.gov]
To: Dalcher, Debra[dalcher.debra@epa.gov]; Vetter, Rick[Vetter.Rick@epa.gov]; Rodman, Sonja[Rodman.Sonja@epa.gov]; McLamb, Marguerite[McLamb.Marguerite@epa.gov]; Lamason, Bill[Lamason.Bill@epa.gov]; French, Chuck[French.Chuck@epa.gov]
From: Jordan, Scott
Sent: Fri 12/8/2017 2:50:33 PM
Subject: OIAI Revision Memo - Scott Comments
OIAI Revision Memo_12.7.17 DD BLS 1200+SJJ12.8.17.docx

I have marked some suggested edits and comment on the OIAI revision memo. See attached.

At this point, my suggestion is that we not do too much work on this until we get some guidance on the approach management wants to take. I think this is sufficient to show very generally what the memo would look like, but there are some aspects of this memo that I think we will want to revise or expand, once we get direction on which option to implement.

Scott Jordan

Air and Radiation Law Office

Office of General Counsel

202-564-7508

From: Dalcher, Debra
Sent: Thursday, December 7, 2017 11:48 AM
To: Jordan, Scott; Vetter, Rick; Rodman, Sonja; McLamb, Marguerite; Lamason, Bill; French, Chuck
Cc: Dalcher, Debra; Shrager, Brian
Subject: OIAI Options Pager & OIAI Revision Memo

Good Morning Everyone,

Attached you will find the current version of the Revision Memo incorporating Scott Jordan's most recent edits/comments/suggestions. After working to accommodate his most recent review Brian Shrager also reviewed (thank you Brian!). I hopefully have addressed his comments and have left his review comments in for informational purposes given I did make changes to OGC reviewed material. Please review those sections carefully and advise if those changes are not acceptable.

Attached is the also the Options Pager we will be using to brief B. Wehrum next week (probably 12/13 but nothing definitive yet). Please review the Options pager and provide edits as appropriate. The content under the second bullet was changed since everyone last reviewed this document in coordination with K. Culligan. I would like to finalize the Options Pager by COB tomorrow if possible given they will be asking for it on Monday if we meet with Bill on Wednesday (I think). Please look for any inconsistencies between the two documents if possible.

Hopefully we are getting close on the draft memo and can also finalize that draft by Monday COB to allow me time to work on the response to comment like document we reference in the memo ☺.

Thank you everyone! Debra

To: French, Chuck[French.Chuck@epa.gov]
Cc: Koerber, Mike[Koerber.Mike@epa.gov]
From: South, Peter
Sent: Wed 11/15/2017 8:50:13 PM
Subject: RE: Draft Agenda for Tomorrow (please send me your hot issues by 4:00 today)

Great—thanks.

From: French, Chuck
Sent: Wednesday, November 15, 2017 3:47 PM
To: South, Peter <South.Peter@epa.gov>
Cc: Tsirigotis, Peter <Tsirigotis.Peter@epa.gov>; Koerber, Mike <Koerber.Mike@epa.gov>; Thompson, Fred <Thompson.Fred@epa.gov>; Culligan, Kevin <Culligan.Kevin@epa.gov>
Subject: RE: Draft Agenda for Tomorrow (please send me your hot issues by 4:00 today)

Hi Pete,

The main topics Peter plans to raise with Bill are: (1) the Oil and Gas NSPS Reconsideration; and (2) the Once-in-Always-In Policy. He also plans to briefly mention the following 3 Court Ordered deadline actions scheduled for signature in December: Leather Finishing Operations RTR Proposal; Wood Building Products RTR Proposal; and Wool Fiberglass Technology Review Final Rule.

OAQPS briefed Bill on CPP earlier today. Peter will probably ask Bill if he has any further questions.

Let us know if you have questions.

Thanks!

Chuck

From: South, Peter
Sent: Wednesday, November 15, 2017 12:19 PM
To: Edwards, Chebryll <Edwards.Chebryll@epa.gov>; Harnett, Bill <Harnett.Bill@epa.gov>; Koerber, Mike <Koerber.Mike@epa.gov>; Noonan, Jenny <Noonan.Jenny@epa.gov>; Sasser, Erika <Sasser.Erika@epa.gov>; Tsirigotis, Peter <Tsirigotis.Peter@epa.gov>; Wayland, Richard <Wayland.Richard@epa.gov>; Whitlow, Jeff <Whitlow.Jeff@epa.gov>; Wood, Anna <Wood.Anna@epa.gov>; Edwards, Chebryll <Edwards.Chebryll@epa.gov>; Noonan, Jenny <Noonan.Jenny@epa.gov>; Edwards, Chebryll <Edwards.Chebryll@epa.gov>; French, Chuck <French.Chuck@epa.gov>; Hemby, James <Hemby.James@epa.gov>; Husk, Martin <Husk.Martin@epa.gov>; Ling, Michael <Ling.Michael@epa.gov>; Mathias, Scott <Mathias.Scott@epa.gov>; Noonan, Jenny <Noonan.Jenny@epa.gov>; Santiago, Juan <Santiago.Juan@epa.gov>; Scavo, Kimber <Scavo.Kimber@epa.gov>; Thompson, Fred <Thompson.Fred@epa.gov>; Whitlow, Jeff <Whitlow.Jeff@epa.gov>
Cc: Alston, Lala <Alston.Lala@epa.gov>; Ashley, John <ashley.john@epa.gov>; Brown, Kelly <Brown.Kelly@epa.gov>; Bunte, Laura <Bunte.Laura@epa.gov>; Chappell, Regina <Chappell.Regina@epa.gov>; Cortelyou-Lee, Jan <Cortelyou-Lee.Jan@epa.gov>; Eck, Janet <Eck.Janet@epa.gov>; Hemby, James <Hemby.James@epa.gov>; Husk, Martin <Husk.Martin@epa.gov>; Johnson, Yvonne W <Johnson.Yvonnew@epa.gov>; Keating, Martha <keating.martha@epa.gov>; Long, Pam <Long.Pam@epa.gov>; Shatas, Angie <Shatas.Angie@epa.gov>; Whitlow, Jeff <Whitlow.Jeff@epa.gov>
Subject: Draft Agenda for Tomorrow (please send me your hot issues by 4:00 today)

See attached draft agenda in prep for Bill Wehrum's visit to RTP tomorrow.

Division Directors: In prep for the 11:00 Hot Issues meeting, please send me the 1-2 topics you plan to raise with Bill by 4:00 pm today (each DD will have 10-15 minutes to raise 1-2 hot issues).

Feel free to call me with any questions.

Pete South

OAR/OAQPS/IO

U.S. EPA

office: 919 541-5359

cell: 919 599-7213

To: Koerber, Mike[Koerber.Mike@epa.gov]
From: South, Peter
Sent: Tue 12/5/2017 9:31:23 PM
Subject: Re: Once-In, Always In

Got it

Sent from my iPhone

On Dec 5, 2017, at 4:23 PM, Koerber, Mike <Koerber.Mike@epa.gov> wrote:

Sent from my iPhone

Begin forwarded message:

From: "Eck, Janet" <Eck.Janet@epa.gov>
Date: December 5, 2017 at 3:30:38 PM EST
To: "Koerber, Mike" <Koerber.Mike@epa.gov>
Subject: Once-In, Always In

Hi Mike, We may have a potential availability challenge for the Once-In, Always-In OAR meeting on Friday, 12/8. The meeting hasn't been schedule yet, but we were wondering if Bill has a full calendar Friday? We asked for 12/7 – 14 on the meeting request. Not sure if eliminating this one day is a possible option. Thanks.

To: Koerber, Mike[Koerber.Mike@epa.gov]
From: Lewis, Josh
Sent: Thur 12/14/2017 11:25:23 PM
Subject: Re: Materials in prep for Bill W et al. visit to RTP on 12/18

Ok. Yes let's talk tomorrow. 9ish is probably best for me

On Dec 14, 2017, at 4:56 PM, Koerber, Mike <Koerber.Mike@epa.gov> wrote:

Steve talked with Bill and we are going to schedule this for 9:00-9:15.

Also, if you're around tomorrow, then I'd like to go over logistics for Monday.

From: Koerber, Mike
Sent: Thursday, December 14, 2017 4:16 PM
To: Lewis, Josh <Lewis.Josh@epa.gov>
Cc: South, Peter <South.Peter@epa.gov>
Subject: RE: Materials in prep for Bill W et al. visit to RTP on 12/18

Okay – we'll stand down. We will schedule when I hear back from you.

From: Lewis, Josh
Sent: Thursday, December 14, 2017 4:08 PM
To: Koerber, Mike <Koerber.Mike@epa.gov>
Cc: South, Peter <South.Peter@epa.gov>
Subject: RE: Materials in prep for Bill W et al. visit to RTP on 12/18

On 2nd thought let's hold off until tomorrow morning…in case I hear any additional thoughts from Bill.

From: Koerber, Mike
Sent: Thursday, December 14, 2017 4:05 PM
To: Lewis, Josh <Lewis.Josh@epa.gov>

Cc: South, Peter <South.Peter@epa.gov>
Subject: Re: Materials in prep for Bill W et al. visit to RTP on 12/18

Okay - we'll schedule this from my calendar

Sent from my iPhone

On Dec 14, 2017, at 3:56 PM, Lewis, Josh <Lewis.Josh@epa.gov> wrote:

Bill would like 15 minutes with the DDs (and other OAQPS senior leadership) right at the start of the day…so if they get there at 9 you could do prior to woodheaters…otherwise the 4 morning briefings may need to shift a bit to accommodate that.

From: South, Peter
Sent: Thursday, December 14, 2017 12:46 PM
To: Alston, Lala <Alston.Lala@epa.gov>; Koerber, Mike <Koerber.Mike@epa.gov>; OAQPS WOPS <OAQPS_WOPS@epa.gov>; OAR Briefings <OAR_Briefings@epa.gov>
Cc: Koerber, Mike <Koerber.Mike@epa.gov>; Alston, Lala <Alston.Lala@epa.gov>
Subject: Materials in prep for Bill W et al. visit to RTP on 12/18

I have attached the agenda and briefing materials in prep for Bill and the team's visit to RTP on Monday, December 18.

Mike will contact Josh to coordinate transportation from the airport (who will be picking up, timing, etc.).

Please contact me or Mike Koerber with any questions. Thanks.

Pete South

OAR/OAQPS/IO

U.S. EPA

office: 919 541-5359

cell: 919 599-7213

<< File: AA Wehrum RTP visit final agenda 12_18_17.docx >>

9:15 to 10:00	Residential Wood Heaters NSPS EPA RTP Location: C401A Call in number: 1 866-299-3188; Participant Code: 202-256-4000 << File: HPBA and PFI BW 12_18_17.docx >>
10:00 to 10:45	Prep Meeting for Mission Measures—OAQPS not participating EPA RTP Location: C401A *No materials*
11:00 to 11:45	Informational Briefing Regarding Review of 111(b) and 111(d) EPA RTP Location: C401A Call in number: 919 541-4105 (no code necessary) << File: CAA 111 Briefing 12_18_17.pptx >>
12:00 to 12:45	General Discussion re: NSR Team EPA RTP Location: C401A Call in number: 919 541-4105 (no code necessary) *No materials*

1:00 to 1:45	OAQPS All Hands EPA RTP Location: RTP EPA Auditorium C111 a, b, c Call in number: 919 541-4105 (no code necessary) *No materials*
2:00 to 2:45	Once-in, Always-in Policy Revision Location: C401A Call in number: 1 866-299-3188; Participant Code: 202-356-4740 << File: OIAI Options 12_18_17.docx >>
3:00 to 4:00	Pre-brief for Option Selection for NO2 Primary NAAQS Location: C401A Call in number: 1 866-299-3188; Participant Code: 202-256-4000 << File: NO2 NAAQS Option Select 12_18_17.pptx >>
4:15	Depart for Airport

To: Koerber, Mike[Koerber.Mike@epa.gov]; Perez, Idalia[Perez.Idalia@epa.gov]; Mckelvey, Laura[Mckelvey.Laura@epa.gov]; Colon, Toni[Colon.Toni@epa.gov]; Warner, Maryann[Warner.Maryann@epa.gov]; Davis, Matthew[Davis.Matthew@epa.gov]
Cc: Noonan, Jenny[Noonan.Jenny@epa.gov]; Cortelyou-Lee, Jan[Cortelyou-Lee.Jan@epa.gov]; Bremer, Kristen[Bremer.Kristen@epa.gov]; Terry, Sara[Terry.Sara@epa.gov]; Strine, Lora[Strine.Lora@epa.gov]
From: Ashley, Jackie
Sent: Thur 1/25/2018 10:21:02 PM
Subject: Signed today: Reclassification of Major Sources as Area Sources Under Section 112 of the Clean Air Act

Good afternoon –

Today, AA Bill Wehrum signed a guidance memorandum withdrawing the "once in always in" policy for the classification of major sources of hazardous air pollutants under section 112 of the Clean Air Act. With the new guidance, sources of hazardous air pollutants previously classified as "major sources" may be reclassified as "area" sources when the facility limits its potential to emit below major source thresholds.

A press release was issued around 5 p.m. and is available at https://www.epa.gov/newsreleases/reducing-regulatory-burdens-epa-withdraws-once-always-policy-major-sources-under-clean

The document is on the web at https://www.epa.gov/stationary-sources-air-pollution/reclassification-major-sources-area-sources-under-section-112-clean

A link to the document is also available at https://www.epa.gov/stationary-sources-air-pollution/national-emission-standards-hazardous-air-pollutants-neshap-9

Please share this information with your contacts as appropriate.

Thank you.

Jackie Ashley - US EPA - Office of Air Quality Planning and Standards - 919-541-7664 – ashley.jackie@epa.gov

To: South, Peter[South.Peter@epa.gov]; Koerber, Mike[Koerber.Mike@epa.gov]
Cc: Cortelyou-Lee, Jan[Cortelyou-Lee.Jan@epa.gov]; Iglesias, Amber[Iglesias.Amber@epa.gov]
From: Henigin, Mary
Sent: Thur 1/25/2018 8:19:04 PM
Subject: Re: OIAI Reclassification of Major Sources as Area Sources Under Section 112 _01 25 2018.docx

Thank you Pete.

Bill and David leave at 4pm for an
outside appt, so this will be signed before then

Mary

On Jan 25, 2018, at 3:13 PM, South, Peter <South.Peter@epa.gov> wrote:

See final version. No edits to text other than Bill's signature block (just formatting changes).

Thanks.

From: Eck, Janet
Sent: Thursday, January 25, 2018 2:37 PM
To: Koerber, Mike <Koerber.Mike@epa.gov>; South, Peter <South.Peter@epa.gov>
Cc: Henigin, Mary <Henigin.Mary@epa.gov>; Lamason, Bill <Lamason.Bill@epa.gov>; Dalcher, Debra <dalcher.debra@epa.gov>; French, Chuck <French.Chuck@epa.gov>; Lassiter, Penny <Lassiter.Penny@epa.gov>
Subject: OIAI Reclassification of Major Sources as Area Sources Under Section 112 _01 25 2018.docx

Attached is the Once In Always In memo that has been approved by OAR. Please forward for their final review and signature. I will put this document into CMS as #OAR-18-000-3788 for their staff to finalize. We will forward the FR notice as soon as it is approved. Thanks.

