From: Lamason, Bill
Location: BLO/Kevin to call Ex. 6 - Personal Privacy
Importance: Normal
Subject: 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: Culligan, Kevin[Culligan.Kevin@epa.gov]
From: Lamason, Bill
Sent: Mon 11/13/2017 2:14:04 PM
Subject: RE: OIAI Check in

Kevin, Unfortunately not as Debra and I have a meeting at 11:30 am. OGC is critical for this morning's meeting so we'll meet with them and then we can backfill you later today. Maybe Elineth can call you at 11:15 am.

-----Original Message-----
From: Culligan, Kevin
Sent: Monday, November 13, 2017 8:49 AM
To: Lamason, Bill <Lamason.Bill@epa.gov>
Subject: Re: OIAI Check in

Could we do 11:15?

Sent from my iPhone

> On Nov 13, 2017, at 8:01 AM, Lamason, Bill <Lamason.Bill@epa.gov> wrote:
>
> Check in. Kevin available until 10 am. Thank! Bill <meeting.ics>

From: Lamason, Bill
Location: D220D/Call in numbe Ex. 6 - Personal Privacy
Importance: Normal
Subject: OIAI Check in (coordination with Kevin)
Start Date/Time: Mon 11/6/2017 6:00:00 PM
End Date/Time: Mon 11/6/2017 7:00:00 PM

Looks like all but Chuck are available at this time. We'll catch him after the call.

To: Culligan, Kevin[Culligan.Kevin@epa.gov]
Cc: Lamason, Bill[Lamason.Bill@epa.gov]; French, Chuck[French.Chuck@epa.gov]; Dalcher, Debra[dalcher.debra@epa.gov]
From: Dalcher, Debra
Sent: Wed 12/6/2017 5:24:39 PM
Subject: RE: Wehrum Meeting Request - Once-In-Always-In Policy Revision

Thanks Kevin.

Peter has asked us to run the 2-pager by Scott Jordan. If you have an opportunity to review that document soon (today!) that would be greatly appreciated so we can incorporate any edits/suggestions and pass that to him for review. If you would like to chat, please let me know. Please comment on Chuck's version of the 2-pager.

Yesterday I received edits on the revision memo from Scott, some of which required a little work, so I am working on that right now.

Debra

From: Culligan, Kevin
Sent: Wednesday, December 06, 2017 11:36 AM
To: Dalcher, Debra <dalcher.debra@epa.gov>
Cc: Lamason, Bill <Lamason.Bill@epa.gov>; French, Chuck <French.Chuck@epa.gov>
Subject: Re: Wehrum Meeting Request - Once-In-Always-In Policy Revision

Will verify with Peter, but think I will be allowed

Sent from my iPhone

On Dec 6, 2017, at 9:08 AM, Dalcher, Debra <dalcher.debra@epa.gov> wrote:

It would be nice if Kevin could be there.

Debra

From: Lamason, Bill
Sent: Wednesday, December 06, 2017 8:53 AM
To: Dalcher, Debra <dalcher.debra@epa.gov>; Culligan, Kevin <Culligan.Kevin@epa.gov>
Cc: French, Chuck <French.Chuck@epa.gov>
Subject: FW: Wehrum Meeting Request - Once-In-Always-In Policy Revision

Debra, FYI.

Kevin, We did not include you on the meeting request due to the "DD+2" rule but thought you might be able to "walk in."

Thanks!

Bill

From: Eck, Janet
Sent: Wednesday, December 06, 2017 8:34 AM
To: Lamason, Bill <Lamason.Bill@epa.gov>
Subject: FW: Wehrum Meeting Request - Once-In-Always-In Policy Revision

FYI. Thanks.

From: Alston, Lala
Sent: Tuesday, December 05, 2017 4:42 PM
To: Loving, Shanita <Loving.Shanita@epa.gov>; Atkinson, Emily <Atkinson.Emily@epa.gov>

Cc: Alston, Lala <Alston.Lala@epa.gov>; South, Peter <South.Peter@epa.gov>; Shryock, Alice <shryock.alice@epa.gov>; Johnson, Tanya <Johnson.Tanya@epa.gov>; McKinney, Voronina <mckinney.voronina@epa.gov>; Eck, Janet <Eck.Janet@epa.gov>
Subject: Wehrum Meeting Request - Once-In-Always-In Policy Revision

Wehrum Meeting Request for scheduling.

Thank you,

Lala

Lala Alston

US/EPA/OAR/OAQPS/IO – MC-C404-04

Research Triangle Park, NC 27711

Phone: (919) 541-5616

To: OAQPS SPPD GL[OAQPS_SPPD_GL@epa.gov]; Boyd, Rochelle[Boyd.Rochelle@epa.gov]; Srivastava, Ravi[Srivastava.Ravi@epa.gov]; McLamb, Marguerite[McLamb.Marguerite@epa.gov]; Thompson, Fred[Thompson.Fred@epa.gov]; Tsirigotis, Peter[Tsirigotis.Peter@epa.gov]; Culligan, Kevin[Culligan.Kevin@epa.gov]; French, Chuck[French.Chuck@epa.gov]; Eck, Janet[Eck.Janet@epa.gov]; Pemberton, Wanda[Pemberton.Wanda@epa.gov]
From: Conner, Lisa
Sent: Thur 11/2/2017 3:03:14 PM
Subject: DOC Report - draft Action Plan (OAR).docx
DOC Report - draft Action Plan (OAR).docx

Hi everyone,

Following up on the discussion from Tuesday's staff meeting, we have received an updated Action Plan table from the DOC report. It seems they've added an item for us for which we have to provide an response – item 7: Unified Coatings Rule (Keith Barnett). They have also added a new list with a few additional items in a second table that did not make the high priority list. They are not asking for input for "potentially responsive actions," however, we may want to be prepared. In particular, this second table mentions "Once-in, Always-in" policy.

We can still edit the document as we see fit, but Mike says "Don't know yourself out." We still do not know if the Reg Reform Task Force will seek any response from us. I have removed the HON from the examples given. Any other suggested edits are welcome. Thanks.

To: Culligan, Kevin[Culligan.Kevin@epa.gov]
From: French, Chuck
Sent: Thur 1/25/2018 8:49:01 PM
Subject: FW: OIAI Reclassification of Major Sources as Area Sources Under Section 112 _01 25 2018.docx
image2018-01-27-164839.pdf

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 8:42:44 PM
Subject: FW: OIAI Reclassification of Major Sources as Area Sources Under Section 112 _01 25 2018.docx
image2018-01-27-164839.pdf

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: Culligan, Kevin[Culligan.Kevin@epa.gov]
Cc: Dalcher, Debra[dalcher.debra@epa.gov]
From: Torres, Elineth
Sent: Thur 11/2/2017 2:01:17 PM
Subject: NRDC comments 2007 OIAI proposal
Comment_National_Resources_Defence_Council_(NRDC) May 4 2007 (1).pdf

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: Dalcher, Debra[dalcher.debra@epa.gov]; Lamason, Bill[Lamason.Bill@epa.gov]; Culligan, Kevin[Culligan.Kevin@epa.gov]; French, Chuck[French.Chuck@epa.gov]; McLamb, Marguerite[McLamb.Marguerite@epa.gov]; RTP-OAQPS-919-541-4332-SPPD/Phone-Line/RTP-OAQPS-BLDG-C[RTP-OAQPS-919-541-4332-SPPD@epa.gov]; Rodman, Sonja[Rodman.Sonja@epa.gov]; Vetter, Rick[Vetter.Rick@epa.gov]
From: Torres, Elineth
Sent: Wed 11/1/2017 2:47:08 PM
Subject: Updated options document
OIAI Options Pager 11_01_17.docx

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-919-541-4332-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: Culligan, Kevin[Culligan.Kevin@epa.gov]
From: Torres, Elineth
Sent: Wed 11/1/2017 1:22:46 PM
Subject: RE: Can you send me the document for the 10:00?
OIAI Options Pager 10_30_17.docx

See attachment.

Thanks!

Elineth Torres

OAQPS

919-541-4347

From: Culligan, Kevin
Sent: Wednesday, November 01, 2017 9:22 AM
To: Torres, Elineth <Torres.Elineth@epa.gov>
Subject: Can you send me the document for the 10:00?

Thanks

From: Torres, Elineth
Location: RTP-D201-Max40/RTP-Bldg-D
Importance: Normal
Subject: OIAI check-in- Urgent-Document Attached
Start Date/Time: Mon 10/30/2017 3:30:00 PM
End Date/Time: Mon 10/30/2017 4:00:00 PM
OIAI Options Pager 10_30_17.docx

This is an urgent check-in for OIAI.

Number to call- Ex. 6 - Personal Privacy

RTP Room D201

To: Torres, Elineth[Torres.Elineth@epa.gov]
Cc: Rodman, Sonja[Rodman.Sonja@epa.gov]; Lamason, Bill[Lamason.Bill@epa.gov]; Dalcher, Debra[dalcher.debra@epa.gov]; McLamb, Marguerite[McLamb.Marguerite@epa.gov]; French, Chuck[French.Chuck@epa.gov]; Culligan, Kevin[Culligan.Kevin@epa.gov]
From: Vetter, Rick
Sent: Mon 10/23/2017 2:26:42 PM
Subject: RE: Updated OIAI options document for OGC review

Thanks, Elineth. I don't know what Sonja's schedule looks like, but I'll do my best to get something to her by COB tomorrow. That should give us plenty of time to work through any issues that might come up during our review.

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: Torres, Elineth
Sent: Monday, October 23, 2017 9:37 AM
To: Vetter, Rick <Vetter.Rick@epa.gov>
Cc: Rodman, Sonja <Rodman.Sonja@epa.gov>; Lamason, Bill <Lamason.Bill@epa.gov>; Dalcher, Debra <dalcher.debra@epa.gov>; McLamb, Marguerite <McLamb.Marguerite@epa.gov>; French, Chuck <French.Chuck@epa.gov>; Culligan, Kevin <Culligan.Kevin@epa.gov>
Subject: Updated OIAI options document for OGC review

Rick,

Attached is the updated OIAI options document we had been working on. This version reflects the latest direction we got from Peter. Peter wants us to get this version reviewed and cleared by OGC before proceeding to share it with OAQPS/OAR IO management. Peter wants to make sure OGC is comfortable with the approaches/options presented in the document.

Per our conversation over the phone, you will review the document first and then have Sonja review it. Do you think it is possible to get OGC input by the end of this week (10/27)? Feel free to let me know if you have questions.

Thank You!

Elineth Torres

OAQPS

919-541-4347

To: French, Chuck[French.Chuck@epa.gov]; Lamason, Bill[Lamason.Bill@epa.gov]
Cc: Dalcher, Debra[dalcher.debra@epa.gov]; Culligan, Kevin[Culligan.Kevin@epa.gov]; McLamb, Marguerite[McLamb.Marguerite@epa.gov]
From: Torres, Elineth
Sent: Mon 10/23/2017 1:17:05 PM
Subject: RE: OIAI updated options paper

Thank You!

I will clean the document and send it to OGC for their review.

Elineth Torres

OAQPS

919-541-4347

From: French, Chuck
Sent: Friday, October 20, 2017 11:13 AM
To: Torres, Elineth <Torres.Elineth@epa.gov>; Lamason, Bill <Lamason.Bill@epa.gov>
Cc: Dalcher, Debra <dalcher.debra@epa.gov>; Culligan, Kevin <Culligan.Kevin@epa.gov>; McLamb, Marguerite <McLamb.Marguerite@epa.gov>
Subject: RE: OIAI updated options paper

Hi Elineth,

Sorry for the delay! Thanks for revising the paper! Anyway, attached are my suggested edits (as shown in attached). Many of these edits are mainly to shorten the paper some. Other edits are for clarification, etc.…

Let me know if you have questions, concerns, etc…

Thanks.

Chuck

From: Torres, Elineth
Sent: Tuesday, October 17, 2017 10:58 AM
To: Lamason, Bill <Lamason.Bill@epa.gov>; French, Chuck <French.Chuck@epa.gov>
Cc: Dalcher, Debra <dalcher.debra@epa.gov>; Culligan, Kevin <Culligan.Kevin@epa.gov>; McLamb, Marguerite <McLamb.Marguerite@epa.gov>
Subject: OIAI updated options paper

Bill and Chuck,

Can you skim the attached version of the OIAI options paper and let me know if you have any edits/comments. In this version we have tried to incorporate the feedback we got from Peter last week. I will share the paper with OGC next but wanted to give you a chance to weigh in at this time since you were present at the meeting with Peter. Would it be possible for you to provide any feedback by noon Thursday, Oct 19?

Thanks,

Elineth Torres

OAQPS

919-541-4347

To: Culligan, Kevin[Culligan.Kevin@epa.gov]
Cc: Dalcher, Debra[dalcher.debra@epa.gov]; Lamason, Bill[Lamason.Bill@epa.gov]
From: Torres, Elineth
Sent: Thur 10/12/2017 6:42:35 PM
Subject: OIAI documents
2007 OIAI FRN proposal.pdf
1995 OIAI guidance memo.pdf
OIAI Options Pager 10_10_17c Working Doc_Clean.docx

Kevin,

Bill asked me to send you the Once In, Always In options paper we discussed yesterday with Peter. I have attached the document for your reference. Please note that Debra and I are working on an updated version that incorporates Peter's feedback. We will send you the updated version next week.

Also attached is the 1995 memorandum and the 1997 proposal for your reference.

Let us know if you have questions.

Thanks!

Elineth Torres

OAQPS

919-541-4347

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]
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: Culligan, Kevin[Culligan.Kevin@epa.gov]
Cc: Santiago, Juan[Santiago.Juan@epa.gov]
From: Wood, Anna
Sent: Wed 1/24/2018 4:28:44 PM
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: 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]
From: Harlow, David
Sent: Wed 1/24/2018 4:02:51 PM
Subject: Revised OI/AI memorandum
dshReclassification of Major Sources as Area Sources Under Section 112_DHarlow Draft.docx

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

To: Lamason, Bill[Lamason.Bill@epa.gov]; Harlow, David[harlow.david@epa.gov]; Culligan, Kevin[Culligan.Kevin@epa.gov]; Dalcher, Debra[dalcher.debra@epa.gov]; Jordan, Scott[Jordan.Scott@epa.gov]; Lassiter, Penny[Lassiter.Penny@epa.gov]
From: Rodman, Sonja
Sent: Wed 1/24/2018 2:33:18 PM
Subject: RE: Once in Always in Discussion

We're switching phone numbers. Please call in to **Ex. 6 - Personal Privacy**

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: Lamason, Bill
Sent: Wednesday, January 24, 2018 9:28 AM
To: Harlow, David <harlow.david@epa.gov>; Culligan, Kevin <Culligan.Kevin@epa.gov>; Dalcher, Debra <dalcher.debra@epa.gov>; Jordan, Scott <Jordan.Scott@epa.gov>; Rodman, Sonja <Rodman.Sonja@epa.gov>; Lassiter, Penny <Lassiter.Penny@epa.gov>
Subject: RE: Once in Always in Discussion

RTP folks, we've called in from D210A. Bill

-----Original Appointment-----
From: Harlow, David
Sent: Monday, January 22, 2018 12:49 PM
To: Harlow, David; Lamason, Bill; Culligan, Kevin; Dalcher, Debra; Jordan, Scott; Rodman, Sonja; Lassiter, Penny
Subject: Once in Always in Discussion

When: Wednesday, January 24, 2018 9:30 AM-10:00 AM (UTC-05:00) Eastern Time (US & Canada).
Where: WJC-N 5415 + Dial: Ex. 6 - Personal Privacy Participant Code: Ex. 6 - Personal Privacy

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

Revised Final Agenda for RTP Visit
William Wehrum, Assistant Administrator, Office of Air and Radiation
December 18, 2017

9:15 to 10:00	Residential Wood Heaters NSPS EPA RTP Location: C401A Call in number: Ex. 6 - Personal Privacy Participant Code: Ex. 6 - Personal Privacy
10:00 to 10:45	Prep Meeting for Mission Measures—*OAQPS not participating* EPA RTP Location: C401A
11:15 to 12:00	OAQPS All Hands EPA RTP Location: RTP EPA Auditorium C111 a, b, c Call in number: Ex. 6 - Personal Privacy no code necessary)
12:00 to 12:45	General Discussion re: NSR Team EPA RTP Location: C401A Call in number: Ex. 6 - Personal Privacy (no code necessary)
1:00 to 1:45	Informational Briefing Regarding Review of 111(b) and 111(d) EPA RTP Location: C401A Call in number: Ex. 6 - Personal Privacy (no code necessary)
2:00 to 2:45	Once-in, Always-in Policy Revision Location: C401A Call in number: Ex. 6 - Personal Privacy; Participant Code: Ex. 6 - Personal Privacy
3:00 to 4:00	Pre-brief for Option Selection for NO2 Primary NAAQS Location: C401A Call in number: Ex. 6 - Personal Privacy; Participant Code: Ex. 6 - Personal Privacy
4:15	Depart for Airport

ECOS

Resolution Number 00-12
Approved August 15, 2000
Girdwood, Alaska

Reaffirmed August 12, 2003
Salt Lake City, Utah

Reaffirmed August 29, 2006
Portland, Oregon

Reaffirmed September 21, 2009
Whitefish, Montana

Revised August 28, 2012
Colorado Springs, Colorado

Revised September 2, 2015
Newport, Rhode Island

As certified by
Alexandra Dapolito Dunn
Executive Director

CHANGE TO THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY'S "ONCE IN, ALWAYS IN" POLICY

WHEREAS, pollution prevention is acknowledged as a best practice for eliminating pollution and has been recognized as such by the United States Environmental Protection Agency (U.S. EPA) in negotiations with the states and territories for revisions to the “once in, always in” policy; and

WHEREAS, the states and territories have developed their own programs, in cooperation with U.S. EPA, to promote and implement pollution prevention practices that have resulted in lasting actual reductions in hazardous air pollutants; and

WHEREAS, the 1990 Pollution Prevention Act states "…opportunities for source reduction are often not realized because existing regulations, and industrial resources they require for compliance, focus upon treatment and disposal, rather than source reduction which is fundamentally different from and more desirable than waste management and pollution control"; and

WHEREAS, Section 112 of the Clean Air Act was established to reduce emissions of Hazardous Air Pollutants (HAPs); and

WHEREAS, since 1992, U.S. EPA has promulgated technology-based emission standards, commonly referred to as Maximum Achievable Control Technology (MACT) standards, to reduce HAP emissions from a wide range of source categories; and

WHEREAS, a major HAP source under a MACT standard is required to obtain a Title V Operating Permit; and

WHEREAS, the "Once In, Always In" Policy results in substantial reporting requirements by continuing all major source requirements under a MACT standard even if the source of HAPs has been eliminated or reduced through pollution prevention measures; and

WHEREAS, U.S. EPA requested and received a National Academy of Sciences (NAS) report titled "Sustainability and the US EPA." The NAS report recommended that U.S. EPA should incorporate sustainability considerations including pollution prevention into its decision making.

NOW, THEREFORE, BE IT RESOLVED THAT THE ENVIRONMENTAL COUNCIL OF STATES (ECOS):

Calls on U.S. EPA to provide an exception to the "Once In, Always In" policy provisions that apply major source requirements after a source reduces and maintains its level of HAP emissions below major source thresholds and equivalent to maximum achievable control technology (MACT) if the reduction is made through the use of pollution prevention measures that are permanent and enforceable through permit conditions;

Calls on U.S. EPA to provide an additional exception to the "Once In, Always In" policy provisions for a source that had a potential to emit above the major source threshold and actual emissions below the major source threshold, has continuously maintained actual emissions below the major source threshold, and maintained records that demonstrate such without the addition of pollution control equipment, becomes subject to a federally enforceable synthetic minor limit after the applicability date of the MACT, and would not be required to add pollution control equipment in order to comply with the MACT;

Calls on U.S. EPA to recognize that the urgency of this issue is dictated by years of negotiation, dialogue, analysis, and review by the Environmental Council of the States, the National Association of Clean Air Agencies (NACAA), and the Forum on State and Tribal Toxics Action (FOSTTA);

Calls on U.S. EPA to develop a timely, informed solution through state and territorial based administrative review and minor source permitting programs that does not require case-by-case determinations, minimizes reporting requirements when performance is through source reduction, and is responsive to state and territorial capabilities and safeguards; and

Believes that by revising the "Once In, Always In" policy to provide an incentive for sources to reduce emissions through means such as process changes and reformulations, as opposed to adding control equipment, U.S. EPA will promote pollution prevention as envisioned in the 1990 Pollution Prevention Act, achieve emissions reductions as envisioned in Section 112 of the Clean Air Act and reduce administrative and reporting burdens.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

OFFICE OF
AIR AND RADIATION

MEMORANDUM

SUBJECT: Reclassification of Major Sources as Area Sources Under Section 112 of the Clean Air Act

FROM: William L. Wehrum
Assistant Administrator

1-25-18

TO: Regional Air Division Directors

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

A prior EPA guidance memorandum had taken a different position. *See* "Potential to Emit for MACT Standards – Guidance on Timing Issues." John Seitz, Director, Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency (May 16, 1995) (the "May 1995 Seitz Memorandum"). The May 1995 Seitz Memorandum set forth a policy, commonly known as "once in, always in" (the "OIAI policy"), under which "facilities may switch to area source status at any time until the 'first compliance date' of the standard," with "first compliance date" being defined to mean the "first date a source must comply with an emission limitation or other substantive regulatory requirement." May 1995 Seitz Memorandum at 5. Thereafter, under the OIAI policy, "facilities that are major sources for HAP on the 'first compliance date' are required to comply permanently with the MACT standard." *Id.* at 9.

The guidance presented here supersedes that which was contained in the May 1995 Seitz Memorandum. The OIAI policy stated in the May 1995 Seitz Memorandum is withdrawn, effective immediately.

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.

BACKGROUND

Relevant Statutory Provisions

Section 112 of the CAA establishes a multi-level regulatory structure for stationary sources of HAP, in which sources meeting a threshold amount of actual or potential HAP emissions – *i.e.*, "major sources" – are generally subject to different standards than sources with HAP emissions below the threshold.[1] Specifically, the CAA defines a "major source" to mean "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." 42 U.S.C. § 7412(a)(1). The term "area source" is defined to mean "any stationary source of hazardous air pollutants that is not a major source." *Id.* 42 U.S.C. § 7412(a)(2).[2] In contrast to the OIAI policy, the CAA contains no provision which specifies that, if a major source wishes to switch to area source status, by taking an enforceable limit on its PTE, it must do so prior to the "first compliance date," or that a major source MACT standard will continue to apply to a former major source that, subsequent to the first compliance date, takes an enforceable limit on its PTE to below the applicable thresholds.

EPA's Past Actions

Shortly after EPA began implementing individual MACT standards through rulemaking, the agency received multiple requests to clarify when a major source of HAP could avoid the requirements applicable to major sources by taking measures to limit its PTE below the major source thresholds. In response, EPA produced the May 1995 Seitz Memorandum. At that time, EPA took the position that facilities that are major sources of HAP on the first substantive compliance date of an applicable major source MACT standard must comply "permanently" with that standard, even if the source was subsequently to become an area source by limiting its PTE. The expressed basis for this OIAI policy was that this would help ensure that required reductions in HAP emissions were maintained over time. *See* May 1995 Seitz Memorandum at 9 ("A once in,

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[1] Standards for major sources are based on MACT, which is the level of control achieved by the best controlled sources in the category. *See* 42 U.S.C. § 7412 (d)(2), (d)(3). Standards for area sources may be based on MACT, but alternatively may be based on either generally available control technology (GACT) or generally available management practices that reduce HAP emissions. *Id.* 42 U.S.C. §7412(d)(2), (5).

[2] The CAA section 112 implementing regulations define "major source" and "area source" in nearly identical terms. *See* 40 CFR 63.2. ("Major source means 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, unless the Administrator establishes a lesser quantity, or in the case of radionuclides, different criteria from those specified in this sentence."; "Area source means any stationary source of hazardous air pollutants that is not a major source as defined in this part.")

always in policy ensures that the health and environmental protection provided by MACT standards is not undermined.").

Since issuing the OIAI policy, EPA has twice proposed regulatory amendments that would have altered this interpretation. In 2003, EPA proposed amendments that focused on HAP emissions reductions resulting from pollution prevention (P2) activities. Apart from certain provisions associated with EPA's National Environmental Performance Track Program, that proposal was never finalized. *See* 68 FR 26249 (May 15, 2003); 69 FR 21737 (April 22, 2004).

In 2007, EPA issued a proposed rule to replace the OIAI policy set forth in the May 1995 Seitz Memorandum. 72 FR 69 (January 3, 2007). In that proposal, EPA reviewed the provisions in CAA section 112 relevant to the OIAI interpretation, applicable regulatory language, stakeholder concerns and potential implications. *Id.* at 71-74. Based on that review, EPA proposed that a major source that is subject to a major source MACT standard would no longer be subject to that standard, if the source were to become an area source through an enforceable limitation on its PTE. Under the proposal, major sources could take such limits on its PTE and obtain "area source" status at any time and would not be required to have done so before the "first compliance date," as the OIAI policy provided. *Id.* at 70 ("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 before the major source thresholds."). EPA has never taken final action on this 2007 proposal, which has not been withdrawn.

DISCUSSION

EPA has determined that the OIAI policy articulated in the May 1995 Seitz Memorandum is contrary to the plain language of the CAA, and, therefore, must be withdrawn. Congress expressly defined the terms "major source" and "area source" in CAA section 112(a), in unambiguous language. A "major source" is a source that "emits or has the potential to emit considering controls, in the aggregate," 10 tpy or more of any single HAP or 25 tpy or more of any combination of HAP. An "area source" is defined simply to mean any stationary source that is not a "major source." The OIAI policy had envisioned a source whose PTE is *below* 10 tpy of any single HAP and 25 tpy of any combination of HAP (*i.e.*, an "area source"), but which is nevertheless subject to the requirements applicable to major sources, including major source MACT standards. Notably absent from the statutory definitions is any reference to the compliance date of a MACT standard. Furthermore, the phrase "considering controls" within the definition of "major source" indicates that measures a source adopts to lower its PTE below the major source threshold must be considered as operating to remove it from the major source category regardless of the time at which those controls are adopted.

In short, Congress placed no temporal limitations on the determination of whether a source emits or has the PTE HAP in sufficient quantity to qualify as a major source. To the extent the OIAI policy imposed such a temporal limitation (*i.e.*, before the "first compliance date"), EPA had no authority to do so under the plain language of the statute.[3]

[3] Noteworthy too is the fact that EPA, in promulgating the regulatory definitions of "major source" and "area source" contained in the General Provisions of 40 CFR part 63, copied the statutory language almost verbatim. *See*

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

Nothing in the structure of the CAA counsels against the plain language reading of the statute to allow major sources to become area sources after an applicable compliance date, just as they have long been able to become area sources before the applicable compliance date. Congress defined major and area sources differently and established different requirements for such sources. The OIAI policy, by contrast, created an artificial time limit that does not exist on the face of the statute by including a temporal limitation on when a major source can become an area source by limiting its PTE.

Many commenters on EPA's 2007 proposal had expressed the view that, by imposing that artificial time limit, the OIAI policy created a disincentive for sources to implement voluntary pollution abatement and prevention efforts, or to pursue technological innovations that would reduce HAP emissions. To the extent that the OIAI policy has long discouraged facilities from identifying and undertaking such HAP emission reduction projects, by applying the statute as written as EPA is now doing, many types of sources will be afforded meaningful incentives to undertake such projects.

The Regional offices should send this memorandum to states within their jurisdiction. Questions concerning specific issues and sources should be directed to the appropriate Regional office. Regional office staff should coordinate with Ms. Elineth Torres or Ms. Debra Dalcher, Policy and Strategies Group, Sector Policies and Programs Division (D205-02), Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone number: (919) 541-4347 or (919) 541-2443, respectively; and email address: torres.elineth@epa.gov or dalcher.debra@epa.gov, respectively.

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note 2, *supra*. EPA did not at that time include any language in those definitions that could reasonably be construed to provide support for the OIAI policy. Accordingly, the policy is contrary not only to the plain language of the CAA (which in itself is dispositive of the policy's lawfulness), but to the plain language of EPA's own regulations.

OAR Meeting Request Form
For Bill Wehrum

Date of this Request: 12/05/2017

Scheduling Point of Contact: Lala Alston, 919-541-5616
Technical Point of Contact: Peter Tsirigotis, 919-541-9411

Subject: Once-in, Always-in Policy Revision

Purpose: Overview of potential approaches to revising the Once-in, Always-in policy under section 112 of the CAA.

- Next ADP Milestone: (specify early guidance, options selection, etc.); meeting scheduled on: __/__/__;
- If applicable, due date to: OP __/__/__ (_ days review); OMB: __/__/__ (days review);
- Legal deadline: Settlement agreement due date is __/__/__.
- Other firm deadline

(Only list one date for first possible date; and one date for last possible date for meetings):

First possible date for meeting: 12/13/2017
Last possible date for meeting: 12/14/2017
Duration: 1 hour

Requested Audio / Video (*Mark with "X" if requested*)

__X__ **Video Location(s):** RTP, DC
List video locations needed (e.g., RTP, DC, Regions)– HQ will set up a bridge if needed

__X_ **HQ Conference Line:**
If requested, HQ staff will provide in meeting invite

____ **Non-HQ Conference Line:**
If you plan to use a non-HQ conference line, include it here

Invitees (please list by Office and in Outlook format, e.g. *Last, First*):
Please include the key OGC and/or Regional representatives as appropriate. Only key invitees are listed by office; others are cc:

Office/Org	Name (*Last, First*)
OAR	Gunasekara, Mandy; Harlow, David; Lewis, Josh;
OAQPS	Page, Steve; Koerber, Mike; Harnett, Bill; Tsirigotis, Peter; Lamason, Bill; Dalcher, Debra; Wood, Anna; Kornylak, Vera
OGC	Rodman, Sonja; Jordan, Scott; Vetter, Rick;
Schedulers to cc:	Alston, Lala; Johnson, Tanya; McKinney, Voronina; Eck, Janet

HQ Meeting Briefing Materials: Must provide to OAQPS IO by 5:00pm, 2 days before meeting.
Revised 6/2017

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

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.

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.

> 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

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.

> 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

"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

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.

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.

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.

> 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?

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

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

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).

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

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

> 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

> 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

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).

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

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

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

> 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

> 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

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

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

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).

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?"

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).

> 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.

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.

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

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

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

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

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

> 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

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

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.

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

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.

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.

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.

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.

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.

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).").

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.

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 in future MACT 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.

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:

EPA-HQ-2018-004063

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.

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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).

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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.

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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

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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:

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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.

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* * * * *

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:

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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:

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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:

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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:

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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:

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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

EC-6-1448-29

~~Delegations~~

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

JAN 25 1995

MEMORANDUM

SUBJECT: Options for Limiting the Potential to Emit (PTE) of a Stationary Source Under Section 112 and Title V of the Clean Air Act (Act)

FROM: John S. Seitz, Director
Office of Air Quality Planning and Standards (MD-10)

Robert I. Van Heuvelen, Director
Office of Regulatory Enforcement (2241)

TO: Director, Air, Pesticides and Toxics Management Division, Regions I and IV
Director, Air and Waste Management Division, Region II
Director, Air, Radiation and Toxics Division, Region III
Director, Air and Radiation Division, Region V
Director, Air, Pesticides and Toxics Division, Region VI
Director, Air and Toxics Division, Regions VII, VIII, IX, and X

Many stationary source requirements of the Act apply only to "major" sources. Major sources are those sources whose emissions of air pollutants exceed threshold emissions levels specified in the Act. For instance, section 112 requirements such as MACT and section 112(g) and title V operating permit requirements largely apply only to sources with emissions that exceed specified levels and are thus major. To determine whether a source is major, the Act focuses not only on a source's actual emissions, but also on its potential emissions. Thus, a source that has maintained actual emissions at levels below the major source threshold could still be subject to major source requirements if it has the potential to emit major amounts of air pollutants. However, in situations where unrestricted operation of a source would result in a potential to emit above major-source levels, such sources may legally avoid program requirements by taking federally-enforceable permit conditions which limit emissions to levels below the applicable major source threshold. Federally-enforceable permit conditions, if violated, are subject to enforcement by the Environmental Protection Agency (EPA) or by

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citizens in addition to the State or Local agency.

As the deadlines for complying with MACT standards and title V operating permits approach, industry and State and local air pollution agencies have become increasingly focused on the need to adopt and implement federally-enforceable mechanisms to limit emissions from sources that desire to limit potential emissions to below major source levels. In fact, there are numerous options available which can be tailored by the States to provide such sources with simple and effective ways to qualify as minor sources. Because there appears to be some confusion and questions regarding how potential to emit limits may be established, EPA has decided to: (1) outline the available approaches to establishing potential to emit limitations, (2) describe developments related to the implementation of these various approaches, and (3) implement a transition policy that will allow certain sources to be treated as minor for a period of time sufficient for these sources to obtain a federally-enforceable limit.