<OIAI.Reclassification of Major Sources as Area Sources Under Section 112 _01 25 2018 rev.docx>

To: Lewis, Josh[Lewis.Josh@epa.gov]; Koerber, Mike[Koerber.Mike@epa.gov]
Cc: South, Peter[South.Peter@epa.gov]
From: Henigin, Mary
Sent: Thur 1/25/2018 7:57:09 PM
Subject: RE: OIAI Reclassification of Major Sources as Area Sources Under Section 112 _01 25 2018.docx

Josh, I am wfh for a couple days. Would you mind calling me at Ex. 6 - Personal Privacy

Mary

From: Lewis, Josh
Sent: Thursday, January 25, 2018 2:51 PM
To: Koerber, Mike <Koerber.Mike@epa.gov>
Cc: Henigin, Mary <Henigin.Mary@epa.gov>; South, Peter <South.Peter@epa.gov>
Subject: RE: OIAI Reclassification of Major Sources as Area Sources Under Section 112 _01 25 2018.docx

Great. Mary, I'll stop down just to touch base.

From: Koerber, Mike
Sent: Thursday, January 25, 2018 2:44 PM
To: Lewis, Josh <Lewis.Josh@epa.gov>
Cc: Henigin, Mary <Henigin.Mary@epa.gov>; South, Peter <South.Peter@epa.gov>
Subject: FW: OIAI Reclassification of Major Sources as Area Sources Under Section 112 _01 25 2018.docx

Josh – FYI. We just got the "final" version here. Pete is doing one last scrub and will send to WOPS. They will print it and hand deliver to you ASAP.

Mike

From: Eck, Janet
Sent: Thursday, January 25, 2018 2:37 PM
To: Koerber, Mike <Koerber.Mike@epa.gov>; South, Peter <South.Peter@epa.gov>
Cc: Henigin, Mary <Henigin.Mary@epa.gov>; Lamason, Bill <Lamason.Bill@epa.gov>; Dalcher, Debra <dalcher.debra@epa.gov>; French, Chuck <French.Chuck@epa.gov>; Lassiter, Penny <Lassiter.Penny@epa.gov>
Subject: OIAI Reclassification of Major Sources as Area Sources Under Section 112 _01 25 2018.docx

Attached is the Once In Always In memo that has been approved by OAR. Please forward for their final review and signature. I will put this document into CMS as #OAR-18-000-3788 for their staff to finalize. We will forward the FR notice as soon as it is approved. Thanks.

To: OAQPS SMT2[OAQPS_SMT2@epa.gov]; OAQPS SMT1[OAQPS_SMT1@epa.gov]
From: South, Peter
Sent: Thur 12/14/2017 2:27:48 PM
Subject: Revised Agenda for Bill W and Team Visit to RTP on 12/18
AA Wehrum RTP visit final agenda 12_18_17.docx

I have attached the revised agenda in prep for 12/18.

To: Atkinson, Emily[Atkinson.Emily@epa.gov]; Koerber, Mike[Koerber.Mike@epa.gov]
Cc: Lewis, Josh[Lewis.Josh@epa.gov]; Loving, Shanita[Loving.Shanita@epa.gov]
From: South, Peter
Sent: Wed 12/13/2017 4:06:13 PM
Subject: RE: Monday 12/18 Travel to RTP and Meeting Schedule Adjustments
AA Wehrum RTP visit draft agenda v 5 12_18_17.docx

Hi Emily,

I spoke to Mike—let's just move the Res Wood Heaters meeting to 9:15 to 10:00 (from 4:00 start time). See attached agenda.

I'll plan to send you and Shanita invitees for the NSR Team meeting later today (we've invited everyone in OAQPS to the All Hands from Mike's calendar so Bill wouldn't get any response emails). I think we're set in terms of invitees for all the other meetings.

Thanks and feel free to call me with any questions.

From: Atkinson, Emily
Sent: Wednesday, December 13, 2017 10:21 AM
To: South, Peter <South.Peter@epa.gov>; Koerber, Mike <Koerber.Mike@epa.gov>
Cc: Lewis, Josh <Lewis.Josh@epa.gov>; Loving, Shanita <Loving.Shanita@epa.gov>
Subject: Monday 12/18 Travel to RTP and Meeting Schedule Adjustments

Hi Pete and Mike,

The IO team traveling to RTP now has flights set – Bill arrives from Philadelphia at 8:32am (the DC crew arrives slightly earlier at 7:45am) into Raleigh.

The DC crew has the earlier return flight taking off at 5:35pm so they would need to leave RTP no later than 4:15/4:30pm to catch their flight. Bill's flight takes off a little later to go back to Philadelphia at 5:55pm.

Let us know how you would like meetings adjusted that day – we could bump one of the afternoon meetings up to start at 9:15am or we could just shorten everything in the afternoon to be just 45 minutes.

Emily

Emily Atkinson
Management Analyst/Office Manager

Immediate Office of the Assistant Administrator
Office of Air and Radiation, USEPA
Room 5412B, 1200 Pennsylvania Avenue NW
Washington, DC 20460
Voice: 202-564-1850
Email: atkinson.emily@epa.gov

To: Koerber, Mike[Koerber.Mike@epa.gov]
Cc: Page, Steve[Page.Steve@epa.gov]
From: Shaw, Betsy
Sent: Wed 10/4/2017 9:22:08 PM
Subject: RE: ECOS is forming a workgroup on Once In, Always In

Thanks Mike!

From: Koerber, Mike
Sent: Wednesday, October 04, 2017 5:10 PM
To: Shaw, Betsy <Shaw.Betsy@epa.gov>
Cc: Page, Steve <Page.Steve@epa.gov>
Subject: FW: ECOS is forming a workgroup on Once In, Always In

Thanks, Betsy. SPPD has been thinking about this and we'll be ready to participate, as needed.

Mike

From: Lamason, Bill
Sent: Wednesday, October 04, 2017 5:08 PM
To: Tsirigotis, Peter <Tsirigotis.Peter@epa.gov>; Koerber, Mike <Koerber.Mike@epa.gov>
Subject: RE: ECOS is forming a workgroup on Once In, Always In

Mike, Peter is correct! Let me know what you need. Bill

From: Tsirigotis, Peter
Sent: Wednesday, October 04, 2017 5:04 PM
To: Koerber, Mike <Koerber.Mike@epa.gov>
Cc: Lamason, Bill <Lamason.Bill@epa.gov>
Subject: Re: ECOS is forming a workgroup on Once In, Always In

Thanks Mike. I'm CC'ing bill. His group has been thinking through this issue for the last couple of months so we're ahead on this one. Let us know if/when you need anything from us. The group also has been working on a two pager, anticipating that we may be briefing this issue at some point. Correct me if I said anything wrong bill.

On Oct 4, 2017, at 4:57 PM, Koerber, Mike <Koerber.Mike@epa.gov> wrote:

From: Shaw, Betsy
Sent: Wednesday, October 04, 2017 4:53 PM
To: Page, Steve <Page.Steve@epa.gov>; Koerber, Mike <Koerber.Mike@epa.gov>
Cc: Dunham, Sarah <Dunham.Sarah@epa.gov>
Subject: FW: ECOS is forming a workgroup on Once In, Always In

Sorry – I missed this e-mail when it was first sent. Looks like this issue is back for another go.

From: Barbery, Andrea
Sent: Friday, September 29, 2017 4:33 PM
To: Shaw, Betsy <Shaw.Betsy@epa.gov>
Subject: ECOS is forming a workgroup on Once In, Always In

Hi Betsy –

Wanted to be sure you were aware of ECOS' work on this; it was news to me. From today's ECOSWIRE:

ECOS Seeks Members for Workgroup on Once In, Always In

ECOS is forming a workgroup to reengage in a conversation with U.S. EPA regarding the Once In, Always In policy under section 112 of the Clean Air Act and Maximum Available Control Technology

(MACT) standards.

If you would like to join this group, please contact Kelly Poole of ECOS. [Poole]

Thanks,

Andrea Barbery

Office of Intergovernmental Relations

U.S. Environmental Protection Agency

202-564-1397

From: Rodman, Sonja
Location: Sonja to call Rick
Importance: Normal
Subject: OIAI
Start Date/Time: Mon 11/13/2017 4:00:00 PM
End Date/Time: Mon 11/13/2017 4:30:00 PM

From: Jordan, Scott
Location: Scott will call Sonja's Cell at Ex. 6 - Personal Privacy
Importance: Normal
Subject: OIAI - Discuss Notes Document
Start Date/Time: Thur 1/18/2018 2:30:00 PM
End Date/Time: Thur 1/18/2018 3:00:00 PM

From: Jordan, Scott
Location: Sonja's Office
Importance: Normal
Subject: OIAI - Update (Just Sonja and Scott)
Start Date/Time: Thur 1/11/2018 3:00:00 PM
End Date/Time: Thur 1/11/2018 4:00:00 PM

Feel free to decline this if you don't think we need it.

From: Jordan, Scott
Location: Sonja's Office
Importance: Normal
Subject: Once In Always In - Update and Check in
Start Date/Time: Mon 1/8/2018 6:00:00 PM
End Date/Time: Mon 1/8/2018 6:30:00 PM

I would like to have a few more minutes to wrap up a couple of points from our conversation just now. Let me know when your Noon meeting is over and you are ready to talk. (I have another call that starts at 1:30.)

To: Graham, Cheryl[Graham.Cheryl@epa.gov]
Cc: Rodman, Sonja[Rodman.Sonja@epa.gov]
From: Williams, Melina
Sent: Thur 12/14/2017 10:45:33 PM
Subject: FW: 12/18/17 Reg Review Agenda Updates

Hi Cheryl, it sounds like the once in always in NESHAP meeting has been moved to Monday at 2.

Melina Williams | US EPA | Office of General Counsel | Air and Radiation Law Office | Mail Code 2344A | phone: (202) 564-3406 | fax: (202) 564-5603

The contents of this e-mail and any attachments to it may contain deliberative-process, attorney-client, attorney work product, or otherwise privileged material. Do not distribute outside of EPA or DOJ.

From: Rodman, Sonja
Sent: Thursday, December 14, 2017 4:53 PM
To: Williams, Melina <Williams.Melina@epa.gov>
Cc: Orlin, David <Orlin.David@epa.gov>
Subject: Re: 12/18/17 Reg Review Agenda Updates

Its currently on Monday at 2:00pm

From: Williams, Melina
Sent: Thursday, December 14, 2017 4:01 PM
To: Rodman, Sonja
Cc: Orlin, David
Subject: FW: 12/18/17 Reg Review Agenda Updates

Hi Sonja,

Do you know if the briefing on the NESHAP once in always in policy has been moved? I think the NO2 option selection was moved to the same time slot.

Thanks,
Melina

Melina Williams | US EPA | Office of General Counsel | Air and Radiation Law Office | Mail Code 2344A | phone: (202) 564-3406 | fax: (202) 564-5603

The contents of this e-mail and any attachments to it may contain deliberative-process, attorney-client, attorney work product, or otherwise privileged material. Do not distribute outside of EPA or DOJ.

-----Original Message-----
From: Graham, Cheryl
Sent: Thursday, December 14, 2017 3:57 PM
To: OGC ARLO <OGC_ARLO@epa.gov>
Subject: 12/18/17 Reg Review Agenda Updates

Attached is the redline/strikeout version of the reg agenda, if you have any additions/deletions please let me know by 11:00am Monday. Reg Review is scheduled for Monday (12/18) at 2:30pm in room 4045.

Thank you

Cheryl R. Graham
OGC/ARLO
(202) 564-5473

From: Rodman, Sonja
Location: Sonja's office or phone
Importance: Normal
Subject: Touch base on OIAI
Start Date/Time: Wed 1/17/2018 3:30:00 PM
End Date/Time: Wed 1/17/2018 4:00:00 PM

To: Rodman, Sonja[Rodman.Sonja@epa.gov]
From: Jordan, Scott
Sent: Thur 1/18/2018 11:33:34 AM
Subject: RE: OIAI - Discuss Notes Document

Will do.

Scott Jordan

Air and Radiation Law Office

Office of General Counsel

202-564-7508

From: Rodman, Sonja
Sent: Wednesday, January 17, 2018 4:51 PM
To: Jordan, Scott <Jordan.Scott@epa.gov>
Subject: RE: OIAI - Discuss Notes Document

Scott, Can you call me on my cell for this. Ex. 6 - Personal Privacy

I have an **Ex. 6 - Personal Privacy**

Sonja L. Rodman

Air Toxics, Consumer Protection and Indoor Air Practice Group

(202) 564-4079

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-----Original Appointment-----
From: Jordan, Scott
Sent: Wednesday, January 17, 2018 4:22 PM
To: Rodman, Sonja
Subject: OIAI - Discuss Notes Document
When: Thursday, January 18, 2018 9:30 AM-10:00 AM (UTC-05:00) Eastern Time (US & Canada).
Where: Sonja's Office

To: Prabhu, Aditi[Prabhu.Aditi@epa.gov]; Simons, Andrew[Simons.Andrew@epa.gov]
Cc: Rodman, Sonja[Rodman.Sonja@epa.gov]
From: Jordan, Scott
Sent: Mon 1/22/2018 7:55:59 PM
Subject: RE: Once-In-Always-In Question - NODA vs Supplemental Proposal vs New Proposal

Thanks. This is very helpful.

Scott Jordan

Air and Radiation Law Office

Office of General Counsel

202-564-7508

From: Prabhu, Aditi
Sent: Monday, January 22, 2018 2:55 PM
To: Jordan, Scott <Jordan.Scott@epa.gov>; Simons, Andrew <Simons.Andrew@epa.gov>
Cc: Rodman, Sonja <Rodman.Sonja@epa.gov>
Subject: RE: Once-In-Always-In Question - NODA vs Supplemental Proposal vs New Proposal

Ex. 5 - Attorney Client

Ex. 5 - Attorney Client

Aditi Prabhu
Office of General Counsel
U.S. Environmental Protection Agency
(202)564-2473

From: Jordan, Scott
Sent: Monday, January 22, 2018 12:52 PM
To: Prabhu, Aditi <Prabhu.Aditi@epa.gov>; Simons, Andrew <Simons.Andrew@epa.gov>
Cc: Rodman, Sonja <Rodman.Sonja@epa.gov>
Subject: Once-In-Always-In Question - NODA vs Supplemental Proposal vs New Proposal

Ex. 5 - Attorney Client

Scott Jordan

Air and Radiation Law Office

Office of General Counsel

202-564-7508

From: Jordan, Scott
Location: Sonja's Office
Importance: Normal
Subject: OIAI - Discuss Notes Document
Start Date/Time: Thur 1/18/2018 2:30:00 PM
End Date/Time: Thur 1/18/2018 3:00:00 PM

To: Rodman, Sonja[Rodman.Sonja@epa.gov]
From: Wilcox, Geoffrey
Sent: Fri 1/26/2018 7:46:49 PM
Subject: RE: Regular Flexiplace today / OIAI memo

Ta!

From: Rodman, Sonja
Sent: Friday, January 26, 2018 2:18 PM
To: Wilcox, Geoffrey <wilcox.geoffrey@epa.gov>
Subject: FW: Regular Flexiplace today / OIAI memo

Sonja L. Rodman

Air Toxics, Consumer Protection and Indoor Air Practice Group

(202) 564-4079

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From: Rodman, Sonja
Sent: Friday, January 26, 2018 8:20 AM
To: OGC ARLO Air Toxics <OGC_ARLO_Air_Toxics@epa.gov>; OGC ARLO MGMT <OGC_ARLO_MGMT@epa.gov>
Subject: Regular Flexiplace today / OIAI memo

Ex. 6 - Personal Privacy

Finally, FYI, I'm attaching the memo Bill Wehrum signed yesterday afternoon withdrawing the Once-In-Always-In policy.

Happy Friday!!

Sonja L. Rodman

Air Toxics, Consumer Protection and Indoor Air Practice Group

(202) 564-4079

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To: Srinivasan, Gautam[Srinivasan.Gautam@epa.gov]
Cc: Schmidt, Lorie[Schmidt.Lorie@epa.gov]; Zenick, Elliott[Zenick.Elliott@epa.gov]; Rodman, Sonja[Rodman.Sonja@epa.gov]
From: Jordan, Scott
Sent: Mon 12/4/2017 7:48:11 PM
Subject: Requesting FlexPlace on Tuesday, Dec. 5, and Friday, Dec. 8

I am requesting **Ex. 6 - Personal Privacy**

I expect to work on the Once In Always In Repeal memo, the CPP review/litigation, and any other matters that require my attention.

I will be reachable at **Ex. 6 - Personal Privacy**

Scott Jordan

Air and Radiation Law Office

Office of General Counsel

202-564-7508

To: Rodman, Sonja[Rodman.Sonja@epa.gov]
From: Wilcox, Geoffrey
Sent: Fri 1/26/2018 7:05:25 PM
Subject: RE: Regular Flexiplace today / OIAI memo

Sorry. Remember what Judge Pillard said about the role of the lawyer versus the client.

From: Rodman, Sonja
Sent: Friday, January 26, 2018 2:04 PM
To: Wilcox, Geoffrey <wilcox.geoffrey@epa.gov>
Subject: FW: Regular Flexiplace today / OIAI memo

Ex. 5 - Attorney Client

Sonja L. Rodman

Air Toxics, Consumer Protection and Indoor Air Practice Group

(202) 564-4079

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From: Thrift, Mike
Sent: Friday, January 26, 2018 1:50 PM
To: Rodman, Sonja <Rodman.Sonja@epa.gov>; OGC ARLO Air Toxics <OGC_ARLO_Air_Toxics@epa.gov>; OGC ARLO MGMT <OGC_ARLO_MGMT@epa.gov>
Subject: RE: Regular Flexiplace today / OIAI memo

Ex. 5 - Attorney Client

From: Rodman, Sonja
Sent: Friday, January 26, 2018 5:20 AM
To: OGC ARLO Air Toxics <OGC_ARLO_Air_Toxics@epa.gov>; OGC ARLO MGMT <OGC_ARLO_MGMT@epa.gov>
Subject: Regular Flexiplace today / OIAI memo

I'll be working regular flexiplace today Ex. 6 - Personal Privacy

Ex. 6 - Personal Privacy

Ex. 6 - Personal Privacy

Finally, FYI, I'm attaching the memo Bill Wehrum signed yesterday afternoon withdrawing the Once-In-Always-In policy.

Happy Friday!!

Sonja L. Rodman

Air Toxics, Consumer Protection and Indoor Air Practice Group

(202) 564-4079

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To: Jordan, Scott[Jordan.Scott@epa.gov]
Sent: Mon 1/22/2018 1:35:49 PM
Subject: FW: REMINDER: 1/23/18 Reg Review Agenda Updates

Thanks Scott, Can you forward

Sonja L. Rodman
Air Toxics, Consumer Protection and Indoor Air Practice Group
(202) 564-4079

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-----Original Message-----
From: Jordan, Scott
Sent: Monday, January 22, 2018 8:34 AM
To: Graham, Cheryl <Graham.Cheryl@epa.gov>
Cc: Rodman, Sonja <Rodman.Sonja@epa.gov>; Zenick, Elliott <Zenick.Elliott@epa.gov>
Subject: RE: REMINDER: 1/23/18 Reg Review Agenda Updates

Cheryl -

Please add to meetings:

Wehrum Meeting with Hearth, Patio and Barbecue Association re Wood Heaters NSPS Rule (01/25 at 11:00)

And to new items for priority discussion:

Guidance Memorandum re Once-In-Always-In Policy under CAA 112 (Scott Jordan)

Scott Jordan
Air and Radiation Law Office
Office of General Counsel
202-564-7508

-----Original Message-----
From: Graham, Cheryl
Sent: Monday, January 22, 2018 6:29 AM
To: OGC ARLO <OGC_ARLO@epa.gov>
Subject: REMINDER: 1/23/18 Reg Review Agenda Updates

Attached is the redline/strikeout version of the reg agenda, if you have any additions/deletions please let me know by 11:00am today. Reg Review is scheduled for Tuesday (01/23) at 1:00pm in room 4045.

Thank you

Cheryl R. Graham
OGC/ARLO
(202) 564-5473

To: Rodman, Sonja[Rodman.Sonja@epa.gov]
From: Jordan, Scott
Sent: Fri 1/26/2018 6:35:56 PM
Subject: Automatic reply: OIAI

I will be out of the office and not checking email until Monday, January 29.

From: Jordan, Scott
Location: Sonja's office or phone
Importance: Normal
Subject: Accepted: Touch base on OIAI
Start Date/Time: Wed 1/17/2018 3:30:00 PM
End Date/Time: Wed 1/17/2018 4:00:00 PM

To: Simons, Andrew[Simons.Andrew@epa.gov]; Prabhu, Aditi[Prabhu.Aditi@epa.gov]; Jordan, Scott[Jordan.Scott@epa.gov]
Sent: Thur 1/11/2018 2:17:38 PM
Subject: RE: Interpretive Rules

Ex. 5 - Attorney Client

Sonja L. Rodman

Air Toxics, Consumer Protection and Indoor Air Practice Group

(202) 564-4079

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From: Simons, Andrew
Sent: Thursday, January 11, 2018 9:15 AM
To: Prabhu, Aditi <Prabhu.Aditi@epa.gov>; Jordan, Scott <Jordan.Scott@epa.gov>
Cc: Rodman, Sonja <Rodman.Sonja@epa.gov>
Subject: RE: Interpretive Rules -

Ex. 5 - Attorney Client

Ex. 5 - Attorney Client

Ex. 5 - Attorney Client

Andrew Simons

Assistant General Counsel
Regulatory Issues Practice Group
Office of General Counsel
U.S. Environmental Protection Agency
Tel. 202-564-3649

WJC-N 7522C

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Please consider the environment before printing this email.

From: Prabhu, Aditi
Sent: Thursday, January 11, 2018 9:10 AM
To: Jordan, Scott <Jordan.Scott@epa.gov>
Cc: Rodman, Sonja <Rodman.Sonja@epa.gov>; Simons, Andrew <Simons.Andrew@epa.gov>
Subject: Re: Interpretive Rules - Ex. 5 - Attorney Client

Ex. 5 - Attorney Client

Ex. 5 - Attorney Client

12-

Ex. 6 - Personal Privacy Can we postpone this meeting to Monday? I'm compressed tomorrow.

Sent from my iPhone

On Jan 11, 2018, at 6:48 AM, Jordan, Scott <Jordan.Scott@epa.gov> wrote:

Sonja –

Ex. 5 - Attorney Client

Ex. 5 - Attorney Client

Scott Jordan

Air and Radiation Law Office

Office of General Counsel

202-564-7508

From: Rodman, Sonja
Sent: Wednesday, January 10, 2018 5:26 PM
To: Jordan, Scott <Jordan.Scott@epa.gov>
Cc: Prabhu, Aditi <Prabhu.Aditi@epa.gov>; Simons, Andrew <Simons.Andrew@epa.gov>
Subject: Re: Interpretive Rules

Ex. 5 - Attorney Client

Ex. 5 - Attorney Client

Ex. 5 - Attorney Client

Sent from my iPhone

On Jan 10, 2018, at 4:14 PM, Jordan, Scott <Jordan.Scott@epa.gov> wrote:

> Thanks. Your email is very helpful, and I look forward to following up with you tomorrow. Also, in our meeting tomorrow, I will provide you with the key background information on what OAR is attempting to do here.

Ex. 5 - Attorney Client

Ex. 5 - Attorney Client

Ex. 5 - Attorney Client

Scott Jordan

Air and Radiation Law Office

Office of General Counsel

202-564-7508

From: Prabhu, Aditi
Sent: Wednesday, January 10, 2018 3:47 PM
To: Jordan, Scott <Jordan.Scott@epa.gov>
Cc: Rodman, Sonja <Rodman.Sonja@epa.gov>; Simons, Andrew <Simons.Andrew@epa.gov>
Subject: RE: Interpretive Rules

Ex. 5 - Attorney Client

Ex. 5 - Attorney Client

Ex. 5 - Attorney Client

Ex. 5 - Deliberative Process

We can discuss tomorrow.

Aditi Prabhu
Office of General Counsel
U.S. Environmental Protection Agency
(202)564-2473

From: Prabhu, Aditi
Sent: Wednesday, January 10, 2018 3:10 PM
To: Jordan, Scott <Jordan.Scott@epa.gov>
Cc: Rodman, Sonja <Rodman.Sonja@epa.gov>; Simons, Andrew <Simons.Andrew@epa.gov>
Subject: RE: Interpretive Rules

Ex. 5 - Attorney Client

Ex. 5 - Attorney Client

Hi Scott – Sorry I haven't had time to delve into this yet. Tomorrow from 10-11 or 1-2 would work for me.

Aditi Prabhu
Office of General Counsel
U.S. Environmental Protection Agency
(202)564-2473

From: Jordan, Scott
Sent: Wednesday, January 10, 2018 3:00 PM

To: Prabhu, Aditi <Prabhu.Aditi@epa.gov>
Cc: Rodman, Sonja <Rodman.Sonja@epa.gov>; Simons, Andrew <Simons.Andrew@epa.gov>
Subject: RE: Interpretive Rules

Ex. 5 - Attorney Client

Ex. 5 - Attorney Client

Aditi –

I just found out that OAR is setting up a call next Wednesday to discuss our options, so it would be good if we could talk tomorrow about my questions.

Do you have any time available tomorrow? I am currently available any time between 9 and 4, except I have a meeting from 2-3.

Sorry for the short turnaround on this.

Scott Jordan

Air and Radiation Law Office

Office of General Counsel

202-564-7508

From: Jordan, Scott
Sent: Wednesday, January 10, 2018 7:13 AM
To: Talty, Mark <Talty.Mark@epa.gov>
Cc: Rodman, Sonja <Rodman.Sonja@epa.gov>; Simons, Andrew <Simons.Andrew@epa.gov>; Prabhu, Aditi <Prabhu.Aditi@epa.gov>
Subject: RE: Interpretive Rules - Final Agency Action? Subject to Judicial Review? (re OIAI Policy)

Mark – Thanks for passing this on.

Aditi – This is not a fire drill, but it would be good if I could get your input in the next day or so. If you are tied up on other things, please let me know when you can reasonably get to this.

Ex. 5 - Attorney Client

Scott Jordan

Air and Radiation Law Office

Office of General Counsel

202-564-7508

From: Talty, Mark
Sent: Tuesday, January 09, 2018 10:29 AM
To: Jordan, Scott <Jordan.Scott@epa.gov>
Cc: Rodman, Sonja <Rodman.Sonja@epa.gov>; Simons, Andrew <Simons.Andrew@epa.gov>; Prabhu, Aditi <Prabhu.Aditi@epa.gov>
Subject: RE: Interpretive Rules

Ex. 5 - Attorney Client

Hi, Scott. Aditi, copied here, Ex. 5 - Attorney Client

Ex. 5 - Attorney Client

She'll be able to address both questions for you.

Best regards,

Mark

Mark C. Talty

Cross-Cutting Issues Law Office

Office of General Counsel

U.S. Environmental Protection Agency

(202) 564-1262

talty.mark@epa.gov

From: Jordan, Scott
Sent: Tuesday, January 09, 2018 10:10 AM
To: Talty, Mark <Talty.Mark@epa.gov>
Cc: Rodman, Sonja <Rodman.Sonja@epa.gov>; Simons, Andrew <Simons.Andrew@epa.gov>
Subject: Interpretive Rules - Ex. 5 - Attorney Client

Mark -

As an initial question: Are you the right CCILO person to talk to about Ex. 5 - Attorney Client If so, see my questions below. If not, please let me know the right person to talk to, or forward this email to them.

Ex. 5 - Attorney Client

Ex. 5 - Attorney Client

If you want to discuss any aspect of this today, I am working from home at Ex. 6 - Personal Privacy

Ex. 6 - Personal Privacy

Thanks,

Scott Jordan

Air and Radiation Law Office

Office of General Counsel

202-564-7508

From: Jordan, Scott
Location: Sonja's Office
Importance: Normal
Subject: OIAI - Update (Just Sonja and Scott)
Start Date/Time: Thur 1/11/2018 3:00:00 PM
End Date/Time: Thur 1/11/2018 4:00:00 PM

Feel free to decline this if you don't think we need it.

From: Jordan, Scott
Location: Sonja's Office
Importance: Normal
Subject: Once In Always In - Update and Check in
Start Date/Time: Mon 1/8/2018 6:00:00 PM
End Date/Time: Mon 1/8/2018 6:30:00 PM

To: Jordan, Scott[Jordan.Scott@epa.gov]; Dalcher, Debra[dalcher.debra@epa.gov]
Cc: Culligan, Kevin[Culligan.Kevin@epa.gov]
Sent: Tue 1/23/2018 7:12:41 PM
Subject: RE: OIAI - Edits to address Kevin point re non-112 requirements

One more thought. **Ex. 5 - Attorney Client**

Sonja L. Rodman

Air Toxics, Consumer Protection and Indoor Air Practice Group

(202) 564-4079

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From: Jordan, Scott
Sent: Monday, January 22, 2018 3:11 PM
To: Dalcher, Debra <dalcher.debra@epa.gov>
Cc: Rodman, Sonja <Rodman.Sonja@epa.gov>; Culligan, Kevin <Culligan.Kevin@epa.gov>
Subject: OIAI - Edits to address Kevin point re non-112 requirements

I think Kevin makes a good point and we can discuss it on Wednesday.

Ex. 5 - Attorney Client

Scott Jordan

Air and Radiation Law Office

Office of General Counsel

202-564-7508

From: Dalcher, Debra
Sent: Monday, January 22, 2018 3:02 PM
To: Jordan, Scott <Jordan.Scott@epa.gov>
Cc: Dalcher, Debra <dalcher.debra@epa.gov>
Subject: Reclassification of Major Sources as Area Sources Under Section 112_Draft_1 22 18_1pm.docx

Scott, see attached.