Federal enforceability is an essential element of establishing limitations on a source's potential to emit. Federal enforceability ensures the conditions placed on emissions to limit a source's potential to emit are enforceable by EPA and citizens as a legal and practical matter, thereby providing the public with credible assurances that otherwise major sources are not avoiding applicable requirements of the Act. In order to ensure compliance with the Act, any approaches developed to allow sources to avoid the major source requirements must be supported by the Federal authorities granted to citizens and EPA. In addition, Federal enforceability provides source owners and operators with assurances that limitations they have obtained from a State or local agency will be recognized by EPA.

The concept of federal enforceability incorporates two separate fundamental elements that must be present in all limitations on a source's potential to emit. First, EPA must have a direct right to enforce restrictions and limitations imposed on a source to limit its exposure to Act programs. This requirement is based both on EPA's general interest in having the power to enforce "all relevant features of SIP's that are necessary for attainment and maintenance of NAAQS and PSD increments" (see 54 FR 27275, citing 48 FR 38748, August 25, 1983) as well as the specific goal of using national enforcement to ensure that the requirements of the Act are uniformly implemented throughout the nation (see 54 FR 27277). Second, limitations must be enforceable as a practical matter.

It is important to recognize that there are shared responsibilities on the part of EPA, State, and local agencies, and on source owners to create and implement approaches to creating acceptable limitations on potential emissions. The lead

responsibility for developing limitations on potential emissions rests primarily with source owners and State and local agencies. At the same time, EPA must work together with interested parties, including industry and States to ensure that clear guidance is established and that timely Federal input, including Federal approval actions, is provided where appropriate. The guidance in this memorandum is aimed towards continuing and improving this partnership.

Available Approaches for Creating Federally-enforceable Limitations on the Potential to Emit

There is no single "one size fits all" mechanism that would be appropriate for creating federally-enforceable limitations on potential emissions for all sources in all situations. The spectrum of available mechanisms should, however, ensure that State and local agencies can create federally-enforceable limitations without undue administrative burden to sources or the agency. With this in mind, EPA views the following types of programs, if submitted to and approved by EPA, as available to agencies seeking to establish federally-enforceable potential to emit limits:[1]

1. Federally-enforceable State operating permit programs (FESOPs) (non-title V). For complex sources with numerous and varying emission points, case-by-case permitting is generally needed for the establishment of limitations on the source's potential to emit. Such case-by-case permitting is often accomplished through a non-title V federally-enforceable State operating permit program. This type of permit program, and its basic elements, are described in guidance published in the Federal Register on June 28, 1989 (54 FR 27274). In short, the program must: (a) be approved into the SIP, (b) impose legal obligations to conform to the permit limitations, (c) provide for limits that are enforceable as a practical matter, (d) be issued in a process that provides for review and an opportunity for comment by the public and by EPA, and (e) ensure that there is no relaxation of otherwise applicable Federal requirements. The EPA believes that these type of programs can be used for both criteria pollutants and hazardous air pollutants, as described in the memorandum, "Approaches to Creating Federally-Enforceable Emissions Limits," November 3, 1993. This memorandum (referred to below as the November 1993 memorandum) is included for your information as Attachment 1. There are a number of important clarifications with respect to hazardous air pollutants subsequent to the November 1993 memorandum which are discussed

[1]This is not an exhaustive list of considerations affecting potential to emit. Other federally-enforceable limits can be used, for example, source-specific SIP revisions. For brevity, we have included those which have the widest applicability.

below (see section entitled "Limitations on Hazardous Air Pollutants").

2. Limitations established by rules. For less complex plant sites, and for source categories involving relatively few operations that are relatively similar in nature, case-by-case permitting may not be the most administratively efficient approach to establishing federally-enforceable restrictions. One approach that has been used is to establish a general rule which creates federally-enforceable restrictions at one time for many sources (these rules have been referred to as "exclusionary" rules and by some permitting agencies as "prohibitory" rules). A specific suggested approach for volatile organic compounds (VOC) limits by rule was described in EPA's memorandum dated October 15, 1993 entitled "Guidance for State Rules for Optional Federally-Enforceable Emissions Limits Based Upon Volatile Organic Compound (VOC) Use." An example of such an exclusionary rule is a model rule developed for use in California. (The California model rule is attached, along with a discussion of its applicability to other situations--see Attachment 2). Exclusionary rules are included in a State's SIP and generally become effective upon approval by EPA.

3. General permits. A concept similar to the exclusionary rule is the establishment of a general permit for a given source type. A general permit is a single permit that establishes terms and conditions that must be complied with by all sources subject to that permit. The establishment of a general permit provides for conditions limiting potential to emit in a one-time permitting process, and thus avoids the need to issue separate permits for each source within the covered source type or category. Although this concept is generally thought of as an element of a title V permit program, there is no reason that a State or local agency could not submit a general permit program as a SIP submittal aimed at creating potential to emit limits for groups of sources. Additionally, general permits can be issued under the auspices of a SIP-approved FESOP. The advantage of a general permit, when compared to an exclusionary rule, is that upon approval by EPA of the State's permit program, a general permit could be written for one or more additional source types without triggering the need for the formal SIP revision process.

4. Construction permits. Another type of case-by-case permit is a construction permit. These permits generally cover new and modified sources, and States have developed such permit programs as an element of their SIP's. As described in the November 1993 memorandum, these State major and minor new source review (NSR) construction permits can provide for federally-enforceable limitations on a source's potential to emit. Further discussion of the use of minor source NSR programs is contained in EPA's letter to Jason Grumet, NESCAUM, dated November 2, 1994,

which is contained in Attachment 3. As noted in this letter, the usefulness of minor NSR programs for the creation of potential to emit limitations can vary from State to State, and is somewhat dependent on the scope of a State's program.

5. Title V permits. Operating permits issued under the Federal title V operating permits program can, in some cases, provide a convenient and readily available mechanism to create federally-enforceable limits. Although the applicability date for part 70 permit programs is generally the driving force for most of the current concerns with respect to potential to emit, there are other programs, such as the section 112 air toxics program, for which title V permits may themselves be a useful mechanism for creating potential to emit limits. For example, many sources will be considered to be major by virtue of combustion emissions of nitrogen oxides or sulfur dioxide, and will be required to obtain part 70 permits. Such permits could be used to establish federally-enforceable limitations that could ensure that the source is not considered a major source of hazardous air pollutants.

Practicable Enforceability

If limitations--whether imposed by SIP rules or through individual or general permits--are incomplete or vague or unsupported by appropriate compliance records, enforcement by the States, citizens and EPA would not be effective. Consequently, in all cases, limitations and restrictions must be of sufficient quality and quantity to ensure accountability (see 54 FR 27283).

The EPA has issued several guidance documents explaining the requirements of practicable enforceability (e.g., "Guidance on Limiting Potential to Emit in New Source Permitting," June 13, 1989; memorandum from John Rasnic entitled "Policy Determination on Limiting Potential to Emit for Koch Refining Company's Clean Fuels Project," March 13, 1992). In general, practicable enforceability for a source-specific permit means that the permit's provisions must specify: (1) A technically-accurate limitation and the portions of the source subject to the limitation; (2) the time period for the limitation (hourly, daily, monthly, and annual limits such as rolling annual limits); and (3) the method to determine compliance including appropriate monitoring, recordkeeping, and reporting. For rules and general permits that apply to categories of sources, practicable enforceability additionally requires that the provisions: (1) identify the types or categories of sources that are covered by the rule; (2) where coverage is optional, provide for notice to the permitting authority of the source's election to be covered by the rule; and (3) specify the enforcement consequences relevant to the rule. More specific guidance on these enforceability principles as they apply to rules and general permits is provided in Attachment 4.

Limitations on Hazardous Air Pollutants (HAP)

There are a number of important points to recognize with respect to the ability of existing State and local programs to create limitations for the 189 HAP listed in (or pursuant to) section 112(b) of the Act, consistent with the definitions of "potential to emit" and "federally-enforceable" in 40 CFR 63.2 (promulgated March 16, 1994, 59 FR 12408 in the part 63 General Provisions). The EPA believes that most State and local programs should have broad capabilities to handle the great majority of situations for which a potential to emit limitation on HAP is needed.

First, it is useful to note that the definition of potential to emit for the Federal air toxics program (see the subpart A "general provisions," section 63.2) considers, for purposes of controlling HAP emissions, federally-enforceable limitations on criteria pollutant emissions if "the *effect* such limitations would have on "[hazardous air pollutant] . . . emissions" is federally-enforceable (emphasis added). There are many examples of such criteria pollutant emission limits that are present in federally-enforceable State and local permits and rules. Examples would include a limitation constraining an operation to one (time limit specified) shift per day or limitations that effectively limit operations to 2000 hours per year. Other examples would include limitations on the amount of material used, for example a permit limitation constraining an operation to using no more than 100 gallons of paint per month. Additionally, federally-enforceable permit terms that, for example, required an incinerator to be operated and maintained at no less than 1600 degrees would have an obvious "effect" on the HAP present in the inlet stream.

Another federally-enforceable way criteria pollutant limitations affect HAP can be described as a "nested" HAP limit within a permit containing conditions limiting criteria pollutants. For example, the particular VOC's within a given operation may include toluene and xylene, which are also HAP. If the VOC-limiting permit has established limitations on the amount of toluene and xylene used as the means to reduce VOC, those limitations would have an obvious "effect" on HAP as well.

In cases as described above, the "effect" of criteria pollutant limits will be straightforward. In other cases, information may be needed on the nature of the HAP stream present. For example, a limit on VOC that ensured total VOC's of 20 tons per year may not ensure that each HAP present is less than 10 tons per year without further investigation. While the EPA intends to develop further technical guidance on situations for which additional permit terms and conditions may be needed to ensure that the "effect" is enforceable as a practical matter, the EPA intends to rely on State and local agencies to employ

care in drafting enforceable requirements which recognize obvious environmental and health concerns.

There are, of course, a few important pollutants which are HAP but are not criteria pollutants. Example of these would include methylene chloride and other pollutants which are considered nonreactive and therefore exempt from coverage as VOC's. Especially in cases where such pollutants are the only pollutants present, criteria pollutant emission limitations may not be sufficient to limit HAP. For such cases, the State or local agency will need to seek program approval under section 112(l) of the Act.

Section 112(l) provides a clear mechanism for approval of State and local air toxics programs for purposes of establishing HAP-specific PTE limits. The EPA intends, where appropriate, that in approving permitting programs into the SIP, to add appropriate language citing approval pursuant to section 112(l) as well. An example illustrating section 112(l) approval is the approval of the State of Ohio's program for limiting potential to emit (see 59 FR 53587, October 25, 1994). In this notice, EPA granted approval under section 112(l) for hazardous air pollutants aspects of a State program for limiting potential to emit. Such language can be added to any federally-enforceable State operating permit program, exclusionary rule, or NSR program update SIP approval notice so long as the State or local program has the authority to regulate HAP and meets other section 112(l) approval criteria. Transition issues related to such section 112(l) approvals are discussed below.

Determination of Maximum Capacity

While EPA and States have been calculating potential to emit for a number of years, EPA believes that it is important at this time to provide some clarification on what is meant in the definition of potential to emit by the "maximum capacity of a stationary source to emit under its physical and operational design." Clearly, there are sources for which inherent physical limitations for the operation restrict the potential emissions of individual emission units. Where such inherent limitations can be documented by a source and confirmed by the permitting agency, EPA believes that States have the authority to make such judgements and factor them into estimates of a stationary source's potential to emit.

The EPA believes that the most straightforward examples of such inherent limitations is for single-emission unit type operations. For example, EPA does not believe that the "maximum capacity" language requires that owner of a paint spray booth at a small auto body shop must assume that (even if the source could be in operation year-round) spray equipment is operated 8760 hours per year in cases where there are inherent physical

limitations on the number of cars that can be painted within any given period of time. For larger sources involving multiple emissions units and complex operations, EPA believes it can be more problematic to identify the inherent limitations that may exist.

The EPA intends, within its resource constraints, to issue technical assistance in this area by providing information on the type of operational limits that may be considered acceptable to limit the potential to emit for certain individual small source categories.

Transition Guidance for Section 112 and Title V Applicability

Most, if not all, States have recognized the need to develop options for limiting the potential emissions of sources and are moving forward with one or more of the strategies described in the preceding sections in conjunction with the submission and implementation of their part 70 permit programs. However, EPA is aware of the concern of States and sources that title V or section 112 implementation will move ahead of the development and implementation of these options, leaving sources with actual emissions clearly below the major source thresholds potentially subject to part 70 and other major source requirements. Gaps could theoretically occur during the time period it takes for a State program to be designed and administratively adopted by the State, approved into the SIP by EPA, and implemented as needed to cover individual sources.

The EPA is committed to aiding all States in developing and implementing adequate, streamlined, and cost-effective vehicles for creating federally-enforceable limits on a source's potential emissions by the time that section 112 or title V requirements become effective. To help bridge any gaps, EPA will expedite its reviews of State exclusionary rules and operating permit rules by, among other things, coordinating the approval of these rules with the approval of the State's part 70 program and by using expeditious approval approaches such as "direct final" Federal Register notices to ensure that approval of these programs does not lag behind approval of the part 70 program.

In addition, in such approval notices EPA will affirm any limits established under the State's program since its adoption by the State but prior to Federal approval if such limits were established in accordance with the procedures and requirements of the approved program. An example of language affirming such limits was recently used in approving an Illinois SIP revision (see 57 FR 59931, included as Attachment 5).

The EPA remains concerned that even with expedited approvals and other strategies, sources may face gaps in the ability to acquire federally-enforceable potential to emit limits due to

delays in State adoption or EPA approval of programs or in their implementation. In order to ensure that such gaps do not create adverse consequences for States or for sources, EPA is announcing a transition policy for a period up to two years from the date of this memorandum. The EPA intends to make this transition policy available at the discretion of the State or local agency to the extent there are sources which the State believes can benefit from such a transition policy. The transition period will extend from now until the gaps in program implementation are filled, but no later than January 1997. Today's guidance, which EPA intends to codify through a notice and comment rulemaking, provides States discretion to use the following options for satisfying potential to emit requirements during this transition period.

1. Sources maintaining emissions below 50 percent of all applicable major source requirements. For sources that typically and consistently maintain emissions significantly below major source levels, relatively few benefits would be gained by making such sources subject to major source requirements under the Act. For this reason, many States are developing exclusionary rules and general permits to create simple, streamlined means to ensure that these sources are not considered major sources. To ease the burden on States' implementation of title V, and to ensure that delays in EPA's approval of these types of programs will not cause an administrative burden on the States, EPA is providing a 2-year transition period for sources that maintain their actual emissions, for every consecutive 12-month period (beginning with the 12 months immediately preceding the date of this memorandum), at levels that do not exceed 50 percent of any and all of the major stationary source thresholds applicable to that source. A source that exceeds the 50 percent threshold, without complying with major source requirements of the Act (or without otherwise limiting its potential to emit), could be subject to enforcement. For this 2-year period, such sources would not be treated as major sources and would not be required to obtain a permit that limits their potential to emit. To qualify under this transition policy, sources must maintain adequate records on site to demonstrate that emissions are maintained below these thresholds for the entire as major sources and would not be required to obtain a permit that limits their potential to emit that would be considered to be adequate during this transition period. Consistent with the California approach, EPA believes it is appropriate for the amount of recordkeeping to vary according to the level of emissions (see paragraphs 1.2 and 4.2 of the attached rule).

2. Larger sources with State limits. For the 2-year transition period, restrictions contained in State permits issued to sources above the 50 percent threshold would be treated by EPA as acceptable limits on potential to emit, provided: (a) the permit is enforceable as a practical matter; (b) the source owner submits a written certification to EPA that it will comply with

the limits as a restriction on its potential to emit; and (c) the source owner, in the certification, accepts Federal and citizen enforcement of the limits (this is appropriate given that the limits are being taken to avoid otherwise applicable Federal requirements). Such limits will be valid for purposes of limiting potential to emit from the date the certification is received by EPA until the end of the transition period. States interested in making use of this portion of the transition policy should work with their Regional Office to develop an appropriate certification process.

3. Limits for noncriteria HAP. For noncriteria HAP for which no existing federally-approved program is available for the creation of federally-enforceable limits, the 2-year transition period provides for sufficient time to gain approval pursuant to section 112(l). For the 2-year transition period, State restrictions on such noncriteria pollutants issued to sources with emissions above the 50 percent threshold would be treated by EPA as limiting a source's potential to emit, provided that: (a) the restrictions are enforceable as a practical matter; (b) the source owner submits a written certification to EPA that it will comply with the limits as a restriction on its potential to emit; and (c) the source owner, in the certification, accepts Federal and citizen enforcement of the limits. Such limits will be valid for purposes of limiting potential to emit from the date the certification is received by EPA until the end of the transition period.

The Regional Offices should send this memorandum, including the attachments, to States within their jurisdiction. Questions concerning specific issues and cases should be directed to the appropriate Regional Office. Regional Office staff may contact Timothy Smith of the Integrated Implementation Group at 919-541-4718, or Clara Poffenberger with the Air Enforcement Division at 202-564-8709.

Attachments

cc: Air Branch Chief, Region I-X
Regional Counsels

Attachment 1

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
Office of Air Quality Planning and Standards
Research Triangle Park, North Carolina 27711

NOV 3 1993

MEMORANDUM

SUBJECT: Approaches to Creating Federally-Enforceable Emissions Limits

FROM: John S. Seitz, Director
Office of Air Quality Planning and Standards (MD-10)

TO: Director, Air, Pesticides and Toxics Management Division, Regions I and IV
Director, Air and Waste Management Division, Region II
Director, Air, Radiation and Toxics Division, Region III
Director, Air and Radiation Division, Region V
Director, Air, Pesticides and Toxics Division, Region VI
Director, Air and Toxics Division, Regions VII, VIII, IX, and X

The new operating permits program under title V of the Clean Air Act (Act), combined with the additional and lower thresholds for "major" sources also provided by the 1990 Amendments to the Act, has led to greatly increased interest by State and local air pollution control agencies, as well as sources, in obtaining federally-enforceable limits on source potential to emit air pollutants. Such limits entitle sources to be considered "minor" for the purposes of title V permitting and various other requirements of the Act. Numerous parties have identified this as a high priority concern potentially involving thousands of sources in each of the larger States.

The issue of creating federally-enforceable emissions limits has broad implications throughout air programs. Although many of the issues mentioned above have arisen in the context of the title V permits program, the same issues exist for other programs, including those under section 112 of the Act. As discussed below, traditional approaches to creating federally-enforceable emissions limits may be unnecessarily burdensome and time-consuming for certain types and sizes of sources. In addition, they have been of limited usefulness with respect to creating such limits for emissions of hazardous air pollutants (HAP's).

The purpose of this memorandum is to respond to these needs by announcing the availability of two further approaches to creating federally-enforceable emissions limits: the extension of existing criteria pollutant program mechanisms for HAP program

purposes, and the creation of certain classes of standardized emissions limits by rule. We believe that these options are responsive to emerging air program implementation issues and provide a reasonable balance between the need for administrative streamlining and the need for emissions limits that are technically sound and enforceable.

Background

Various regulatory options already exist for the creation of federally-enforceable limits on potential to emit. These were summarized in a September 18, 1992 memorandum from John Calcagni, Director, Air Quality Management Division. That memorandum identified the five regulatory mechanisms generally seen as available. These are: State major and minor new source review (NSR) permits [if the NSR program has been approved into the State implementation plan (SIP) and meets certain procedural requirements]; operating permits based on programs approved into the SIP pursuant to the criteria in the June 28, 1989 Federal Register (54 FR 27274); and title V permits (including general permits). Also available are SIP limits for individual sources and limits for HAP's created through a State program approved pursuant to section 112(l) of the Act.

Regional Office and State air program officials realize that these five options are generally workable, but feel that the programs emerging from the 1990 Amendments present certain further needs that are not well met. They note that NSR is not always available, title V permitting can be more rigorous than appropriate for those sources that are in fact quite small, and that general permits have limitations in their usefulness. The use of State operating permits approved into the SIP pursuant to the June 28, 1989 Federal Register is generally considered to be a promising option for some of these transactions; however, these programs do not regulate toxics directly.

State Operating Permits for Both Criteria Pollutants and HAP's

As indicated above, State operating permits issued by programs approved into the SIP pursuant to the process provided in the June 28, 1989 Federal Register are recognized as federally enforceable. This is a useful option, but has historically been viewed as limited in its ability to directly create emissions limits for HAP's because of the SIP focus on criteria pollutants.

Since that option was created, however, section 112 of the Act has been rewritten, creating significant new regulatory requirements and conferring additional responsibilities and authorities upon the Environmental Protection Agency (EPA) and the States. Section 112 now mandates a wide range of activities:

source-specific preconstruction reviews, areawide approaches to controlling risk, provisions for permitting pursuant to the title V permitting program, and State program provisions in section 112(l) that are similar to aspects of the SIP program. A result of these changes is that implementation of toxics programs will entail the use of many of the same administrative mechanisms as have been in use for the criteria pollutant programs.

Upon further analysis of these new program mandates and corresponding authorities, EPA concludes that section 112 of the Act, including section 112(l), authorizes it to recognize these same State operating permits programs for the creation of federally-enforceable emissions limits in support of the implementation of section 112. Congress recognized, and longstanding State practice confirms, that operating permits are core-implementing mechanisms for air quality program requirements. This was EPA's basis for concluding that section 110 of the Act authorizes the recognition and approval into the SIP of operating permits pursuant to the June 28, 1989 promulgation, even though section 110 did not expressly provide for such a program. Similarly, broad provision of section 112(l) for "a program for the implementation and enforcement . . . of emission standards and other requirements for air pollutants subject to this section" provides a sound basis for EPA recognition of State operating permits for implementation and enforcement of section 112 requirements in the same manner as these permitting processes were recognized pursuant to section 110.

In implementing this authority to approve State operating permits programs pursuant to section 112, it should be noted that the specific criteria for what constitutes a federally-enforceable permit are also the same as for the existing SIP programs. The June 28, 1989 Federal Register essentially addressed in a generic sense the core criteria for creating federally-enforceable emissions limits in operating permits: appropriate procedural mechanisms, including public notice and opportunity for comment, statutory authority for EPA approval of the State program, and enforceability as a practical matter. The EPA did this in the context of SIP development, not because these criteria are specific to the SIP, but because section 110 of the Act was seen as our only certain statutory basis for this prior to the 1990 Amendments. Based on the discussion above, States can extend or develop State operating permits programs for toxics pursuant to the criteria set forth in the June 28, 1989 Federal Register. The EPA is also evaluating analogous opportunities to enhance State NSR programs to address toxics and will address this in future guidance.

This is a significant opportunity to limit directly the emissions of HAP's. It also offers the advantage of the administrative efficiencies that arise from using existing

administrative mechanisms, as opposed to creating additional ones.

States are encouraged to consult with EPA Regional Offices to discuss the details of adapting their current programs to carry out these additional functions. The EPA will consider State permitting programs meeting the criteria in the June 28, 1989 Federal Register as being approvable for HAP program functions as well. States may submit their programs for implementing this process with their part 70 program submittals, or at such other time as they choose. The EPA has various options for administratively recognizing these State program submittals. The EPA plans initially to review these State programs as SIP review actions, but with official recognition pursuant to authorities in both sections 110 and 112. Once rulemaking pursuant to section 112(l) of the Act is completed, EPA expects to use the process developed in that rule for approving State programs for HAP's. The section 112(l) process may be especially useful prior to EPA approval and implementation of the State title V programs. The reader may wish to refer to the process for certain section 112(l) approvals proposed on May 19, 1993 (58 FR 29296) (see section 63.91).

The General Provisions (40 CFR part 63) establish the applicability framework for the implementation of section 112. In the final rule, EPA will indicate that State operating permits programs which meet the procedural requirements of the June 28, 1989 Federal Register can be used to develop federally-enforceable emissions limits for HAP's, thereby limiting a source's potential to emit. In addition, after we gain implementation experience, EPA will be evaluating the usefulness of further rulemaking to define more specific criteria by which this process may be used in the implementation of programs under section 112 of the Act. Any such rulemaking could similarly be incorporated into the General Provisions in part 63.

State-Standardized Processes Created by Rule to Establish Source-Specific, Federally-Enforceable Emissions Limits

State air program officials have highlighted specific types of sources that are of particular administrative concern because of their nature and number. These include sources whose emissions are primarily volatile organic compounds (VOC) arising from use of solvents or coatings, such as automobile body shops. Another example is fuel-burning sources that have low actual emissions because of limited hours of operation, but with the potential to emit sulfur dioxide in amounts sufficient to cause them to be classified as major sources.

The EPA recognizes that emissions limitations for some processes can be created through standardized protocols. For example, limitations on potential to emit could be established

for certain VOC sources on the basis of limits on solvent use, backed up by recordkeeping and by periodic reporting. Similarly, limitations on sulfur dioxide emissions could be based on specified sulfur content of fuel and the source's obligation to limit usage to certain maximum amounts. Limits on hours of operation may be acceptable for certain others sources, such as standby boilers. In all cases, of course, the technical requirements would need to be supported by sufficient compliance procedures, especially monitoring and reporting, to be considered enforceable.

The EPA concludes that such protocols could be relied on to create federally-enforceable limitations on potential to emit if adopted through rulemaking and approved by EPA. Although such an approach is appropriate for only a limited number of source categories, these categories include large numbers of sources, such as dry cleaners, auto body shops, gas stations, printers, and surface coaters. If such standardized control protocols are sufficiently reliable and replicable, EPA and the public need not be involved in their application to individual sources, as long as the protocols themselves have been subject to notice and opportunity to comment and have been approved by EPA into the SIP.

To further illustrate this concept and to provide implementation support to the States, EPA has recently released guidance on one important way of using this process. This document, entitled "Guidance for State Rules for Optional Federally-Enforceable Emissions Limits Based on Volatile Organic Compound Use," was issued by D. Kent Berry, Acting Director, Air Quality Management Division, on October 15, 1993. It describes approvable processes by which States can create federally-enforceable emissions limits for VOC for large numbers of sources in a variety of source categories.

States have flexibility in their choice of administrative process for implementation. In some cases, it may be adequate for a State to apply these limits to individual sources through a registration process rather than a permit. A source could simply submit a certification to the State committing to comply with the terms of an approved protocol. Violations of these certifications would constitute SIP violations, in the case of protocols approved into the SIP, and be subject to the same enforcement mechanisms as apply in the case of any other SIP violation. Such violations would, of course, also subject the source to enforcement for failure to comply with the requirements that apply to major sources, such as the requirement to obtain a title V permit or comply with various requirements of section 112 of the Act.

Some States have also indicated an interest in more expansive approaches to implementing this concept, such as making

presumptive determinations of control equipment efficiency with respect to particular types of sources and pollutants. While such approaches are more complicated and present greater numbers of concerns in the EPA review process, they offer real potential if properly crafted. The EPA will evaluate State proposals and approve them if they are technically sound and enforceable as a practical matter.

States may elect to use this approach to create federally-enforceable emissions limits for sources of HAP's as well. Based on the same authorities in section 112 of the Act, as cited above in the case of operating permits, EPA can officially recognize such State program submittals. As with the operating permits option discussed in the preceding section, EPA plans initially to review these activities as SIP revisions, but with approval pursuant to both sections 110 and 112 of the Act, and approve them through the section 112(l) process when that rule is final.

Implementation Guidance

As indicated above, the creation of federally-enforceable limits on a source's potential to emit involves the identification of the procedural mechanisms for these efforts, including the statutory basis for their approval by EPA, and the technical criteria necessary for their implementation. Today's guidance primarily addresses the procedural mechanisms available and the statutory basis for EPA approval.

The EPA will be providing further information with respect to the implementation of these concepts. As described above, the first portion of this guidance, addressing limits on VOC emissions, was issued on October 15, 1993. My office is currently working with Regional Offices and certain States in order to assist in the development of program options under consideration by those States. We will provide technical and regulatory support to other State programs and will make the results of these efforts publicly available through the Office of Air Quality Planning and Standards (OAQPS) Technology Transfer Network bulletin board.

We will provide further support through the release of a document entitled "Enforceability Requirements for Limiting Potential to Emit Through SIP Rules and General Permits," which is currently undergoing final review within EPA. In addition, EPA will be highlighting options for use of existing technical guidance with respect to creating sound and enforceable emissions limits. An important example of such guidance is the EPA "Blue Book," which has been in use by States for the past 5 years as part of their VOC control programs.

States are encouraged to discuss program needs with their EPA Regional Offices. The OAQPS will work with them in addressing approvals. As indicated, additional technical guidance for implementing these approaches is underway and will be made publicly available soon. For further information, please call Kirt Cox at (919) 541-5399.

cc: Air Branch Chief, Regions I-X
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Attachment 2
California Example Rule

Background

State agencies and local agencies (such as the Air Pollution Control Districts in California) can adopt rules which place emissions limitations on a category of sources through a combination of limitations and compliance requirements. These rules, if practicably enforceable, adopted with adequate public process and approved into the SIP, can validly limit potential to emit. Moreover, because State or local rules can cover many sources with a single regulatory action, they are well-suited to cover large populations of smaller sources. Many States are finding that a combination of SIP rules or general permits for smaller sources combined with individual permits for larger sources provides the simplest means of ensuring that minor source emissions are adequately limited.

Discussion of California Rule

The EPA, the California Air Pollution Control Officers Association and the California Air Resources Board recently completed development of a model rule for use by the California Air Pollution Control Districts. Because the rule contains several innovations, including covering all source categories, and should prove to be an inexpensive and efficient means of limiting the potential emissions of thousands of sources in California, the EPA believes that parts of the rule may be helpful for other States to review and consider.

The proposed rule is designed to place smaller sources under annual emissions limits which restrict their "potential to emit" and thus their exposure to "major source" requirements of the Clean Air Act. The rule ensures compliance with the annual limit through a series of recordkeeping and reporting requirements. These requirements are tapered to reduce burdens as source size decreases. The rule creates three levels of responsibility. The first tier requires both recordkeeping and reporting. The second tier requires only recordkeeping with no reporting. For instance, sources that emit only attainment pollutants which limit their emissions to below 25 tons per year have no reporting requirement. For sources under 5 tons per year (or 2 tons per year for a single hazardous air pollutant), there is no specified recordkeeping or reporting requirements although these sources must still maintain sufficient records to demonstrate their compliance with the rule.

To the extent possible, the recordkeeping requirements are itemized by source category and are designed to take advantage of

records that sources are already likely to maintain. Through these measures, the rule should assure the public that the sources subject to the rule are properly maintaining their emissions below major source levels, while maximizing source flexibility and minimizing paperwork.

There are other safeguards built into the rule and in California's overall regulatory scheme which add to the EPA's confidence that the proposal can work. The rule applies only to sources that agree to limit their emissions to 50 percent or less of the major source threshold. Sources with emissions above this level must either comply with all applicable "major source" requirements or secure a source-specific, federally-enforceable Air Pollution Control District permit that properly limits emissions to levels below major source thresholds. Some sources may be able to qualify for an "alternative operation limit" which places simple operating limits on a source's combustion of fuel, sale of gasoline or use of a solvent. Because of the ease with which compliance can be tracked with operational limits, the rule allows sources using these limits to go up to 80 percent of the major source threshold. Either way, EPA believes that the rule creates a sufficient compliance buffer.

Moreover, California has an extensive permit and inspection infrastructure that increases EPA's confidence that the rule will prove adequate for limiting emissions. California law requires that, upon annual renewal, each permit be reviewed to determine that the permit conditions are adequate to assure compliance with district rules and other applicable requirements. In addition, most California Air Pollution Control Districts have an extensive inspection program which means that compliance with the rule will be spot checked by inspectors visiting the source.

Finally, the rule is designed to provide smaller sources with a federally-enforceable means of limiting their potential emissions. The rule excludes sources that already have a federally enforceable operating permit, and it cannot be used to avoid complying with an permit required by the Air Pollution Control Districts.

Aside from these general observations, EPA did have a number of comments regarding specific language included in the rule. The three most significant comments are set forth below. However, States interested in using this rule as a model should be aware that it was specifically designed to fit with California State law and existing SIP provisions and that States may wish to consider making other changes to reflect their individual needs and requirements.

Section 2.7: In a PM-10 nonattainment area, PM-10 precursors may need to be included when determining whether a source is major as required by section 189(e) of the Clean Air Act. Districts adopting this model rule should consider whether the definition of "Major Source" in section 2.7 should be augmented to include sources of PM-10 precursors.