Ex. 5 - Attorney Client

Debra

To: Rodman, Sonja[Rodman.Sonja@epa.gov]; Jordan, Scott[Jordan.Scott@epa.gov]
Cc: Versace, Paul[Versace.Paul@epa.gov]
From: Vetter, Rick
Sent: Wed 11/29/2017 1:43:53 PM
Subject: RE: first cut at revising OIAI memo

Thanks, Sonja. It will be good to have a chance to work with you Scott. I'll try to get back to it this afternoon, but it may be tomorrow morning before I can finish it up. **Ex. 5 - Attorney Client**

Ex. 5 - Attorney Client

Rick

Richard H. Vetter
Attorney Advisor
Air & Radiation Law Office
Office of General Counsel
vetter.rick@epa.gov
919-541-2127

-----Original Message-----

From: Rodman, Sonja
Sent: Tuesday, November 28, 2017 5:17 PM
To: Vetter, Rick <Vetter.Rick@epa.gov>; Jordan, Scott <Jordan.Scott@epa.gov>
Cc: Versace, Paul <Versace.Paul@epa.gov>
Subject: FW: first cut at revising OIAI memo

Rick & Scott, First, I apologize for (1) not finding time to sit down with the two of you today and let you Ex. 6 - Personal Privacy and (2) not finding time to look at this. It is my understanding that Peter would like to get a "polished draft" of this to the Administrator next week. The goal of providing a draft will NOT be to present something for signature, but instead to present an example of what we might be able to do and get general guidance on direction. Ex. 5 - Attorney Client Ex. 5 - Attorney Client Ex. 5 - Attorney Client So sorry to drop this and run. Thanks! - Sonja

Sonja L. Rodman
Air Toxics, Consumer Protection and Indoor Air Practice Group
(202) 564-4079

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-----Original Message-----
From: McLamb, Marguerite
Sent: Tuesday, November 28, 2017 10:14 AM
To: Rodman, Sonja <Rodman.Sonja@epa.gov>
Subject: first cut at revising OIAI memo

Sonja,
Attached is a rough first cut at revising the OIAI memo (RLSO and clean w comments). It's rough -- not cleaned up, formatted, or fully intact yet -- but should convey a general direction for the document enough to give you something to respond to. I am will be Ex. 6 - Personal Privacy but available in the afternoon.
I hope you had a great Thanksgiving!
Best,
Marguerite

****

Marguerite E. McLamb
Policy Advisor
Sector Policies and Programs Division
Office of Air Quality Planning & Standards
U.S. Environmental Protection Agency
Research Triangle Park, NC 27711
Phone: (919) 541-7858
Fax: (919) 541-4991
mclamb.marguerite@epa.gov

To: Schwab, Justin[Schwab.Justin@epa.gov]
Cc: Srinivasan, Gautam[Srinivasan.Gautam@epa.gov]; Schmidt, Lorie[Schmidt.Lorie@epa.gov]; Baptist, Erik[Baptist.Erik@epa.gov]; Jordan, Scott[Jordan.Scott@epa.gov]
From: Rodman, Sonja
Sent: Wed 12/20/2017 10:10:22 PM
Subject: Once In Always In
1995_05_16_oiai memo.pdf
OIAI memo_Wehrum_edits.docx
2007_oiai_proposal.pdf

Justin, Per your request, attached are some of the OIAI materials: the 1995 Seitz memo, the 2007 proposal, and the draft memo as edited by Bill (note that we haven't yet reviewed this revised draft).

I will send some information on today's RTR meeting (and the materials) tomorrow morning.

Regards - Sonja

Sonja L. Rodman

Air Toxics, Consumer Protection and Indoor Air Practice Group

(202) 564-4079

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May 16, 1995

MEMORANDUM

SUBJECT: Potential to Emit for MACT Standards -- Guidance on Timing Issues

FROM: John S. Seitz, Director
Office of Air Quality Planning and Standards (MD-10)

TO: Linda Murphy, Region I
Conrad Simon, Region II
Thomas Maslany, Region III
Winston Smith, Region IV
David Kee, Region V
Stanley Meiberg, Region VI
William Spratlin, Region VII
Patricia Hull, Region VIII
David Howekamp, Region IX
Jim McCormick, Region X

Section 112 of the Clean Air Act distinguishes between major sources and area sources of hazardous air pollutants. Although maximum achievable control technology (MACT) is required for all major sources of hazardous air pollutants, lesser controls or no controls may be required of area sources in a particular industry. In addition, whether a facility is a major or area source of hazardous air pollutants may affect the applicability of other CAA requirements -- such as when or whether the facility is required to obtain a Title V operating permit.

The purpose of this memo is to clarify when a major source of hazardous air pollutants can become an area source -- by obtaining federally enforceable limits on its potential to emit -- rather than comply with major source requirements. Timing questions are important to address now because several MACT standards have been promulgated and because an increasing number of sources are nearing deadlines for submitting Title V operating permit applications. The EPA recently provided guidance on how

facilities can obtain federally enforceable limits on their potential to emit hazardous and criteria air pollutants in a January 25, 1995, memo from me to you.

STATUTORY AND REGULATORY BACKGROUND

Section 112 of the Act defines a "major source" as "any stationary source or group of stationary sources located within a contiguous area and under common control that emits or has the potential to emit considering controls, in the aggregate, 10 tons per year or more of any hazardous air pollutant or 25 tons per year or more of any combination of hazardous air pollutants..." The term "potential to emit" is defined in the section 112 general provisions (40 CFR Part 63.2) as " the maximum capacity of a stationary source to emit a pollutant under its physical or operational design," considering controls and limitations that are federally enforceable. This definition is consistent with definitions in regulations for the new source review and Title V permit programs.

SCOPE OF TODAY'S GUIDANCE

EPA has received a number of requests for clarification concerning when facilities may limit their potential to emit to avoid applicability of major source requirements of promulgated MACT standards. Most of these issues are not explicitly addressed by the section 112 general provisions nor by MACT standards themselves. Therefore, EPA is providing this guidance for MACT standards based on the Agency's interpretation of the relevant statutory language.

Today's guidance addresses three issues:

- By what date must a facility limit its potential to emit if it wishes to avoid major source requirements of a MACT standard?

- Is a facility that is required to comply with a MACT standard permanently subject to that standard?

- In the case of facilities with two or more sources in different source categories: If such a facility is a major source for purposes of one MACT standard, is the facility necessarily a major source for purposes of subsequently promulgated MACT standards?

EPA plans to follow this guidance memorandum with rulemaking actions to address these issues. The Agency intends to include provisions on potential to emit timing <u>in future MACT</u> rules and amendments to the section 112 general provisions. The EPA believes that the structure of section 112 strongly suggests certain outer limits for when a source may avoid a standard through a limit on its potential to emit. However, EPA also

believes the statute may be flexible enough to allow the Agency

to reach different results through rulemaking. In forthcoming rulemaking, EPA will be considering alternative approaches that could garner additional environmental benefits and provide additional flexibility to small sources.

TIMING FOR OBTAINING POTENTIAL TO EMIT RESTRICTIONS: GUIDANCE FOR PROMULGATED STANDARDS

Existing sources

Today's guidance clarifies that facilities may switch to area source status at any time until the "first compliance date" of the standard. The "first compliance date" is defined as the first date a source must comply with an emission limitation or other substantive regulatory requirement (i.e., leak detection and repair programs, work practice measures, housekeeping measures, etc..., but not a notice requirement) in the applicable MACT standard. By that date, to avoid being in violation, a major source must either comply with the standard, or obtain and comply with federally enforceable limits ensuring that actual and potential emissions are below major source thresholds.

The Act does not directly address a deadline for a source to avoid requirements applicable to major sources through a reduction of potential to emit. However, a result that is consistent with the language and structure of the Act is that sources should not be allowed to avoid compliance with a standard after the compliance date, even through a reduction in potential 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.

Moreover, while some standards have multiple, staggered compliance dates, these requirements are intended to function in an integrated manner to meet the statutory goals for that source category. For such a standard, the relevant date for purposes of this policy is the first substantive compliance date. While the Act may permit exceptions to these general rules, any such exceptions will need to be developed through rulemaking.

Some have read the Act to require an even earlier deadline, namely, the date of standard promulgation. EPA believes this result is not as strongly compelled by the statute. It is reasonable to presume that Congress intended a source to have some opportunity to avoid a standard by becoming an area source once it has been identified as subject in a promulgated standard.

The compliance date deadline approach would give small emitters (i.e. facilities with actual emissions below the major threshold) time to limit their potential emissions rather than comply with major source requirements. Under this approach, a facility will have the same amount of time to comply whether it chooses to meet the standard or limit its potential to emit.

This compliance date approach for existing sources is also reasonable because it recognizes the circumstances that exist regarding MACT standards issued to date. States are in the process of developing additional mechanisms that can provide federally enforceable limits to sources. In addition, EPA rules have not previously specified when facilities may switch from major to area-source status to avoid MACT applicability. It would be inequitable to hold sources to a promulgation date deadline absent clear advance notice to sources of the full significance of that date. Although the Act gives EPA discretion to designate a deadline earlier than the first compliance date, this is most appropriately done through rulemaking in a manner that gives adequate notice to the regulated community. By contrast, any source should presume that the compliance date is the final date to establish its status as an area source, at least for purposes of that standard.

For clarity, the Agency wishes to note that as long as a facility does not qualify for treatment as an area source, the facility must comply with any applicable major source requirement under the Clean Air Act. Facilities in need to comply with additional limits to qualify as area sources will need to plan ahead to obtain the limits before compliance deadlines for major source requirements. Facilities should consult with State and local air agencies concerning the timing of any necessary submittal.

New sources

Section 112 requires new sources to comply with a MACT standard upon startup or no later than the promulgation date of the standard, whichever is later. As a legal matter, to avoid being in violation, a "potential" major source must either comply with MACT or obtain and comply with federally enforceable limits by this statutory deadline.

Therefore, the Agency advises that any new facility that would be a major source in the absence of federally enforceable limits must obtain and comply with such limits no later than the promulgation date of the standard or the date of startup of the source, whichever is later. For the same reasons articulated below with regard to existing sources, a new source that is major

at the time of promulgation or startup will remain major for purposes of that standard.

Once In, Always In Interpretation

EPA is today clarifying that facilities that are major sources for HAPs on the "first compliance date" are required to comply permanently with the MACT standard to ensure that maximum achievable reductions in toxic emissions are achieved and maintained.

EPA believes that this once in, always in policy follows most naturally from the language and structure of the statute. In many cases, application of MACT will reduce a major emitter's emissions to levels substantially below the major thresholds. Without a once in, always in policy, these facilities could "backslide" from MACT control levels by obtaining potential-to-emit limits, escaping applicability of the MACT standard, and increasing emissions to the major-source threshold (10/25 tons per year). Thus, the maximum achievable emissions reductions that Congress mandated for major sources would not be achieved. 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.

> Example: A facility has potential emissions of 100 tons/year. After compliance with the applicable MACT standard, which requires a 99 percent emissions reduction, the facility's total potential emissions would be 1 ton/year. Under today's guidance, that facility could not subsequently operate with emissions exceeding the maximum achievable control technology emission level. The facility could not escape continued applicability of the MACT standard by obtaining "area source" status through limitations on emissions up to the 10/25 ton per year major source thresholds.

Additionally, the Act requires all major sources to obtain a Part 70 operating permit. Section 501(2) provides that any source that is major under section 112 will also be major under title V. It follows that a source that is major for purposes of any MACT standard will be subject to title V as a major source. As clarification, most MACT standards explicitly require operating permits for major sources. However, this principle applies regardless of whether it is specified in the particular standard. Therefore, a source required to comply with MACT requirements applicable to major sources will also be required to obtain a Part 70 permit for that MACT requirement.

APPLICABILITY OF MULTIPLE MACT STANDARDS TO A SINGLE FACILITY

A facility that is subject to a MACT standard is not

necessarily a major source for future MACT standards. For example, if after compliance with a MACT standard, a source's potential to emit is less than the 10/25 tons per year applicability level, the EPA will consider the facility an area source for purposes of a subsequent standard.

> EXAMPLE: A facility has degreasing operations which emit 30 tons per year of HAP. The same facility also has the potential to emit 5 tons/year of HAP from the coating of miscellaneous metal parts. After complying with the Halogenated Solvent Cleaning MACT, the maximum potential emissions from degreasing operations is 3 tons per year. The total federally enforceable potential emissions from this facility would now be 8 tons per year which meets the definition for an "area source." Therefore, this facility would not be subject to the major source requirements of the future miscellaneous metal parts MACT standard.

It should be noted that EPA has authority to require additional reductions in toxic emissions from sources that avoid MACT requirements through reductions in potential to emit. Section 112(f), the residual risk program, requires EPA to evaluate the risk and to promulgate additional standards for each category or subcategory of major sources, and allows EPA discretion to do the same for area sources, where there is not an ample margin of safety to protect public health within 8 years after promulgation of the MACT standard. The EPA will consider whether residual risk standards are appropriate for sources complying with MACT standards or potential to emit limits.

In addition, EPA is committed to implementation of the urban area source program as required in Section 112(c)(3) of the CAA. This program requires EPA to issue air toxics standards for area sources representing 90 percent of the area source emissions of the 30 hazardous air pollutants that present the greatest threat to public health in the largest number of urban areas. Together, the Residual Risk Standards and the Urban Area Source Standards ensure protection of public health beyond that achieved by implementation of the MACT standards for major sources.

To: Rodman, Sonja[Rodman.Sonja@epa.gov]; Graham, Cheryl[Graham.Cheryl@epa.gov]
From: Jordan, Scott
Sent: Mon 12/11/2017 2:45:06 PM
Subject: RE: 12/11/17 Reg Review Agenda Updates

Cheryl - FYI - The meeting with Wehrum on Once in Always In Policy with respect to Air Toxics Rules has now been pushed back to Wednesday, Dec 20.

Scott Jordan
Air and Radiation Law Office
Office of General Counsel
202-564-7508

-----Original Message-----
From: Rodman, Sonja
Sent: Thursday, December 07, 2017 4:18 PM
To: Graham, Cheryl <Graham.Cheryl@epa.gov>
Cc: Jordan, Scott <Jordan.Scott@epa.gov>
Subject: RE: 12/11/17 Reg Review Agenda Updates

Can you add to meetings

Meeting with Wehrum on Once in Always In Policy with respect to Air Toxics Rules (12/13 time tbd)

Sonja L. Rodman
Air Toxics, Consumer Protection and Indoor Air Practice Group
(202) 564-4079

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-----Original Message-----
From: Graham, Cheryl
Sent: Thursday, December 07, 2017 11:55 AM
To: OGC ARLO <OGC_ARLO@epa.gov>
Subject: 12/11/17 Reg Review Agenda Updates

Attached is the redline/strikeout version of the reg agenda, if you have any additions/deletions please let me know by 11:00am Monday. Reg Review is scheduled for Monday (12/11) at 2:30pm in room 4045.