Section 4.2(D): The rule allows sources using air pollution control equipment to demonstrate compliance through the maintenance of general records on the unit and its operations. EPA has always been concerned with this provision since many pollution control units are only effective if specific operating procedures are followed. These specifics are best set and tracked in a source-specific, federally enforceable permit. For this reason, section 1.3 sunsets the applicability of the draft rule, after January 1, 1999, to pollution control equipment. For the coverage to continue beyond that date, a district must extend the provision. The EPA will disapprove the extension if the experience with the rule demonstrates that more specific conditions are needed to ensure that pollution control devices are being used properly and continuously.

Section 4.2(E): In general, EPA does not favor the use of generic or catch-all recordkeeping requirements for compliance purposes. There is a fear that the records necessary to show compliance for individual source categories will not be specified by the generic provision and thus will not be maintained. For this reason, EPA urges the Board and the Districts to evaluate regularly whether specific recordkeeping requirements should be developed for additional categories. As we noted during our negotiations, EPA will evaluate this question after the rule is in effect for three years and the EPA may seek -- through a SIP call or through other mechanisms -- to require additional recordkeeping requirements if there are implementation problems with this generic category. The districts may wish to add to the rule a provision which would authorize them to add recordkeeping requirements for additional source categories without a further SIP revision.

State of California
Proposed Rule to Limit
Potential to Emit
January 11, 1995

1.0 APPLICABILITY

1.1 General Applicability: This rule shall apply to any stationary source which would, if it did not comply with the limitations set forth in this rule, have the potential to emit air contaminants equal to or in excess of the threshold for a major source of regulated air pollutants or a major source of hazardous air pollutants (HAPs) and which meets one of the following conditions:

A. In every 12-month period, the actual emissions of the stationary source are less than or equal to the emission limitations specified in section 3.1 below; or

B. In every 12-month period, at least 90 percent of the emissions from the stationary source are associated with an operation limited by any one of the alternative operational limits specified in section 6.1 below.

1.2 Stationary Source with De Minimis Emissions: The recordkeeping and reporting provisions in sections 4.0, 5.0 and 6.0 below shall not apply to a stationary source with de minimis emissions or operations as specified in either subsection A or B below:

A. In every 12-month period, the stationary source emits less than or equal to the following quantities of emissions:

1. 5 tons per year of a regulated air pollutant (excluding HAPs),

2. 2 tons per year of a single HAP,

3. 5 tons per year of any combination of HAPs, and

4. 20 percent of any lesser threshold for a single HAP that the United States Environmental Protection Agency (U.S. EPA) may establish by rule.

B. In every 12-month period, at least 90 percent of the stationary source's emissions are associated with an operation for which the throughput is less than or equal to one of the quantities specified in subsections 1 through 9 below:

1. 1,400 gallons of any combination of solvent-containing materials but no more than 550 gallons of any one solvent-containing material, provided that the materials do not contain the following: methyl chloroform (1,1,1-trichloroethane), methylene chloride (dichloromethane), tetrachloroethylene (perchloroethylene), or trichloroethylene;

2. 750 gallons of any combination of solvent-containing materials where the

materials contain the following: methyl chloroform (1,1,1-trichloroethane), methylene chloride (dichloromethane), tetrachloroethylene (perchloroethylene), or trichloroethylene, but not more than 300 gallons of any one solvent-containing material;

3. ____ gallons of solvent-containing (or volatile organic compound containing) material used at a paint spray unit(s);[1]

4. 4,400,000 gallons of gasoline dispensed from equipment with Phase I and II vapor recovery systems;

5. 470,000 gallons of gasoline dispensed from equipment without Phase I and II vapor recovery systems;

6. 1,400 gallons of gasoline combusted;

7. 16,600 gallons of diesel fuel combusted;

8. 500,000 gallons of distillate oil combusted, or

9. 71,400,000 cubic feet of natural gas combusted.

Within 30 days of a written request by the District or the U.S. EPA, the owner or operator of a stationary source not maintaining records pursuant to sections 4.0 or 6.0 shall demonstrate that the stationary source's emissions or throughput are not in excess of the applicable quantities set forth in subsection A or B above.

1.3 Provision for Air Pollution Control Equipment: The owner or operator of a stationary source may take into account the operation of air pollution control equipment on the capacity of the source to emit an air contaminant if the equipment is required by Federal, State, or District rules and regulations or permit terms and conditions. The owner or operator of the stationary source shall maintain and operate such air pollution control equipment in a manner consistent with good air pollution control practice for minimizing emissions. This provision shall not apply after January 1, 1999 unless such operational limitation is federally enforceable or unless the District Board specifically extends this provision and it is submitted to the U.S. EPA. Such extension shall be valid unless, and until, the U.S. EPA disapproves the extension of this provision.

1.4 *Exemption, Stationary Source Subject to Rule ____ (District Title V rule): This rule shall not* apply to the following stationary sources:

A. Any stationary source whose actual emissions, throughput, or operation, at any time after the effective of this rule, is greater than the quantities specified in sections 3.1 or 6.1 below and which meets both of the following conditions:

[1]To be determined based on district SIP rules

1. The owner or operator has notified the District at least 30 days prior to any exceedance that s/he will submit an application for a Part 70 permit, or otherwise obtain federally-enforceable permit limits, and

2. A complete Part 70 permit application is received by the District, or the permit action to otherwise obtain federally-enforceable limits is completed, within 12 months of the date of notification.

However, the stationary source may be immediately subject to applicable federal requirements, including but not limited to, a maximum achievable control technology (MACT) standard.

B. Any stationary source that has applied for a Part 70 permit in a timely manner and in conformance with Rule ____ (the District's Title V rule), and is awaiting final action by the District and U.S. EPA.

C. Any stationary source required to obtain an operating permit under Rule ____ (the District's Title V rule) for any reason other than being a major source.

D. Any stationary source with a valid Part 70 permit.

Notwithstanding subsections B and D above, nothing in this section shall prevent any stationary source which has had a Part 70 permit from qualifying to comply with this rule in the future in lieu of maintaining an application for a Part 70 permit or upon rescission of a Part 70 permit if the owner or operator demonstrates that the stationary source is in compliance with the emissions limitations in section 3.1 below or an applicable alternative operational limit in section 6.1 below.

1.5 Exemption, Stationary Source with a Limitation on Potential to Emit: this rule shall not apply to any stationary source which has a valid operating permit with federally-enforceable conditions or other federally-enforceable limits limiting its potential to emit to below the applicable threshold(s) for a major source as defined in sections 2.7 and 2.8 below.

1.6 Within three years of the effective date of Rule ____ (District Title V rule), the District shall maintain and make available to the public upon request, for each stationary source subject to this rule, information identifying the provisions of this rule applicable to the source.

1.7 This rule shall not relieve any stationary source from complying with requirements pertaining to any otherwise applicable preconstruction permit, or to replace a condition or term of any preconstruction permit, or any provision of a preconstruction permitting program.[2] This does not preclude issuance of any preconstruction permit with conditions or terms necessary to ensure compliance with this rule.

[2]For example, PSD, NSR, and ATC

2.0 DEFINITIONS

All terms shall retain the definitions provided under 40 CFR Part 70.2 [alternatively, the District Title V rule] unless otherwise defined herein.

2.1 12-month period: A period of twelve consecutive months determined on a rolling basis with a new 12-month period beginning on the first day of each calendar month.

2.2 Actual Emissions: The emissions of a regulated air pollutant from a stationary source for every 12-month period. Valid continuous emission monitoring data or source test data shall be preferentially used to determine actual emissions. In the absence of valid continuous emissions monitoring data or source test data, the basis for determining actual emissions shall be: throughputs of process materials; throughputs of materials stored; usage of materials; data provided in manufacturer's product specifications; material volatile organic compound (VOC) content reports or laboratory analyses; other information required by this rule and applicable District, State and Federal regulations; or information requested in writing by the District. All calculations of actual emissions shall use U.S. EPA, California Air Resources Board (CARB) or District approved methods, including emission factors and assumptions.

2.3 Alternative Operational Limit: A limit on a measurable parameter, such as hours of operation, throughput of materials, use of materials, or quantity of product, as specified in Section 6.0, Alternative Operational Limit and Requirements.

2.4 Emission Unit: Any article, machine, equipment, operation, contrivance or related groupings of such that may produce and/or emit any regulated air pollutant or hazardous air pollutant.

2.5 Federal Clean Air Act: The federal Clean Air Act (CAA) as amended in 1990 (42 U.S.C. section 7401 et seq.) and its implementing regulations.

2.6 Hazardous Air Pollutant: Any air pollutant listed pursuant to section 112(b) of the federal Clean Air Act.

2.7 Major Source of Regulated Air Pollutants (excluding HAPs): A stationary source that emits or has the potential to emit a regulated air pollutant (excluding HAPs) in quantities equal to or exceeding the lesser of any of the following thresholds:

A. 100 tons per year (tpy) of any regulated air pollutant;

B. 50 tpy of volatile organic compounds or oxides of nitrogen for a federal ozone nonattainment area classified as serious, 25 tpy for an area classified as severe, or 10 tpy for an area classified as extreme; and

C. 70 tpy of PM_{10} for a federal PM_{10} nonattainment area classified as serious.

Fugitive emissions of these pollutants shall be considered in calculating total emissions for stationary sources in accordance with 40 CFR Part 70.2 "Definitions- Major source(2)."

2.8 Major Source of Hazardous Air Pollutants: A stationary source that emits or has the potential to emit 10 tons per year or more of a single HAP listed in section 112(b) of the CAA, 25 tons per year or more of any combination of HAPs, or such lesser quantity as the U.S. EPA may establish by rule. Fugitive emissions of HAPs shall be considered in calculating emissions for all stationary sources. The definition of a major source of radionuclides shall be specified by rule by the U.S. EPA.

2.9 Part 70 Permit: An operating permit issued to a stationary source pursuant to an interim, partial or final Title V program approved by the U.S. EPA.

2.10 Potential to Emit: The maximum capacity of a stationary source to emit a regulated air pollutant based on 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 only if the limitation is federally enforceable.

2.11 Process Statement: An annual report on permitted emission units from an owner or operator of a stationary source certifying under penalty of perjury the following: throughputs of process materials; throughputs of materials stored; usage of materials; fuel usage; any available continuous emissions monitoring data; hours of operation; and any other information required by this rule or requested in writing by the District.

2.12 Regulated Air Pollutant: The following air pollutants are regulated:

A. Oxides of nitrogen and volatile organic compounds;

B. Any pollutant for which a national ambient air quality standard has been promulgated;

C. Any Class I or Class II ozone depleting substance subject to a standard promulgated under Title VI of the federal Clean Air Act;

D. Any pollutant that is subject to any standard promulgated under section 111 of the federal Clean Air Act; and

E. Any pollutant subject to a standard or requirement promulgated pursuant to section 112 of the federal Clean Air Act, including:

1. Any pollutant listed pursuant to section 112(r) (Prevention of Accidental Releases) shall be considered a regulated air pollutant upon promulgation of the list.

2. Any HAP subject to a standard or other requirement promulgated by the U.S. EPA pursuant to section 112(d) or adopted by the District pursuant to 112(g) and (j) shall be considered a regulated air pollutant for all sources or categories of sources: 1) upon promulgation of the standard or requirement, or 2) 18 months after the standard or requirement was scheduled to be promulgated pursuant to section 112(e)(3).

3. Any HAP subject to a District case-by-case emissions limitation determination for a new or modified source, prior to the U.S. EPA promulgation or scheduled promulgation of an emissions limitation shall be considered a regulated air pollutant when the determination is made pursuant to section 112(g)(2). In case-by-case emissions limitation determinations, the HAP shall be considered a regulated air pollutant only for the individual source for which the emissions limitation determination was made.

3.0 EMISSION LIMITATIONS

3.1 Unless the owner or operator has chosen to operate the stationary source under an alternative operational limit specified in section 6.1 below, no stationary source subject to this rule shall emit in every 12-month period more than the following quantities of emissions:

A. 50 percent of the major source thresholds for regulated air pollutants (excluding HAPs),

B. 5 tons per year of a single HAP,

C. 12.5 tons per year of any combination of HAPs, and

D. 50 percent of any lesser threshold for a single HAP as the U.S. EPA may establish by rule.

3.2 The APCO shall evaluate a stationary source's compliance with the emission limitations in section 3.1 above as part of the District's annual permit renewal process required by Health & Safety Code section 42301(e). In performing the evaluation, the APCO shall consider any annual process statement submitted pursuant to Section 5.0, Reporting Requirements. In the absence of valid continuous emission monitoring data or source test data, actual emissions shall be calculated using emissions factors approved by the U.S. EPA , CARB, or the APCO.

3.3 Unless the owner or operator has chosen to operate the stationary source under an alternative operational limit specified in section 6.1 below, the owner or operator of a stationary source subject to this rule shall obtain any necessary permits prior to commencing any physical or operational change or activity which will result in actual emissions that exceed the limits specified in section 3.1 above.

4.0 RECORDKEEPING REQUIREMENTS

Immediately after adoption of this rule, the owner or operator of a stationary source subject to this rule shall comply with any applicable recordkeeping requirements in this section. However, for a stationary source operating under an alternative operational limit, the owner or operator shall instead comply with the applicable recordkeeping and reporting requirements specified in Section 6.0, Alternative Operational Limit and Requirements. The recordkeeping requirements of this rule shall not replace any recordkeeping requirement

contained in an operating permit or in a District, State, or Federal rule or regulation.

4.1. A stationary source previously covered by the provisions in section 1.2 above shall comply with the applicable provisions of section 4.0 above and sections 5.0 and 6.0 below if the stationary source exceeds the quantities specified in section 1.2.A above.

4.2 The owner or operator of a stationary source subject to this rule shall keep and maintain records for each permitted emission unit or groups of permitted emission units[3] sufficient to determine actual emissions. Such information shall be summarized in a monthly log, maintained on site for five years, and be made available to District, CARB, or U.S. EPA staff upon request.

A. Coating/Solvent Emission Unit

The owner or operator of a stationary source subject to this rule that contains a coating/solvent emission unit or uses a coating, solvent, ink or adhesive shall keep and maintain the following records:

1. A current list of all coatings, solvents, inks and adhesives in use. This list shall include: information on the manufacturer, brand, product name or code, VOC content in grams per liter or pounds per gallon, HAPS content in grams per liter or pounds per gallon, or manufacturer's product specifications, material VOC content reports or laboratory analyses providing this information;

2. A description of any equipment used during and after coating/solvent application, including type, make and model; maximum design process rate or throughput; control device(s) type and description (if any); and a description of the coating/solvent application/drying method(s) employed;

3. A monthly log of the consumption of each solvent (including solvents used in clean-up and surface preparation), coating, ink and adhesive used; and

4. All purchase orders, invoices, and other documents to support information in the monthly log.

B. Organic Liquid Storage Unit

The owner or operator of a stationary source subject to this rule that contains a permitted organic liquid storage unit shall keep and maintain the following records:

1. A monthly log identifying the liquid stored and monthly throughput; and

[3]In some cases it may be appropriate to keep records on groups of emission units which are connected in series. Examples are internal combustion engines in the oil fields with a common fuel line, or a series of paint spray booths with a common feed.

2. Information on the tank design and specifications including control equipment.

C. Combustion Emission Unit

The owner or operator of a stationary source subject to this rule that contains a combustion emission unit shall keep and maintain the following records:

1. Information on equipment type, make and model, maximum design process rate or maximum power input/output, minimum operating temperature (for thermal oxidizers) and capacity, control device(s) type and description (if any) and all source test information; and

2. A monthly log of hours of operation, fuel type, fuel usage, fuel heating value (for non-fossil fuels; in terms of BTU/lb or BTU/gal), percent sulfur for fuel oil and coal, and percent nitrogen for coal.

D. Emission Control Unit

The owner or operator of a stationary source subject to this rule that contains an emission control unit shall keep and maintain the following records:

1. Information on equipment type and description, make and model, and emission units served by the control unit;

2. Information on equipment design including where applicable: pollutant(s) controlled; control effectiveness; maximum design or rated capacity; inlet and outlet temperatures, and concentrations for each pollutant controlled; catalyst data (type, material, life, volume, space velocity, ammonia injection rate and temperature); baghouse data (design, cleaning method, fabric material, flow rate, air/cloth ratio); electrostatic precipitator data (number of fields, cleaning method, and power input); scrubber data (type, design, sorbent type, pressure drop); other design data as appropriate; all source test information; and

3. A monthly log of hours of operation including notation of any control equipment breakdowns, upsets, repairs, maintenance and any other deviations from design parameters.

E. General Emission Unit

The owner or operator of a stationary source subject to this rule that contains an emission unit not included in subsections A, B or C above shall keep and maintain the following records:

1. Information on the process and equipment including the following: equipment type, description, make and model; maximum design process rate or throughput; control device(s) type and description (if any);

2. Any additional information requested in writing by the APCO;

3. A monthly log of operating hours, each raw material used and its amount, each product produced and its production rate; and

4. Purchase orders, invoices, and other documents to support information in the monthly log.

5.0 REPORTING REQUIREMENTS

5.1 At the time of annual renewal of a permit to operate under Rule _____ (the District's general permitting rule), each owner or operator of a stationary source subject to this rule shall submit to the District a process statement. The statement shall be signed by the owner or operator and certify that the information provided is accurate and true.

5.2 For the purpose of determining compliance with this rule, this requirement shall not apply to stationary sources which emit in every 12-month period less than or equal to the following quantities:

A. For any regulated air pollutant (excluding HAPs),

1. 25 tons per year including a regulated air pollutant for which the District has a federal area designation of attainment, unclassified, transitional, or moderate nonattainment,

2. 15 tons per year for a regulated air pollutant for which the District has a federal area designation of serious nonattainment,

3. 6.25 tons per year for a regulated air pollutant for which the District has a federal area designation of severe nonattainment,

B. 2.5 tons per year of a single HAP,

C. 6.25 tons per year of any combination of HAPs, and

D. 25 percent of any lesser threshold for a single HAP as the U.S. EPA may establish by rule.

5.3 A stationary source previously covered by provisions in section 5.2 above shall comply with the provisions of section 5.1 above if the stationary source exceeds the quantities specified in section 5.2.

5.4 Any additional information requested by the APCO under section 5.1 above shall be submitted to the APCO within 30 days of the date of request.

6.0 ALTERNATIVE OPERATIONAL LIMIT AND REQUIREMENTS

[The District may propose additional alternative operational limits]

The owner or operator may operate the permitted emission units at a stationary source subject to this rule under any one alternative operational limit, provided that at least 90 percent of the stationary source's emissions in every 12-month period are associated with the operation(s) limited by the alternative operational limit.

6.1 Upon choosing to operate a stationary source subject to this rule under any one alternative operational limit, the owner or operator shall operate the stationary source in compliance with the alternative operational limit and comply with the specified recordkeeping and reporting requirements.

A. The owner or operator shall report within 24 hours to the APCO any exceedance of the alternative operational limit.

B. The owner or operator shall maintain all purchase orders, invoices, and other documents to support information required to be maintained in a monthly log. Records required under this section shall be maintained on site for five years and be made available to District or U.S. EPA staff upon request.

C. Gasoline Dispensing Facility Equipment with Phase I and II Vapor Recovery Systems

The owner or operator shall operate the gasoline dispensing equipment in compliance with the following requirements:

1. No more than 7,000,000 gallons of gasoline shall be dispensed in every 12-month period.

2. A monthly log of gallons of gasoline dispensed in the preceding month with a monthly calculation of the total gallons dispensed in the previous 12 months shall be kept on site.

3. A copy of the monthly log shall be submitted to the APCO at the time of annual permit renewal. The owner or operator shall certify that the log is accurate and true.

D. Degreasing or Solvent-Using Unit

The owner or operator shall operate the degreasing or solvent-using unit(s) in compliance with the following requirements:

1. a. If the solvents do not include methyl chloroform (1,1,1-trichloroethane), methylene chloride (dichloromethane), tetrachloroethylene (perchloroethylene), or trichloroethylene, no more than 5,400 gallons of any combination of solvent-containing materials and no more than 2,200 gallons of any one solvent-containing material

shall be used in every 12-month period,.

b. If the solvents include methyl chloroform (1,1,1-trichloroethane), methylene chloride (dichloromethane), tetrachloroethylene (perchloroethylene), or trichloroethylene, no more than 2,900 gallons of any combination of solvent-containing materials and no more than 1,200 gallons of any one solvent-containing material shall be used in every 12-month period.

2. A monthly log of amount and type of solvent used in the preceding month with a monthly calculation of the total gallons used in the previous 12 months shall be kept on site.

3. A copy of the monthly log shall be submitted to the APCO at the time of annual permit renewal. The owner or operator shall certify that the log is accurate and true.

E. Paint Spraying Unit[4]

The owner or operator shall operate the paint spraying unit(s) in compliance with the following requirements:

1. The total usage rate of all VOC-containing materials, including but not limited to, coatings, thinners, reducers, and cleanup solution shall not exceed _____ gallons in every 12-month period.

2. A monthly log of the gallons of VOC-containing materials used in the preceding month with a monthly calculation of the total gallons used in the previous 12 months shall be kept on site.

3. A copy of the monthly log shall be submitted to the APCO at the time of annual permit renewal. The owner or operator shall certify that the log is accurate and true.

F. Diesel-Fueled Emergency Standby Engine(s) with Output Less Than 1,000 Brake Horsepower

[Depending on the District's federal ozone attainment status, the District will adopt either subsection 1.a, 1.b, or 1.c below.]

The owner or operator shall operate the emergency standby engine(s) in compliance with the following requirements:

1. a. For a federal ozone area designation of attainment, unclassified, transitional, or moderate nonattainment, the emergency standby

[4]To be determined based on District SIP rules

engine(s) shall not operate more than 5,200 hours in every 12-month period and shall not use more than 265,000 gallons of diesel fuel in every 12-month period.

b. For a federal ozone nonattainment area classified as serious, the emergency standby engine(s) shall not operate more than 2,600 hours in every 12-month period and shall not use more than 133,000 gallons of diesel fuel in every 12-month period.

c. For a federal ozone nonattainment area classified as severe, the emergency standby engine(s) shall not operate more than 1,300 hours in 12-month period and shall not use more than 66,000 gallons of diesel fuel in every 12-month period.

2. A monthly log of hours of operation, gallons of fuel used, and a monthly calculation of the total hours operated and gallons of fuel used in the previous 12 months shall be kept on site.

3. A copy of the monthly log shall be submitted to the APCO at the time of annual permit renewal. The owner or operator shall certify that the log is accurate and true.

6.2 The owner or operator of a stationary source subject to this rule shall obtain any necessary permits prior to commencing any physical or operational change or activity which will result in an exceedance of an applicable operational limit specified in section 6.1 above.

7.0 VIOLATIONS

7.1 Failure to comply with any of the applicable provisions of this rule shall constitute a violation of this rule. Each day during which a violation of this rule occurs is a separate offense.

7.2 A stationary source subject to this rule shall be subject to applicable federal requirements for a major source, including Rule ____ (District Title V rule) when the conditions specified in either subsections A or B below, occur:

A. Commencing on the first day following every 12-month period in which the stationary source exceeds a limit specified in section 3.1 above and any applicable alternative operational limit specified in section 6.1, above, or

B. Commencing on the first day following every 12-month period in which the owner or operator can not demonstrate that the stationary source is in compliance with the limits in section 3.1 above or any applicable alternative operational limit specified in section 6.1 above.

Attachment 3

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
RESEARCH TRIANGLE PARK, NC 27711

OFFICE OF
AIR QUALITY PLANNING
AND STANDARDS

NOV 2 1994

Mr. Jason Grumet
Executive Director, Northeast States
for Coordinated Air Use Management
129 Portland Street
Boston, Massachusetts 02114

Dear Mr. Grumet:

This is in response to Mr. Michael Bradley's March 22, 1994 letter to Mary Nichols seeking clarification of the Federal enforceability of State's existing minor new source review (NSR) programs. It is my understanding that some of the NESCAUM States are interested in using their existing minor NSR programs to limit a source's potential to emit so as to allow sources to legally avoid being considered a major source for title V purposes.

In my November 3, 1993 memorandum entitled "Approaches to Creating Federally-Enforceable Emission Limits," I described approaches that States could use to limit a source's potential to emit for title V purposes. While a number of approaches are acceptable, the Environmental Protection Agency (EPA) has promoted the use of State operating permits programs approved under sections 110 and 112(l), pursuant to the criteria set forth in the June 28, 1989 Federal Register. Among other things, these criteria include an opportunity for public and EPA review and require that permit conditions be practically enforceable. Several States have followed EPA's recommendation and have either adopted these requirements or are in the process of doing so.

The Agency recognizes the use of other approaches as well. In response to your question, EPA's position is that minor NSR permits issued under programs that have already been approved into the State implementation plan (SIP) are federally enforceable. Thus, EPA allows the use of federally-enforceable minor NSR permits to limit a source's potential to emit provided that the scope of a State's program allows for this and that the minor NSR permits are in fact enforceable as a practical matter.

Because minor NSR programs are essentially preconstruction review programs for new sources and modifications to existing sources, minor NSR programs can generally be used to limit a

source's potential emissions when such limits are taken in conjunction with a preconstruction permit action. In addition, please note that the term "modification" generally encompasses both physical changes and changes in the method of operation at an existing source (see Clean Air Act section 111(a)(4)). Thus, the scope of some, though not all, minor NSR programs is broad enough to be used to also limit a source's potential to emit for nonconstruction-related events. This occurs where the modification component of State programs extends to both physical changes and changes in the method of operation. In these cases, where a voluntary reduction in the method of operation (e.g., limit in hours of operation or production rate) by itself is considered a modification for minor NSR permitting, a source may reduce its hours of operation or production rate and make such a change federally enforceable through limits in its minor NSR permit.

Some States' minor NSR programs are written so as to preclude a source from limiting its potential to emit absent an increase in emissions. There may be other limitations on the scope of these programs as well. Since there is considerable variation among State minor NSR programs, a review of any individual State program would be necessary to determine its ability to limit a source's potential to emit. It may be beneficial for States to contact the appropriate EPA Regional Office if there are questions about the scope of the SIP-approved minor NSR program.

Minor NSR programs have generally been used in the past to limit a source's potential to emit for criteria pollutants. There is a growing need for sources to limit their potential to emit for toxic pollutants as well. The EPA is currently considering ways in which a State may limit the potential to emit of toxic pollutants, including possible uses of existing minor NSR programs. I plan to keep you and others aware of our efforts in this regard.

You should also be aware that a recent court ruling has called into question the Federal enforceability of a State minor NSR permit that does not meet the public participation requirements of current EPA regulations despite SIP approval of the State's program [see United States v. Marine Shale Processors, No. 90-1240 (E.D. La.) (bench ruling), June 15, 1994]. In that case involving extensive alleged violations of the permit terms, the court held that EPA could not enforce the terms of the minor NSR permit. The court subsequently ruled that the company could not rely on the permit to limit its potential to emit, and thus was liable for having failed to obtain a major

NSR permit. The outcome of this case suggests that States should proceed cautiously in relying on minor NSR programs to limit potential to emit where the program does not actually provide public participation.

In summary, EPA has provided guidance on approaches that are available to limit a source's potential to emit. The Agency recommends approaches that meet the criteria set forth in the June 28, 1989 Federal Register. Many States are taking action to adopt such programs. With respect to minor NSR permits, EPA believes that permits conditions issued in accordance with existing State minor NSR programs that have been approved into the SIP, and which are enforceable as a practical matter, are federally enforceable and can be used to limit potential to emit. Caution is advised, however, with respect to permits that do not meet procedural requirements. These programs are primarily preconstruction review programs although in many cases they can also limit a source's potential to emit in conjunction with operational changes.

As you have noted, title V issues are complicated and resource intensive. In order for the title V program to be successfully implemented, it is important that States and EPA work cooperatively in developing operating permits programs. Your comments and recommendations on program development issues are welcome.

We appreciate this opportunity to be of service and trust that this information will be helpful to you.

Sincerely,

John S. Seitz
Director
Office of Air Quality Planning
and Standards

cc: Air Division Director, Regions I-X

Attachment 4

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

JAN 25 1995

OFFICE OF
ENFORCEMENT AND
COMPLIANCE ASSURANCE

SUBJECT: Guidance on Enforceability Requirements for Limiting Potential to Emit through SIP and §112 Rules and General Permits

FROM: Kathie A. Stein, Director
Air Enforcement Division

TO: Director, Air, Pesticides and Toxics Management Division, Regions I and IV
Director, Air and Waste Management Division, Region II
Director, Air, Radiation and Toxics Division, Region III
Director, Air and Radiation Division, Region V
Director, Air, Pesticides and Toxics Division, Region VI
Director, Air and Toxics Division, Regions VII, VIII, IX, and X

Attached is a guidance document developed over the past year by the former Stationary Source Compliance Division in coordination with the Air Enforcement Division, Office of Air Quality Planning and Standards, OAR's Office of Policy Analysis and Review, and the Office of General Counsel, as well as with significant input from several Regions.

A number of permitting authorities have begun discussions with or have submitted programs for review by EPA that would provide alternative mechanisms for limiting potential to emit. Several authorities have submitted SIP rules and at least one State has been developing a State general permit approach. We believe that this guidance is important to assist the EPA Regions as well as States in approving and developing such approaches.

For additional information regarding this guidance, please contact me or Clara Poffenberger of my staff at (202) 564-8709.

cc: John Rasnic, Director
Manufacturing, Energy, and Transportation Division
Office of Compliance

Air Branch Chiefs, Regions I - X

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JAN 25 1995

Enforceability Requirements for Limiting Potential to Emit Through SIP and §112 Rules and General Permits

Introduction

As several EPA guidances describe, there are several mechanisms available for sources to limit potential to emit. EPA guidances have also described the importance of practical enforceability of the means used to limit potential to emit. This guidance is intended to provide additional guidance on practical enforceability for such limits. We provide references for guidances on practical enforceability for permits and rules in general and provide guidance in this document for application of the same principles to "limitations established by rule or general permit," as described in the guidance document issued January 25, 1995, entitled "Options for Limiting Potential to Emit (PTE) of a Stationary Source under section 112 and Title V of the Clean Air Act (Act)." The description is as follows:

> Limitations established by rules. For less complex plant sites, and for source categories involving relatively few operations that are similar in nature, case-by-case permitting may not be the most administratively efficient approach to establishing federally enforceable restrictions. One approach that has been used is to establish a general rule which creates federally enforceable restrictions at one time for many sources (these rules have been referred to as "prohibitory" or "exclusionary" rules[1]). The concept of exclusionary rules is described in detail in the November 3, 1993 memorandum ["Approaches to Creating Federally Enforceable Emissions Limits," from John S. Seitz]. A specific suggested approach for VOC limits by rule was described in EPA's memorandum dated October 15, 1993 entitled "Guidance for State Rules for Optional Federally-Enforceable Emissions Limits Based Upon Volatile Organic Compound (VOC) Use." An example of such an exclusionary rule is a model rule developed for use in California. (The California model rule is attached, along with a discussion of its applicability to other situations--see Attachment 2). Exclusionary rules are included in a State's SIP or 112 program and generally become effective upon approval by the EPA.

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[1] The EPA prefers the term "exclusionary rule" in that this phrase is a less ambiguous description of the overall purpose of these rules.

General permits. A concept similar to the exclusionary rule is the establishment of a general permit for a given source type. A general permit is a single permit that establishes terms and conditions that must be complied with by all sources subject to that permit. The establishment of a general permit could provide for emission limitations in a one-time permitting process, and thus avoid the need to issue separate permits for each source. Although this concept is generally thought of as an element of Title V permit programs, there is no reason that a State or local agency could not submit a general permit program as a SIP submittal aimed at creating synthetic minor sources. Additionally, FESOP [Federally Enforceable State Operating Permit, usually referring to Title I State Operating Permit Programs approved under the criteria established by EPA in the June 28, 1989 Federal Register notice, 54 FR 27274] programs can include general permits as an element of the FESOP program being approved into the SIP. The advantage of a SIP general permit, when compared to an exclusionary rule, is that upon approval by the EPA of the State's general permit program, a general permit could be written for an additional source type without triggering the need for the formal SIP revision process. (January 25, 1995, Seitz and Van Heuvelen memorandum, page 4.)

SIP or § 112 Rules

Source-category standards approved in the SIP or under 112, if enforceable as a practical matter, can be used as federally enforceable limits on potential to emit. Such provisions require public participation and EPA review. Once a specific source qualifies under the applicability requirements of the source-category rule, additional public participation is not required to make the limits federally enforceable as a matter of legal sufficiency since the rule itself underwent public participation and EPA review. The rule must still be enforceable as a practical matter in order to be considered federally enforceable. A source that violates this type of rule limiting potential to emit below major source thresholds or is later determined not to qualify for coverage under the rule, could be subject to enforcement action for violation of the rule and for constructing or operating without a proper permit (a part 70 permit, a New Source Review permit, or operating without meeting §112 requirements, or any combination thereof).

General Permits

The Title V regulations set out provisions for general permits covering numerous similar sources. The primary purpose of general permits is to provide a permitting alternative where

the normal permitting process would be overly burdensome, such as for area sources under section 112. General permits may be issued to cover any category of numerous similar sources, including major sources, provided that such sources meet certain criteria laid out in 40 CFR part 70. Sources may be issued general permits strictly for the purpose of avoiding classification as a major source. In other words, general permits may be used to limit the potential to emit for numerous similar sources. However, general permits must also meet both legal and practical federal enforceability requirements.

With respect to legal sufficiency, the operating permit regulations provide that once the general permit has been issued after opportunity for public participation and EPA and affected State review, the permitting authority may grant or deny a source's request to be covered by a general permit without further public participation or EPA or affected State review. The action of granting or denying the source's request is not subject to judicial review. A general permit does not carry a permit shield. A source may be subject to enforcement action for operating without a part 70 permit if the source is later determined not to qualify for coverage under the general permit. Sources covered by general permits must comply with all part 70 requirements.

State SIP or 112(l) General Permits

Another mechanism available to limit potential to emit is a general permit program approved into the SIP or under section 112(l), the hazardous air pollutant program authority. This mechanism allows permitting authorities to issue and revise general permits consistent with SIP or 112(l) program requirements without going through the SIP or 112(l) approval process for each general permit or revision of a general permit. The program is also separate from title V, like title I state operating permits, and issuance and revisions of the permits are not required to comply with title V procedures.

Once a program is approved, issuing and revising general permits should be significantly less burdensome and time-consuming for State legislative and rulemaking authorities. The EPA review should also be less burdensome and time-consuming. After a program is approved, permitting authorities have the flexibility to submit and issue general permits as needed rather than submitting them all at once as part of a SIP submittal. Given the reduced procedural burden, permitting authorities should be able to issue general permits to small groups or categories or sources rather than attempt to cover broad categories with a generic rule. We anticipate that specific permit requirements for general permits may be readily developed with the assistance of interested industry groups.

The State general permit approach may allow sources to meet the federal enforceability requirements more easily than other approaches. However, to use this approach, States must have a federally enforceable program that provides the State the authority to issue such permits; to accomplish this, EPA must approve the program into the SIP or pursuant to section 112(l) of the Clean Air Act.

Enforceability Principles

In 1989, in response to challenges from the Chemical Manufacturers Association and other industry groups, EPA reiterated its position that controls and limitations used to limit a source's potential to emit must be federally enforceable. See 54 FR 27274 (June 28, 1989). Federally enforceable limits can be established by Clean Air Act programs such as NSPS, NESHAPs, MACTs, and SIP requirements. However, source-specific limits are generally set forth in permits. Generally, to be considered federally enforceable, the permitting program must be approved by EPA into the SIP and include provisions for public participation. In addition, permit terms and conditions must be practicably enforceable to be considered federally enforceable. EPA provided specific guidance on federally enforceable permit conditions in a June 13, 1989 policy memo "Limiting Potential to Emit in New Source Permitting" from John Seitz and in the June 28, 1989 Federal Register notice (54 FR 27274). Additional guidance can also be found in United States v. Louisiana Pacific, 682 F. Supp. 1122 (D. Colo. 1987), 682 F. Supp 1141 (D. Colo. 1988), which led to these guidance statements and a number of other memoranda covering practicable enforceability as it relates to rolling averages, short-term averages, and emission caps. See "Use of Long Term Rolling Averages to Limit Potential to Emit," from John B. Rasnic to David Kee, February 24, 1992; "Limiting Potential to Emit" from Mamie Miller to George Czerniak, August 5, 1992; "Policy Determination on Limiting Potential to Emit for Koch Refining Company's Clean Fuels Project", from John B. Rasnic to David Kee, March 13, 1992; and "3M Tape Manufacturing Division Plant, St. Paul, Minnesota" from John B. Rasnic to David Kee, July 14, 1992.

In 1987, EPA laid out enforceability criteria that SIP rules must meet. See "Review of State Implementation Plans and Revisions for Enforceability and Legal Sufficiency" from Michael Alushin, Alan Eckert, and John Seitz, September 3, 1987 (1987 SIP memo). The criteria include clear statements as to applicability, specificity as to the standard that must be met, explicit statements of the compliance time frames (e.g. hourly, daily, monthly, or 12-month averages, etc.), that the time frame and method of compliance employed must be sufficient to protect the standard involved, recordkeeping requirements must be specified, and equivalency provisions must meet certain requirements.

Based on these precedents, this guidance describes six enforceability criteria which a rule or a general permit must meet to make limits enforceable as a practical matter. In general, practical enforceability for a source-specific permit term means that the provision must specify (1) a technically accurate limitation and the portions of the source subject to the limitation; (2) the time period for the limitation (hourly, daily, monthly, annually); and (3) the method to determine compliance including appropriate monitoring, recordkeeping and reporting. For rules and general permits that apply to categories of sources, practical enforceability additionally requires that the provision (4) identify the categories of sources that are covered by the rule; (5) where coverage is optional, provide for notice to the permitting authority of the source's election to be covered by the rule; and (6) recognize the enforcement consequences relevant to the rule.

This guidance will address requirements (4) and (5) first as they are concepts that are unique to rules and general permits.

A. Specific Applicability

Rules and general permits designed to limit potential to emit must be specific as to the emission units or sources covered by the rule or permit. In other words, the rule or permit must clearly identify the category(ies) of sources that qualify for the rule's coverage. The rule must apply to categories of sources that are defined specifically or narrowly enough so that specific limits and compliance monitoring techniques can be identified and achieved by all sources in the categories defined.

A rule or general permit that covers a homogeneous group of sources should allow standards to be set that limit potential to emit and provide the specific monitoring requirements. (Monitoring is more fully addressed in section D.) The State can allow for generic control efficiencies where technically sound and appropriate, depending on the extent of the application and ability to monitor compliance with resultant emission limits. Similarly, specific and narrow applicability may allow generic limits on material usage or limits on hours of operation to be sufficient. For example, a rule or general permit that applies to fossil-fuel fired boilers of a certain size may allow for limits on material usage, such as fuel-type and quantity. A rule or general permit that applies only to standby diesel generators or emergency generators may allow restrictions on hours of operation to limit potential to emit. The necessary compliance terms (i.e., monitoring or recordkeeping) associated with any of these limits, such as with hours of operation, can readily be specified in the rule or the general permit itself.

General permits under Title V are assumed to include this

enforceability principle because the Part 70 regulations set out specific criteria that States should consider in developing their general permit provisions (See 57 FR 32278). These factors include requirements that

> "categories of sources covered by general permits should be generally homogenous in terms of operations, processes, and emissions. All sources in the category should have essentially similar operations or processes and emit pollutants with similar characteristics."

Another factor stated is "sources should be subject to the same or substantially similar requirements governing operation, emissions, monitoring, reporting, or recordkeeping." Examples of source categories appropriate for general permits include: degreasers, dry cleaners, small heating systems, sheet fed printers, and VOC storage tanks (see 57 FR 32278).

B. Reporting or Notice to Permitting Authority

The rule or general permit should provide specific reporting requirements as part of the compliance method. Although the compliance method for all sources must include recordkeeping requirements, the permitting authority may make a determination that reporting requirements for small sources would provide minimal additional compliance assurance. Where ongoing reporting requirements are determined not to be reasonable for a category of sources, the rule or general permit should still provide that the source notify the permitting authority of its coverage by the rule or the permit. In the limited situation where all the sources described in a source category are required to comply with the all of the provisions of a rule or general permit, notice is not needed. However, where there are no reporting requirements and no opt-in provisions, the permitting authority must provide the public with the names and locations of sources subject to the rule or permit.

For Title V general permits, Part 70 requires sources to submit an application for a general permit which must be approved or disapproved by the permitting authority. For SIP or §112 rules and SIP or §112 general permits, in response to receiving the notice or application, the permitting authority may issue an individual permit, or alternatively, a letter or certification. The permitting authority may also determine initially whether it will issue a response for each individual application or notice, and may initially specify a reasonable time period after which a source that has submitted an application or notice will be deemed to be authorized to operate under the general permit or SIP or §112 rule.

C. Specific Technically Accurate Limits

The rule or general permit issued pursuant to the SIP or §112 must specify technically accurate limits on the potential to emit. The rule or general permit must clearly specify the limits that apply, and include the specific associated compliance monitoring. (The compliance monitoring requirements are discussed further in the next section.) The standards or limits must be technically specific and accurate to limit potential to emit, identifying any allowed deviations.

The 1987 policy on SIP enforceability states that limitations "must be sufficiently specific so that a source is fairly on notice as to the standard it must meet." For example, "alternative equivalent technique" provisions should not be approved without clarification concerning the time period over which equivalency is measured as well as whether the equivalency applies on a per source or per line basis or is facility-wide.

Further, for potential to emit limitations, the standards set must be technically sufficient to provide assurance to EPA and the public that they actually represent a limitation on the potential to emit for the category of sources identified. Any presumption for control efficiency must be technically accurate and the rule must provide the specific parameters as enforceable limits to assure that the control efficiency will be met. For example, rules setting presumptive efficiencies for incineration controls applied to a specific or broad category must state the operating temperature limits or range, the air flow, or any other parameters that may affect the efficiency on which the presumptive efficiency is based. Similarly, material usage limits such as fuel limits, as stated above, require specifying the type of fuel and may require specifying other operating parameters.

A rule that allows sources to submit the specific parameters and associated limits to be monitored may not be enforceable because the rule itself does not set specific technical limits. The submission of these voluntarily accepted limits on parameters or monitoring requirements would need to be federally enforceable. Absent a source-specific permit and appropriate review and public participation of the limits, such a rule is not consistent with the EPA's enforceability principles.

D. Specific Compliance Monitoring

The rule must specify the methods to determine compliance. Specifically, the rule must state the monitoring requirements, recordkeeping requirements, reporting requirements, and test methods as appropriate for each potential to emit limitation; and clarify which methods are used for making a direct determination of compliance with the potential to emit limitations.

"Monitoring" refers to many different types of data collection, including continuous emission or opacity monitoring, and measurements of various parameters of process or control devices (e.g. temperature, pressure drop, fuel usage) and recordkeeping of parameters that have been limited, such as hours of operation, production levels, or raw material usage. Without a verifiable plantwide emission limit, verifiable emission limits must be assigned to each unit or group of units subject to the rule or general permit. Where monitoring cannot be used to determine emissions directly, limits on appropriate operating parameters must be established for the units or source, and monitoring must verify compliance with those limits. The monitoring must be sufficient to yield data from the relevant time period that is representative of the source's compliance with the standard or limit. Continuous emissions monitoring, especially in the case of smaller sources, is not required.

E. Practicably Enforceable Averaging Times

The averaging time for all limits must be practicably enforceable. In other words, the averaging time period must readily allow for determination of compliance. EPA policy expresses a preference toward short term limits, generally daily but not to exceed one month. However, EPA policy allows for rolling limits not to exceed 12 months or 365 days where the permitting authority finds that the limit provides an assurance that compliance can be readily determined and verified. See June 13, 1989 "Guidance on Limiting Potential to Emit," February 24, 1992 Memorandum "Use of Long Term Rolling Averages to Limit Potential to Emit" from John Rasnic to David Kee, and March 13, 1992 "Policy Determination on Limiting Potential to Emit for Koch Refining Company's Clean Fuels Project" from John B. Rasnic to David Kee, stating that determinations to allow an annual rolling average versus a shorter term limit must be made on a case by case basis. Various factors weigh in favor of allowing a long term rolling average, such as historically unpredictable variations in emissions. Other factors may weigh in favor of a shorter term limit, such as the inability to set interim limits during the first year. The permitting agency must make a determination as to what monitoring and averaging period is warranted for the particular source-category in light of how close the allowable emissions would be to the applicability threshold.

F. Clearly Recognized Enforcement

Violations of limits imposed by the rule or general permit that limit potential to emit constitute violations of major source requirements. In other words, the source would be violating a "synthetic minor" requirement which may result in the source being treated as a major source under Titles I and V. The 1989 Federal Register Notice provides for separate enforcement

and permitting treatment depending on whether the source subsequently chooses to become major or remain minor. Thus, violations of the rule or general permit or violation of the specific conditions of the rule or general permit subjects the source to potential enforcement under the Clean Air Act and state law. The operating permit rule states that notwithstanding the shield provisions of part 70, the source subject to a general permit may be subject to enforcement action for operating without a part 70 permit if the source is later determined not to qualify for the conditions and terms of the general permit. Moreover, violation of any of the conditions of the rule or general permit may result in a different determination of the source's potential to emit and thus may subject the source to major source requirements and to enforcement action for failure to comply with major source requirements from the initial determination.

Rule Requirements for State General Permit Programs

As discussed above, general permit programs must be submitted to EPA for approval under SIP authority or under section 112(l), or both, depending on its particular pollutant application. SIP and 112(l) approval and rulemaking procedures must be met, including public notice and comment. The specific application of the enforceability principles for establishing State SIP or §112(l) general permit programs require that the rule establishing the program set out these principles as rule requirements. In other words, these principles must be specific rule requirements to be met by each general permit.

The rule establishing the program must require that (1) general permits apply to a specific and narrow category of sources; (2) sources electing coverage under general permits, where coverage is not mandatory, provide notice or reporting to the permitting authority; (3) general permits provide specific and technically accurate (verifiable) limits that restrict the potential to emit; (4) general permits contain specific compliance monitoring requirements; (5) limits in general permits are established based on practicably enforceable averaging times; and (6) violations of the permit are considered violations of the State and federal requirements and may result in the source being subject to major source requirements.

In addition, since the rule establishing the program does not provide the specific standards to be met by the source, each general permit, but not each application under each general permit, must be issued pursuant to public and EPA notice and comment. The 1989 Federal Register notice covering enforceability of operating permits requires that SIP operating permit programs issue permits pursuant to public and EPA notice and comment. Title V requires that permits, including general permits, be issued subject to EPA objection.

Section B

General Clean Air Act Stationary Source Policies and Guidance

Section B Document 25

Memorandum of Understanding Between the U.S. Environmental Protection Agency and the U.S. Department of Energy concerning the Clean Air Act Emission Standards for Radionuclides, 40 CFR Part 61 Including Subparts H, I, Q & T

04/05/95

To: Harlow, David[harlow.david@epa.gov]
Cc: Lassiter, Penny[Lassiter.Penny@epa.gov]; Culligan, Kevin[Culligan.Kevin@epa.gov]; Dalcher, Debra[dalcher.debra@epa.gov]; Jordan, Scott[Jordan.Scott@epa.gov]; Rodman, Sonja[Rodman.Sonja@epa.gov]; Atkinson, Emily[Atkinson.Emily@epa.gov]
From: Lamason, Bill
Sent: Tue 1/23/2018 8:54:41 PM
Subject: FW: Reclassification of Major Sources as Area Sources Under Section 112_DHarlow Draft.docx
Reclassification of Major Sources as Area Sources Under Section 112_DHarlow Draft.docx

David,

Hope you are well. Attached is the latest version of the memo we believe is about ready to begin signoff process. We left comments in the document on specific areas where we need to check in with you on at our 9:30 am meeting Wednesday morning. We look forward to talking with you about the memo and what we believe are the next steps.

Thank you!

Bill Lamason

To: Lamason, Bill[Lamason.Bill@epa.gov]
From: Culligan, Kevin
Sent: Wed 1/31/2018 7:55:07 PM
Subject: RE: News Clips – January 31, 2018

Look at the 2nd clip under air news

From: Bremer, Kristen
Sent: Wednesday, January 31, 2018 2:25 PM
Subject: News Clips – January 31, 2018

News Clips – January 31, 2018

Air News

Π□□□□□□□□ Pruitt says ozone focus on implementation, not underlying standard *(POLITICO)*

Π□□□□□□□□ Pruitt: 'Once in, always in' rule change was policy decision *(POLITICO)*

Π□□□□□□□□ With Democrats in charge, N.J. wants to exit litigation *(E&E News)*

Π□□□□□□□□ Groups call for investigation of EPA inaction at Torrance Refinery *(Los Angeles Times)*

Climate

Π□□□□□□□□ Pruitt wants to know Earth's 'ideal temperature' *(Climatewire)*

Π□□□□□□□□ Pruitt: No decision yet on carbon endangerment finding challenge *(Utility Dive)*

On the Hill

Π□□□□□□□□ Carper to Pruitt: 'I want real answers' *(Greenwire)*

Enforcement

Π□□□□□□□□ Bodine Says 'Informal' Enforcement May Cut Cases But Speed Compliance *(Inside EPA)*

IRIS

Π□□□□□□□□ On Eve Of NAS Review, ACC Questions IRIS' Future Due To Lack Of Reforms *(Inside EPA)*

Other News

Π□□□□□□□□ States' rights champion Scott Pruitt makes an exception for California *(Los Angeles Times)*

Π□□□□□□□□ An office in each state under discussion — Pruitt *(E&E News)*

Π□□□□□□□□ EPA Head Scott Pruitt Once Said Donald Trump Would Be 'Abusive' to the Constitution *(Time)*

Π□□□□□□□□ Pruitt publicly bashed Trump. Will it hurt him? *(Climatewire)*

…And in Happier News

Π□□□□□□□□ Top colleges like Yale are teaching students to prioritize happiness—not money and power *(Quartz)*

Pruitt says ozone focus on implementation, not underlying standard

POLITICO

By: Alex Guillen

Published: January 30, 2018

EPA Administrator Scott Pruitt told lawmakers today that he has focused more on issues with implementing the 2015 ozone rule rather than the decision to lower the limit.

Pruitt noted at a Senate Environment and Public Works Committee hearing that there has been great debate over the Obama administration rule that lowered the ozone standard from 75 parts per billion to 70 ppb. But, he added, “that’s not been our focus.”

Instead, he said, EPA has put its resources into various implementation issues. That includes finishing attainment designations, which Pruitt said could be wrapped up by April. He said EPA is also working on “exceptional events,” natural occurrences of high ozone levels, and ozone that floats into the U.S. from abroad, especially China.

A lawsuit over the 2015 ozone rule has been on hold since last year. EPA said earlier this month that it may still revise the rule.

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Pruitt: 'Once in, always in' rule change was policy decision

POLITICO

By: Annie Snider

Published: January 30, 2018

EPA Administrator Scott Pruitt said this morning that last week's decision to end Clinton-era "once in, always in" Clean Air Act requirements was not made by the agency's air experts.

"That was a decision that was made outside of the program office of air. It was a policy office decision," Pruitt told the Senate Environment and Public Works Committee.

The comment came in response to a question from Sen. Tom Carper of Delaware, the top Democrat on the committee, about whether the agency conducted an analysis of the potential health effects of the policy change.

"I find it incredible that EPA did this seemingly without knowing or caring about potential health effects of its action," Carper said.

The "once in always in," codified in now revoked 1995 policy guidance, was designed to prevent major emitters like power plants and factories from getting out of tough requirements to limit their toxic air emissions. It required that any emitter that qualified as a "major" source of hazardous air pollutants would permanently be subject to that tougher standard to comply with MACT rules, even if its emissions dropped low enough to be considered an "area" source subject to fewer or no requirements.

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With Democrats in charge, N.J. wants to exit litigation

E&E News

By: Amanda Reilly

Published: January 30, 2018

With a Democrat in its governor's mansion, New Jersey wants to exit the massive litigation over the Obama administration's Clean Power Plan.

The Garden State filed a motion today to voluntarily withdraw from the lawsuit in the U.S. Court of Appeals for the District of Columbia Circuit in the wake of the swearing-in of Gov. Phil Murphy and Gurbir Grewal, the nation's first Sikh state attorney general.

Under Republican Gov. Chris Christie, New Jersey had been among a large coalition of states that filed lawsuits over the rule, which aimed to lower carbon dioxide emissions from existing power plants. Dozens of industry entities and companies also challenged the rule.

Murphy has moved swiftly to overturn Christie's climate policies. Yesterday, he signed an executive order re-entering New Jersey into a regional cap-and-trade program that Christie had withdrawn from in 2012 (*Greenwire*, Jan. 30).

North Carolina similarly dropped the litigation over the Clean Power Plan and other Obama-era policies when Democratic leadership took office in the state in 2017 (*E&E News PM*, Feb. 23, 2017).

Though the litigation over the Clean Power Plan is fully briefed and argued, it's been suspended since last April, when the D.C. Circuit granted a Trump administration motion to hold the case in abeyance. EPA asked that the case be suspended while it goes through the administrative process to roll back the rule. Environmentalists have tried unsuccessfully to convince the court to restart the case.

Implementation of the Clean Power Plan remains stayed by the Supreme Court.

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Groups call for investigation of EPA inaction at Torrance Refinery

Los Angeles Times

By: Evan Halper

Published: January 30, 2018

After federal inspectors uncovered what they reported to be serious hazardous waste violations at the Torrance Refinery, the incoming Trump administration chose not to pursue them, dismaying the team that visited the facility.

Now, environmental groups are calling on the Environmental Protection Agency's watchdog office to investigate.

Environment California and the Environmental Integrity Project, a Washington group, filed an official request asking the inspector general "to undertake an investigation to determine whether enforcement against this facility was improperly or unreasonably deferred."

A Los Angeles Times story published earlier this month featured one of the inspectors who discovered the violations -- which included hundreds of tons of hazardous waste being improperly stored on the site for 26 years -- expressing concern that politics played a role in the EPA inaction. The agency has refused to comment on its decision not to act on the long list of draft violations its staff drew up.

The EPA says the investigation is still ongoing, nearly a year after the inspection team filed its report. Instead of issuing the violations suggested, the EPA passed the report on to the state, which has significantly less experience identifying and responding to the type of hazardous waste problems the EPA spotted. The state has yet to take action.

The letter the advocacy groups sent to the agency's inspector general says the EPA inaction is particularly concerning in light of the facility's history. An explosion at the refinery in 2015 was a "serious near miss" that could have resulted in a "potentially catastrophic release" into surrounding communities, according to the U.S. Chemical Safety Board.

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Pruitt wants to know Earth's 'ideal temperature'

Climatewire

By: Niina Heikkinen and Scott Waldman

Published: January 31, 2018

Scott Pruitt is subtly changing how he talks about climate change.

In Senate testimony yesterday, the U.S. EPA administrator said the primary purpose of a "red-team, blue-team" debate is not aimed at questioning whether climate change is happening, but rather what it might mean for humanity. Pruitt said his red-team exercise would be centered on specific scientific questions, such as ideal global temperatures in the future.

"The discussion is not whether there are questions that we know the answers to; there are questions that we don't know the answer to," he said in response to a question by Sen. Jeff Merkley (D-Ore.).

"For example, 'What is the ideal surface temperature in the year 2100?' is something many folks have different perspectives on. That red-team, blue-team exercise is an exercise to provide an opportunity to the American people to consume information from scientists that have different perspectives on key issues and, frankly, could be used to build consensus in this body."

His testimony came as uncertainty grows around Pruitt's plan for a public debate over climate science. White House advisers signaled recently that the plan for a red-team debate was "on hold," and it's unclear where President Trump stands on the idea. Pruitt once suggested that the debate could be aired on television, but some mainstream scientists, and some who question global warming, have expressed doubts about its usefulness.

In recent weeks, Pruitt has sought to clarify the role of publicly debating the science.

"The climate is changing," he told Reuters earlier this month. "That's not the debate. The debate is how do we know what the ideal surface temperature is in 2100?"

That talking point marks a relatively new rhetorical shift. In the past, Pruitt has talked about climate change as a debate and, at times, denied the basic foundation of climate science. Mainstream scientists have long said that humans are warming the planet at an unprecedented pace through the burning of fossil fuels.

Back in March, shortly after he was confirmed, Pruitt stated that humans are not the primary drivers of climate change. After extensive criticism, an EPA spokesman clarified that the questions Pruitt believes are worth debating include: "How much is the climate changing, to what extent is human activity involved, and what to do about it?"

Mainstream climate scientists are not debating ideal surface temperatures, though many say warming needs to be limited to 2 degrees Celsius. They caution that greater levels of warming could lead to a sea-level rise of more than 3 feet in some areas of the world, a dramatic rise in fatal heat and other damage. The notion that the current rate of global warming could cause disastrous consequences by 2100 has been supported by researchers at NASA, NOAA, and government agencies and academic institutions across the world.

Within the field of climate science, there is no debate about ideal surface temperatures, said Kevin Trenberth, a meteorologist at the National Center for Atmospheric Research. He said it's deceptive to portray the current observed changes as part of a natural cycle, where changes happen on time scales of 10,000 years or more, not a few centuries.

"It's a silly concept because the ideal surface temperatures are the ones that you are adapted to, and those are the current temperatures," he said. "Any change tends to be disruptive, and if changes occur rapidly, that is the most disruptive thing that can happen, and that's what is happening with human-induced climate change."

'No decision' on endangerment finding

Pruitt's testimony marked the first time he has appeared before the Senate Environment and Public Works Committee since his confirmation hearing a year ago. Pruitt also faced pointed questions from Democrats about the agency's actions on climate change, including potential

changes to vehicle emissions standards and the endangerment finding for greenhouse gases.

Pruitt maintained that the idea of a red-team, blue-team debate on climate change is still "under consideration." And he said news reports indicating that the White House had told him to not go forward with the red-team concept were "untrue."

"So the public reports were incorrect?" Merkley asked.

"In this instance, yes," Pruitt replied.

E&E News reported last month that the White House had urged EPA air chief Bill Wehrum to put the debate on ice. While the president reportedly supported the exercise, not everyone agreed it was a good idea (*Climatewire*, Dec. 15, 2017).

Pruitt had previously suggested in House testimony that the red-team, blue-team discussion could happen by the end of January. There's no indication that it's close to happening.

Merkley questioned the legitimacy of the exercise.

"I will say the perception of the red team, blue team was that your entire intention was to, on behalf of the Koch brother cartel, continue to mislead the American people about the very significant impacts of carbon pollution, casting doubt on carbon pollution, casting doubt on established science, contrary to your contention that you like to listen to scientists," Merkley said.

Pruitt did not take credit for the idea and instead said the concept originated from Steve Koonin, who was undersecretary for science at the Department of Energy under former President Obama.

The EPA administrator also fielded questions from Sen. Ed Markey (D-Mass.), who pressed him on whether he plans to maintain California's waiver authority to set higher vehicle emissions standards.

"Do you support, once again, the maintenance, the retention of the California waiver, which Massachusetts uses and many other states also use?" Markey asked.

Pruitt said having a single national program is "essential" and said the agency is speaking with the California Air Resources Board to "come to a resolution" before EPA reviews the vehicle standards in April.

"Senator, federalism doesn't mean one state can dictate to the rest of the country. We recognize California's special status in the statute, and we are well-prepared to find consensus around these issues," Pruitt said.

Markey emphasized that Massachusetts and other states want the waiver to continue and to maintain high standards for vehicle emissions, especially as they became "increasingly fearful" that EPA could roll back fuel economy standards.

Pruitt also faced sharp questions from Sen. Tom Carper of Delaware, the panel's ranking Democrat, about whether he would promise to leave the endangerment finding for greenhouse gases untouched. The finding is the cornerstone of the agency's authority to regulate emissions.

Pruitt declined to make a commitment.

"There is no decision or determination on that," he said.

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Pruitt: No decision yet on carbon endangerment finding challenge

Utility Dive

By: Gavin Bade

Published: January 30, 2018

Pruitt's first oversight hearing at the Senate Environment and Public Works Committee revealed little about the EPA's plans for regulations on the power sector in the year to come.

The EPA head largely avoided making concrete policy statements on pending regulatory actions like the replacement of the Clean Power Plan. But he made clear the agency has not ruled out a challenge to the carbon endangerment finding, which underlies the CPP and other federal actions to limit greenhouse gases.

Asked by Carper if he would challenge the endangerment finding, Pruitt responded only that "no decision or determination" has been made on it yet.

Story continues below

The administrator has so far resisted calls from conservative activists to challenge the 2009 finding, a move that would severely restrict the federal government's authority to regulate carbon if successful. In his confirmation hearing last year, Pruitt said the finding is the "law of the land," but then in July he told Reuters there could be a legal case for unraveling it.

In a House hearing in December, Pruitt said he believed the Obama administration "short-shrifted" the scientific analysis behind the endangerment finding. A challenge of the finding in court would likely be an uphill battle, but establishing an internal "red team, blue team" panel to critique climate science could be a first step.

Pruitt told the committee that decision is still "under consideration."

"There are questions we know the answer to and questions we don't know the answer to, for example what is the ideal surface temp in year 2100 is something folks have different perspectives," Pruitt said. "So that red team, blue team exercise is an opportunity to provide the American people opportunity to consume info from scientists who have different perspectives on key issues, and frankly could be used to build consensus in this body."

Pruitt denied reports that the White House had stepped in to stop the climate review, but also linked it to the EPA's authority to regulate carbon under Section 111 of the Clean Air Act, which underpinned the Clean Power Plan.

"As you know the Clean Air Act that was amended in 1990, as you look at it many who were involved in that process recognized that CO2 was not part of the discussion under Section 111," he said. "So we have much work to do legally and procedurally but [red team, blue team] is under consideration."

Throughout the hearing Democratic senators sharply critiqued Pruitt for attempts to roll back clean air regulations and "wage a war on climate science," in the words of Carper. Republicans praised the administrator, saying the regulatory rollbacks would help create jobs.

In one exchange, Carper asked Pruitt if the EPA conducted a health analysis before issuing a decision to end the OIAI rule that made major pollution sources subject to tougher emission control standards. Companies will now be able to escape the tougher standards if they take steps to cut pollution.

Pruitt responded that the EPA has statutory authority to alter the rule without such a study.

"That was a decision that was made outside of the Program Office of Air," he said. "It was a Policy Office decision."

Later, Pruitt added that the decision was "really about incentivizing investment by companies to achieve better outcomes for the environment."

"All this policy says is if those major emitters make major investment and achieve the outcomes to achieve air quality ... they ought to be rewarded and not have to be treated as a major emitter if they're no longer in that category," Pruitt said.

After the hearing, Pruitt approached the dais for a private conversation with Carper before leaving without answering questions. Carper told reporters that the conversation concerned the appointment of Wheeler as assistant administrator and Holly Graves as EPA chief financial officer.

"I made it clear we were going to find it difficult to move them forward expeditiously as long as the nomination of Kathleen Hartnett-White was still out there," Carper said. "I explained to him ... she sat right at that table and gave perhaps the worst performance I've seen in 17 years for a witness for a major institution at this administration and he needs to be mindful of that."

After that hearing, Democrats derailed Hartnett-White's nomination at the end of 2017, only to see the White House resubmit the controversial nominee in January. The hearing also revealed that Wheeler was present in meetings regarding coal plant subsidies with Department of Energy officials and coal magnate Bob Murray. Carper said those meetings would not cause him to oppose Wheeler's confirmation outright, but deserve more explanation.

"I've discussed that with him and urged him to meet with every Democrat on this committee and others off this committee to fully explain his role in the work of Mr. Murray — how he participated, if at all, in it," Carper said.

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Carper to Pruitt: 'I want real answers'

Greenwire

By: Kevin Bogardus

Published: January 30, 2018

U.S. EPA Administrator Scott Pruitt today faced off with Democrats at a contentious hearing on Capitol Hill.

Pruitt testified before the Senate Environment and Public Works Committee this morning, his first time before the panel since his confirmation hearing in January 2017. Ranking member Tom Carper (D-Del.) pressed the EPA chief to meet more often with lawmakers in a public forum.

"You can do better, and it's important that you do," Carper said, noting Pruitt's predecessors in the Obama administration had come before the committee several times.

Carper criticized Pruitt for several actions he has taken at EPA — delaying environmental rules, removing science advisers and taking down climate science webpages. The senator also said Pruitt had been "repeatedly misrepresenting the truth about President Obama's record."

"Stop doing it," Carper said, adding that Pruitt should spare senators platitudes at today's hearing. "I want real answers," said the Delaware senator.

Pruitt defended how he has run the agency over the past year, emphasizing his focus on the rule of law, process and federalism, with EPA partnering with states.

"I don't believe environmental protection is putting up fences," Pruitt said in his opening statement, in which he also asked for senators' help on his "war on lead" to eradicate the toxin from drinking water.

Pruitt won praise from Republicans for his work in reversing EPA rules. Chairman John Barrasso (R-Wyo.) said, "The administration's deregulatory approach is working."

Barrasso heralded job growth under the Trump administration as Pruitt has addressed the agency's regulations.

"Administrator Pruitt, the reward for good work is often more work, and I don't need to tell you that we've got a lot of work left to do," Barrasso said.