Thank you

Cheryl R. Graham
OGC/ARLO
(202) 564-5473

To: Rodman, Sonja[Rodman.Sonja@epa.gov]
From: Jordan, Scott
Sent: Mon 1/29/2018 11:45:20 AM
Subject: RE: OIAI- Ex. 5 - Attorney Client

Ex. 5 - Attorney Client

Scott Jordan

Air and Radiation Law Office

Office of General Counsel

202-564-7508

From: Rodman, Sonja
Sent: Friday, January 26, 2018 1:36 PM
To: Jordan, Scott <Jordan.Scott@epa.gov>

Subject: OIAI

Ex. 5 - Attorney Client

Sonja L. Rodman

Air Toxics, Consumer Protection and Indoor Air Practice Group

(202) 564-4079

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To: Rodman, Sonja[Rodman.Sonja@epa.gov]
From: Vetter, Rick
Sent: Tue 11/14/2017 7:23:18 PM
Subject: RE: Current Version of Revision Memo
Memo replacing OIAI with proposed 2007 interpretation_11_13_17 405pm+rhv.docx

Sonja,

Ex. 5 - Attorney Client

Rick

Richard H. Vetter

Richard H. Vetter

Attorney Advisor

Air & Radiation Law Office

Office of General Counsel

vetter.rick@epa.gov

919-541-2127

From: Dalcher, Debra
Sent: Monday, November 13, 2017 4:09 PM
To: McLamb, Marguerite <McLamb.Marguerite@epa.gov>; Vetter, Rick <Vetter.Rick@epa.gov>; Lamason, Bill <Lamason.Bill@epa.gov>; Rodman, Sonja <Rodman.Sonja@epa.gov>
Cc: Dalcher, Debra <dalcher.debra@epa.gov>; Torres, Elineth <Torres.Elineth@epa.gov>
Subject: Current Version of Revision Memo

Importance: High

As promised during our meeting this morning I am sending out the current working draft of the memo for your review/any comments.

Elineth and I will begin work on this again tomorrow. We would appreciate any feedback you might have on the attached.

Thank you, Debra

Debra S. Dalcher

U.S. EPA

Policy and Strategies Group

Sector Policies and Programs Division, OAQPS

109 T.W. Alexander Drive

Research Triangle Park, NC 27711

Phone: 919-541-2443

To: Schwab, Justin[Schwab.Justin@epa.gov]; Rodman, Sonja[Rodman.Sonja@epa.gov]; Srinivasan, Gautam[Srinivasan.Gautam@epa.gov]
From: Jordan, Scott
Sent: Thur 1/25/2018 6:38:48 PM
Subject: OIAI - Heads up re Harlow Call re one Sentence
OIAI.Reclassification of Major Sources as Area Sources Under Section 112 Draft_01 25 2018-Final OGC Comments.1.25.18.docx

Justin –

David Harlow is going to call you about the addition of the following sentence (which appears on p. 4 of the attached).

Ex. 5 - Attorney Client

Ex. 5 - Attorney Client

Ex. 5 - Attorney Client Rather than have this go back and forth up our respective management chains, I agreed with OAR that it made sense for David and you to talk directly.

Scott Jordan

Air and Radiation Law Office

Office of General Counsel

202-564-7508

From: Schwab, Justin
Sent: Thursday, January 25, 2018 9:33 AM
To: Rodman, Sonja <Rodman.Sonja@epa.gov>; Srinivasan, Gautam <Srinivasan.Gautam@epa.gov>; Jordan, Scott <Jordan.Scott@epa.gov>
Subject: RE: NEED INPUT BY TOMORROW MORNING: Once-In-Always-In Guidance Memorandum

Please find attached. I'm fine with all the edits/comments (I have indicated responses within the comments in bold, all headed "Justin:". I think we have consensus here and unless I'm missing any problem this is fine to pass on to OAR as far as I'm concerned – Sonja/Gautam?

From: Rodman, Sonja
Sent: Thursday, January 25, 2018 9:25 AM
To: Schwab, Justin <Schwab.Justin@epa.gov>; Srinivasan, Gautam <Srinivasan.Gautam@epa.gov>; Jordan, Scott <Jordan.Scott@epa.gov>
Subject: RE: NEED INPUT BY TOMORROW MORNING: Once-In-Always-In Guidance Memorandum

Look at Scott's. Mine is just a cleaned up version of that. I moved a few of his comments into e-mail.

Sonja L. Rodman

Air Toxics, Consumer Protection and Indoor Air Practice Group

(202) 564-4079

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From: Schwab, Justin
Sent: Thursday, January 25, 2018 9:23 AM
To: Rodman, Sonja <Rodman.Sonja@epa.gov>; Srinivasan, Gautam <Srinivasan.Gautam@epa.gov>; Jordan, Scott <Jordan.Scott@epa.gov>
Subject: RE: NEED INPUT BY TOMORROW MORNING: Once-In-Always-In Guidance Memorandum

I have 2 drafts sent to me recently, one by Scott at 8:40, one by Sonja at 8:57 (to which this message replies).

Which should I review?

From: Rodman, Sonja
Sent: Thursday, January 25, 2018 8:57 AM
To: Schwab, Justin <Schwab.Justin@epa.gov>; Srinivasan, Gautam <Srinivasan.Gautam@epa.gov>; Jordan, Scott <Jordan.Scott@epa.gov>
Subject: FW: NEED INPUT BY TOMORROW MORNING: Once-In-Always-In Guidance Memorandum

Our responses in bold below. Also revised draft attached. I'd like to send this to OAR shortly.

Sonja L. Rodman

Air Toxics, Consumer Protection and Indoor Air Practice Group

(202) 564-4079

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From: Schwab, Justin
Sent: Thursday, January 25, 2018 7:49 AM
To: Srinivasan, Gautam <Srinivasan.Gautam@epa.gov>
Cc: Rodman, Sonja <Rodman.Sonja@epa.gov>; Jordan, Scott <Jordan.Scott@epa.gov>
Subject: Re: NEED INPUT BY TOMORROW MORNING: Once-In-Always-In Guidance Memorandum

Agree.

Sent from my iPhone

On Jan 25, 2018, at 7:42 AM, Srinivasan, Gautam <Srinivasan.Gautam@epa.gov> wrote:

Ex. 5 - Attorney Client

++++++++++++

202-564-5647 (o)

202-695-6287 (c)

On Jan 24, 2018, at 9:53 PM, Schwab, Justin <Schwab.Justin@epa.gov> wrote:

Ex. 5 - Attorney Client

Ex. 5 - Attorney Client

Ex. 5 - Attorney Client

Sent from my iPhone

On Jan 24, 2018, at 7:24 PM, Rodman, Sonja <Rodman.Sonja@epa.gov> wrote:

Justin, I just learned that Bill Wehrum wants to sign the OIAI guidance memo tomorrow afternoon. Is there any way you can get any comments to us first thing in the morning? Sorry, I thought we had more time. If you want to discuss anything tonight please call my personal cell Ex. 6 - Personal Privacy Thanks! – Sonja

Sonja L. Rodman

Air Toxics, Consumer Protection and Indoor Air Practice Group

(202) 564-4079

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From: Rodman, Sonja
Sent: Wednesday, January 24, 2018 11:59 AM
To: Schwab, Justin <schwab.justin@epa.gov>
Cc: Jordan, Scott <Jordan.Scott@epa.gov>; Srinivasan, Gautam <Srinivasan.Gautam@epa.gov>
Subject: FOR YOUR REVIEW: Once-In-Always-In Guidance Memorandum

Justin, Attached for your review is the draft guidance memorandum on reclassification of major sources as area sources under CAA section 112. This draft has been heavily edited by David Harlow and includes Bill Wehrum's edits also. It is short – only 4 pages. I am also attaching a draft of the FR notice that will be published to provide notice of the new memo. This is a slightly rougher draft and hasn't been through OAR mgt review yet. Bill would like to get these signed this week. Do you think it will be possible for you to review by tomorrow? Thanks – Sonja

Sonja L. Rodman

Air Toxics, Consumer Protection and Indoor Air Practice Group

(202) 564-4079

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From: Jordan, Scott
Location: Scott will call Sonja's Cell at Ex. 6 - Personal Privacy
Importance: Normal
Subject: OIAI - Discuss Notes Document
Start Date/Time: Thur 1/18/2018 2:30:00 PM
End Date/Time: Thur 1/18/2018 3:00:00 PM

To: Rodman, Sonja[Rodman.Sonja@epa.gov]; Greenglass, Nora[Greenglass.Nora@epa.gov]
From: Jordan, Scott
Sent: Wed 1/31/2018 3:53:40 PM
Subject: Adding Info re Wehrum MM2A Memo to Air Toxics Library

Sonja and Nora –

Ex. 5 - Attorney Client

Let me know if you want to discuss this.

Thanks

Scott Jordan

Air and Radiation Law Office

Office of General Counsel

202-564-7508

To: Rodman, Sonja[Rodman.Sonja@epa.gov]
From: Srinivasan, Gautam
Sent: Thur 1/25/2018 1:45:56 AM
Subject: Re: NEED INPUT BY TOMORROW MORNING: Once-In-Always-In Guidance Memorandum

Thanks. **Ex. 5 - Deliberative Process**

++++++++++++
202-564-5647 (o)
202-695-6287 (c)

On Jan 24, 2018, at 8:07 PM, Rodman, Sonja <Rodman.Sonja@epa.gov> wrote:

Hmmm. He was asking questions about process trying to get a sense for how things get signed, but he didn't seem surprised that Justin wanted to see it. I'll ask Scott what he thought as he was there too.

Sonja L. Rodman

Air Toxics, Consumer Protection and Indoor Air Practice Group

(202) 564-4079

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From: Srinivasan, Gautam
Sent: Wednesday, January 24, 2018 8:03 PM
To: Rodman, Sonja <Rodman.Sonja@epa.gov>
Subject: Re: NEED INPUT BY TOMORROW MORNING: Once-In-Always-In Guidance Memorandum

Any reaction you could discern?

I ask b/c he seemed surprised in another context that Justin was reviewing after him. So just trying to figure out if something bigger is going on there.

++++++++++++

202-564-5647 (o)

202-695-6287 (c)

On Jan 24, 2018, at 7:58 PM, Rodman, Sonja <Rodman.Sonja@epa.gov> wrote:

Yes, I told him today that our FO wanted to look at it.

Sonja L. Rodman

Air Toxics, Consumer Protection and Indoor Air Practice Group

(202) 564-4079

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From: Srinivasan, Gautam
Sent: Wednesday, January 24, 2018 7:56 PM
To: Rodman, Sonja <Rodman.Sonja@epa.gov>
Subject: Re: NEED INPUT BY TOMORROW MORNING: Once-In-Always-In Guidance Memorandum

Out of curiosity, does Harlow know Justin is reviewing after him?

++++++++++++

202-564-5647 (o)

202-695-6287 (c)

On Jan 24, 2018, at 7:24 PM, Rodman, Sonja <Rodman.Sonja@epa.gov> wrote:

Justin, I just learned that Bill Wehrum wants to sign the OIAI guidance memo tomorrow afternoon. Is there any way you can get any comments to us first thing in the morning? Sorry, I thought we had more time. If you want to discuss anything tonight please call my personal cell Ex. 6 - Personal Privacy Thanks! – Sonja

Sonja L. Rodman

Air Toxics, Consumer Protection and Indoor Air Practice Group

(202) 564-4079

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From: Rodman, Sonja
Sent: Wednesday, January 24, 2018 11:59 AM
To: Schwab, Justin <schwab.justin@epa.gov>
Cc: Jordan, Scott <Jordan.Scott@epa.gov>; Srinivasan, Gautam <Srinivasan.Gautam@epa.gov>
Subject: FOR YOUR REVIEW: Once-In-Always-In Guidance Memorandum

Justin, Attached for your review is the draft guidance memorandum on reclassification of major sources as area sources under CAA section 112. This draft has been heavily edited by David Harlow and includes Bill Wehrum's edits also. It is short – only 4 pages. I am also attaching a draft of the FR notice that will be published to provide notice of the new memo. This is a slightly rougher draft and hasn't been through OAR mgt review yet. Bill would like to get these

signed this week. Do you think it will be possible for you to review by tomorrow? Thanks – Sonja

Sonja L. Rodman

Air Toxics, Consumer Protection and Indoor Air Practice Group

(202) 564-4079

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To: Rodman, Sonja[Rodman.Sonja@epa.gov]
Cc: Srinivasan, Gautam[Srinivasan.Gautam@epa.gov]
From: Schmidt, Lorie
Sent: Tue 12/5/2017 6:23:25 PM
Subject: Once in always in

In the context of nsr reform discussion, bill brought up **Ex. 5 - Deliberative Process**

Ex. 5 - Deliberative Process

Ex. 5 - Attorney Client

Sent from my iPhone

To: Rodman, Sonja[Rodman.Sonja@epa.gov]
From: Jordan, Scott
Sent: Wed 1/17/2018 8:44:08 PM
Subject: Re: OIAI - Scott Notes on Memo and Rulemaking

I would like to chat about a couple of points. I tried your cell, and got a message saying the voice mailbox was full. If you want to talk between now and 4:30, please call Ex. 6 - Personal Privacy Ex. 6 - Personal Privacy If you prefer to talk tomorrow, I will find an open time and send an invite.

Scott Jordan

Air and Radiation Law Office

Office of General Counsel

202-564-7508

From: Rodman, Sonja
Sent: Wednesday, January 17, 2018 3:27 PM
To: Jordan, Scott
Subject: RE: OIAI - Scott Notes on Memo and Rulemaking

Just a couple thoughts. Let me know if you'd like to chat.

Sonja L. Rodman

Air Toxics, Consumer Protection and Indoor Air Practice Group

(202) 564-4079

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From: Jordan, Scott
Sent: Wednesday, January 17, 2018 2:25 PM

To: Rodman, Sonja <Rodman.Sonja@epa.gov>
Subject: OIAI - Scott Notes on Memo and Rulemaking

Sonja -

Attached is a document with my notes on the memo and rulemaking to withdraw the OIAI policy Ex. 5 - Deliberative Process

Ex. 5 - Deliberative Process

What I have tried to do in this document is describe the key parts of the memo and rulemaking, how the memo and rulemaking achieve the goals, and what issues we need to decide at this point.

If you want to discuss this, I will be reachable today at Ex. 6 - Personal Privacy until 4:30 and am mostly open tomorrow. Otherwise, if you mark any specific comments on the document, and let me know if you think this should be a handout at tomorrow meeting with OAR, I can revise this before tomorrow's meeting.

Scott Jordan

Air and Radiation Law Office

Office of General Counsel

202-564-7508

To: Rodman, Sonja[Rodman.Sonja@epa.gov]
From: Barnett, Keith
Sent: Tue 11/21/2017 1:57:58 PM
Subject: FW: OIAI - Coating Sector Examples

Keith Barnett

Minerals and Manufacturing Group Leader

919-541-5605

From: Dalcher, Debra
Sent: Tuesday, November 21, 2017 7:42 AM
To: Barnett, Keith <Barnett.Keith@epa.gov>; Dunkins, Robin <Dunkins.Robin@epa.gov>
Cc: Lamason, Bill <Lamason.Bill@epa.gov>; Shrager, Brian <Shrager.Brian@epa.gov>; Hirtz, Paula <Hirtz.Paula@epa.gov>; Whitfield, Kaye <Whitfield.Kaye@epa.gov>
Subject: RE: OIAI - Coating Sector Examples

Keith,

Ex. 5 - Attorney Client

Thank you, Debra

From: Barnett, Keith
Sent: Monday, November 20, 2017 7:11 PM
To: Dalcher, Debra <dalcher.debra@epa.gov>; Dunkins, Robin <Dunkins.Robin@epa.gov>
Cc: Lamason, Bill <Lamason.Bill@epa.gov>; Shrager, Brian <Shrager.Brian@epa.gov>; Hirtz, Paula <Hirtz.Paula@epa.gov>; Whitfield, Kaye <Whitfield.Kaye@epa.gov>
Subject: RE: OIAI - Coating Sector Examples

Ex. 5 - Attorney Client

Keith Barnett

Minerals and Manufacturing Group Leader

919-541-5605

From: Dalcher, Debra
Sent: Monday, November 20, 2017 10:39 AM
To: Barnett, Keith <Barnett.Keith@epa.gov>; Dunkins, Robin <Dunkins.Robin@epa.gov>
Cc: Lamason, Bill <Lamason.Bill@epa.gov>; Shrager, Brian <Shrager.Brian@epa.gov>
Subject: OIAI - Coating Sector Examples
Importance: High

Ex. 5 - Attorney Client

Thank you, Debra

Debra S. Dalcher

U.S. EPA

Policy and Strategies Group

Sector Policies and Programs Division, OAQPS

109 T.W. Alexander Drive

Research Triangle Park, NC 27711

Phone: 919-541-2443

To: Rodman, Sonja[Rodman.Sonja@epa.gov]
From: Jordan, Scott
Sent: Fri 12/8/2017 4:03:01 PM
Subject: Re: oiai

If you want to talk now (or at any point between now and 3:30), you can call Ex. 6 - Personal Privacy

Ex. 6 - Personal Privacy

I looked at your edits and comments, and think they are good.