Pruitt was pressed repeatedly for short answers from Democrats on several issues. In turn, the EPA administrator tried to offer longer responses, often leading to interruptions and cross-talk.

Carper asked Pruitt whether the agency had conducted a health analysis or studied which facilities would emit more pollution related to the EPA chief's move to end the "once in always in" Clinton-era policy that targeted industrial air pollution.

"These are not yes-or-no answers. I have to explain what we did with that decision," Pruitt said.

Carper also asked Pruitt whether he would ax the agency's endangerment finding concluding that carbon dioxide and other greenhouse gases were harmful to human health and welfare by contributing to climate change. That finding has been the basis of the agency's climate rules.

"For as long as you are administrator, do you commit not to take any steps to repeal or replace the so-called endangerment finding?" Carper asked. "Yes or no, do you plan to take any steps to repeal or replace the endangerment finding, yes or no?"

"There is no decision or determination on that," Pruitt said.

Other Democrats looked to poke holes in Pruitt's tenure so far at EPA.

Sen. Tammy Duckworth (D-Ill.) noted the Trump administration has proposed to cut funding for an agency lead reduction program. In addition, Pruitt has moved slowly toward revising a rule intended to limit the amount of lead and copper in drinking water.

"This does not sound like a war on lead," Duckworth said.

That exchange prompted a quip from Sen. Jim Inhofe (R-Okla.), a Pruitt ally.

"I get the impression they don't like you," Inhofe said, eliciting laughs from the audience.

Other issues raised today didn't touch on EPA directly. Sen. Sheldon Whitehouse (D-R.I.) brought up a 2016 interview Pruitt, then Oklahoma attorney general, gave to a local radio station. Pruitt made several disparaging remarks about then-presidential candidate Donald Trump, saying he would be "more abusive to" the Constitution than President Obama (*see related story*).

"Do you recall saying that?" Whitehouse said.

"I don't, senator. I don't echo that today at all," Pruitt said.

Senators also asked about issues important to their constituents. Sen. Deb Fischer (R-Neb.) asked the EPA chief for a timeline on the agency's rewrite of the Waters of the U.S. rule, which has sparked a backlash from farming groups.

"We are providing regulatory certainty because we are taking steps to provide a substitute for WOTUS," Pruitt said.

Pruitt said he expects EPA will propose a substitute rule in April or May this year.

Both Sens. Ben Cardin (D-Md.) and Chris Van Hollen (D-Md.) asked Pruitt about EPA's move to end agency funding for the *Bay Journal*, a newspaper that focuses on the Chesapeake Bay.

Pruitt said that decision is under review.

"The decision should not have been made the way it was, so it is already under reconsideration," Pruitt told Cardin.

Van Hollen cited reporting by E&E News that found the involvement of Trump political appointees in ending the EPA grant for the newspaper (*Greenwire*, Jan. 4). The Maryland senator said Pruitt should keep politics out of such funding decisions.

"We should have never gotten to this point where EPA is making politically driven decisions on contracts," Van Hollen said.

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Bodine Says 'Informal' Enforcement May Cut Cases But Speed Compliance

Inside EPA

By: Doug Obey

Published: January 30, 2018

EPA enforcement chief Susan Bodine says the agency plans to launch pilot projects using "informal" enforcement actions that notify a facility of a violation and aim to achieve immediate compliance without waiting for formal litigation steps, saying that while it may cause a drop in total enforcement cases it could speed compliance.

Bodine, assistant administrator in the Office of Enforcement & Compliance Assurance (OECA), said the pilot projects are among her list of goals during Jan. 30 remarks to an EPA National Executive Leadership Development Conference in Washington, D.C. She conceded that the informal enforcement approach could open EPA to criticism that it is reducing its enforcement efforts, but said it could provide better environmental protection.

"One of our strategic measures is reducing the time between identifying environmental problems in getting back into compliance," Bodine said during a panel discussion on EPA's draft strategic plan for fiscal years 2018-2022, which the agency is expected to finalize in February and will outline its broad agenda for those years.

"One of the things that I want to do, and [that] OECA is working on, is to do pilot projects and hopefully institutionalize this, where we can take informal actions," Bodine said.

Under the informal enforcement approach, "the inspector can let the facility know it has a problem. And we get compliance immediately as opposed to waiting for the inspection report, waiting for a [notice of violation], and then getting credit for it," she said on the second day of the two-day conference.

Bodine's remarks come with outside groups already flagging a significant drop in agency enforcement during the first year of the Trump administration. Senate Democrats have cited warnings from former EPA staff about a steep drop off in agency enforcement cases during President Donald Trump's first year.

For example, Jeff Ruch, executive director of Public Employees for Environmental Responsibility (PEER), at an informal Jan. 23 forum scoffed at EPA Administrator Scott Pruitt's prior pledge to pursue "core" agency activities, citing a contradiction between such pledges and concerns that the enforcement function is being "hollowed out."

Ruch cited as some examples of degraded agency enforcement new criminal enforcement cases under the Pruitt regime approaching a 30- year low, as well as a number of special agents in EPA's criminal investigation division down by more than half since 2003 to 147 by August 2017 -- before the conclusion of staff buyouts initiated by Pruitt.

At the EPA conference, Bodine said that the informal enforcement method might generate some criticism along those lines. She said, "We are all going to be criticized, saying, 'Oh, they are not taking as many cases.'"

But she added, “[W]hat we care about are the outcomes, we care about compliance.”

Enforcement Efforts

Bodine's remarks were part of a broader discussion in which the heads of several EPA offices combined discussion of their priorities with outreach to agency staff still facing uncertainty after the first year of the Trump administration. In that vein, Bodine herself drew laughs and applause from agency staff when she emphasized that she saw enforcement as a crucial part of performing the agency's mission, though it was not referenced on a slide during the session of general principles expected to drive the agency's work over the next several years.

“Enforcement and compliance assurance is critical to meeting every one of these core elements. Maybe you don't' see it there but I see it there,” Bodine said.

Similarly, EPA Office of Air & Radiation Assistant Administrator Bill Wehrum during the discussion praised EPA career staff and managers, acknowledging that they have repeatedly dealt with shifts in agency political leadership, including during the administration of former President George W. Bush -- where Wehrum served as acting EPA air chief -- to former President Barack Obama, and now the Trump administration.

“Part of why I admire the institution is, you put up with us,” he said, referring to shifting political appointees. “This group handles it with grace.”

But Democrats in Congress, environmentalists and others appear likely to criticize the informal enforcement action plan, to the extent they view it as part of what they cite as an apparent trend toward pared-back enforcement under Pruitt.

“EPA has gone from a watchdog to a lapdog on enforcement,” Senator Ed. Markey (D-MA) said in his opening remarks at the Jan. 23 forum.

The agency will also be closely watched for how it implements so called “cooperative federalism ” approaches amid concerns from advocates of strong enforcement that EPA Administrator Scott Pruitt's embrace of the idea will simply hand enforcement matters off to states with weak enforcement programs.

Bodine during the discussion appeared to offer some assurance that Pruitt will not let states get away with lax enforcement. She said she is aware of at least two instances since she arrived at the agency where Pruitt was “extremely supportive” of efforts by the agency to warn a state that the agency would act if the state did not step up actions to protect drinking water.

“We sent that message and the state stepped up, so we didn't end up having to take a federal enforcement action.”

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On Eve Of NAS Review, ACC Questions IRIS' Future Due To Lack Of Reforms

Inside EPA

By: Maria Hegstad

Published: January 30, 2018

As the National Academy of Sciences (NAS) prepares to review EPA's Integrated Risk Information System (IRIS), a top American Chemistry Council (ACC) official is critiquing the chemical assessment program for not adopting prior NAS advice on reforming IRIS, though the official stops short of taking a position on whether IRIS should continue.

"If nothing changes in the IRIS assessment program, I don't see the value of doing that," Mike Walls, vice president of regulatory and technical affairs at ACC, said in an exclusive Jan. 24 interview with *Inside EPA*. "The ongoing discussion" about the program, including the NAS review slated to take place Feb. 1-2 "provides an opportunity for Congress and EPA to consider the ongoing role of IRIS," he said.

But Walls said that ACC, whose staff have long criticized IRIS assessments and the program itself, has "not taken a position" on whether the IRIS program should be ended. Instead, Walls pointed to ACC's priority: fully funding and implementing Congress' 2016 update of the Toxic Substances Control Act (TSCA).

"We've been clear that a priority for this administration has to be to provide appropriate resources for the TSCA amendments. The proposed budget has done exactly that," Walls said. "We certainly focused our attention in the appropriations process in ensuring that EPA has the funding that's required to carry out its statutory mandates."

IRIS, a program that agency leaders created in the 1980s to ensure various agency programs and regions were using consistent, quality risk numbers in their decision-making does not have a direct statutory mandate. Instead, the risk values that it generates are used by EPA risk managers to make decisions and carry out other statutory mandates.

Walls adds, "I think it's up to EPA management to determine whether other existing programs are returning value that they ought to have."

IRIS watchers inside and outside the agency are preparing for potential major changes to the IRIS program under the Trump administration, based in large part on fiscal year 2018 budget documents from the executive and Congress. Early fiscal year 2018 budget memos proposed eliminating IRIS, but the final budget proposal retained the program although in smaller form.

Report language attached to the pending FY18 bills in the House and Senate, propose de-funding IRIS entirely or consolidating EPA's risk resources in the nascent TSCA program. Both proposals have led to outcry from environmentalists, who argue that moving IRIS from EPA's research office to the toxics office could further politicize the program, which was placed in the research office to distance it from such concerns.

Sources inside and outside the agency raise concerns that if IRIS is subsumed in the TSCA program, IRIS' traditional EPA clients -- the air, water and Superfund offices -- will be left

without a source of risk values, particularly as the Trump EPA's final implementing rules for the new TSCA program propose generally not considering legacy uses of chemicals in evaluations.

Asked about this concern, Walls told *Inside EPA* that he "can't comment on the degree to which other [EPA program] offices use IRIS values. If they are using outdated information, that hasn't been shown to conform with best available science, what are they getting?"

IRIS Assessments

Walls said that his and ACC's members companies' concerns remain with the quality of IRIS assessments. He argued that the program has yet to "really implement the NAS recommendations from the 2011 and 2014 [reports]," referring to prior advice on how to reform and improve IRIS.

For example, in 2011 NAS suggested, among other recommendations, that EPA make assessments more rigorous by standardizing its "approach to using weight-of-evidence guidelines" and more transparent by printing standardized evidence tables in the assessments.

NAS' 2014 report generally praised EPA for its efforts to implement the recommendations, and encouraged EPA to continue its efforts to adopt a systematic review process, which the committee viewed as central to both increasing the quality of the analyses and its transparency. The report also encouraged EPA to complete its then-pending IRIS assessment handbook and to include uncertainty analyses and risk ranges in the IRIS assessments.

"And you know, just in the draft assessments that came out in 2017, the draft assessments for [ethyl tert-butyl ether (ETBE)] and tert-butanol . . . neither those drafts nor the final benzo(a)pyrene assessment [released] in January 2017 deal with how to address the essential question of weight of evidence of the data," Walls said.

The assessments Walls references are the last released under IRIS, though EPA is slated to publish in the Jan. 31 *Federal Register* its draft IRIS assessment plan for uranium.

The ETBE and tert-butanol assessments are the only IRIS values formally released since the transition to the Trump EPA, which followed shortly after the appointment of new staff leaders for IRIS: Tina Bahadori as director of the National Center for Environmental Assessment and Kris Thayer as director of IRIS. Thayer, who Bahadori recruited from the National Institutes of Environmental Health Sciences, specializes in systematic review.

Asked if EPA's lack of a political nominee leading the research office could be part of the reason for its lack of output in the past year, Walls replied, "The process for filling positions is what it is. I have no knowledge that the lack of folks in those positions is slowing things down. This is not a new problem -- we've seen it since at least 2011."

But Walls also said that just releasing more assessments does not address his concerns. Instead, he said, "Stakeholder engagement is key to any future for the IRIS program. That starts with the [chemical] nomination process. How they engage in [the chemical] prioritization and nomination process."

Further, Walls said that EPA's handbook guiding how IRIS assessments are conducted needs to be updated and released in draft form for public comment, the systematic review process should be documented and "stakeholder feedback ought to be sought" upon it. Walls also wants IRIS to address stakeholder comments in their documents.

Systematic Review

Thayer and Bahadori have given a series of presentations since August, describing their efforts to train IRIS staff in systematic review approaches, apply these to ongoing assessments, and also train staff elsewhere in the agency on the methods. Five IRIS staff have been embedded in the toxics office to assist them with systematic review approaches, Bahadori said in a presentation before EPA's Science Advisory Board last fall.

Thayer and IRIS staff presented a number of the new systematic review tools in multiple presentations at the annual Society for Risk Analysis meeting last December, and also highlighted the expansion of the Health and Environmental Research Online (HERO) database, which contains summaries of all studies referenced in IRIS assessments to the toxics office.

Asked whether he had concerns that the IRIS staff are training toxics office staff, Walls said, "I have no direct knowledge of that. It's interesting to me that one of the things that we've called for in the IRIS program is the systematic review process should be documented and the subject of public comment. If [EPA's Office of Pollution Prevention and Toxics (OPPT)] is adopting [IRIS' systematic review process, it] should be the subject of public comment. Early in OPPT's guide on risk evaluation there was some mention of systematic review; it would be important to make that available. I don't have an opinion on IRIS folks providing training on it."

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States' rights champion Scott Pruitt makes an exception for California

Los Angeles Times

By: Evan Halper

Published: January 31, 2018

The Trump administration can't seem to decide how much of a confrontation it wants with California over gas guzzlers.

As the Environmental Protection Agency moves to loosen car and truck mileage standards, California is very much standing in its way. The state holds a waiver that allows it — and any state choosing to go along with it — to keep intact the strict pollution requirements imposed by the Obama administration.

Those standards are a crucial component of California's climate action plans — plans the Trump administration does not much like. As long as California holds the authority to set mileage standards, the Trump administration is powerless to allow substantially more gas guzzlers on the road.

Nearly half of the vehicles sold in America would still fall under the California rules. And manufacturers can't afford to build different fleets for different states, so they build everything to meet California rules.

The EPA is trying to persuade the state to give a little in negotiations that recently got underway. There is not much incentive for the state to fold.

EPA head Scott Pruitt says he is hopeful "consensus" can be reached. But he also has warned California not to overplay its hand, suggesting that the EPA could try to block the state's waiver and order it to allow more higher polluting vehicles.

It's an awkward threat for Pruitt, a supposed champion of states' rights.

"Federalism doesn't mean that one state can dictate to the rest of the country," he said at a Senate hearing Tuesday.

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An office in each state under discussion — Pruitt

E&E News

By: Kevin Bogardus

Published: January 30, 2018

U.S. EPA Administrator Scott Pruitt today discussed his efforts to reshape the agency.

At a Senate Environment and Public Works Committee hearing, Sen. Joni Ernst (R-Iowa)

recalled Pruitt's visit to her state this past August where he touched on moving various agencies out of Washington.

Ernst said moving some government operations out of the nation's capital could serve as an economic boost to other areas and tighten bonds between citizens and the federal government.

"With a more decentralized EPA, do you feel misguided policies such as [the Waters of the U.S. rule] could have been prevented, and do you support relocating government functions outside of the Washington, D.C., metro area?" Ernst asked the EPA chief.

Pruitt noted that half of his agency's roughly 14,000 employees are already in 10 regional offices across the country, while the other half work in the agency's Washington headquarters.

Pruitt said, "One of the things we ought to engage as far as a collaborative discussion is whether it makes sense to locate operational units in each of the state capitals across this country to ensure that there is a focus on issues specific to that state — whether it is Superfund, air issues, water issues, the rest."

The administrator said he welcomed input from Congress on what makes sense for EPA to better deliver services nationwide.

"We have just begun this discussion internally," Pruitt said.

If EPA were to implement such an extensive transformation of its office space, it would likely be met with fierce opposition from several on Capitol Hill, which was evident in today's hearing.

Pruitt's talk of an EPA office in every state drew a sharp rebuke from Sen. Tammy Duckworth (D-Ill.). She brought up speculation last year that EPA intended to close its Region 5 office in Chicago and consolidate it with the Region 7 branch in Lenexa, Kan.

The rumors of Region 5's closure drew pushback from lawmakers in both parties and were denied by Pruitt and other EPA officials at the time. The EPA chief repeated that denial at today's hearing.

"That's not accurate, senator," Pruitt told Duckworth.

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EPA Head Scott Pruitt Once Said Donald Trump Would Be 'Abusive' to the Constitution

Time

By: Justin Worland

Published: January 30, 2018

Environmental Protection Agency head Scott Pruitt has earned his place as a trusted advisor to President Trump, but in a 2016 radio interview brought to light Tuesday Pruitt bashed Trump as a populist who appealed to "disaffected" and a threat to the rule of law.

"Donald Trump in the White House would be more abusive to the Constitution than Barack Obama – and that's saying a lot," Pruitt said on the Pat Campbell Show, an Oklahoma talk radio program, in February 2016. "If Donald Trump is the nominee and eventually the president, he would take, I think unapologetic steps, to use executive power to confront Congress in a way that is truly unconstitutional."

Pruitt's tone has changed since coming to Washington. The former Oklahoma attorney general has succeeded in launching a widespread effort at undoing Obama-era regulations and has repeatedly praised Trump as the driving force behind those efforts. Pruitt often likens his agenda as part of a broader federalist agenda to give power back to the states and undo overreach from federal agencies.

When confronted with the 2016 interview during a Senate hearing Tuesday, Pruitt said he did not recall the comments and does not agree with them today. “After meeting him, and now having the honor of working for him, it is abundantly clear that President Trump is the most consequential leader of our time,” Pruitt said in a statement. “No one has done more to advance the rule of law than President Trump.”

The interview — which aired early in the 2016 presidential nominating process — resurfaced this week in a report from the group Documented Investigations and represents the latest in a string of controversies surrounding the EPA administrator. Pruitt has come under fire for a range of reasons from questioning the science of climate change to using taxpayer dollars to build a private phone booth in the EPA at the cost of nearly $25,000.

Trump has stood by Pruitt despite the often negative publicity. And Pruitt has succeeded — along with allies — in pushing the president to take his position on a number of key policy issues, including withdraw from the Paris Agreement on climate change. In turn, Pruitt has sought to advance within the administration with his sights set on attorney general.

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Pruitt publicly bashed Trump. Will it hurt him?

Climatewire

By: Robin Bravender and Niina Heikkinen

Published: January 31, 2018

Scott Pruitt might be keeping his head down for a while.

Just as the U.S. EPA administrator began testifying in the Senate yesterday, a radio interview from February 2016 began making waves in the press, with Pruitt forcefully criticizing the future president as a "bully."

"I believe that Donald Trump in the White House would be more abusive to the Constitution than Barack Obama," said Pruitt, who was the Republican attorney general of Oklahoma at the time.

Pruitt's sharp criticism of Trump went viral, generating headlines in national news outlets and sparking an uproar on social media. The recording's distribution by a watchdog group was timed to coincide with Pruitt's testimony before the Environment and Public Works Committee, where he was grilled about working for a president who he believed could cause a constitutional crisis.

Pruitt told lawmakers he didn't remember making those comments. He later recanted. EPA issued a statement by Pruitt saying, "After meeting him, and now having the honor of working for him, it is abundantly clear that President Trump is the most consequential leader of our time."

The EPA boss was spotted at the White House after the hearing yesterday, prompting speculation that he was there to talk about his 2016 remarks. EPA sent out Pruitt's daily schedule to show that he was there for a prescheduled national security meeting about energy and climate change.

Pruitt, who supported Jeb Bush in the Republican primary, is one of many top officials in the administration who publicly criticized Trump preceding the 2016 election. But at the very least, the flap is an embarrassment for the EPA boss and for Trump. It remains to be seen whether the criticisms ultimately lessen the clout Pruitt has with the president or damage his political future.

Pruitt's situation is "awkward at best," said Christine Todd Whitman, who led EPA during the George W. Bush administration. "To see this kind of thing be unearthed, it's obviously going to make for uneasy relations for a time," she added. "It's not helpful, no matter what."

Bill Reilly, EPA administrator under George H.W. Bush, called Pruitt's language "pretty strong." But, he added, "there's so many precedents for it," pointing to reports that Secretary of State Rex Tillerson called Trump a "moron."

On the campaign trail in 2015, then-GOP candidate Rick Perry called Trump's campaign "a cancer on conservatism" that "must be clearly diagnosed, excised and discarded." Perry is now Trump's Energy secretary.

Andrew Wheeler, Trump's nominee to be EPA's deputy administrator, also publicly criticized Trump in February 2016. Wheeler — who was then a coal lobbyist supporting the campaign of Sen. Marco Rubio (R-Fla.) — called Trump a "bully" in a Facebook post that has since been deleted, *The Washington Post* reported. Wheeler said Trump "hasn't been that successful" in business and "has more baggage then all of the other Republican candidates combined," according to the *Post*.

Some former EPA officials expect Pruitt to emerge unscathed.

The 2016 election was "a while ago," said Jeff Holmstead, an industry attorney at Bracewell LLP and a former EPA official during the George W. Bush administration. "During the primaries, a lot of people said nasty things about each other," and there's a sense that "everybody's at war," he said.

As for the Pruitt interview that's getting attention, Holmstead said, "I don't think it's going to have any impact." His impression, he said, is that Trump "is certainly aware of and appreciates and respects Pruitt, and I don't think this will really damage it."

During one of the major policy climate policy fights that have taken place in the Trump White House, Pruitt lobbied heavily to push Trump to withdraw from the Paris climate accord, despite a push from other officials who wanted the United States to stay in. Pruitt and his camp came out victorious, and Pruitt played spokesman for the administration in the aftermath, frequently appearing on cable news and other media outlets to tout the decision.

Former EPA chief Reilly said, "I would imagine he could weather that storm. ... I don't see it, honestly, as something that's likely to cause him to be dismissed or fired."

The White House is likely to notice, Whitman said. "When you criticize the president, not much slips under the radar," she said. But if there were a time when it might not get as much attention, she said, it would be when the president is preoccupied with giving a State of the Union address.

Ultimately, Whitman said, "I'll be surprised if people don't figure out there's nothing that you say that can't come back to bite you."

It's unclear whether the White House knew about Pruitt's remarks prior to their distribution yesterday. It's possible that they came up in Pruitt's vetting, although this administration has been criticized for failing to identify red flags for potential officials.

Meanwhile, critics of Pruitt and the administration are piling on.

"It's sad that Donald Trump is likely more upset about Scott Pruitt's accurate portrayal of him than Pruitt's relentless attacks on clean air, clean water, and the health of the American public," Sierra Club Executive Director Michael Brune said yesterday in a statement. "But Trump prizes his ego above anyone else, so Pruitt should watch his back. Keep your eyes on Trump moving forward — will Pruitt wind up in the dog house like Jeff Sessions, or out of a job like Tom Price?"

Nick Surgey, director of the watchdog group Documented, suggested Pruitt's involvement with the Trump administration was a "marriage of convenience" that allowed him to pay back the support he had received from the fossil fuel industry and could help him seek higher office at a later date. Surgey's group drew attention to the 2016 radio interview yesterday.

Surgey said he happened across the Trump comments by chance. "I was just listening to lots of old Scott Pruitt radio interviews. I wasn't listening to them expecting to hear a critical attack on Donald Trump; I wanted to see if there was an evolution on his views on climate over the years," Surgey said. "Scott Pruitt's views on climate change change like the weather; it depends on what audience he was speaking to."

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Top colleges like Yale are teaching students to prioritize happiness—not money and power

Quartz

By: Jenny Anderson

Published: January 31, 2018

It takes a lot of hard work to get into places like Yale and Stanford. But once students make it to the Ivy League, many find that while they're ready to tackle Shakespeare and comparative political systems, they're lost when it comes to building emotionally rich, and balanced lives.

To that end, a growing number of top universities are offering courses that aim to put students on the happiness track. A week after Yale opened registration for its debut course "Psychology and the Good Life" this January, a quarter of the undergraduate population—more than 1,180 students—had signed up, making it the most popular course ever at the university. Meanwhile, one in six undergraduates at Stanford take a course that teaches students to apply design thinking to the "wicked problem" of creating fulfilling lives and careers. And at McGill University, in Montreal, Quebec, students have flocked to "Lessons of Community and Compassion," a course on social connectedness and belonging—precisely the things they may have sacrificed to get into one of Canada's top institutions.

"I think students are looking for meaning," Peter Salovey, president of Yale, told Quartz at the World Economic Forum in Davos. Salovey, an early pioneer in research on emotional intelligence, says that while students today are more sophisticated and worldly than previous generations, they seem to be much less resilient. Their sense of vulnerability is driving them to search for purpose, in academic courses and beyond.

Laurie Santos, the psychology professor teaching the Yale class, says the message behind her course—helping students figure out what it means to live happier, more satisfying lives, and teaching them scientifically-tested strategies to achieve that goal—resonates with kids who are only now realizing the toll that academic rigor has taken on their sleep, mental health, and sense

of social connectedness.

"Our intuitions about what to do to be happy are wrong," she says. We think we want to achieve high-powered positions or make a lot of money, even if that means sacrificing the things that make us balanced and sane—human connection, exercise, rest, and activities that allow us to recharge. "This is a great moment when we have rigorous research on positive psychology —what makes us happy, but also on behavioral change," says Santos. Her course covers practical topics ranging from the psychological benefits of charitable giving to how to pick a meaningful career. And because science shows that grade-seeking can undermine happiness, she encourages the students to take the course pass-fail.

Mental health issues among young adults are on the rise at universities around the world. "I was really surprised at the levels of anxiety and depression students face," Santos says. A 2013 report by the Yale College Council found that more than half of undergraduates sought mental health services during their time on campus. A 2009 survey of 80,121 students, conducted by the American College Health Association-National College Health Assessment, showed that 39% of college students felt hopeless during the school year, and 25% felt so depressed they found it hard to function. Nearly half (47%) reported feeling overwhelming anxiety, and 84% said they felt generally overwhelmed by all they have to do.

Teaching students how to be happier isn't just about helping them as individuals—it can also be about helping them be better citizens. In the course "Lessons of Community and Compassion: Overcoming Social Isolation and Building Social Connectedness through Policy and Program Development," McGill University professor of practice Kim Samuel introduces students to some of the most socially isolated people on the planet—refugees and migrants, indigenous communities, families struggling with food insecurity; the displaced, disabled, and disconnected. One of the goals of her course, she says, is to teach students what it feels like to have a sense of safety and community in their own lives, so that they can help build connectedness in more disadvantaged populations. "All students have experienced some degree of social isolation in their lives," she says, "and that recognition is the royal road to reciprocity."

Many of her students say it's a life-altering experience. Jeremy Monk, who took Samuel's course and is now a graduate student at Columbia University, says, "I think a lot of us down the road, when we look back on where we started … this is going to be the place that we started, and where our ideas started to blossom, and where we really were given the chance to feel like we can make a difference and we are the leaders of change."

Stanford's "Designing Your Life" course, meanwhile, is taught by Bill Burnett, head of Stanford 's design program, and Dave Evans, who led the design of Apple's first mouse and co-founded the gaming company Electronic Arts before becoming a lecturer in the design program.

Evans says everyone is trying to answer the question posed by poet Mary Oliver: "What is it you plan to do / with your one wild and precious life?" "None of us got the manual explaining how to figure out the answer," he adds. Soon-to-be graduates are facing that question with immediacy, and under pressure. "They've been wonderfully trained to get into and attend schools for 22 years—but not how to live in the world and to determine what "a life" means to them," Evans says. He notes that being good at school is not the same thing as being good at life.

The Stanford courses have been such a success that the university's Life Design Lab, co-founded by Evans and Burnett, now helps other colleges and universities to develop their own versions of the program. Evans says similar courses are now being taught at Northwestern, University of Vermont, Dartmouth, University of Michigan and MIT. "We're adding the 'life' component explicitly back to the college experience," Evans says. "It's attractive because the need is great, the priority is high, and there's little offered to help."

The pursuit of happiness is, of course, hardly a new development. "Plato was talking about this," Santo says. Scores of people have bought best-selling books on achieving happiness, from Gretchen Rubin's *The Happiness Project* to Dan Gilbert's *Stumbling on Happiness*. And as the New York Times notes, courses on positive psychology are a popular draw for college students; 900 students enrolled in a Harvard lecture titled Positive Psychology in 2006.

What's new is the growing body of scientific research on what actually makes people happy —and a sense from universities that today's undergraduates are particularly in need of guidance.

Parents hold some responsibility for students' lack of resilience, says Salovey. Parents' laser-sharp, lifelong focus on getting their kids into top universities means that students are terrified of messing up. "It's a kind of parenting that's focused on college admissions and mitigating risks. We have to help students develop their own voice, to pick themselves up after failure."

There's another advantage to offering classes on happiness: They underscore that mental health

and emotional balance aren't things that young people can afford to keep putting off. According to Sonja Lyuboirsky, a psychology professor at the University of California, Riverside and author of the *The How of Happiness: A Scientific Approach to Getting the Life You Want*, 40% of our happiness is conscious, intentional, and under our control. "It takes the work you have to put in to be a great violinist, it takes work every day," Santos says. Happiness is never a lost cause, but the science does suggests that becoming a happy person is not a quick fix. Taking a college course on the subject may be the best short cut there is.

Santos will only teach one semester of the Yale course. But a five-part seminar-style series, "The Science of Well-Being," will be available in March, for free, on the online education site Coursera.

So far, Santos has taught five sessions of "Psychology and the Good Life." She says the feedback has been overwhelmingly positive. "They are taking these ideas to heart in a way I did not expect," she says. Alumni are already writing her to request a copy of the syllabus, as are kindergarten teachers and PTA heads. It's not just young people who need help with happiness, she notes: "This is a human problem."

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From: Culligan, Kevin
Location: WJC-N 5415 + Dial: Ex. 5 - Deliberative Process Participant Code: Ex. 5 - Deliberative Process
Importance: Normal
Subject: Accepted: Once in Always in Discussion
Start Date/Time: Wed 1/24/2018 2:30:00 PM
End Date/Time: Wed 1/24/2018 3:00:00 PM

To: Lassiter, Penny[Lassiter.Penny@epa.gov]
From: Culligan, Kevin
Sent: Fri 1/19/2018 12:23:42 AM
Subject: Re: Once In Always In - Document for Today's Meeting - Notes on Memo and Rulemaking

Penny,

You need to get used to this DD role. You are supposed to let your staff look up stuff in the FR. :)

Seriously, thAnks for taking the time to look at this.

- Kevin

Sent from my iPhone

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

Ex. 5 - Deliberative Process

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).

Ex. 6 - Personal Privacy

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

To: Kevin Culligan[Scoopgoblue@gmail.com]
From: Culligan, Kevin
Sent: Mon 12/18/2017 7:06:44 PM
Subject: Fwd: OIAI Options 12_18_17.docx
OIAI Options 12_18_17.docx
ATT00001.htm

Sent from my iPhone

Begin forwarded message:

From: "Lamason, Bill" <Lamason.Bill@epa.gov>
Date: December 18, 2017 at 1:18:06 PM EST
To: "Culligan, Kevin" <Culligan.Kevin@epa.gov>
Subject: OIAI Options 12_18_17.docx

Kevin, Per your request. Bill

From: Culligan, Kevin
Location: D220D/Bill's OFfice, Ex. 6 - Personal Privacy
Importance: Normal
Subject: Accepted: 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

To: Lamason, Bill[Lamason.Bill@epa.gov]
From: Culligan, Kevin
Sent: Fri 1/26/2018 6:47:26 PM
Subject: Press on once in always in

AIR POLLUTION

EPA kills Clinton-era industrial standards

Sean Reilly, E&E News reporter

Published: Friday, January 26, 2018

U.S. EPA headquarters in Washington. Claudine Hellmuth/E&E News

Barely two weeks after Republican lawmakers sought to scrap a Clinton-era air policy intended to limit industrial pollution, U.S. EPA air chief Bill Wehrum obliged yesterday, saying in a memo that the "once in, always in" policy ran contrary to the Clean Air Act.

Wehrum's decision, effective immediately, won swift applause from industry groups but denunciations from environmental organizations, one of which vowed to fight it "with every available tool."

The policy, dating back to 1995, had applied to factories and other "major" industrial pollution sources subject to maximum achievable control technology (MACT) standards because they annually release more than 10 tons of a single air toxic or 25 tons of any combination of hazardous pollutants.

Under the policy, the standards remained in place even if a facility's emissions dropped below the relevant thresholds on the grounds that a polluter could otherwise backslide.

But in yesterday's memo, Wehrum said that interpretation was not authorized by the "plain language" of

the Clean Air Act. Revoking it "will reduce regulatory burden for industries and the states, while continuing to ensure stringent and effective controls on hazardous air pollutants," he said in an accompanying press release. EPA plans to seek public comment, he indicated in the memo.

Repeal was welcomed by Senate Environment and Public Works Chairman John Barrasso (R-Wyo.). Together with Sen. Shelley Moore Capito (R-W.Va.), Barrasso had urged EPA earlier this month to scrap the policy, saying that it in fact acted as disincentive to curb emissions (*E&E Daily*, Jan. 10). In a press release yesterday, he called Wehrum's decision "consistent with President Trump's agenda to keep America's air clean and our economy growing."

Also praising the move was the American Forest & Paper Association, where President and CEO Donna Harman said it would reduce and "remove disincentives to voluntary efforts and technical innovations that could reduce emissions."

John Walke, clean air director at the Natural Resources Defense Council, ranked repeal among the "most dangerous actions" yet taken by the Trump administration and said it "drastically weakens" protective limits on arsenic, lead and other air pollutants.

"NRDC will fight this terrible decision to unleash toxic pollutants with every available tool," Walke said.

In ending the "once, in always in" policy, Wehrum could be seen as tending to unfinished business dating back to his stint as acting EPA air chief from 2005 to 2007 during George W. Bush's administration. During that time, EPA proposed rescinding the 1995 directive but was blocked by Congress. While EPA never took final action on that 2007 proposal, Wehrum wrote yesterday, it was never withdrawn.

From: Culligan, Kevin
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

To: Santiago, Juan[Santiago.Juan@epa.gov]
From: Culligan, Kevin
Sent: Thur 1/25/2018 9:17:41 PM
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: Culligan, Kevin[Culligan.Kevin@epa.gov]
From: Culligan, Kevin
Sent: Mon 11/20/2017 10:35:16 PM
Subject: to do Tuesday

Call Carrie Jenks

Once in always in

Talk to Peter

- Off Wednesday

- CPP docket

To: Dalcher, Debra[dalcher.debra@epa.gov]
Cc: Lamason, Bill[Lamason.Bill@epa.gov]
From: Culligan, Kevin
Sent: Mon 11/20/2017 4:27:41 PM
Subject: RE: Memo replacing OIAI with proposed 2007 interpretation_11_20_17_1115.docx

Got it Thanks

From: Dalcher, Debra
Sent: Monday, November 20, 2017 11:26 AM
To: Culligan, Kevin <Culligan.Kevin@epa.gov>
Cc: Lamason, Bill <Lamason.Bill@epa.gov>
Subject: Memo replacing OIAI with proposed 2007 interpretation_11_20_17_1115.docx

For 11:30 meeting Kevin. Debra

To: Santiago, Juan[Santiago.Juan@epa.gov]
From: Culligan, Kevin
Sent: Thur 1/25/2018 8:54:03 PM
Subject: FW: OIAI Reclassification of Major Sources as Area Sources Under Section 112 _01 25 2018.docx
image2018-01-27-164839.pdf

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>
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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>
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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

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To: Lamason, Bill[Lamason.Bill@epa.gov]
From: Culligan, Kevin
Sent: Mon 11/13/2017 1:49:03 PM
Subject: Re: OIAI Check in

Could we do 11:15?

Sent from my iPhone

> On Nov 13, 2017, at 8:01 AM, Lamason, Bill <Lamason.Bill@epa.gov> wrote:
>
> Check in. Kevin available until 10 am. Thank! Bill
> <meeting.ics>

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]
To: Dalcher, Debra[dalcher.debra@epa.gov]
From: Culligan, Kevin
Sent: Wed 12/6/2017 7:14:01 PM
Subject: Re: OECA Contact on OIAI Memo

Thanks Debra

From: Dalcher, Debra
Sent: Wednesday, December 6, 2017 2:11 PM
To: Culligan, Kevin
Cc: Tsirigotis, Peter; Lamason, Bill; French, Chuck; Jordan, Scott; Vetter, Rick; Rodman, Sonja
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: Dalcher, Debra[dalcher.debra@epa.gov]
Cc: Lamason, Bill[Lamason.Bill@epa.gov]; French, Chuck[French.Chuck@epa.gov]
From: Culligan, Kevin
Sent: Wed 12/6/2017 4:36:07 PM
Subject: Re: Wehrum Meeting Request - Once-In-Always-In Policy Revision

Will verify with Peter, but think I will be allowed

Sent from my iPhone

On Dec 6, 2017, at 9:08 AM, Dalcher, Debra <dalcher.debra@epa.gov> wrote:

It would be nice if Kevin could be there.

Debra

From: Lamason, Bill
Sent: Wednesday, December 06, 2017 8:53 AM
To: Dalcher, Debra <dalcher.debra@epa.gov>; Culligan, Kevin <Culligan.Kevin@epa.gov>
Cc: French, Chuck <French.Chuck@epa.gov>
Subject: FW: Wehrum Meeting Request - Once-In-Always-In Policy Revision

Debra, FYI.

Kevin, We did not include you on the meeting request due to the "DD+2" rule but thought you might be able to "walk in."

Thanks!

Bill

From: Eck, Janet
Sent: Wednesday, December 06, 2017 8:34 AM
To: Lamason, Bill <Lamason.Bill@epa.gov>
Subject: FW: Wehrum Meeting Request - Once-In-Always-In Policy Revision

FYI. Thanks.

From: Alston, Lala
Sent: Tuesday, December 05, 2017 4:42 PM
To: Loving, Shanita <Loving.Shanita@epa.gov>; Atkinson, Emily <Atkinson.Emily@epa.gov>
Cc: Alston, Lala <Alston.Lala@epa.gov>; South, Peter <South.Peter@epa.gov>; Shryock, Alice <shryock.alice@epa.gov>; Johnson, Tanya <Johnson.Tanya@epa.gov>; McKinney, Voronina <mckinney.voronina@epa.gov>; Eck, Janet <Eck.Janet@epa.gov>
Subject: Wehrum Meeting Request - Once-In-Always-In Policy Revision

Wehrum Meeting Request for scheduling.

Thank you,

Lala

Lala Alston

US/EPA/OAR/OAQPS/IO – MC-C404-04

Research Triangle Park, NC 27711

Phone: (919) 541-5616

To: Torres, Elineth[Torres.Elineth@epa.gov]
Cc: 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-919-541-4332-SPPD/Phone-Line/RTP-OAQPS-BLDG-C[RTP-OAQPS-919-541-4332-SPPD@epa.gov]; Rodman, Sonja[Rodman.Sonja@epa.gov]; Vetter, Rick[Vetter.Rick@epa.gov]
From: Culligan, Kevin
Sent: Wed 11/1/2017 3:17:42 PM
Subject: Re: Updated options document

Looks good to me

Sent from my iPhone

On Nov 1, 2017, at 10:47 AM, Torres, Elineth <Torres.Elineth@epa.gov> wrote:

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-919-541-4332-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

<OIAI Options Pager 11_01_17.docx>

From: Culligan, Kevin
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: Culligan, Kevin
Location: Kevin to call Bill's office - Ex. 6 - Personal Privacy /D220D - Bill's office
Importance: Normal
Subject: Accepted: 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: Wood, Anna[Wood.Anna@epa.gov]
From: Culligan, Kevin
Sent: Wed 1/24/2018 3:43:29 PM
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: Lamason, Bill[Lamason.Bill@epa.gov]
From: Culligan, Kevin
Sent: Wed 1/24/2018 2:34:49 PM
Subject: Re: Once in Always in Discussion

We are on

Sent from my iPhone

On Jan 24, 2018, at 9:28 AM, Lamason, Bill <Lamason.Bill@epa.gov> wrote:

RTP folks, we've called in from D210A. Bill

-----Original Appointment-----
From: Harlow, David
Sent: Monday, January 22, 2018 12:49 PM
To: Harlow, David; Lamason, Bill; Culligan, Kevin; Dalcher, Debra; Jordan, Scott; Rodman, Sonja; Lassiter, Penny
Subject: Once in Always in Discussion
When: Wednesday, January 24, 2018 9:30 AM-10:00 AM (UTC-05:00) Eastern Time (US & Canada).

Ex. 6 - Personal Privacy

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

To: Rush, Alan[Rush.Alan@epa.gov]
From: Culligan, Kevin
Sent: Wed 1/24/2018 1:48:11 PM
Subject: Fwd: Reclassification of Major Sources as Area Sources Under Section 112_DHarlow Draft.docx
Reclassification of Major Sources as Area Sources Under Section 112_DHarlow Draft.docx
ATT00001.htm

If you are in, do you have time to send this to the printer?

Sent from my iPhone

Begin forwarded message:

From: "Lamason, Bill" <Lamason.Bill@epa.gov>
Date: January 23, 2018 at 3:54:41 PM EST
To: "Harlow, David" <harlow.david@epa.gov>
Cc: "Lassiter, Penny" <Lassiter.Penny@epa.gov>, "Culligan, Kevin" <Culligan.Kevin@epa.gov>, "Dalcher, Debra" <dalcher.debra@epa.gov>, "Jordan, Scott" <Jordan.Scott@epa.gov>, "Rodman, Sonja" <Rodman.Sonja@epa.gov>, "Atkinson, Emily" <Atkinson.Emily@epa.gov>
Subject: FW: Reclassification of Major Sources as Area Sources Under Section 112_DHarlow Draft.docx

David,

Hope you are well. Attached is the latest version of the memo we believe is about ready to begin signoff process. We left comments in the document on specific areas where we need to check in with you on at our 9:30 am meeting Wednesday morning. We look forward to talking with you about the memo and what we believe are the next steps.

Thank you!

Bill Lamason

From: Dalcher, Debra
Location: WJC-N 5415 + Dial: Ex. 6 - Personal Privacy
Importance: Normal
Subject: Accepted: Once in Always in Discussion
Start Date/Time: Wed 1/24/2018 2:30:00 PM
End Date/Time: Wed 1/24/2018 3:00:00 PM

From: Dalcher, Debra

Ex. 6 - Personal Privacy

Importance: Normal
Subject: Accepted: Once-in, Always-in Policy Revision
Start Date/Time: Mon 12/18/2017 7:00:00 PM
End Date/Time: Mon 12/18/2017 8:00:00 PM

From: Dalcher, Debra
Location: D220D/Bill's OFfice, Ex. 6 - Personal Privacy
Importance: Normal
Subject: Accepted: 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

From: Dalcher, Debra

Ex. 6 - Personal Privacy

Importance: Normal
Subject: Accepted: Once-in, Always-in Policy Revision
Start Date/Time: Wed 12/20/2017 9:00:00 PM
End Date/Time: Wed 12/20/2017 10:00:00 PM

From: Jordan, Scott
Location: Debra to Call Scott (we can chat Friday am if that works better just let me know)
Importance: Normal
Subject: Accepted: OIAI Meetng
Start Date/Time: Thur 1/18/2018 6:00:00 PM
End Date/Time: Thur 1/18/2018 6:30:00 PM

From: Torres, Elineth
Location: Elineth's office
Importance: Normal
Subject: OIAI check-in
Start Date/Time: Wed 9/27/2017 12:30:00 PM
End Date/Time: Wed 9/27/2017 1:00:00 PM

From: Torres, Elineth
Location: Elineth's office
Importance: Normal
Subject: OIAI follow-up
Start Date/Time: Tue 9/26/2017 1:30:00 PM
End Date/Time: Tue 9/26/2017 2:30:00 PM

From: Torres, Elineth
Location: RTP-D201-Max40/RTP-Bldg-D
Importance: Normal
Subject: OIAI cont. discussion - Mgmt Discussion
Start Date/Time: Wed 9/27/2017 4:00:00 PM
End Date/Time: Wed 9/27/2017 5:00:00 PM

We will continue our OIAI principle-based discussion initiated on 9/20.
Feel free to bring your lunch.

Thanks,

Elineth

From: Torres, Elineth
Location: Elineth's office
Importance: Normal
Subject: 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

From: Dalcher, Debra
Location: Debra to Call Scott (we can chat Friday am if that works better just let me know)
Importance: Normal
Subject: OIAI Meetng
Start Date/Time: Thur 1/18/2018 6:00:00 PM
End Date/Time: Thur 1/18/2018 6:30:00 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

From: Wehrum, Bill

Ex. 6 - Personal Privacy

Importance: Normal
Subject: Once-in, Always-in Policy Revision
Start Date/Time: Mon 12/18/2017 7:00:00 PM
End Date/Time: Mon 12/18/2017 7:45:00 PM
Wehrum Meeting Request - Once-in Aways-in Policy Revision.docx

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

From: Torres, Elineth
Importance: Normal
Subject: 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: Torres, Elineth
Importance: Normal
Subject: OIAI debrief
Start Date/Time: Thur 9/28/2017 6:00:00 PM
End Date/Time: Thur 9/28/2017 6:30:00 PM

To: Lamason, Bill[Lamason.Bill@epa.gov]
Cc: Dalcher, Debra[dalcher.debra@epa.gov]
From: Dalcher, Debra
Sent: Thur 1/25/2018 6:45:09 PM
Subject: FRN Notice of Memorandum Availability Draft 01 25 18 JE DD.docx
FRN Notice of Memorandum Availability Draft 01 25 18 JE DD.docx

To: Dalcher, Debra[dalcher.debra@epa.gov]
From: Eck, Janet
Sent: Wed 1/24/2018 3:44:41 PM
Subject: OIAI Docs
OIAI Guidance Memo Notice RoutingSlip.docx
OIAI Guidance Memo&Notice Checklist.doc

Thanks.

To: Jordan, Scott[Jordan.Scott@epa.gov]; Rodman, Sonja[Rodman.Sonja@epa.gov]
Cc: Dalcher, Debra[dalcher.debra@epa.gov]
From: Dalcher, Debra
Sent: Fri 12/8/2017 12:58:38 PM
Subject: OIAI Briefing Pager

We don't yet have a confirmed meeting to brief next week but it will probably be on the 13th. The pager is the priority right now, but of course I need review comments on both :).

Note Chuck has some suggested edits on the pager and copied everyone.

Thank you, Debra

I can be reached at Ex. 6 - Personal Privacy if you need to speak with me today.

To: Dalcher, Debra[dalcher.debra@epa.gov]
From: Lamason, Bill
Sent: Wed 12/13/2017 1:04:23 PM
Subject: FW: A few OAQPS items
NSR Improvement Projects - summary work plan 12-12-17.docx

Debra, FYI. Bill

From: Koerber, Mike
Sent: Tuesday, December 12, 2017 4:29 PM
To: Santiago, Juan <Santiago.Juan@epa.gov>; Lamason, Bill <Lamason.Bill@epa.gov>; Wood, Anna <Wood.Anna@epa.gov>; Tsirigotis, Peter <Tsirigotis.Peter@epa.gov>; Wayland, Richard <Wayland.Richard@epa.gov>
Cc: Johnson, Yvonne W <Johnson.Yvonnew@epa.gov>; South, Peter <South.Peter@epa.gov>
Subject: FW: A few OAQPS items

FYI- Here is the version of the NSR Workplan that was shared with OAR. Thank you for your work on this. I suspect that we will get feedback from Bill soon – perhaps as part of the NSR discussion on Monday.

Mike

From: Koerber, Mike
Sent: Tuesday, December 12, 2017 12:26 PM
To: Lewis, Josh <Lewis.Josh@epa.gov>; Cyran, Carissa <Cyran.Carissa@epa.gov>
Subject: A few OAQPS items

Josh, Carissa: Here are a few things to share with Bill:

•□□□□□□ NSR Workplan – Attached is an updated version of what we sent last week. This version identifies our estimated schedule and a few key issues needing Bill's feedback.

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]
From: Dalcher, Debra
Sent: Thur 11/16/2017 6:40:26 PM
Subject: RE: Current Version of Revision Memo
Memo replacing OIAI with proposed 2007 interpretation_11_15_17_2PM.docx

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: 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]
From: Koerber, Mike
Sent: Thur 1/25/2018 1:55:41 PM
Subject: RE: Draft Comms Plan for Today's Memo - Please Review ASAP
Reclassification of Major Sources Comms Plan MK.docx

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: 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]
From: Dalcher, Debra
Sent: Mon 11/13/2017 9:09:14 PM
Subject: Current Version of Revision Memo
Memo replacing OIAI with proposed 2007 interpretation_11_13_17 405pm.docx

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: Dalcher, Debra[dalcher.debra@epa.gov]
From: Eck, Janet
Sent: Thur 1/25/2018 1:50:49 PM
Subject: Latest Files
Reclassification of Major Sources as Area Sources Under Section 112_01 24 2018.docx
FRN Notice of Memorandum Availability 01 24 18_DD.docx

Thanks.

To: Dalcher, Debra[dalcher.debra@epa.gov]
From: Morales, Mariel
Sent: Tue 12/12/2017 6:08:05 PM
Subject: OIAI 1-pager

Hi Debra,

I took a look at the hard copy of the pager you gave me. Overall, it looks fine. The one thing I did notice was that under the "issue" section. The text in the sub bullets are different sizes. I'd double check that.

Mariel Morales

Communications Specialist

OAQPS/SPPD

U.S. Environmental Protection Agency

(919) 541-9774

To: Dalcher, Debra[dalcher.debra@epa.gov]
From: Dalcher, Debra
Sent: Mon 11/6/2017 1:20:38 PM
Subject: FW: FDMS User Account Change Request (OIAI Rulemaking Docket)
OIAI Docket Bulk Download Request 11_1_17.docx

From: Dalcher, Debra
Sent: Monday, November 06, 2017 8:20 AM
To: Bernales, Barbara <bernales.barbara@epa.gov>
Cc: Scully, Carolyn <Scully.Carolyn@epa.gov>; Torres, Elineth <Torres.Elineth@epa.gov>
Subject: FW: FDMS User Account Change Request (OIAI Rulemaking Docket)

Good Morning Barbara

I am wondering if you could help with something. We submitted the attached request on 1 Nov for a docket extraction (an older docket, but not a large one). We submitted another a few days later and received that one already ☺.

There is some urgency associated with the above request and we are hoping someone could check to make sure it was received and also provide an update on when we can expect to receive the files.

If this does not fall in your lane, please just let me know who I can touch base with.

Thanks so much, Debra

From: Torres, Elineth
Sent: Wednesday, November 01, 2017 7:50 AM
To: FDMS <FDMS@epa.gov>
Cc: Dalcher, Debra <dalcher.debra@epa.gov>
Subject: FDMS User Account Change Request

See attached request.

Thanks.

Elineth Torres

OAQPS

919-541-4347

To: Dalcher, Debra[dalcher.debra@epa.gov]
Cc: Rodman, Sonja[Rodman.Sonja@epa.gov]
From: Jordan, Scott
Sent: Thur 1/25/2018 1:48:08 PM
Subject: OIAI Q&As -
OIAIQA_SJ1.25.18.docx

Debra – On minor wordsmithing on answer to the 3d Q is shown suggestion in the attached.

Scott Jordan

Air and Radiation Law Office

Office of General Counsel

202-564-7508

From: Dalcher, Debra
Sent: Thursday, January 25, 2018 8:27 AM
To: Jordan, Scott <Jordan.Scott@epa.gov>
Subject: OIAIQA.docx

Quick Q & As. Any comments Scott?

Thanks, Debra

To: Dalcher, Debra[dalcher.debra@epa.gov]
From: Lamason, Bill
Sent: Thur 11/30/2017 9:23:03 PM
Subject: FW: Page Meeting Request-OIAI Revisions_11_30_17.docx
Page Meeting Request-OIAI Revisions_11_30_17.docx
Wehrum Meeting Request-OIAI Policy Revision Approaches.docx

FYI – meant to copy you. Let me know if you have any questions. Bill

From: Lamason, Bill
Sent: Thursday, November 30, 2017 3:33 PM
To: Eck, Janet <Eck.Janet@epa.gov>
Cc: French, Chuck <French.Chuck@epa.gov>; Culligan, Kevin <Culligan.Kevin@epa.gov>
Subject: Page Meeting Request-OIAI Revisions_11_30_17.docx

Janet, Meeting requests for OIAI. Chuck bringing you the signed copies. Bill

To: Dalcher, Debra[dalcher.debra@epa.gov]
From: Jordan, Scott
Sent: Mon 1/22/2018 2:33:58 PM
Subject: OIAI - FR Notice re Guidance Memorandum - Scott Comments
FRN OIAI Guidance Memorandum 1_19_18+SJJ 1.22.18.docx

Here are my suggested edits and comments on the FR notice.

Scott Jordan

Air and Radiation Law Office

Office of General Counsel

202-564-7508

From: Dalcher, Debra
Sent: Friday, January 19, 2018 3:52 PM
To: Jordan, Scott <Jordan.Scott@epa.gov>
Cc: Dalcher, Debra <dalcher.debra@epa.gov>
Subject: FRN OIAI Guidance Memorandum 1_19_18.docx

1st draft. Debra

To: Jordan, Scott[Jordan.Scott@epa.gov]
From: Dalcher, Debra
Sent: Thur 1/25/2018 1:26:46 PM
Subject: OIAIQA.docx
OIAIQA.docx

Quick Q & As. Any comments Scott?

Thanks, Debra

To: Jordan, Scott[Jordan.Scott@epa.gov]
Cc: Rodman, Sonja[Rodman.Sonja@epa.gov]; Dalcher, Debra[dalcher.debra@epa.gov]; Lamason, Bill[Lamason.Bill@epa.gov]
From: Dalcher, Debra
Sent: Thur 1/25/2018 5:08:14 PM
Subject: FRN Notice of Memorandum Availability Draft 01 25 18 JE DD.docx
FRN Notice of Memorandum Availability Draft 01 25 18 JE DD.docx

Scott,

Here is the FR Notice. Thank you, Debra

To: Dalcher, Debra[dalcher.debra@epa.gov]
Cc: Torres, Elineth[Torres.Elineth@epa.gov]
From: Eck, Janet
Sent: Mon 1/29/2018 1:54:41 PM
Subject: RE: FR Dailies: OP has concluded review on a OAR PKI document
OAR-18-000-3788Signed OIAI FR Notice25Jan18.pdf
9973-51-OAR_FRN Notice of MemoAvail01 25 18.SWedits1.25.18.docx

Hi Debra, The only thing that changed was the header on the signature page. It is required for OAR & Administrator signatures, but not for OAQPS when we do electronic signature. I forgot to remove it when we changed to Peter's signature, but Pete took it off. All is good. However, there was a problem w/the electronic signature, so we had to UPS the signed copy to DC. It is scheduled to arrive this morning for processing. Thanks.

From: Dalcher, Debra
Sent: Monday, January 29, 2018 7:03 AM
To: Eck, Janet <Eck.Janet@epa.gov>
Cc: Torres, Elineth <Torres.Elineth@epa.gov>; Dalcher, Debra <dalcher.debra@epa.gov>
Subject: FW: FR Dailies: OP has concluded review on a OAR PKI document

I can't get into notes. Can you let me know if they had any comments for my records (Trying to keep everything together for Elineth).

Thank you, Debra

From: Stephanie Washington [mailto:Washington.Stephanie@epamail.epa.gov]
Sent: Thursday, January 25, 2018 4:18 PM
To: Eck, Janet <Eck.Janet@epa.gov>; Dalcher, Debra <dalcher.debra@epa.gov>; South, Peter <South.Peter@epa.gov>
Subject: FR Dailies: OP has concluded review on a OAR PKI document

OP has concluded review on a FR Dailies OAR PKI document
Title: Relcassification of Major Sources as Area Sources Under Section 112 of the Clean Air Act
FRL #: 9973-51-OAR
Stage: Notice

Please follow the doclink to the FR Dailies database -->
notes://EPAHUB2/RIS\Frdaily.nsf/0/50BE81054B9DCD4A85258220005C07B9

To: Dalcher, Debra[dalcher.debra@epa.gov]
From: Tsirigotis, Peter
Sent: Mon 12/11/2017 1:03:58 PM
Subject: Re: OIAI Revision Memo_12.8.17.Wehrum Draft.docx

Is this the first email you sent on Friday?

On Dec 11, 2017, at 7:35 AM, Dalcher, Debra <dalcher.debra@epa.gov> wrote:

Peter,

Here you go.

Please confirm receipt.

Thank you, Debra

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

To: Dalcher, Debra[dalcher.debra@epa.gov]
From: Mills, Kathy
Sent: Thur 1/25/2018 1:05:25 PM
Subject: OI/AI Q&A doc
OIAIQ&A.docx

Hi Debra,

Jan and I talked yesterday regarding Q&As – so created rough draft doc to get your initial thoughts. Q&As will be helpful to Office of Public Affairs once this gets signed and posted.

Looks likc this is moving quickly today.

KB

Kathy "KB Mills ~ SPPD ~ U. S. EPA, OAQPS ~ 919-541-1599

To: Tsirigotis, Peter[Tsirigotis.Peter@epa.gov]
From: Dalcher, Debra
Sent: Mon 12/11/2017 12:35:46 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: 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]
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 - Ex. 6 - Personal Privacy – 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.

To: Dalcher, Debra[dalcher.debra@epa.gov]
From: Lamason, Bill
Sent: Mon 1/22/2018 12:31:28 PM
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>

To: Dalcher, Debra[dalcher.debra@epa.gov]
From: Zhang Liping
Sent: Fri 1/26/2018 9:47:24 PM
Subject: U.S. EPA reverses policy on 'major sources' of pollution

Hello Debra,
The OIAI is withdrawn and it is effective immediately.

But 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.

So in our ongoing title V permit renew, should we adopt this reversed policy right away or we need to wait till final regulatory text changed in FR and still submit the renew application as OIAI? then come back to revise our newly renewed permit for applicable regulations after it is on FR?

Thank you-

Liping Zhang, P. E.
Manager, Global EHS Permitting & Regulatory Support
Deere & Company World Headquarters
One John Deere Place
Moline, Illinois 61265 USA
Phone: (309) 748-3241
Cell: Ex. 6 - Personal Privacy

To: Jordan, Scott[Jordan.Scott@epa.gov]; Dalcher, Debra[dalcher.debra@epa.gov]
From: Rodman, Sonja
Sent: Fri 12/8/2017 7:32:58 PM
Subject: RE: oiai

Ill be here

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: 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

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: 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.

To: Torres, Elineth[Torres.Elineth@epa.gov]; Rodman, Sonja[Rodman.Sonja@epa.gov]
Cc: Lamason, Bill[Lamason.Bill@epa.gov]; Dalcher, Debra[dalcher.debra@epa.gov]
From: Vetter, Rick
Sent: Wed 11/1/2017 12:30:10 PM
Subject: RE: OIAI Check-in

Elineth,

Sonja cancelled today's Air Toxics Group meeting because Ex. 6 - Personal Privacy so I don't know whether she will be checking her email. Hopefully, she will, but I want you to be aware that you may not hear from her.

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: Torres, Elineth
Sent: Wednesday, November 01, 2017 7:54 AM
To: Rodman, Sonja <Rodman.Sonja@epa.gov>
Cc: Vetter, Rick <Vetter.Rick@epa.gov>; Lamason, Bill <Lamason.Bill@epa.gov>; Dalcher, Debra <dalcher.debra@epa.gov>
Subject: RE: OIAI Check-in

Sonja,

Please let us know by email if you have any comments/edits on the options pager or feedback from your management.

Thanks,

Elineth Torres

OAQPS

919-541-4347

-----Original Appointment-----
From: Rodman, Sonja
Sent: Wednesday, November 01, 2017 7:08 AM
To: Torres, Elineth
Subject: Declined: 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

To: Dalcher, Debra[dalcher.debra@epa.gov]
From: Lamason, Bill
Sent: Fri 12/8/2017 6:00:40 PM
Subject: Re: OIAI Revision Memo_12.8.17.Wehrum Draft.docx

Thanks! B

Sent from my iPhone

On Dec 8, 2017, at 11:12 AM, Dalcher, Debra <dalcher.debra@epa.gov> wrote:

Ex. 5 - Deliberative Process

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

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

<OIAI Options Pager 12.8.17 w SJ edits 1100 am.docx>

To: Rodman, Sonja[Rodman.Sonja@epa.gov]
Cc: Vetter, Rick[Vetter.Rick@epa.gov]; Lamason, Bill[Lamason.Bill@epa.gov]; Dalcher, Debra[dalcher.debra@epa.gov]
From: Torres, Elineth
Sent: Wed 11/1/2017 12:29:46 PM
Subject: RE: OIAI Check-in

Sonja,

Bill told me you are sick, hope you feel better.

We will have our meeting at 10AM and move forward with the input we get from Rick. We will circle back with you once you are in the office.

Thanks,

Elineth Torres

OAQPS

919-541-4347

From: Torres, Elineth
Sent: Wednesday, November 01, 2017 7:54 AM
To: Rodman, Sonja <Rodman.Sonja@epa.gov>
Cc: Vetter, Rick <Vetter.Rick@epa.gov>; Lamason, Bill <Lamason.Bill@epa.gov>; Dalcher, Debra <dalcher.debra@epa.gov>
Subject: RE: OIAI Check-in

Sonja,

Please let us know by email if you have any comments/edits on the options pager or feedback

from your management.

Thanks,

Elineth Torres

OAQPS

919-541-4347

-----Original Appointment-----
From: Rodman, Sonja
Sent: Wednesday, November 01, 2017 7:08 AM
To: Torres, Elineth
Subject: Declined: 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

To: Dalcher, Debra[dalcher.debra@epa.gov]
From: Tsirigotis, Peter
Sent: Fri 12/8/2017 5:30:54 PM
Subject: Re: Memo

Thx

On Dec 8, 2017, at 12:30 PM, Dalcher, Debra <dalcher.debra@epa.gov> wrote:

<OIAI Revision Memo_12.8.17.Wehrum Draft_no signatory.docx>

To: Rodman, Sonja[Rodman.Sonja@epa.gov]
Cc: Vetter, Rick[Vetter.Rick@epa.gov]; Lamason, Bill[Lamason.Bill@epa.gov]; Dalcher, Debra[dalcher.debra@epa.gov]
From: Torres, Elineth
Sent: Wed 11/1/2017 11:53:40 AM
Subject: RE: OIAI Check-in

Sonja,

Please let us know by email if you have any comments/edits on the options pager or feedback from your management.

Thanks,

Elineth Torres

OAQPS

919-541-4347

-----Original Appointment-----
From: Rodman, Sonja
Sent: Wednesday, November 01, 2017 7:08 AM
To: Torres, Elineth
Subject: Declined: 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

To: Torres, Elineth[Torres.Elineth@epa.gov]; Dalcher, Debra[dalcher.debra@epa.gov]
From: Lamason, Bill
Sent: Wed 11/15/2017 3:18:43 PM
Subject: FW: OIAI Options Pager 11_01_17_Sent to Koerber 11_14_17.docx

One more change. B

From: French, Chuck
Sent: Wednesday, November 15, 2017 10:04 AM
To: Lamason, Bill <Lamason.Bill@epa.gov>
Cc: Culligan, Kevin <Culligan.Kevin@epa.gov>
Subject: Re: OIAI Options Pager 11_01_17_Sent to Koerber 11_14_17.docx

Looks good, except I suggest you delete the word "previously" in the new bullet under option 3

Sent from my iPhone

On Nov 14, 2017, at 4:56 PM, Lamason, Bill <Lamason.Bill@epa.gov> wrote:

> Chuck and Kevin, Thanks. The attached version includes edits from both of you with some further refinements. Take a final look and I think this is good to go. I plan to send to Koerber by 9:30 am tomorrow. Thanks again! Bill

> **From:** French, Chuck
> **Sent:** Tuesday, November 14, 2017 4:41 PM
> **To:** Culligan, Kevin <Culligan.Kevin@epa.gov>; Lamason, Bill <Lamason.Bill@epa.gov>
> **Subject:** RE: OIAI Options Pager 11_01_17_Sent to Koerber 11_14_17.docx

> Attached are a few suggested edits. See attached and let me know if you have any comments or questions.

> Thanks.

Chuck

From: Culligan, Kevin
Sent: Tuesday, November 14, 2017 2:28 PM
To: Lamason, Bill <Lamason.Bill@epa.gov>
Cc: French, Chuck <French.Chuck@epa.gov>
Subject: RE: OIAI Options Pager 11_01_17_Sent to Koerber 11_14_17.docx

Bill,

I don't think the memo as written Ex. 5 - Deliberative Process

Ex. 5 - Deliberative Process

- Kevin

From: Lamason, Bill
Sent: Tuesday, November 14, 2017 12:51 PM
To: Culligan, Kevin <Culligan.Kevin@epa.gov>
Cc: French, Chuck <French.Chuck@epa.gov>
Subject: FW: OIAI Options Pager 11_01_17_Sent to Koerber 11_14_17.docx

Kevin, Per our conversation. Bill

From: Dalcher, Debra
Sent: Tuesday, November 14, 2017 12:07 PM
To: Lamason, Bill <Lamason.Bill@epa.gov>
Cc: Dalcher, Debra <dalcher.debra@epa.gov>; Torres, Elineth <Torres.Elineth@epa.gov>
Subject: OIAI Options Pager 11_01_17_Sent to Koerber 11_14_17.docx

Bill,

This is the current version of the Options Paper for OIAI.