Ex. 5 - Attorney Client

Scott Jordan

Air and Radiation Law Office

Office of General Counsel

202-564-7508

From: Rodman, Sonja
Sent: Friday, December 8, 2017 10:49 AM
To: Jordan, Scott
Subject: oiai

I had a few comments but wanted to discuss with you before sending to the group

Sonja L. Rodman

Air Toxics, Consumer Protection and Indoor Air Practice Group

(202) 564-4079

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To: Rodman, Sonja[Rodman.Sonja@epa.gov]; Jordan, Scott[Jordan.Scott@epa.gov]
From: Srinivasan, Gautam
Sent: Thur 1/25/2018 3:12:12 PM
Subject: RE: NEED INPUT BY TOMORROW MORNING: Once-In-Always-In Guidance Memorandum

Justin just called on the way to another meeting. Ex. 5 - Attorney Client
Ex. 5 - Attorney Client With that, go ahead and send to OAR.

++++++++++++

202-564-5647 (o)

202-695-6287 (c)

From: Rodman, Sonja
Sent: Thursday, January 25, 2018 9:43 AM
To: Srinivasan, Gautam <Srinivasan.Gautam@epa.gov>; Schwab, Justin <Schwab.Justin@epa.gov>; Jordan, Scott <Jordan.Scott@epa.gov>
Subject: RE: NEED INPUT BY TOMORROW MORNING: Once-In-Always-In Guidance Memorandum

Ex. 5 - Attorney Client

Sonja L. Rodman

Air Toxics, Consumer Protection and Indoor Air Practice Group

(202) 564-4079

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From: Srinivasan, Gautam
Sent: Thursday, January 25, 2018 9:40 AM
To: Schwab, Justin <Schwab.Justin@epa.gov>; Rodman, Sonja <Rodman.Sonja@epa.gov>; Jordan, Scott <Jordan.Scott@epa.gov>
Subject: RE: NEED INPUT BY TOMORROW MORNING: Once-In-Always-In Guidance Memorandum

Ex. 5 - Attorney Client

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202-564-5647 (o)

202-695-6287 (c)

From: Schwab, Justin
Sent: Thursday, January 25, 2018 9:39 AM
To: Srinivasan, Gautam <Srinivasan.Gautam@epa.gov>; Rodman, Sonja <Rodman.Sonja@epa.gov>; Jordan, Scott <Jordan.Scott@epa.gov>
Subject: RE: NEED INPUT BY TOMORROW MORNING: Once-In-Always-In Guidance Memorandum

Good catch. Ex. 5 - Attorney Client

From: Srinivasan, Gautam
Sent: Thursday, January 25, 2018 9:38 AM
To: Schwab, Justin <Schwab.Justin@epa.gov>; Rodman, Sonja <Rodman.Sonja@epa.gov>; Jordan, Scott <Jordan.Scott@epa.gov>
Subject: RE: NEED INPUT BY TOMORROW MORNING: Once-In-Always-In Guidance Memorandum

Ex. 5 - Attorney Client

Ex. 5 - Attorney Client

Ex. 5 - Attorney Client I have nothing further. It does seem like we are at consensus. Justin, you may want to reach out to David and give him a heads up. I think these edits all make the document stronger, but it may look like a lot of redlining, and I don't know how David would react to that. You no doubt have a better sense than me on this.

++++++++++++

202-564-5647 (o)

202-695-6287 (c)

From: Schwab, Justin
Sent: Thursday, January 25, 2018 9:33 AM
To: Rodman, Sonja <Rodman.Sonja@epa.gov>; Srinivasan, Gautam <Srinivasan.Gautam@epa.gov>; Jordan, Scott <Jordan.Scott@epa.gov>
Subject: RE: NEED INPUT BY TOMORROW MORNING: Once-In-Always-In Guidance Memorandum

Please find attached. I'm fine with all the edits/comments (I have indicated responses within the comments in bold, all headed "Justin:". I think we have consensus here and unless I'm missing any problem this is fine to pass on to OAR as far as I'm concerned – Sonja/Gautam?

From: Rodman, Sonja
Sent: Thursday, January 25, 2018 9:25 AM
To: Schwab, Justin <Schwab.Justin@epa.gov>; Srinivasan, Gautam <Srinivasan.Gautam@epa.gov>; Jordan, Scott <Jordan.Scott@epa.gov>
Subject: RE: NEED INPUT BY TOMORROW MORNING: Once-In-Always-In Guidance Memorandum

Look at Scott's. Mine is just a cleaned up version of that. I moved a few of his comments into e-

mail.

Sonja L. Rodman

Air Toxics, Consumer Protection and Indoor Air Practice Group

(202) 564-4079

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From: Schwab, Justin
Sent: Thursday, January 25, 2018 9:23 AM
To: Rodman, Sonja <Rodman.Sonja@epa.gov>; Srinivasan, Gautam <Srinivasan.Gautam@epa.gov>; Jordan, Scott <Jordan.Scott@epa.gov>
Subject: RE: NEED INPUT BY TOMORROW MORNING: Once-In-Always-In Guidance Memorandum

I have 2 drafts sent to me recently, one by Scott at 8:40, one by Sonja at 8:57 (to which this message replies).

Which should I review?

From: Rodman, Sonja
Sent: Thursday, January 25, 2018 8:57 AM
To: Schwab, Justin <Schwab.Justin@epa.gov>; Srinivasan, Gautam <Srinivasan.Gautam@epa.gov>; Jordan, Scott <Jordan.Scott@epa.gov>
Subject: FW: NEED INPUT BY TOMORROW MORNING: Once-In-Always-In Guidance Memorandum

Our responses in bold below. Also revised draft attached. I'd like to send this to OAR shortly.

Sonja L. Rodman

Air Toxics, Consumer Protection and Indoor Air Practice Group

(202) 564-4079

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From: Schwab, Justin
Sent: Thursday, January 25, 2018 7:49 AM
To: Srinivasan, Gautam <Srinivasan.Gautam@epa.gov>
Cc: Rodman, Sonja <Rodman.Sonja@epa.gov>; Jordan, Scott <Jordan.Scott@epa.gov>
Subject: Re: NEED INPUT BY TOMORROW MORNING: Once-In-Always-In Guidance Memorandum

Agree.

Sent from my iPhone

On Jan 25, 2018, at 7:42 AM, Srinivasan, Gautam <Srinivasan.Gautam@epa.gov> wrote:

Ex. 5 - Attorney Client

++++++++++++

202-564-5647 (o)

202-695-6287 (c)

On Jan 24, 2018, at 9:53 PM, Schwab, Justin <Schwab.Justin@epa.gov> wrote:

Ex. 5 - Attorney Client

Ex. 5 - Attorney Client

Ex. 5 - Attorney Client

Sent from my iPhone

On Jan 24, 2018, at 7:24 PM, Rodman, Sonja <Rodman.Sonja@epa.gov> wrote:

Justin, I just learned that Bill Wehrum wants to sign the OIAI guidance memo tomorrow afternoon. Is there any way you can get any comments to us first thing in the morning? Sorry, I thought we had more time. If you want to discuss anything tonight please call my personal cell 703-608-8932. Thanks! – Sonja

Sonja L. Rodman

Air Toxics, Consumer Protection and Indoor Air Practice Group

(202) 564-4079

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From: Rodman, Sonja
Sent: Wednesday, January 24, 2018 11:59 AM
To: Schwab, Justin <schwab.justin@epa.gov>
Cc: Jordan, Scott <Jordan.Scott@epa.gov>; Srinivasan, Gautam <Srinivasan.Gautam@epa.gov>
Subject: FOR YOUR REVIEW: Once-In-Always-In Guidance Memorandum

Justin, Attached for your review is the draft guidance memorandum on reclassification of major sources as area sources under CAA section 112. This draft has been heavily edited by David Harlow and includes Bill Wehrum's edits also. It is short – only 4 pages. I am also attaching a draft of the FR notice that will be published to provide notice of the new memo. This is a slightly rougher draft and hasn't been through OAR mgt review yet. Bill would like to get these signed this week. Do you think it will be possible for you to review by tomorrow? Thanks – Sonja

Sonja L. Rodman

Air Toxics, Consumer Protection and Indoor Air Practice Group

(202) 564-4079

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To: OGC ARLO MGMT[OGC_ARLO_MGMT@epa.gov]; McConkey, Diane[Mcconkey.Diane@epa.gov]
Cc: Hooks, Samantha[hooks.samantha@epa.gov]
From: Graham, Cheryl
Sent: Mon 1/22/2018 4:39:05 PM
Subject: Agenda BEFORE Assistants Meeting
18-01-22 agenda.docx

Cheryl R. Graham
OGC/ARLO
(202) 564-5473

To: Torres, Elineth[Torres.Elineth@epa.gov]
Cc: Rodman, Sonja[Rodman.Sonja@epa.gov]
From: Vetter, Rick
Sent: Mon 11/13/2017 4:29:47 PM
Subject: OIAI - Document outlining the comments regarding the 2007 proposal you want OGC to work on responses to.

Elineth,

I either inadvertently deleted or misfiled the email you referenced during the phone call. (Whatever the reason, I cannot locate it.) Please resend it and copy Sonja so that she is in the email chain going forward. Thanks.

Rick

Richard H. Vetter

Richard H. Vetter

Attorney Advisor

Air & Radiation Law Office

Office of General Counsel

vetter.rick@epa.gov

919-541-2127

To: Rodman, Sonja[Rodman.Sonja@epa.gov]
From: Li, Ryland (Shengzhi)
Sent: Tue 1/30/2018 8:14:41 PM
Subject: RE: EPA "Once In, Always In" HAP Policy

Ex. 5 - Attorney Client

Regards,

Ryland

Ryland (Shengzhi) Li

Attorney-Adviser
U.S. Environmental Protection Agency
Office of General Counsel, Air and Radiation Law Office

tel: (202) 564-6787 | em: li.ryland@epa.gov | desk: WJC-N 7353K

mail: USEPA (2344A), 1200 Pennsylvania Ave. NW, Washington, DC 20460

From: Rodman, Sonja
Sent: Tuesday, January 30, 2018 2:31 PM
To: Culligan, Kevin <Culligan.Kevin@epa.gov>; Dalcher, Debra <dalcher.debra@epa.gov>; Shrager, Brian <Shrager.Brian@epa.gov>; Lamason, Bill <Lamason.Bill@epa.gov>; McLamb, Marguerite <McLamb.Marguerite@epa.gov>; Jordan, Scott <Jordan.Scott@epa.gov>
Cc: Li, Ryland (Shengzhi) <Li.Ryland@epa.gov>
Subject: RE: EPA "Once In, Always In" HAP Policy

The delegation lists are not up to date. Some regions update the tables. Others do not.

Sonja L. Rodman

Air Toxics, Consumer Protection and Indoor Air Practice Group

(202) 564-4079

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From: Culligan, Kevin
Sent: Tuesday, January 30, 2018 2:28 PM
To: Dalcher, Debra <dalcher.debra@epa.gov>; Shrager, Brian <Shrager.Brian@epa.gov>; Lamason, Bill <Lamason.Bill@epa.gov>; McLamb, Marguerite <McLamb.Marguerite@epa.gov>; Jordan, Scott <Jordan.Scott@epa.gov>
Cc: Rodman, Sonja <Rodman.Sonja@epa.gov>
Subject: RE: EPA "Once In, Always In" HAP Policy

It seems like there are two questions here:

Ex. 5 - Deliberative Process

From: Dalcher, Debra
Sent: Tuesday, January 30, 2018 2:13 PM
To: Shrager, Brian <Shrager.Brian@epa.gov>; Lamason, Bill <Lamason.Bill@epa.gov>; Culligan, Kevin <Culligan.Kevin@epa.gov>; McLamb, Marguerite <McLamb.Marguerite@epa.gov>; Jordan, Scott <Jordan.Scott@epa.gov>
Cc: Rodman, Sonja <Rodman.Sonja@epa.gov>
Subject: FW: EPA "Once In, Always In" HAP Policy
Importance: High

Can anyone help with this one?

From: Jared Rothstein [mailto:rothsteinj@socma.com]
Sent: Tuesday, January 30, 2018 1:48 PM
To: Torres, Elineth <Torres.Elineth@epa.gov>; Dalcher, Debra <dalcher.debra@epa.gov>
Subject: EPA "Once In, Always In" HAP Policy

Hello Debra and Elineth,

I recently reviewed the U.S. EPA guidance memorandum announcing its withdrawal of its "once in always in" policy for the classification of major sources of hazardous air pollutants under section 112 of the Clean Air Act, and had a couple questions regarding implementation. Do you know which states have the delegated authority to ratify this change in policy? My understanding is that it would only apply to the states that have been delegated by EPA to administer the 112 program. I assume EPA's position is that the states with delegated authority are obliged to follow the new policy if they want to maintain their delegation, because the new memo says clearly that the old policy is not authorized by the statute? Any information you might have regarding state adoption of the policy would be very helpful.

Thank you!

Jared

Jared A. Rothstein | *Senior Manager, Regulatory Affairs*

Society of Chemical Manufacturers & Affiliates (SOCMA)

1400 Crystal Drive | Suite 630 | Arlington, VA 22202

(571) 348-5122 | rothsteinj@socma.com

To: Srinivasan, Gautam[Srinivasan.Gautam@epa.gov]; Rodman, Sonja[Rodman.Sonja@epa.gov]; Jordan, Scott[Jordan.Scott@epa.gov]
From: Schwab, Justin
Sent: Thur 1/25/2018 2:38:42 PM
Subject: RE: NEED INPUT BY TOMORROW MORNING: Once-In-Always-In Guidance Memorandum

Good catch. Ex. 5 - Attorney Client

From: Srinivasan, Gautam
Sent: Thursday, January 25, 2018 9:38 AM
To: Schwab, Justin <Schwab.Justin@epa.gov>; Rodman, Sonja <Rodman.Sonja@epa.gov>; Jordan, Scott <Jordan.Scott@epa.gov>
Subject: RE: NEED INPUT BY TOMORROW MORNING: Once-In-Always-In Guidance Memorandum

Ex. 5 - Attorney Client

Ex. 5 - Attorney Client I have nothing further. It does seem like we are at consensus. Justin, you may want to reach out to David and give him a heads up. I think these edits all make the document stronger, but it may look like a lot of redlining, and I don't know how David would react to that. You no doubt have a better sense than me on this.