Please transmit to Mike Koerber.

Thank you, Debra

<OIAI Options Pager 11_01_17_Sent to Koerber 11_14_17 - kc & cf edits.docx>

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]
From: Dalcher, Debra
Sent: Thur 12/7/2017 4:48:06 PM
Subject: OIAI Options Pager & OIAI Revision Memo
OIAI Revision Memo_12.7.17 DD BLS 1200.docx
OIAI Revision Memo_12.7.17 DD BLS 1200.docx

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: Torres, Elineth[Torres.Elineth@epa.gov]
Cc: Dalcher, Debra[dalcher.debra@epa.gov]
From: Lamason, Bill
Sent: Wed 11/15/2017 1:56:00 PM
Subject: Re: OIAI Options Pager 11_01_17_Send to Koerber - Revised

Thanks! B

Sent from my iPhone

On Nov 15, 2017, at 8:51 AM, Torres, Elineth <Torres.Elineth@epa.gov> wrote:

Clean version attached.

Elineth Torres

OAQPS

919-541-4347

From: Lamason, Bill
Sent: Wednesday, November 15, 2017 8:13 AM
To: Dalcher, Debra <dalcher.debra@epa.gov>; Torres, Elineth <Torres.Elineth@epa.gov>
Subject: FW: OIAI Options Pager 11_01_17_Send to Koerber - Revised

Debra and Elineth, Per our discussion this morning. Bill

From: Lamason, Bill
Sent: Tuesday, November 14, 2017 4:56 PM
To: French, Chuck <French.Chuck@epa.gov>; Culligan, Kevin <Culligan.Kevin@epa.gov>
Subject: RE: OIAI Options Pager 11_01_17_Sent to Koerber 11_14_17.docx

Chuck and Kevin, Thanks. The attached version includes edits from both of

you with some further refinements. Take a final look and I think this is good to go. I plan to send to Koerber by 9:30 am tomorrow. Thanks again! Bill

From: French, Chuck
Sent: Tuesday, November 14, 2017 4:41 PM
To: Culligan, Kevin <Culligan.Kevin@epa.gov>; Lamason, Bill <Lamason.Bill@epa.gov>
Subject: RE: OIAI Options Pager 11_01_17_Sent to Koerber 11_14_17.docx

Attached are a few suggested edits. See attached and let me know if you have any comments or questions.

Thanks.

Chuck

From: Culligan, Kevin
Sent: Tuesday, November 14, 2017 2:28 PM
To: Lamason, Bill <Lamason.Bill@epa.gov>
Cc: French, Chuck <French.Chuck@epa.gov>
Subject: RE: OIAI Options Pager 11_01_17_Sent to Koerber 11_14_17.docx

Bill,

Ex. 5 - Deliberative Process

Ex. 5 - Deliberative Process

- Kevin

From: Lamason, Bill
Sent: Tuesday, November 14, 2017 12:51 PM
To: Culligan, Kevin <Culligan.Kevin@epa.gov>
Cc: French, Chuck <French.Chuck@epa.gov>
Subject: FW: OIAI Options Pager 11_01_17_Sent to Koerber 11_14_17.docx

Kevin, Per our conversation. Bill

From: Dalcher, Debra
Sent: Tuesday, November 14, 2017 12:07 PM
To: Lamason, Bill <Lamason.Bill@epa.gov>
Cc: Dalcher, Debra <dalcher.debra@epa.gov>; Torres, Elineth <Torres.Elineth@epa.gov>
Subject: OIAI Options Pager 11_01_17_Sent to Koerber 11_14_17.docx

Bill,

This is the current version of the Options Paper for OIAI.

Please transmit to Mike Koerber.

Thank you, Debra

<OIAI Options Pager 11_01_17_Sent to Koerber 11_15_17_Clean.docx>

To: Lamason, Bill[Lamason.Bill@epa.gov]; Dalcher, Debra[dalcher.debra@epa.gov]
From: Torres, Elineth
Sent: Wed 11/15/2017 1:51:36 PM
Subject: RE: OIAI Options Pager 11_01_17_Send to Koerber - Revised
OIAI Options Pager 11_01_17_Sent to Koerber 11_15_17_Clean.docx

Clean version attached.

Elineth Torres

OAQPS

919-541-4347

From: Lamason, Bill
Sent: Wednesday, November 15, 2017 8:13 AM
To: Dalcher, Debra <dalcher.debra@epa.gov>; Torres, Elineth <Torres.Elineth@epa.gov>
Subject: FW: OIAI Options Pager 11_01_17_Send to Koerber - Revised

Debra and Elineth, Per our discussion this morning. Bill

From: Lamason, Bill
Sent: Tuesday, November 14, 2017 4:56 PM
To: French, Chuck <French.Chuck@epa.gov>; Culligan, Kevin <Culligan.Kevin@epa.gov>
Subject: RE: OIAI Options Pager 11_01_17_Sent to Koerber 11_14_17.docx

Chuck and Kevin, Thanks. The attached version includes edits from both of you with some further refinements. Take a final look and I think this is good to go. I plan to send to Koerber by 9:30 am tomorrow. Thanks again! Bill

From: French, Chuck

Sent: Tuesday, November 14, 2017 4:41 PM
To: Culligan, Kevin <Culligan.Kevin@epa.gov>; Lamason, Bill <Lamason.Bill@epa.gov>
Subject: RE: OIAI Options Pager 11_01_17_Sent to Koerber 11_14_17.docx

Attached are a few suggested edits. See attached and let me know if you have any comments or questions.

Thanks.

Chuck

From: Culligan, Kevin
Sent: Tuesday, November 14, 2017 2:28 PM
To: Lamason, Bill <Lamason.Bill@epa.gov>
Cc: French, Chuck <French.Chuck@epa.gov>
Subject: RE: OIAI Options Pager 11_01_17_Sent to Koerber 11_14_17.docx

Bill,

Ex. 5 - Deliberative Process

- Kevin

From: Lamason, Bill
Sent: Tuesday, November 14, 2017 12:51 PM
To: Culligan, Kevin <Culligan.Kevin@epa.gov>
Cc: French, Chuck <French.Chuck@epa.gov>
Subject: FW: OIAI Options Pager 11_01_17_Sent to Koerber 11_14_17.docx

Kevin, Per our conversation. Bill

From: Dalcher, Debra
Sent: Tuesday, November 14, 2017 12:07 PM
To: Lamason, Bill <Lamason.Bill@epa.gov>
Cc: Dalcher, Debra <dalcher.debra@epa.gov>; Torres, Elineth <Torres.Elineth@epa.gov>
Subject: OIAI Options Pager 11_01_17_Sent to Koerber 11_14_17.docx

Bill,

This is the current version of the Options Paper for OIAI.

Please transmit to Mike Koerber.

Thank you, Debra

To: Dalcher, Debra[dalcher.debra@epa.gov]
Cc: Lamason, Bill[Lamason.Bill@epa.gov]; Torres, Elineth[Torres.Elineth@epa.gov]
From: McLamb, Marguerite
Sent: Wed 11/8/2017 8:30:02 PM
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 - Deliberative Process

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: Lamason, Bill[Lamason.Bill@epa.gov]; Dalcher, Debra[dalcher.debra@epa.gov]
From: Torres, Elineth
Sent: Wed 11/15/2017 1:18:38 PM
Subject: RE: OIAI Options Pager 11_01_17_Send to Koerber - Revised

Got it. I saved to the G:user/share. The clean version is updated with the 11/15/17 date.

Elineth Torres

OAQPS

919-541-4347

From: Lamason, Bill
Sent: Wednesday, November 15, 2017 8:13 AM
To: Dalcher, Debra <dalcher.debra@epa.gov>; Torres, Elineth <Torres.Elineth@epa.gov>
Subject: FW: OIAI Options Pager 11_01_17_Send to Koerber - Revised

Debra and Elineth, Per our discussion this morning. Bill

From: Lamason, Bill
Sent: Tuesday, November 14, 2017 4:56 PM
To: French, Chuck <French.Chuck@epa.gov>; Culligan, Kevin <Culligan.Kevin@epa.gov>
Subject: RE: OIAI Options Pager 11_01_17_Sent to Koerber 11_14_17.docx

Chuck and Kevin, Thanks. The attached version includes edits from both of you with some further refinements. Take a final look and I think this is good to go. I plan to send to Koerber by 9:30 am tomorrow. Thanks again! Bill

From: French, Chuck
Sent: Tuesday, November 14, 2017 4:41 PM

To: Culligan, Kevin <Culligan.Kevin@epa.gov>; Lamason, Bill <Lamason.Bill@epa.gov>
Subject: RE: OIAI Options Pager 11_01_17_Sent to Koerber 11_14_17.docx

Attached are a few suggested edits. See attached and let me know if you have any comments or questions.

Thanks.

Chuck

From: Culligan, Kevin
Sent: Tuesday, November 14, 2017 2:28 PM
To: Lamason, Bill <Lamason.Bill@epa.gov>
Cc: French, Chuck <French.Chuck@epa.gov>
Subject: RE: OIAI Options Pager 11_01_17_Sent to Koerber 11_14_17.docx

Bill,

Ex. 5 - Deliberative Process

- Kevin

From: Lamason, Bill
Sent: Tuesday, November 14, 2017 12:51 PM
To: Culligan, Kevin <Culligan.Kevin@epa.gov>
Cc: French, Chuck <French.Chuck@epa.gov>
Subject: FW: OIAI Options Pager 11_01_17_Sent to Koerber 11_14_17.docx

Kevin, Per our conversation. Bill

From: Dalcher, Debra
Sent: Tuesday, November 14, 2017 12:07 PM
To: Lamason, Bill <Lamason.Bill@epa.gov>
Cc: Dalcher, Debra <dalcher.debra@epa.gov>; Torres, Elineth <Torres.Elineth@epa.gov>
Subject: OIAI Options Pager 11_01_17_Sent to Koerber 11_14_17.docx

Bill,

This is the current version of the Options Paper for OIAI.

Please transmit to Mike Koerber.

Thank you, Debra

To: Torres, Elineth[Torres.Elineth@epa.gov]; Dalcher, Debra[dalcher.debra@epa.gov]
Cc: Linda S. Kee[lkee@green-envi.com]; Linda Maher[lmaher@green-envi.com]; Michelle Olive[molive@green-envi.com]
From: Janet L. Greenberg
Sent: Fri 1/26/2018 3:58:07 PM
Subject: area source under 63 MMMM

We are very interested in the memo issued yesterday:

https://www.epa.gov/newsreleases/reducing-regulatory-burdens-epa-withdraws-once-always-policy-major-sources-under-clean

regarding the reclassification of Major Sources as Area Sources under the MACT standards. We wish to send a comment to you, to ensure that the notice published by EPA will cover a specific situation encountered by one of our clients.

40 CFR 63 Subpart MMMM (National Emission Standard for Hazardous Air Pollutants: Surface Coating of Miscellaneous Metal Parts and Products) applies only to operations located at major sources of hazardous air pollutants (HAP) (10 tons per year of any one HAP or 25 tons per year of any combination of HAP). Our client does not currently have the potential to emit (PTE) these quantities of HAP, nor did the site have this PTE prior to the effective date of this regulation. However, they did not have an enforceable PTE registration in place prior to the effective date of the regulation.

The coating booth began operations in 2004, after January 2, 2004, the promulgation date of the regulation. It has never been a major source, thus, the site could not have become affected by this regulation until it missed the APD-CERT deadline to enforceably certify its PTE on January 2, 2007, which is the date the regulation became effective for existing sources. The old EPA guidance contained this requirement:

Today's guidance clarifies that facilities may switch to area source status at any time until the "first compliance date" of the standard.

However, the site did not submit an enforceable certification of these area source potential emission rates on form APD-CERT to TCEQ until March 19, 2007, after the effective compliance date of the regulation of January 2, 2007. Because of the "once in, always in" policy, the site has done their best to comply with this regulation.

Compliance with 63 MMMM has been a significant burden for this small site, which ultimately has nearly discontinued certain of their coating operations, partially due to the difficulty in obtaining acceptable, affordable paints in the small quantities needed for their operations.

Distributors were not able to offer cost-effective low-HAP solutions to them that still met the needs and warranty requirements of their customers.

But will our client now be able to cease sending semi-annual reports under 63 MMMM, and also no longer be subject to the requirements of this regulation, since they have long since registered their area source status? Their area source PTE registration just happened to be 2 months after the "first compliance date" of the regulation.

We would appreciate your help and advice in bringing this issue to a close for this small facility.

Thanks,

Janet L. Greenberg, P.E.

GREEN Environmental Consulting, Inc.

10322 Ivyridge Rd.

Houston, TX 77043

Phone 713-932-8942

JGreen@green-envi.com

www.green-envi.com

To: Dalcher, Debra[dalcher.debra@epa.gov]; Torres, Elineth[Torres.Elineth@epa.gov]
From: Lamason, Bill
Sent: Wed 11/15/2017 1:13:14 PM
Subject: FW: OIAI Options Pager 11_01_17_Send to Koerber - Revised
OIAI Options Pager 11_01_17_Sent to Koerber 11_14_17 - kc & cf edits.docx

Debra and Elineth, Per our discussion this morning. Bill

From: Lamason, Bill
Sent: Tuesday, November 14, 2017 4:56 PM
To: French, Chuck <French.Chuck@epa.gov>; Culligan, Kevin <Culligan.Kevin@epa.gov>
Subject: RE: OIAI Options Pager 11_01_17_Sent to Koerber 11_14_17.docx

Chuck and Kevin, Thanks. The attached version includes edits from both of you with some further refinements. Take a final look and I think this is good to go. I plan to send to Koerber by 9:30 am tomorrow. Thanks again! Bill

From: French, Chuck
Sent: Tuesday, November 14, 2017 4:41 PM
To: Culligan, Kevin <Culligan.Kevin@epa.gov>; Lamason, Bill <Lamason.Bill@epa.gov>
Subject: RE: OIAI Options Pager 11_01_17_Sent to Koerber 11_14_17.docx

Attached are a few suggested edits. See attached and let me know if you have any comments or questions.

Thanks.

Chuck

From: Culligan, Kevin
Sent: Tuesday, November 14, 2017 2:28 PM
To: Lamason, Bill <Lamason.Bill@epa.gov>
Cc: French, Chuck <French.Chuck@epa.gov>
Subject: RE: OIAI Options Pager 11_01_17_Sent to Koerber 11_14_17.docx

Bill,

Ex. 5 - Deliberative Process

- Kevin

From: Lamason, Bill
Sent: Tuesday, November 14, 2017 12:51 PM
To: Culligan, Kevin <Culligan.Kevin@epa.gov>
Cc: French, Chuck <French.Chuck@epa.gov>
Subject: FW: OIAI Options Pager 11_01_17_Sent to Koerber 11_14_17.docx

Kevin, Per our conversation. Bill

From: Dalcher, Debra
Sent: Tuesday, November 14, 2017 12:07 PM
To: Lamason, Bill <Lamason.Bill@epa.gov>
Cc: Dalcher, Debra <dalcher.debra@epa.gov>; Torres, Elineth <Torres.Elineth@epa.gov>

Subject: OIAI Options Pager 11_01_17_Sent to Koerber 11_14_17.docx

Bill,

This is the current version of the Options Paper for OIAI.

Please transmit to Mike Koerber.

Thank you, Debra

To: Dalcher, Debra[dalcher.debra@epa.gov]; Lamason, Bill[Lamason.Bill@epa.gov]
From: Pemberton, Wanda
Sent: Tue 1/30/2018 6:43:34 PM
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

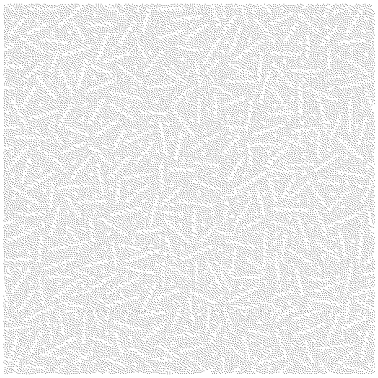
"Nobody cares how much you know, until they know how much you care." – Theodore Roosevelt

-----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: Lamason, Bill[Lamason.Bill@epa.gov]; Eck, Janet[Eck.Janet@epa.gov]
Cc: Dalcher, Debra[dalcher.debra@epa.gov]; Shrager, Brian[Shrager.Brian@epa.gov]
From: Pemberton, Wanda
Sent: Fri 1/26/2018 3:26:22 PM
Subject: RE: In case you have not heard- OIAI Policy is withdrawn- see memo



Well, guess I don't need to send an email out today. ☺

****

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

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. This is fine they shared. Spoke with Peter and he wants us to speak to the memo and the upcoming rulemaking on OIAI. B

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: Jordan, Scott[Jordan.Scott@epa.gov]; Schwab, Justin[Schwab.Justin@epa.gov]
Cc: Rodman, Sonja[Rodman.Sonja@epa.gov]; Lamason, Bill[Lamason.Bill@epa.gov]; Dalcher, Debra[dalcher.debra@epa.gov]; Barnett, Keith[Barnett.Keith@epa.gov]; Storey, Brian[storey.brian@epa.gov]
From: Harlow, David
Sent: Tue 1/30/2018 1:56:35 PM
Subject: RE: Brick MACT Litigation - Rule 28(j) Notice to Court of Wehrum Memo/Change in OIAI Policy - Review requested asap

Thank you for the update, Scott. In this instance, however, since my former firm represents one of the parties in this litigation, I am of course recused from any participation.

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: Jordan, Scott
Sent: Tuesday, January 30, 2018 8:20 AM
To: Schwab, Justin <Schwab.Justin@epa.gov>; Harlow, David <harlow.david@epa.gov>
Cc: Rodman, Sonja <Rodman.Sonja@epa.gov>; Lamason, Bill <Lamason.Bill@epa.gov>; Dalcher, Debra <dalcher.debra@epa.gov>; Barnett, Keith <Barnett.Keith@epa.gov>; Storey, Brian <storey.brian@epa.gov>
Subject: Brick MACT Litigation - Rule 28(j) Notice to Court of Wehrum Memo/Change in OIAI Policy - Review requested asap

David and Justin –

Ex. 5 - Attorney Client

Ex. 5 - Attorney Client

Ex. 5 - Attorney Client

DOJ is planning to file this today (Tuesday) so there is no significant delay between the issuance of the memo and our providing notice of it to the court.

Please let us know asap if you have any questions or comments on the attached letter, or if we need to hold this to provide additional time for review.

Scott Jordan

Air and Radiation Law Office

Office of General Counsel

202-564-7508

From: Bowers, Kate (ENRD) [mailto:Kate.Bowers@usdoj.gov]
Sent: Monday, January 29, 2018 12:52 PM
To: sonya.shea@usdoj.gov; Rodman, Sonja <Rodman.Sonja@epa.gov>; Jordan, Scott <Jordan.Scott@epa.gov>
Subject: RE: Brick MACT - Reclassification of Major Sources Memo

Sonja and Scott—

Sonya is tied up this afternoon, so I'm circulating her draft 28(j) letter on her behalf. Please send us any comments as soon as is practicable.

Thanks,
Kate

From: Shea, Sonya (ENRD)
Sent: Friday, January 26, 2018 4:48 PM
To: Rodman, Sonja <Rodman.Sonja@epa.gov>; Jordan, Scott <Jordan.Scott@epa.gov>
Cc: Bowers, Kate (ENRD) <KBowers@ENRD.USDOJ.GOV>
Subject: RE: Brick MACT - Reclassification of Major Sources Memo

Great, I'll send a calendar invite. We can use my line: Ex. 6 - Personal Privacy; code Ex. 6 - Personal Privacy
Scott—please let me know if 10:30 doesn't work for you.

From: Rodman, Sonja [mailto:Rodman.Sonja@epa.gov]
Sent: Friday, January 26, 2018 3:12 PM
To: Shea, Sonya (ENRD) <SShea@ENRD.USDOJ.GOV>; Jordan, Scott <Jordan.Scott@epa.gov>
Cc: Bowers, Kate (ENRD) <KBowers@ENRD.USDOJ.GOV>
Subject: RE: Brick MACT - Reclassification of Major Sources Memo

I could do 10:30

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: Shea, Sonya (ENRD) [mailto:Sonya.Shea@usdoj.gov]
Sent: Friday, January 26, 2018 2:53 PM
To: Rodman, Sonja <Rodman.Sonja@epa.gov>; Jordan, Scott <Jordan.Scott@epa.gov>
Cc: kate.bowers@usdoj.gov
Subject: RE: Brick MACT - Reclassification of Major Sources Memo

Does Monday work? I'm available outside of 11:30-3.

From: Rodman, Sonja [mailto:Rodman.Sonja@epa.gov]
Sent: Friday, January 26, 2018 2:47 PM
To: Shea, Sonya (ENRD) <SShea@ENRD.USDOJ.GOV>; Jordan, Scott <Jordan.Scott@epa.gov>
Cc: Bowers, Kate (ENRD) <KBowers@ENRD.USDOJ.GOV>
Subject: RE: Brick MACT - Reclassification of Major Sources 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: Shea, Sonya (ENRD) [mailto:Sonya.Shea@usdoj.gov]
Sent: Friday, January 26, 2018 2:09 PM
To: Jordan, Scott <Jordan.Scott@epa.gov>; Rodman, Sonja <Rodman.Sonja@epa.gov>
Cc: kate.bowers@usdoj.gov
Subject: Brick MACT - Reclassification of Major Sources Memo

Hi Scott and Sonja,

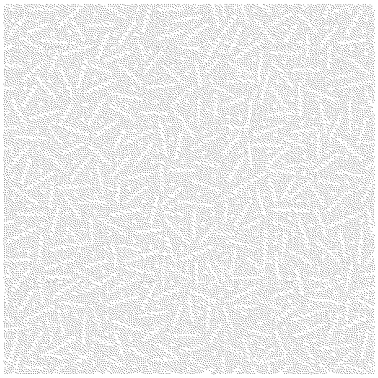
Could we please discuss what implications the withdrawal of the Seitz memo and the new memo have for the arguments we advanced in the Brick MACT case?

I'm available today until 4, and between 5 and 5:30 pm. Please let me know if you're available, or if you'd prefer to set a time early next week.

Thank you,

Sonya

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]
From: Lamason, Bill
Sent: Fri 1/26/2018 2:30:57 PM
Subject: RE: In case you have not heard- OIAI Policy is withdrawn- see memo



Thanks for sharing. This is fine they shared. Spoke with Peter and he wants us to speak to the memo and the upcoming rulemaking on OIAI. B

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: Dalcher, Debra[dalcher.debra@epa.gov]
Cc: Jordan, Scott[Jordan.Scott@epa.gov]
From: Rodman, Sonja
Sent: Fri 12/8/2017 4:16:25 PM
Subject: FW: oiai
OIAI Options Pager 12_07_17_OGC Rv Vs_336-cf-edits2+SJ 12.8.17slr.docx

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: Dalcher, Debra[dalcher.debra@epa.gov]
From: Lamason, Bill
Sent: Thur 12/7/2017 1:59:07 PM
Subject: OIAI Options Pager 12_06_17_BL-cf-kc-edits.docx
OIAI Options Pager 12_06_17_BL-cf-kc-edits.docx

Per our conversation. Thanks for working to capture Kevin's comments.

Bill

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 6:28:13 PM
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]
Cc: Lamason, Bill[Lamason.Bill@epa.gov]
From: Srivastava, Ravi
Sent: Tue 11/14/2017 6:24:20 PM
Subject: RE: Path OIAI

Glad to help!

From: Dalcher, Debra
Sent: Tuesday, November 14, 2017 1:01 PM
To: Srivastava, Ravi <Srivastava.Ravi@epa.gov>
Cc: Lamason, Bill <Lamason.Bill@epa.gov>
Subject: RE: Path OIAI

Thank you for working on this. Debra

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.

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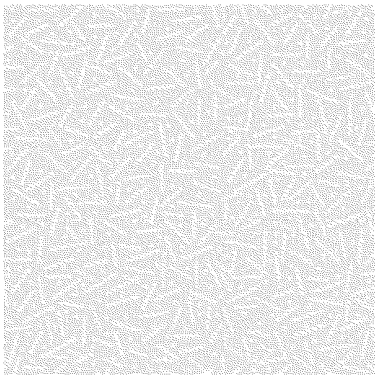
Ravi

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: Pemberton, Wanda[Pemberton.Wanda@epa.gov]; Dholakia, Umesh[Dholakia.Umesh@epa.gov]; Lancey, Susan[lancey.susan@epa.gov]; Page, Lee[Page.Lee@epa.gov]; Trine, Rae[trine.rae@epa.gov]; Barrett, Richard[barrett.richard@epa.gov]; Kramer, Elizabeth[Kramer.Elizabeth@epa.gov]; Olson, Kyle[Olson.Kyle@epa.gov]; Law, Nicole[Law.Nicole@epa.gov]; Narvaez, Madonna[Narvaez.Madonna@epa.gov]; Glass, Geoffrey[GLASS.GEOFFREY@EPA.GOV]
Cc: Lamason, Bill[Lamason.Bill@epa.gov]; McLamb, Marguerite[McLamb.Marguerite@epa.gov]; Conner, Lisa[Conner.Lisa@epa.gov]; Eck, Janet[Eck.Janet@epa.gov]; Dalcher, Debra[dalcher.debra@epa.gov]; Shrager, Brian[Shrager.Brian@epa.gov]; French, Chuck[French.Chuck@epa.gov]; Srivastava, Ravi[Srivastava.Ravi@epa.gov]; Shine, Brenda[Shine.Brenda@epa.gov]; Fruh, Steve[Fruh.Steve@epa.gov]; Barnett, Keith[Barnett.Keith@epa.gov]; Dunkins, Robin[Dunkins.Robin@epa.gov]; Cozzie, David[Cozzie.David@epa.gov]; Lassiter, Penny[Lassiter.Penny@epa.gov]
From: Vyas, Himanshu
Sent: Mon 1/29/2018 11:30:26 PM
Subject: RE: In case you have not heard- OIAI Policy is withdrawn- see memo



Thank you, Wanda.

I should note that this issue will also be discussed on the next monthly staff NSR and Title V call, scheduled for next Wednesday afternoon, February 7th, from 2:00pm to 4:00pm eastern. That discussion will be led by Yolanda Adams of Region 4 and the Policy and Strategies Group at OAQPS. If anyone in this group in on those calls but skips them usually, I would recommend listening in this time!

Himanshu Vyas
Environmental Engineer
U.S. EPA, Region III
Office of Permits and State Programs (3AP10)
1650 Arch Street

Philadelphia, PA 19103-2029

Phone: 215-814-2112

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From: Pemberton, Wanda
Sent: Monday, January 29, 2018 4:57 PM
To: Dholakia, Umesh <Dholakia.Umesh@epa.gov>; Lancey, Susan <lancey.susan@epa.gov>; Vyas, Himanshu <vyas.himanshu@epa.gov>; Page, Lee <Page.Lee@epa.gov>; Trine, Rae <trine.rae@epa.gov>; Barrett, Richard <barrett.richard@epa.gov>; Kramer, Elizabeth <Kramer.Elizabeth@epa.gov>; Olson, Kyle <Olson.Kyle@epa.gov>; Law, Nicole <Law.Nicole@epa.gov>; Narvaez, Madonna <Narvaez.Madonna@epa.gov>; Glass, Geoffrey <GLASS.GEOFFREY@EPA.GOV>
Cc: Lamason, Bill <Lamason.Bill@epa.gov>; McLamb, Marguerite <McLamb.Marguerite@epa.gov>; Conner, Lisa <Conner.Lisa@epa.gov>; Eck, Janet <Eck.Janet@epa.gov>; Dalcher, Debra <dalcher.debra@epa.gov>; Shrager, Brian <Shrager.Brian@epa.gov>; French, Chuck <French.Chuck@epa.gov>; Srivastava, Ravi <Srivastava.Ravi@epa.gov>; Shine, Brenda <Shine.Brenda@epa.gov>; Fruh, Steve <Fruh.Steve@epa.gov>; Barnett, Keith <Barnett.Keith@epa.gov>; Dunkins, Robin <Dunkins.Robin@epa.gov>; Cozzie, David <Cozzie.David@epa.gov>; Lassiter, Penny <Lassiter.Penny@epa.gov>
Subject: RE: In case you have not heard- OIAI Policy is withdrawn- see memo

Hi Folks,

As most of you all know, the Agency announced its withdrawal from the OIAI. This will be an agenda item on our next RATC call (which is slated for April 5). In the meantime, please feel free to explore and share the links below:

The press release: https://www.epa.gov/newsreleases/reducing-regulatory-burdens-epa-withdraws-once-always-policy-major-sources-under-clean

The document is at https://www.epa.gov/stationary-sources-air-pollution/reclassification-major-sources-area-sources-under-section-112-clean

A link to the page with the document is also available at https://www.epa.gov/stationary-sources-

air-pollution/national-emission-standards-hazardous-air-pollutants-neshap-9

Please stay tuned!

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

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

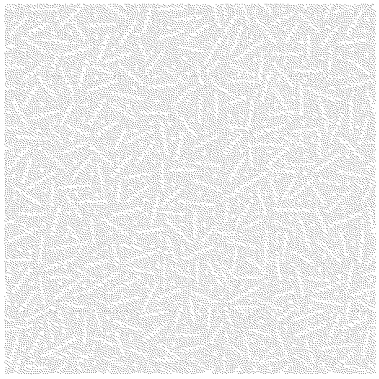
<Russo.Todd@epa.gov>; Sager, John <Sager.John@epa.gov>; Sieffert, Margaret <Sieffert.Margaret@epa.gov>; Smuts, MaryBeth <Smuts.Marybeth@epa.gov>; Stewart, Kathleen <Stewart.Kathleen@epa.gov>; Throwe, Scott <Throwe.Scott@epa.gov>; Trine, Rae <trine.rae@epa.gov>; Valenziano, Beth <valenziano.beth@epa.gov>; 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: Dalcher, Debra[dalcher.debra@epa.gov]
From: McLamb, Marguerite
Sent: Wed 12/6/2017 9:21:37 PM
Subject: OIAI

Hi, Debra,
Could you send me the latest version of the memo?
Thanks!
Marguerite

To: Lancey, Susan[lancey.susan@epa.gov]
Cc: Dalcher, Debra[dalcher.debra@epa.gov]
From: Pemberton, Wanda
Sent: Mon 1/29/2018 10:08:42 PM
Subject: RE: In case you have not heard- OIAI Policy is withdrawn- see memo



Hi Susan,

Debra Dalcher is my point of contact on this topic. I am copying her on this reply so that she can prepare for any queries that may come from your area.

Wanda P.

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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

From: Lancey, Susan
Sent: Monday, January 29, 2018 5:01 PM
To: Pemberton, Wanda <Pemberton.Wanda@epa.gov>
Subject: RE: In case you have not heard- OIAI Policy is withdrawn- see memo

Hi Wanda,

Is there a contact at EPA HQ if we have questions? Thank you,

Susan Lancey

U.S. EPA New England

5 Post Office Square

Suite 100 (OEP05-2)

Boston, MA 02109

Phone: (617) 918-1656

From: Pemberton, Wanda
Sent: Monday, January 29, 2018 4:57 PM
To: Dholakia, Umesh <Dholakia.Umesh@epa.gov>; Lancey, Susan <lancey.susan@epa.gov>; Vyas, Himanshu <vyas.himanshu@epa.gov>; Page, Lee <Page.Lee@epa.gov>; Trine, Rae <trine.rae@epa.gov>; Barrett, Richard <barrett.richard@epa.gov>; Kramer, Elizabeth <Kramer.Elizabeth@epa.gov>; Olson, Kyle <Olson.Kyle@epa.gov>; Law, Nicole <Law.Nicole@epa.gov>; Narvaez, Madonna <Narvaez.Madonna@epa.gov>; Glass, Geoffrey <GLASS.GEOFFREY@EPA.GOV>
Cc: Lamason, Bill <Lamason.Bill@epa.gov>; McLamb, Marguerite <McLamb.Marguerite@epa.gov>; Conner, Lisa <Conner.Lisa@epa.gov>; Eck, Janet <Eck.Janet@epa.gov>; Dalcher, Debra <dalcher.debra@epa.gov>; Shrager, Brian <Shrager.Brian@epa.gov>; French, Chuck <French.Chuck@epa.gov>; Srivastava, Ravi <Srivastava.Ravi@epa.gov>; Shine, Brenda <Shine.Brenda@epa.gov>; Fruh, Steve <Fruh.Steve@epa.gov>; Barnett, Keith <Barnett.Keith@epa.gov>; Dunkins, Robin <Dunkins.Robin@epa.gov>; Cozzie, David <Cozzie.David@epa.gov>; Lassiter, Penny <Lassiter.Penny@epa.gov>
Subject: RE: In case you have not heard- OIAI Policy is withdrawn- see memo

Hi Folks,

As most of you all know, the Agency announced its withdrawal from the OIAI. This will be an agenda item on our next RATC call (which is slated for April 5). In the meantime, please feel free to explore and share the links below:

The press release: https://www.epa.gov/newsreleases/reducing-regulatory-burdens-epa-withdraws-once-always-policy-major-sources-under-clean

The document is at https://www.epa.gov/stationary-sources-air-pollution/reclassification-major-sources-area-sources-under-section-112-clean

A link to the page with the document is also available at https://www.epa.gov/stationary-sources-air-pollution/national-emission-standards-hazardous-air-pollutants-neshap-9

Please stay tuned!