++++++++++++

202-564-5647 (o)

202-695-6287 (c)

From: Schwab, Justin
Sent: Thursday, January 25, 2018 9:33 AM
To: Rodman, Sonja <Rodman.Sonja@epa.gov>; Srinivasan, Gautam <Srinivasan.Gautam@epa.gov>; Jordan, Scott <Jordan.Scott@epa.gov>
Subject: RE: NEED INPUT BY TOMORROW MORNING: Once-In-Always-In Guidance

Memorandum

Please find attached. I'm fine with all the edits/comments (I have indicated responses within the comments in bold, all headed "Justin:". I think we have consensus here and unless I'm missing any problem this is fine to pass on to OAR as far as I'm concerned – Sonja/Gautam?

From: Rodman, Sonja
Sent: Thursday, January 25, 2018 9:25 AM
To: Schwab, Justin <Schwab.Justin@epa.gov>; Srinivasan, Gautam <Srinivasan.Gautam@epa.gov>; Jordan, Scott <Jordan.Scott@epa.gov>
Subject: RE: NEED INPUT BY TOMORROW MORNING: Once-In-Always-In Guidance Memorandum

Look at Scott's. Mine is just a cleaned up version of that. I moved a few of his comments into e-mail.

Sonja L. Rodman

Air Toxics, Consumer Protection and Indoor Air Practice Group

(202) 564-4079

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From: Schwab, Justin
Sent: Thursday, January 25, 2018 9:23 AM
To: Rodman, Sonja <Rodman.Sonja@epa.gov>; Srinivasan, Gautam <Srinivasan.Gautam@epa.gov>; Jordan, Scott <Jordan.Scott@epa.gov>
Subject: RE: NEED INPUT BY TOMORROW MORNING: Once-In-Always-In Guidance Memorandum

I have 2 drafts sent to me recently, one by Scott at 8:40, one by Sonja at 8:57 (to which this message replies).

Which should I review?

From: Rodman, Sonja
Sent: Thursday, January 25, 2018 8:57 AM
To: Schwab, Justin <Schwab.Justin@epa.gov>; Srinivasan, Gautam <Srinivasan.Gautam@epa.gov>; Jordan, Scott <Jordan.Scott@epa.gov>
Subject: FW: NEED INPUT BY TOMORROW MORNING: Once-In-Always-In Guidance Memorandum

Our responses in bold below. Also revised draft attached. I'd like to send this to OAR shortly.

Sonja L. Rodman

Air Toxics, Consumer Protection and Indoor Air Practice Group

(202) 564-4079

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From: Schwab, Justin
Sent: Thursday, January 25, 2018 7:49 AM
To: Srinivasan, Gautam <Srinivasan.Gautam@epa.gov>
Cc: Rodman, Sonja <Rodman.Sonja@epa.gov>; Jordan, Scott <Jordan.Scott@epa.gov>
Subject: Re: NEED INPUT BY TOMORROW MORNING: Once-In-Always-In Guidance

Memorandum

Agree.

Sent from my iPhone

On Jan 25, 2018, at 7:42 AM, Srinivasan, Gautam <Srinivasan.Gautam@epa.gov> wrote:

Ex. 5 - Attorney Client

++++++++++++

202-564-5647 (o)

202-695-6287 (c)

On Jan 24, 2018, at 9:53 PM, Schwab, Justin <Schwab.Justin@epa.gov> wrote:

Ex. 5 - Attorney Client

Ex. 5 - Attorney Client

Ex. 5 - Attorney Client

Sent from my iPhone

On Jan 24, 2018, at 7:24 PM, Rodman, Sonja <Rodman.Sonja@epa.gov> wrote:

Justin, I just learned that Bill Wehrum wants to sign the OIAI guidance memo tomorrow afternoon. Is there any way you can get any comments to us first thing in the morning? Sorry, I thought we had more time. If you want to discuss anything tonight please call my personal cell 703-608-8932. Thanks! – Sonja

Sonja L. Rodman

Air Toxics, Consumer Protection and Indoor Air Practice Group

(202) 564-4079

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From: Rodman, Sonja
Sent: Wednesday, January 24, 2018 11:59 AM
To: Schwab, Justin <schwab.justin@epa.gov>
Cc: Jordan, Scott <Jordan.Scott@epa.gov>; Srinivasan, Gautam <Srinivasan.Gautam@epa.gov>
Subject: FOR YOUR REVIEW: Once-In-Always-In Guidance Memorandum

Justin, Attached for your review is the draft guidance memorandum on reclassification of major sources as area sources under CAA section 112. This draft has been heavily edited by David Harlow and includes Bill Wehrum's edits also. It is short – only 4 pages. I am also attaching a draft of the FR notice that will be published to provide notice of the new memo. This is a slightly rougher draft and hasn't been through OAR mgt review yet. Bill would like to get these signed this week. Do you think it will be possible for you to review by tomorrow? Thanks – Sonja

Sonja L. Rodman

Air Toxics, Consumer Protection and Indoor Air Practice Group

(202) 564-4079

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To: Graham, Cheryl[Graham.Cheryl@epa.gov]
Cc: Rodman, Sonja[Rodman.Sonja@epa.gov]; Zenick, Elliott[Zenick.Elliott@epa.gov]
From: Jordan, Scott
Sent: Mon 1/22/2018 1:33:56 PM
Subject: RE: REMINDER: 1/23/18 Reg Review Agenda Updates

Cheryl -

Please add to meetings:

Wehrum Meeting with Hearth, Patio and Barbecue Association re Wood Heaters NSPS Rule (01/25 at 11:00)

And to new items for priority discussion:

Guidance Memorandum re Once-In-Always-In Policy under CAA 112 (Scott Jordan)

Scott Jordan
Air and Radiation Law Office
Office of General Counsel
202-564-7508

-----Original Message-----
From: Graham, Cheryl
Sent: Monday, January 22, 2018 6:29 AM
To: OGC ARLO <OGC_ARLO@epa.gov>
Subject: REMINDER: 1/23/18 Reg Review Agenda Updates

Attached is the redline/strikeout version of the reg agenda, if you have any additions/deletions please let me know by 11:00am today. Reg Review is scheduled for Tuesday (01/23) at 1:00pm in room 4045.

Thank you

Cheryl R. Graham
OGC/ARLO
(202) 564-5473

To: Jordan, Scott[Jordan.Scott@epa.gov]; Schwab, Justin[Schwab.Justin@epa.gov]; Rodman, Sonja[Rodman.Sonja@epa.gov]
From: Srinivasan, Gautam
Sent: Thur 1/25/2018 2:33:09 PM
Subject: RE: OIAI Guidance Memorandum - Draft Incorporating Justin's comments with additional Scott comments

Ex. 5 - Attorney Client

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202-564-5647 (o)

202-695-6287 (c)

From: Jordan, Scott
Sent: Thursday, January 25, 2018 8:40 AM
To: Schwab, Justin <Schwab.Justin@epa.gov>; Srinivasan, Gautam <Srinivasan.Gautam@epa.gov>; Rodman, Sonja <Rodman.Sonja@epa.gov>
Subject: OIAI Guidance Memorandum - Draft Incorporating Justin's comments with additional Scott comments

Attached is revised draft of the memo that incorporates Justin's comments (and addresses Gautam's point below), and adds one point that I noticed this morning.

Ex. 5 - Attorney Client

Ex. 5 - Attorney Client

Scott Jordan

Air and Radiation Law Office

Office of General Counsel

202-564-7508

From: Schwab, Justin
Sent: Thursday, January 25, 2018 7:49 AM
To: Srinivasan, Gautam <Srinivasan.Gautam@epa.gov>
Cc: Rodman, Sonja <Rodman.Sonja@epa.gov>; Jordan, Scott <Jordan.Scott@epa.gov>
Subject: Re: NEED INPUT BY TOMORROW MORNING: Once-In-Always-In Guidance Memorandum

Agree.

Sent from my iPhone

On Jan 25, 2018, at 7:42 AM, Srinivasan, Gautam <Srinivasan.Gautam@epa.gov> wrote:

Ex. 5 - Attorney Client

++++++++++++

202-564-5647 (o)

202-695-6287 (c)

On Jan 24, 2018, at 9:53 PM, Schwab, Justin <Schwab.Justin@epa.gov> wrote:

Ex. 5 - Attorney Client

Ex. 5 - Attorney Client

Sent from my iPhone

On Jan 24, 2018, at 7:24 PM, Rodman, Sonja <Rodman.Sonja@epa.gov> wrote:

Justin, I just learned that Bill Wehrum wants to sign the OIAI guidance memo tomorrow afternoon. Is there any way you can get any comments to us first thing

in the morning? Sorry, I thought we had more time. If you want to discuss anything tonight please call my personal cell Ex. 6 - Personal Privacy Thanks! – Sonja

Sonja L. Rodman

Air Toxics, Consumer Protection and Indoor Air Practice Group

(202) 564-4079

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Sent: Wednesday, January 24, 2018 11:59 AM
To: Schwab, Justin <schwab.justin@epa.gov>
Cc: Jordan, Scott <Jordan.Scott@epa.gov>; Srinivasan, Gautam <Srinivasan.Gautam@epa.gov>
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Justin, Attached for your review is the draft guidance memorandum on reclassification of major sources as area sources under CAA section 112. This draft has been heavily edited by David Harlow and includes Bill Wehrum's edits also. It is short – only 4 pages. I am also attaching a draft of the FR notice that will be published to provide notice of the new memo. This is a slightly rougher draft and hasn't been through OAR mgt review yet. Bill would like to get these signed this week. Do you think it will be possible for you to review by tomorrow? Thanks – Sonja

Sonja L. Rodman

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To: Rodman, Sonja[Rodman.Sonja@epa.gov]; Srinivasan, Gautam[Srinivasan.Gautam@epa.gov]; Jordan, Scott[Jordan.Scott@epa.gov]
From: Schwab, Justin
Sent: Thur 1/25/2018 2:32:54 PM
Subject: RE: NEED INPUT BY TOMORROW MORNING: Once-In-Always-In Guidance Memorandum
EDIT OIAI.Memo. Reclassification of Major Sources as Area Sources Under Section
112_2018_01_24_Draft_Justin OGC 1.25.18.docx

Please find attached. I'm fine with all the edits/comments (I have indicated responses within the comments in bold, all headed "Justin:". I think we have consensus here and unless I'm missing any problem this is fine to pass on to OAR as far as I'm concerned – Sonja/Gautam?

From: Rodman, Sonja
Sent: Thursday, January 25, 2018 9:25 AM
To: Schwab, Justin <Schwab.Justin@epa.gov>; Srinivasan, Gautam <Srinivasan.Gautam@epa.gov>; Jordan, Scott <Jordan.Scott@epa.gov>
Subject: RE: NEED INPUT BY TOMORROW MORNING: Once-In-Always-In Guidance Memorandum

Look at Scott's. Mine is just a cleaned up version of that. I moved a few of his comments into e-mail.

Sonja L. Rodman

Air Toxics, Consumer Protection and Indoor Air Practice Group

(202) 564-4079

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Our responses in bold below. Also revised draft attached. I'd like to send this to OAR shortly.

Sonja L. Rodman

Air Toxics, Consumer Protection and Indoor Air Practice Group

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From: Schwab, Justin
Sent: Thursday, January 25, 2018 7:49 AM

To: Srinivasan, Gautam <Srinivasan.Gautam@epa.gov>
Cc: Rodman, Sonja <Rodman.Sonja@epa.gov>; Jordan, Scott <Jordan.Scott@epa.gov>
Subject: Re: NEED INPUT BY TOMORROW MORNING: Once-In-Always-In Guidance Memorandum

Agree.

Sent from my iPhone

On Jan 25, 2018, at 7:42 AM, Srinivasan, Gautam <Srinivasan.Gautam@epa.gov> wrote:

Ex. 5 - Attorney Client

++++++++++++

202-564-5647 (o)

202-695-6287 (c)

On Jan 24, 2018, at 9:53 PM, Schwab, Justin <Schwab.Justin@epa.gov> wrote:

Ex. 5 - Attorney Client

Ex. 5 - Attorney Client

Ex. 5 - Attorney Client

Sent from my iPhone

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Sonja L. Rodman

Air Toxics, Consumer Protection and Indoor Air Practice Group

(202) 564-4079

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To: Schwab, Justin <schwab.justin@epa.gov>
Cc: Jordan, Scott <Jordan.Scott@epa.gov>; Srinivasan, Gautam <Srinivasan.Gautam@epa.gov>
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Sonja L. Rodman

Air Toxics, Consumer Protection and Indoor Air Practice Group

(202) 564-4079

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To: Rodman, Sonja[Rodman.Sonja@epa.gov]
From: Jordan, Scott
Sent: Tue 1/23/2018 3:56:31 PM
Subject: OIAI - ARLO Input re Process vs Substance
Comment_National_Resources_Defence_Council_(NRDC) May 4 2007 (1).pdf

Sonja -

Ex. 5 - Attorney Client

Scott Jordan

Air and Radiation Law Office

Office of General Counsel

202-564-7508

From: Dalcher, Debra
Sent: Monday, January 22, 2018 3:56 PM
To: Jordan, Scott
Cc: Dalcher, Debra; Lamason, Bill; Culligan, Kevin; Rodman, Sonja
Subject: RE: Reclassification of Major Sources as Area Sources Under Section 112_Draft_1 22 18_1pm.docx

Scott,

Ex. 5 - Attorney Client

That is the last of Kevin's comments. None from Penny yet.

Thank you, Debra

From: Dalcher, Debra
Sent: Monday, January 22, 2018 3:02 PM
To: Jordan, Scott <Jordan.Scott@epa.gov>
Cc: Dalcher, Debra <dalcher.debra@epa.gov>
Subject: Reclassification of Major Sources as Area Sources Under Section 112_Draft_1 22 18_1pm.docx

Scott, see attached.

Ex. 5 - Attorney Client

Ex. 5 - Attorney Client

Debra

To: Jordan, Scott[Jordan.Scott@epa.gov]
Cc: Prabhu, Aditi[Prabhu.Aditi@epa.gov]; Simons, Andrew[Simons.Andrew@epa.gov]
From: Rodman, Sonja
Sent: Thur 1/18/2018 4:28:47 PM
Subject: Re: Once In Always In - Follow up Question

Ex. 5 - Attorney Client

Sent from my iPhone

On Jan 18, 2018, at 11:19 AM, Rodman, Sonja <Rodman.Sonja@epa.gov> wrote:

Ex. 5 - Attorney Client

Sent from my iPhone

On Jan 18, 2018, at 7:24 AM, Jordan, Scott <Jordan.Scott@epa.gov> wrote:

Aditi and Andy –

Ex. 5 - Attorney Client

Ex. 5 - Attorney Client

Thanks,

Scott Jordan

Air and Radiation Law Office

Office of General Counsel

202-564-7508

From: Rodman, Sonja
Location: RTP-D201-Max40/RTP-Bldg-D
Importance: Normal
Subject: Accepted: OIAI check-in- Urgent
Start Date/Time: Mon 10/30/2017 3:30:00 PM
End Date/Time: Mon 10/30/2017 4:00:00 PM

To: Vetter, Rick[Vetter.Rick@epa.gov]
From: Rodman, Sonja
Sent: Thur 9/7/2017 7:46:51 PM
Subject: RE: OIAI

OK. I'm out tomorrow, but she gave us a few days to get our comments in. Thanks.

Sonja L. Rodman, Assistant General Counsel for Air Toxics, Consumer Protection and Indoor Air / Office of General Counsel / U.S. Environmental Protection Agency / (202) 564-4079 / 202-768-2120 (cell)

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From: Vetter, Rick
Sent: Thursday, September 07, 2017 2:52 PM
To: Rodman, Sonja <Rodman.Sonja@epa.gov>
Cc: Torres, Elineth <Torres.Elineth@epa.gov>; McLamb, Marguerite <McLamb.Marguerite@epa.gov>
Subject: RE: OIAI

Will do. It may be morning before I can get back to them though.

Richard H. Vetter

Richard H. Vetter

Attorney Advisor

Air & Radiation Law Office

Office of General Counsel

vetter.rick@epa.gov

919-541-2127

From: Rodman, Sonja
Sent: Thursday, September 07, 2017 1:50 PM
To: Vetter, Rick <Vetter.Rick@epa.gov>
Cc: Torres, Elineth <Torres.Elineth@epa.gov>; McLamb, Marguerite <McLamb.Marguerite@epa.gov>
Subject: OIAI

Rick, Here are my comments on the OIAI memo. Could you add yours on top of mine and send on to Elineth?

Cc'ing Elineth and Marguerite so they can see my comments.

Sonja L. Rodman, Assistant General Counsel for Air Toxics, Consumer Protection and Indoor Air / Office of General Counsel / U.S. Environmental Protection Agency / (202) 564-4079 / 202-768-2120 (cell)

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To: Vetter, Rick[Vetter.Rick@epa.gov]
From: Rodman, Sonja
Sent: Thur 11/16/2017 2:26:45 PM
Subject: OIAI
Memo replacing OIAI with proposed 2007 interpretation_11_13_17 405pm+rhv+slr.docx

Ex. 5 - Attorney Client

Sonja L. Rodman

Air Toxics, Consumer Protection and Indoor Air Practice Group

(202) 564-4079

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To: Jordan, Scott[Jordan.Scott@epa.gov]
From: Rodman, Sonja
Sent: Tue 1/23/2018 4:47:29 PM
Subject: RE: OIAI - ARLO Input re Process vs Substance

Ex. 5 - Attorney Client

Sonja L. Rodman

Air Toxics, Consumer Protection and Indoor Air Practice Group

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From: Jordan, Scott
Sent: Tuesday, January 23, 2018 10:57 AM
To: Rodman, Sonja <Rodman.Sonja@epa.gov>
Subject: OIAI - ARLO Input re Process vs Substance

Sonja -

Ex. 5 - Attorney Client

Ex. 5 - Attorney Client

Scott Jordan

Air and Radiation Law Office

Office of General Counsel

202-564-7508

From: Dalcher, Debra
Sent: Monday, January 22, 2018 3:56 PM
To: Jordan, Scott
Cc: Dalcher, Debra; Lamason, Bill; Culligan, Kevin; Rodman, Sonja
Subject: RE: Reclassification of Major Sources as Area Sources Under Section 112_Draft_1 22 18_1pm.docx

Scott,

Ex. 5 - Attorney Client

Ex. 5 - Attorney Client

That is the last of Kevin's comments. None from Penny yet.

Thank you, Debra

From: Dalcher, Debra
Sent: Monday, January 22, 2018 3:02 PM
To: Jordan, Scott <Jordan.Scott@epa.gov>
Cc: Dalcher, Debra <dalcher.debra@epa.gov>
Subject: Reclassification of Major Sources as Area Sources Under Section 112_Draft_1 22 18_1pm.docx

Scott, see attached.

Ex. 5 - Attorney Client

Debra

To: Schwab, Justin[schwab.justin@epa.gov]
Cc: Srinivasan, Gautam[Srinivasan.Gautam@epa.gov]; Schmidt, Lorie[Schmidt.Lorie@epa.gov]; Baptist, Erik[baptist.erik@epa.gov]; Jordan, Scott[Jordan.Scott@epa.gov]
Bcc: Rodman, Sonja[Rodman.Sonja@epa.gov]
From: Rodman, Sonja
Sent: Wed 12/20/2017 10:10:22 PM
Subject: Once In Always In
1995_05_16_oiai memo.pdf
OIAI memo_Wehrum_edits.docx
2007_oiai_proposal.pdf

Justin, Per your request, attached are some of the OIAI materials: the 1995 Seitz memo, the 2007 proposal, and the draft memo as edited by Bill (note that we haven't yet reviewed this revised draft).

I will send some information on today's RTR meeting (and the materials) tomorrow morning.

Regards - Sonja

Sonja L. Rodman

Air Toxics, Consumer Protection and Indoor Air Practice Group

(202) 564-4079

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To: Jordan, Scott[Jordan.Scott@epa.gov]; Srinivasan, Gautam[Srinivasan.Gautam@epa.gov]
From: Rodman, Sonja
Sent: Thur 1/25/2018 7:53:24 PM
Subject: RE: OIAI - Heads up re Harlow Call re one Sentence

Ex. 5 - Attorney Client

Sonja L. Rodman

Air Toxics, Consumer Protection and Indoor Air Practice Group

(202) 564-4079

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From: Jordan, Scott
Sent: Thursday, January 25, 2018 1:53 PM
To: Srinivasan, Gautam <Srinivasan.Gautam@epa.gov>
Cc: Rodman, Sonja <Rodman.Sonja@epa.gov>
Subject: RE: OIAI - Heads up re Harlow Call re one Sentence

Ex. 5 - Attorney Client

Scott Jordan

Air and Radiation Law Office

Office of General Counsel

202-564-7508

From: Srinivasan, Gautam
Sent: Thursday, January 25, 2018 1:44 PM
To: Jordan, Scott <Jordan.Scott@epa.gov>
Subject: RE: OIAI - Heads up re Harlow Call re one Sentence

Ex. 5 - Attorney Client

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202-564-5647 (o)

202-695-6287 (c)

From: Jordan, Scott
Sent: Thursday, January 25, 2018 1:39 PM
To: Schwab, Justin <Schwab.Justin@epa.gov>; Rodman, Sonja <Rodman.Sonja@epa.gov>; Srinivasan, Gautam <Srinivasan.Gautam@epa.gov>
Subject: OIAI - Heads up re Harlow Call re one Sentence

Justin –

David Harlow is going to call you about the addition of the following sentence (which appears on p. 4 of the attached).

Ex. 5 - Attorney Client

Ex. 5 - Attorney Client

Ex. 5 - Attorney Client Rather than have this go back and forth up our respective management chains, I agreed with OAR that it made sense for David and you to talk directly.

Scott Jordan

Air and Radiation Law Office

Office of General Counsel

202-564-7508

From: Schwab, Justin
Sent: Thursday, January 25, 2018 9:33 AM
To: Rodman, Sonja <Rodman.Sonja@epa.gov>; Srinivasan, Gautam <Srinivasan.Gautam@epa.gov>; Jordan, Scott <Jordan.Scott@epa.gov>
Subject: RE: NEED INPUT BY TOMORROW MORNING: Once-In-Always-In Guidance Memorandum

Please find attached. I'm fine with all the edits/comments (I have indicated responses within the comments in bold, all headed "Justin:". I think we have consensus here and unless I'm missing any problem this is fine to pass on to OAR as far as I'm concerned – Sonja/Gautam?

From: Rodman, Sonja
Sent: Thursday, January 25, 2018 9:25 AM
To: Schwab, Justin <Schwab.Justin@epa.gov>; Srinivasan, Gautam <Srinivasan.Gautam@epa.gov>; Jordan, Scott <Jordan.Scott@epa.gov>
Subject: RE: NEED INPUT BY TOMORROW MORNING: Once-In-Always-In Guidance Memorandum

Look at Scott's. Mine is just a cleaned up version of that. I moved a few of his comments into e-mail.

Sonja L. Rodman

Air Toxics, Consumer Protection and Indoor Air Practice Group

(202) 564-4079

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From: Schwab, Justin
Sent: Thursday, January 25, 2018 9:23 AM
To: Rodman, Sonja <Rodman.Sonja@epa.gov>; Srinivasan, Gautam <Srinivasan.Gautam@epa.gov>; Jordan, Scott <Jordan.Scott@epa.gov>
Subject: RE: NEED INPUT BY TOMORROW MORNING: Once-In-Always-In Guidance Memorandum

I have 2 drafts sent to me recently, one by Scott at 8:40, one by Sonja at 8:57 (to which this message replies).

Which should I review?

From: Rodman, Sonja
Sent: Thursday, January 25, 2018 8:57 AM
To: Schwab, Justin <Schwab.Justin@epa.gov>; Srinivasan, Gautam <Srinivasan.Gautam@epa.gov>; Jordan, Scott <Jordan.Scott@epa.gov>
Subject: FW: NEED INPUT BY TOMORROW MORNING: Once-In-Always-In Guidance Memorandum

Our responses in bold below. Also revised draft attached. I'd like to send this to OAR shortly.

Sonja L. Rodman

Air Toxics, Consumer Protection and Indoor Air Practice Group

(202) 564-4079

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From: Schwab, Justin
Sent: Thursday, January 25, 2018 7:49 AM
To: Srinivasan, Gautam <Srinivasan.Gautam@epa.gov>
Cc: Rodman, Sonja <Rodman.Sonja@epa.gov>; Jordan, Scott <Jordan.Scott@epa.gov>
Subject: Re: NEED INPUT BY TOMORROW MORNING: Once-In-Always-In Guidance Memorandum

Agree.

Sent from my iPhone

On Jan 25, 2018, at 7:42 AM, Srinivasan, Gautam <Srinivasan.Gautam@epa.gov> wrote:

Ex. 5 - Attorney Client

++++++++++++

202-564-5647 (o)

202-695-6287 (c)

On Jan 24, 2018, at 9:53 PM, Schwab, Justin <Schwab.Justin@epa.gov> wrote:

Ex. 5 - Attorney Client

Ex. 5 - Attorney Client

Agree, but suggest a couple of minor edits, as noted in the attached draft.

Sent from my iPhone

On Jan 24, 2018, at 7:24 PM, Rodman, Sonja <Rodman.Sonja@epa.gov> wrote:

Justin, I just learned that Bill Wehrum wants to sign the OIAI guidance memo tomorrow afternoon. Is there any way you can get any comments to us first thing in the morning? Sorry, I thought we had more time. If you want to discuss anything tonight please call my personal cell Ex. 6 - Personal Privacy Thanks! – Sonja

Sonja L. Rodman

Air Toxics, Consumer Protection and Indoor Air Practice Group

(202) 564-4079

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From: Rodman, Sonja
Sent: Wednesday, January 24, 2018 11:59 AM
To: Schwab, Justin <schwab.justin@epa.gov>
Cc: Jordan, Scott <Jordan.Scott@epa.gov>; Srinivasan, Gautam <Srinivasan.Gautam@epa.gov>
Subject: FOR YOUR REVIEW: Once-In-Always-In Guidance Memorandum

Justin, Attached for your review is the draft guidance memorandum on reclassification of major sources as area sources under CAA section 112. This draft has been heavily edited by David Harlow and includes Bill Wehrum's edits

also. It is short – only 4 pages. I am also attaching a draft of the FR notice that will be published to provide notice of the new memo. This is a slightly rougher draft and hasn't been through OAR mgt review yet. Bill would like to get these signed this week. Do you think it will be possible for you to review by tomorrow? Thanks – Sonja

Sonja L. Rodman

Air Toxics, Consumer Protection and Indoor Air Practice Group

(202) 564-4079

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From: Rodman, Sonja
Location: Call in Ex. 6 - Personal Privacy
Importance: Normal
Subject: Tentative: OIAI Memo - Supporting Doc Development
Start Date/Time: Wed 12/13/2017 4:30:00 PM
End Date/Time: Wed 12/13/2017 5:00:00 PM

To: Srinivasan, Gautam[Srinivasan.Gautam@epa.gov]
From: Rodman, Sonja
Sent: Wed 12/20/2017 12:32:02 AM
Subject: Re: OIAI

I now have a 1:30 Wehrum meeting and so can only stay for the first 30 minutes anyways.

Sent from my iPhone

> On Dec 19, 2017, at 7:15 PM, Srinivasan, Gautam <Srinivasan.Gautam@epa.gov> wrote:
>
> How long do you need at hot issues? We might need to squeeze in a 705 stay issue.
>
> ++++++++++++++
> 202-564-5647 (o)
> 202-695-6287 (c)

To: Schwab, Justin[Schwab.Justin@epa.gov]
From: EPA Press Office
Sent: Thur 1/25/2018 9:54:51 PM
Subject: Reducing Regulatory Burdens: EPA withdraws "once-in always-in" policy for major sources under Clean Air Act

EPA issued a guidance memorandum withdrawing the "once-in always-in" policy for the classification of major sources of hazardous air pollutants under section 112 of the Clean Air Act.

Reducing Regulatory Burdens: EPA withdraws "once-in always-in" policy for major sources under Clean Air Act

WASHINGTON (January 25, 2018) – Today, the U.S. Environmental Protection Agency (EPA) issued a guidance memorandum withdrawing the "once-in always-in" policy for the classification of major sources of hazardous air pollutants under section 112 of the Clean Air Act. With the new guidance, sources of hazardous air pollutants previously classified as "major sources" may be reclassified as "area" sources when the facility limits its potential to emit below major source thresholds.

"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 Bill Wehrum, assistant administrator of EPA's Office of Air and Radiation.** "It will reduce regulatory burden for industries and the states, while continuing to ensure stringent and effective controls on hazardous air pollutants."

Today's memo is another step by which EPA is reducing unnecessary regulatory burdens that deterred innovative efforts to improve the environment. The "once in always in" 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. States, state organizations and industries have frequently requested rescission of this policy, which was one of the most commonly cited requests in response to President Trump's Executive Order 13777. Today's EPA action is an important step in furtherance of the president's regulatory reform agenda while providing a meaningful incentive for investment in HAP reduction activities and technologies.

The Clean Air Act defines a "major source" as a one that emits, or has the potential to emit, 10 tons per year of any hazardous air pollutant, or 25 tons per year or more of any combination of hazardous air pollutants. Sources with emissions below this threshold are classified as "area sources." Different control standards apply to the source depending on whether or not it is classified as a "major source" or an "area source."

In a 1995 memo, EPA established a "once-in always-in" policy that determined that any facility subject to major source standards would always remain subject to those standards, even if production processes changed or controls were implemented that eliminated or permanently reduced that facility's potential to emit hazardous air pollutants.

Today's memo finds that EPA had no statutory authority under the Clean Air Act to place a time limit on when a facility may be determined to be an area source, and that a plain language reading of the Act must allow facilities to be reclassified as area sources once their potential to emit hazardous air pollutants falls below the levels that define major sources.

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 as discussed in this memorandum.

More information is available online at https://www.epa.gov/stationary-sources-air-pollution/national-emission-standards-hazardous-air-pollutants-neshap-9

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