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

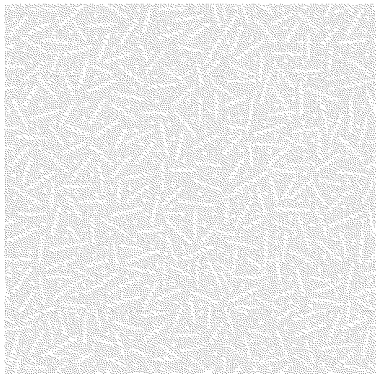
From: Dholakia, Umesh
Sent: Friday, January 26, 2018 8:15 AM
To: Pemberton, Wanda <Pemberton.Wanda@epa.gov>; BECKHAM, LISA <BECKHAM.LISA@EPA.GOV>; BANDROWSKI, MIKE <Bandrowski.Mike@epa.gov>; Behan, Frank <Behan.Frank@epa.gov>; Bertram, Gary <Bertram.Gary@epa.gov>; Blais, Gary <Blais.Gary@epa.gov>; Campbell, 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: Pemberton, Wanda[Pemberton.Wanda@epa.gov]
Cc: Dalcher, Debra[dalcher.debra@epa.gov]
From: Narvaez, Madonna
Sent: Mon 1/29/2018 10:06:12 PM
Subject: RE: In case you have not heard- OIAI Policy is withdrawn- see memo



Thanks, Wanda!

Senior Air Toxics Advisor

Narvaez.madonna@epa.gov

US Environmental Protection Agency

1200 Sixth Avenue, Suite 900

MC: OAW-150

Seattle, WA 98101

206.553.2117

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https://twitter.com/EPAnorthwest

From: Pemberton, Wanda
Sent: Monday, January 29, 2018 2:02 PM

To: Narvaez, Madonna <Narvaez.Madonna@epa.gov>
Cc: Dalcher, Debra <dalcher.debra@epa.gov>
Subject: RE: In case you have not heard- OIAI Policy is withdrawn- see memo

Hi Madonna,

Debra Dalcher is my point of contact on this topic. I am copying her on this reply so that she will be aware of your upcoming invitation.

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

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From: Narvaez, Madonna
Sent: Monday, January 29, 2018 4:59 PM
To: Pemberton, Wanda <Pemberton.Wanda@epa.gov>
Subject: RE: In case you have not heard- OIAI Policy is withdrawn- see memo

Who will be talking about it, do you know? I will be gone, but we have the Air Toxics APM call on my last Wednesday, and I would like to invite whoever will be talking about this. Thanks!

Senior Air Toxics Advisor

Narvaez.madonna@epa.gov

US Environmental Protection Agency

1200 Sixth Avenue, Suite 900

MC: OAW-150

Seattle, WA 98101

206.553.2117

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https://twitter.com/EPAnorthwest

From: Pemberton, Wanda
Sent: Monday, January 29, 2018 1:57 PM
To: Dholakia, Umesh <Dholakia.Umesh@epa.gov>; Lancey, Susan <lancey.susan@epa.gov>; Vyas, Himanshu <vyas.himanshu@epa.gov>; Page, Lee <Page.Lee@epa.gov>; Trine, Rae <trine.rae@epa.gov>; Barrett, Richard <barrett.richard@epa.gov>; Kramer, Elizabeth <Kramer.Elizabeth@epa.gov>; Olson, Kyle <Olson.Kyle@epa.gov>; Law, Nicole <Law.Nicole@epa.gov>; Narvaez, Madonna <Narvaez.Madonna@epa.gov>; Glass, Geoffrey <GLASS.GEOFFREY@EPA.GOV>
Cc: Lamason, Bill <Lamason.Bill@epa.gov>; McLamb, Marguerite <McLamb.Marguerite@epa.gov>; Conner, Lisa <Conner.Lisa@epa.gov>; Eck, Janet <Eck.Janet@epa.gov>; Dalcher, Debra <dalcher.debra@epa.gov>; Shrager, Brian <Shrager.Brian@epa.gov>; French, Chuck <French.Chuck@epa.gov>; Srivastava, Ravi <Srivastava.Ravi@epa.gov>; Shine, Brenda <Shine.Brenda@epa.gov>; Fruh, Steve <Fruh.Steve@epa.gov>; Barnett, Keith <Barnett.Keith@epa.gov>; Dunkins, Robin <Dunkins.Robin@epa.gov>; Cozzie, David <Cozzie.David@epa.gov>; Lassiter, Penny <Lassiter.Penny@epa.gov>
Subject: RE: In case you have not heard- OIAI Policy is withdrawn- see memo

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The document is at https://www.epa.gov/stationary-sources-air-pollution/reclassification-major-sources-area-sources-under-section-112-clean

A link to the page with the document is also available at https://www.epa.gov/stationary-sources-air-pollution/national-emission-standards-hazardous-air-pollutants-neshap-9

Please stay tuned!

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

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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: 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 8:35:01 PM
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: Jordan, Scott[Jordan.Scott@epa.gov]
Cc: Dalcher, Debra[dalcher.debra@epa.gov]; French, Chuck[French.Chuck@epa.gov]
From: Lamason, Bill
Sent: Fri 12/8/2017 3:20:25 PM
Subject: Re: OIAI Options Pager - Scott Comments

No. It is this Phone that automatically threads together messages. Sorry all. B

Sent from my iPhone

On Dec 8, 2017, at 10:19 AM, Jordan, Scott <Jordan.Scott@epa.gov> wrote:

Debra - I think Bill hit reply instead of reply-to-all, so I am forwarding this to you.

Scott Jordan

Air and Radiation Law Office

Office of General Counsel

202-564-7508

From: Lamason, Bill
Sent: Friday, December 8, 2017 10:07 AM
To: Jordan, Scott
Subject: Re: OIAI Options Pager - Scott Comments

Thanks. Saw Scott's email reply. Please copy me when you send the draft to Peter. Thanks again. B

Sent from my iPhone

On Dec 8, 2017, at 9:02 AM, Jordan, Scott <Jordan.Scott@epa.gov> wrote:

I added some comments and suggested edits to the document with Chuck's edits. See Attached.

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.

Ex. 5 - Deliberative Process

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

<OIAI Options Pager 12_07_17_OGC Rv Vs 336-cf-edits2+SJ 12.8.17.docx>

To: Lamason, Bill[Lamason.Bill@epa.gov]
From: Dalcher, Debra
Sent: Thur 11/30/2017 2:43:14 PM
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: 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 7:27:25 PM
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]; Lamason, Bill[Lamason.Bill@epa.gov]
Cc: French, Chuck[French.Chuck@epa.gov]
From: Jordan, Scott
Sent: Fri 12/8/2017 3:19:10 PM
Subject: Fw: OIAI Options Pager - Scott Comments

Debra - I think Bill hit reply instead of reply-to-all, so I am forwarding this to you.

Scott Jordan

Air and Radiation Law Office

Office of General Counsel

202-564-7508

From: Lamason, Bill
Sent: Friday, December 8, 2017 10:07 AM
To: Jordan, Scott
Subject: Re: OIAI Options Pager - Scott Comments

Thanks. Saw Scott's email reply. Please copy me when you send the draft to Peter. Thanks again. B

Sent from my iPhone

On Dec 8, 2017, at 9:02 AM, Jordan, Scott <Jordan.Scott@epa.gov> wrote:

I added some comments and suggested edits to the document with Chuck's edits. See Attached.

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. **Ex. 5 - Deliberative Process**

Ex. 5 - Deliberative Process

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

<OIAI Options Pager 12_07_17_OGC Rv Vs 336-cf-edits2+SJ 12.8.17.docx>

To: Dalcher, Debra[dalcher.debra@epa.gov]
Cc: Torres, Elineth[Torres.Elineth@epa.gov]
From: Lamason, Bill
Sent: Tue 11/14/2017 5:13:07 PM
Subject: RE: OIAI Options Pager 11_01_17_Sent to Koerber 11_14_17.docx

Thanks! I'll confer with Chuck on who should send it up. Bill

From: Dalcher, Debra
Sent: Tuesday, November 14, 2017 12:07 PM
To: Lamason, Bill <Lamason.Bill@epa.gov>
Cc: Dalcher, Debra <dalcher.debra@epa.gov>; Torres, Elineth <Torres.Elineth@epa.gov>
Subject: OIAI Options Pager 11_01_17_Sent to Koerber 11_14_17.docx

Bill,

This is the current version of the Options Paper for OIAI.

Please transmit to Mike Koerber.

Thank you, Debra

To: Goehl, Eric[Goehl.Eric@epa.gov]
Cc: Dalcher, Debra[dalcher.debra@epa.gov]
From: Lamason, Bill
Sent: Fri 12/8/2017 2:24:11 PM
Subject: Re: Once in Always in Memo

No need. Peter and I spoke. Cal me Ex. 6 - Personal Privacy

Sent from my iPhone

On Dec 8, 2017, at 9:20 AM, Goehl, Eric <Goehl.Eric@epa.gov> wrote:

That was my understanding. I'll check in with Fred to make sure.

From: Lamason, Bill
Sent: Friday, December 08, 2017 9:16 AM
To: Goehl, Eric <Goehl.Eric@epa.gov>
Cc: Dalcher, Debra <dalcher.debra@epa.gov>
Subject: Re: Once in Always in Memo

Ok. Think we will have to send. Was she calling now? B

Sent from my iPhone

On Dec 8, 2017, at 9:14 AM, Goehl, Eric <Goehl.Eric@epa.gov> wrote:

You're welcome.

Yes, Debra was going to call Fred to explain that the memo is currently being reviewed by OGC and could change.

From: Lamason, Bill
Sent: Friday, December 08, 2017 9:10 AM

To: Goehl, Eric <Goehl.Eric@epa.gov>
Cc: Dalcher, Debra <dalcher.debra@epa.gov>
Subject: Re: Once in Always in Memo

Thanks. Did you get her? B

Sent from my iPhone

On Dec 8, 2017, at 9:02 AM, Goehl, Eric <Goehl.Eric@epa.gov> wrote:

Debra,

Fred just stopped by my desk and asked if you would send him the latest "Once in Always In" memo. I'm assuming you know what memo he is referring to, if not we can follow up with him.

Thank you,

Eric

Eric Goehl, Environmental Scientist

US EPA OAQPS/SPPD/RCG

919-541-4299

goehl.eric@epa.gov

To: Noonan, Jenny[Noonan.Jenny@epa.gov]
Cc: Dalcher, Debra[dalcher.debra@epa.gov]; Fruh, Steve[Fruh.Steve@epa.gov]
From: Lamason, Bill
Sent: Mon 1/29/2018 9:45:35 PM
Subject: FW: NESHAP ZZZZ (Once In Always In) Policy

Jenny, FYI. Let us know is you still need a response. Bill

From: Fruh, Steve
Sent: Tuesday, January 16, 2018 11:16 AM
To: South, Peter <South.Peter@epa.gov>
Cc: Eck, Janet <Eck.Janet@epa.gov>; Lamason, Bill <Lamason.Bill@epa.gov>
Subject: Re: NESHAP ZZZZ (Once In Always In) Policy

Mr Kane called me back earlier today and I told him EPA was working on a public communication that should be available soon and should also help provide clarity.

Sent from my iPhone

On Jan 16, 2018, at 10:28 AM, South, Peter <South.Peter@epa.gov> wrote:

> Great—thanks!

> **From:** Fruh, Steve
> **Sent:** Tuesday, January 16, 2018 9:29 AM
> **To:** South, Peter <South.Peter@epa.gov>
> **Cc:** Eck, Janet <Eck.Janet@epa.gov>; Lamason, Bill <Lamason.Bill@epa.gov>
> **Subject:** Re: NESHAP ZZZZ (Once In Always In) Policy

> I left a message last week and will follow up today and will confirm.

> Sent from my iPhone

> On Jan 16, 2018, at 8:49 AM, South, Peter <South.Peter@epa.gov> wrote:

> > Hi Steve,
> >
> > I think this is the second time this individual has contacted OAR-IO (I forwarded the initial email from Emily last week to Bill L—I believe he forwarded on to you).

Can you or your staff follow-up with Mr. Kane today and send me an email following the call. I'd like to confirm with Emily that we contacted this individual and answered his question(s).

Thanks and give me a call with any questions.

From: Atkinson, Emily
Sent: Friday, January 12, 2018 12:09 PM
To: South, Peter <South.Peter@epa.gov>
Subject: FW: NESHAP ZZZZ (Once In Always In) Policy

This person is following up looking for information. Could you all get in touch with them?

From: Alan Kane [mailto:alanjkane@comcast.net]
Sent: Friday, January 12, 2018 11:44 AM
To: Atkinson, Emily <Atkinson.Emily@epa.gov>
Cc: DeCiutiis, Paul E. <paul.deciutiis@gmail.com>; Hamm, Russell <rhammenviro@gmail.com>
Subject: Re: NESHAP ZZZZ (Once In Always In) Policy

Emily, did you receive this email?

Thanks

Alan Kane

From: "Alan Kane" [Ex. 6 - Personal Privacy]@comcast.net>
To: "Atkinson Emily" <Atkinson.Emily@EPA.gov>
Cc: "Alan J Kane" <[Ex. 6 - Personal Privacy]@comcast.net>, "Paul E. DeCiutiis" <[Ex. 6 - Personal Privacy]@gmail.com>, "Russell Hamm" <[Ex. 6 - Personal Privacy]@gmail.com>
Sent: Tuesday, January 9, 2018 10:49:22 AM
Subject: NESHAP ZZZZ (Once In Always In) Policy

Emily, I am trying to find a contact within EPA that may be able to help with the following situation.

I am working on a specific instance concerning the punitive nature of complying with the MACT ZZZZ rules resulting from the 1995 EPA Policy know as the "Once In Always In". The facility has installed the necessary controls in the form of oxidation catalyst and air fuel ratio controllers to meet current MACT ZZZZ and NSPS JJJJ requirements but since it was done without having a federally enforceable limit the facility must remain a Major Source. It can be demonstrated through the required stack testing that the facility is actually a true minor source and has been for many years. I would like to discuss this situation in more detail when it's convenient.

Thanks,

Alan Kane

To: Mills, Kathy[Mills.Kathy@epa.gov]
Cc: Dalcher, Debra[dalcher.debra@epa.gov]
From: Dalcher, Debra
Sent: Wed 1/24/2018 5:16:42 PM
Subject: FW: Revised OI/AI memorandum
dshReclassification of Major Sources as Area Sources Under Section 112_DHarlow Draft.docx

Close Hold Kathy, thank you, Debra

From: Dalcher, Debra
Sent: Wednesday, January 24, 2018 11:14 AM
To: Noonan, Jenny <noonan.jenny@epa.gov>
Cc: Lamason, Bill <Lamason.Bill@epa.gov>
Subject: FW: Revised OI/AI memorandum
Importance: High

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

To: Dalcher, Debra[dalcher.debra@epa.gov]
From: Lamason, Bill
Sent: Tue 12/19/2017 1:37:54 PM
Subject: RE: **Ex. 6 - Personal Privacy**

Thanks for letting me know and I approve. Bill

From: Dalcher, Debra
Sent: Tuesday, December 19, 2017 8:35 AM
To: Lamason, Bill <Lamason.Bill@epa.gov>
Cc: Dalcher, Debra <dalcher.debra@epa.gov>
Subject: **Ex. 6 - Personal Privacy**

I will be spending the above uninterrupted time working on fleshing out the comment summary to support the OIAI memo. If we do receive comments on the memo I will also be incorporating them although the memo will not be published until February 2018.

Thank you, Debra

To: Lamason, Bill[Lamason.Bill@epa.gov]
Cc: Dalcher, Debra[dalcher.debra@epa.gov]; Torres, Elineth[Torres.Elineth@epa.gov]
From: Dalcher, Debra
Sent: Tue 11/14/2017 5:07:18 PM
Subject: OIAI Options Pager 11_01_17_Sent to Koerber 11_14_17.docx
OIAI Options Pager 11_01_17_Sent to Koerber 11_14_17.docx

Bill,

This is the current version of the Options Paper for OIAI.

Please transmit to Mike Koerber.

Thank you, Debra

To: Dalcher, Debra[dalcher.debra@epa.gov]; Cortelyou-Lee, Jan[Cortelyou-Lee.Jan@epa.gov]; Lamason, Bill[Lamason.Bill@epa.gov]; Koerber, Mike[Koerber.Mike@epa.gov]
From: Mills, Kathy
Sent: Thur 1/25/2018 2:39:44 PM
Subject: RE: Draft Comms Plan for Today's Memo - Please Review ASAP

O&G contacts:

Ryan Streams

Regulatory Affairs Analyst

Western Energy Alliance (WEA)

303.501.1060

rstreams@westernenergyalliance.org

Matt Todd

API

202.682.8319

ToddM@api.org

Matt Hite

GPA
202-279-1664

mhite@gpaglobal.org

Jim Elliott

Independent Assoc.

(717)791-2012

jelliott@spilmanlaw.com

Kathy "KB Mills ~ SPPD ~ U. S. EPA, OAQPS ~ 919-541-1599

From: Dalcher, Debra
Sent: Thursday, January 25, 2018 8:57 AM
To: Cortelyou-Lee, Jan <Cortelyou-Lee.Jan@epa.gov>; Lamason, Bill <Lamason.Bill@epa.gov>; Koerber, Mike <Koerber.Mike@epa.gov>
Cc: Mills, Kathy <Mills.Kathy@epa.gov>
Subject: RE: Draft Comms Plan for Today's Memo - Please Review ASAP

ECOS stated the most impacted facilities by our OIAI policy are subject to the following NESHAP:

Aerospace Mfg & Rework Facs - 40 CFR 63, Subpart GG

Oil & Natural Gas Production Facs - 40 CFR 63, Subpart HH

Wood Furniture Mfg. - 40 CFR 63, Subpart JJ

"Surface Coating" - 40 CFR 63, Subpart IIII (auto & Truck), JJJJ (Paper), KKKK (Metal Can),

MMMM (misc.), NNNN (Large Appliance), OOOO (Fabric), RRRR (Metal Furniture), SSSS (Metal Coil)

Halogenated Solvent Cleaners - 40 CFR 63, Subpart T

Do we have industry groups tied to these rules?

I will review who submitted comments in a few minutes. I am looking at the coms plan right now.

Debra

From: Cortelyou-Lee, Jan
Sent: Thursday, January 25, 2018 8:54 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: RE: Draft Comms Plan for Today's Memo - Please Review ASAP

Folks – one additional request.

Are there some industry groups we should add to our notification list? Like groups that commented in the EO process to revise this policy? Please help me by adding them to the roll-out plan – thank you.

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: 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: Goehl, Eric
Sent: Fri 12/8/2017 2:20:47 PM
Subject: RE: Once in Always in Memo

That was my understanding. I'll check in with Fred to make sure.

From: Lamason, Bill
Sent: Friday, December 08, 2017 9:16 AM
To: Goehl, Eric <Goehl.Eric@epa.gov>
Cc: Dalcher, Debra <dalcher.debra@epa.gov>
Subject: Re: Once in Always in Memo

Ok. Think we will have to send. Was she calling now? B

Sent from my iPhone

On Dec 8, 2017, at 9:14 AM, Goehl, Eric <Goehl.Eric@epa.gov> wrote:

You're welcome.

Yes, Debra was going to call Fred to explain that the memo is currently being reviewed by OGC and could change.

From: Lamason, Bill
Sent: Friday, December 08, 2017 9:10 AM
To: Goehl, Eric <Goehl.Eric@epa.gov>
Cc: Dalcher, Debra <dalcher.debra@epa.gov>
Subject: Re: Once in Always in Memo

Thanks. Did you get her? B

Sent from my iPhone

On Dec 8, 2017, at 9:02 AM, Goehl, Eric <Goehl.Eric@epa.gov> wrote:

Debra,

Fred just stopped by my desk and asked if you would send him the latest "Once in Always In" memo. I'm assuming you know what memo he is referring to, if not we can follow up with him.

Thank you,

Eric

Eric Goehl, Environmental Scientist

US EPA OAQPS/SPPD/RCG

919-541-4299

goehl.eric@epa.gov

To: Noonan, Jenny[Noonan.Jenny@epa.gov]; Dalcher, Debra[dalcher.debra@epa.gov]
From: Lamason, Bill
Sent: Mon 1/29/2018 9:44:54 PM
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: Dalcher, Debra[dalcher.debra@epa.gov]
Cc: Lamason, Bill[Lamason.Bill@epa.gov]; Torres, Elineth[Torres.Elineth@epa.gov]
From: McLamb, Marguerite
Sent: Wed 11/8/2017 8:04:15 PM
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

She would like to know timing, to the best degree we can predict. I told her that Bill was planning to meet with Peter today and discuss this topic and may be able to provide more information, which we would share with her.
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: Dalcher, Debra[dalcher.debra@epa.gov]; Shrager, Brian[Shrager.Brian@epa.gov]
Cc: Lamason, Bill[Lamason.Bill@epa.gov]
From: Weatherhead, Darryl
Sent: Fri 1/19/2018 7:01:55 PM
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

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: Goehl, Eric[Goehl.Eric@epa.gov]
Cc: Dalcher, Debra[dalcher.debra@epa.gov]
From: Lamason, Bill
Sent: Fri 12/8/2017 2:16:25 PM
Subject: Re: Once in Always in Memo

Ok. Think we will have to send. Was she calling now? B

Sent from my iPhone

On Dec 8, 2017, at 9:14 AM, Goehl, Eric <Goehl.Eric@epa.gov> wrote:

You're welcome.

Yes, Debra was going to call Fred to explain that the memo is currently being reviewed by OGC and could change.

From: Lamason, Bill
Sent: Friday, December 08, 2017 9:10 AM
To: Goehl, Eric <Goehl.Eric@epa.gov>
Cc: Dalcher, Debra <dalcher.debra@epa.gov>
Subject: Re: Once in Always in Memo

Thanks. Did you get her? B

Sent from my iPhone

On Dec 8, 2017, at 9:02 AM, Goehl, Eric <Goehl.Eric@epa.gov> wrote:

Debra,

Fred just stopped by my desk and asked if you would send him the latest "Once in Always In" memo. I'm assuming you know what memo he is referring to, if not we

can follow up with him.

Thank you,

Eric

Eric Goehl, Environmental Scientist

US EPA OAQPS/SPPD/RCG

919-541-4299

goehl.eric@epa.gov

To: Dalcher, Debra[dalcher.debra@epa.gov]
Cc: Lamason, Bill[Lamason.Bill@epa.gov]
From: Noonan, Jenny
Sent: Mon 1/29/2018 9:40:04 PM
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: Cortelyou-Lee, Jan[Cortelyou-Lee.Jan@epa.gov]
Cc: Lamason, Bill[Lamason.Bill@epa.gov]
From: Dalcher, Debra
Sent: Wed 1/24/2018 5:07:40 PM
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]; Jordan, Scott[Jordan.Scott@epa.gov]
Cc: Lamason, Bill[Lamason.Bill@epa.gov]
From: Rodman, Sonja
Sent: Thur 1/25/2018 2:25:50 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

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: Lamason, Bill[Lamason.Bill@epa.gov]
Cc: Dalcher, Debra[dalcher.debra@epa.gov]
From: Goehl, Eric
Sent: Fri 12/8/2017 2:14:34 PM
Subject: RE: Once in Always in Memo

You're welcome.

Yes, Debra was going to call Fred to explain that the memo is currently being reviewed by OGC and could change.

From: Lamason, Bill
Sent: Friday, December 08, 2017 9:10 AM
To: Goehl, Eric <Goehl.Eric@epa.gov>
Cc: Dalcher, Debra <dalcher.debra@epa.gov>
Subject: Re: Once in Always in Memo

Thanks. Did you get her? B

Sent from my iPhone

On Dec 8, 2017, at 9:02 AM, Goehl, Eric <Goehl.Eric@epa.gov> wrote:

Debra,

Fred just stopped by my desk and asked if you would send him the latest "Once in Always In" memo. I'm assuming you know what memo he is referring to, if not we can follow up with him.

Thank you,

Eric

Eric Goehl, Environmental Scientist

US EPA OAQPS/SPPD/RCG

919-541-4299

goehl.eric@epa.gov

To: Eck, Janet[Eck.Janet@epa.gov]
Cc: Dalcher, Debra[dalcher.debra@epa.gov]
From: Dalcher, Debra
Sent: Mon 1/29/2018 7:35:47 PM
Subject: OIAI Reg Agenda Entry.docx
OIAI Reg Agenda Entry.docx

Janet,

I only made a couple of changes. I believe in about 2 weeks we will be able to flesh this out much more.

Thank you, Debra

To: Johnson, Tanya[Johnson.Tanya@epa.gov]
Cc: Dalcher, Debra[dalcher.debra@epa.gov]
From: Lamason, Bill
Sent: Mon 12/18/2017 5:54:42 PM
Subject: OIAI Options 12_18_17.docx
OIAI Options 12_18_17.docx

Tanya, Per your request. We'll bring a few hard copies also. Bill

To: Dalcher, Debra[dalcher.debra@epa.gov]
From: Jordan, Scott
Sent: Wed 12/6/2017 3:31:06 PM
Subject: OIAI Review - What has caused us to revisit the OIAI policy
What has caused us to revisit the policy+SJJ12.6.17.docx

Debra –

I had a few thoughts on this, which I have marked in comment balloons in the attached.

Scott Jordan

Air and Radiation Law Office

Office of General Counsel

202-564-7508

From: Dalcher, Debra
Sent: Tuesday, December 05, 2017 12:01 PM
To: Jordan, Scott <Jordan.Scott@epa.gov>
Cc: Dalcher, Debra <dalcher.debra@epa.gov>
Subject: What has caused us to revisit the policy.docx

Scott,

Kevin C. penned this document to help us gather our thoughts on how we could justify the policy change we want to reflect in the memo. The notes are mine. Thought it might be useful to share with you for review.

Debra

To: Dalcher, Debra[dalcher.debra@epa.gov]
Cc: Lamason, Bill[Lamason.Bill@epa.gov]; Torres, Elineth[Torres.Elineth@epa.gov]
From: McLamb, Marguerite
Sent: Wed 11/8/2017 3:27:22 PM
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: Dalcher, Debra[dalcher.debra@epa.gov]; Barnett, Keith[Barnett.Keith@epa.gov]
From: Lamason, Bill
Sent: Mon 1/22/2018 9:30:15 PM
Subject: RE: CMS ASSIGNMENT AL-18-000-3332
EPA response to Sens Barrasso Capito on onceinalwaysin.docx

Keith, l made some edits. Bill

From: Dalcher, Debra
Sent: Monday, January 22, 2018 12:59 PM
To: Barnett, Keith <Barnett.Keith@epa.gov>
Cc: Lamason, Bill <Lamason.Bill@epa.gov>
Subject: FW: CMS ASSIGNMENT AL-18-000-3332

Keith,

Attached is my note to Mariel.

Thank you for requesting the extension. I am copying Bill to keep him in the loop.

Thank you, Debra

From: Dalcher, Debra
Sent: Monday, January 22, 2018 7:11 AM
To: Morales, Mariel <Morales.Mariel@epa.gov>
Subject: RE: CMS ASSIGNMENT AL-18-000-3332

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: Jordan, Scott[Jordan.Scott@epa.gov]; Rodman, Sonja[Rodman.Sonja@epa.gov]
Cc: Dalcher, Debra[dalcher.debra@epa.gov]
From: Dalcher, Debra
Sent: Wed 1/24/2018 4:58:28 PM
Subject: Reclassification of Major Sources as Area Sources Under Section 112_BF Final Draft 01 24 2018.docx
Reclassification of Major Sources as Area Sources Under Section 112_BF Final Draft 01 24 2018.docx

Blue folder version. If you could send me a note when OGC has completed their final review I would appreciate it.

Thanks, Debra

To: Dalcher, Debra[dalcher.debra@epa.gov]
From: Torres, Elineth
Sent: Tue 11/14/2017 2:32:34 PM
Subject: RE: Memo replacing OIAI with proposed 2007 interpretation_11_14_17 ET.docx

Thanks. Yes, hope the technical leads can help us with the specific rule citations.

Elineth Torres

OAQPS

919-541-4347

From: Dalcher, Debra
Sent: Tuesday, November 14, 2017 9:29 AM
To: Torres, Elineth <Torres.Elineth@epa.gov>
Subject: Memo replacing OIAI with proposed 2007 interpretation_11_14_17 ET.docx

Edits for you to look at. We probably need the citations for all of the specific rules we are referring to. Notice that you included the boiler citation.

To: McLamb, Marguerite[McLamb.Marguerite@epa.gov]
Cc: Dalcher, Debra[dalcher.debra@epa.gov]
From: Lamason, Bill
Sent: Wed 11/29/2017 8:31:42 PM
Subject: RE: OIAI Memo

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]
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 3:18:56 PM
Subject: Memo replacing OIAI with proposed 2007 interpretation_11_6_17 MM (002).docx
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: Shrager, Brian[Shrager.Brian@epa.gov]
Cc: Dalcher, Debra[dalcher.debra@epa.gov]; Lamason, Bill[Lamason.Bill@epa.gov]
From: Dalcher, Debra
Sent: Fri 1/19/2018 2:59:02 PM
Subject: RIA for OIAI Rule Package (either supplemental or new proposal)

Good Morning Brian,

Ex. 5 - Deliberative Process

Ex. 5 - Deliberative Process If you can respond before Monday that would be great.
Thank you, Debra

To: Lamason, Bill[Lamason.Bill@epa.gov]
Cc: Dalcher, Debra[dalcher.debra@epa.gov]
From: McLamb, Marguerite
Sent: Wed 11/29/2017 8:27:45 PM
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: 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]
Cc: Shrager, Brian[Shrager.Brian@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.

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: Dalcher, Debra[dalcher.debra@epa.gov]
From: Lamason, Bill
Sent: Wed 12/6/2017 2:13:16 PM
Subject: RE: OIAI Options Pager 11_01_17_(Updated for Koerber 11_30_17_1640).docx

Thanks for sending. Let me know if you hear from Kevin or Chuck. I may have a few edits to suggest but I am more interested in learning if this is what Kevin had in mind in response to Peter's ask.

Bill

From: Dalcher, Debra
Sent: Tuesday, December 05, 2017 4:59 PM
To: Culligan, Kevin <Culligan.Kevin@epa.gov>
Cc: Dalcher, Debra <dalcher.debra@epa.gov>; French, Chuck <French.Chuck@epa.gov>; Lamason, Bill <Lamason.Bill@epa.gov>
Subject: OIAI Options Pager 11_01_17_(Updated for Koerber 11_30_17_1640).docx
Importance: High

Kevin,

First attempt at addressing what we talked about this morning. See new section in the pager.

These bullets align with how the memo is currently written.

Debra

To: Torres, Elineth[Torres.Elineth@epa.gov]; Rodman, Sonja[Rodman.Sonja@epa.gov]
Cc: Dalcher, Debra[dalcher.debra@epa.gov]
From: Vetter, Rick
Sent: Tue 11/14/2017 2:27:21 PM
Subject: RE: comment excerpts on statutory/legal interpretation received on EPA's 2007 GP Proposal

Thanks, Elineth. I am currently reviewing the revised memo that Debra sent yesterday afternoon. Once I get my comments on the memo to Sonja, I'll take a look at the document and let you know if I have any questions.

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: Torres, Elineth
Sent: Tuesday, November 14, 2017 8:49 AM
To: Vetter, Rick <Vetter.Rick@epa.gov>; Rodman, Sonja <Rodman.Sonja@epa.gov>
Cc: Dalcher, Debra <dalcher.debra@epa.gov>
Subject: comment excerpts on statutory/legal interpretation received on EPA's 2007 GP Proposal

Rick,
I am attaching a sample of comment excerpts on statutory/legal interpretation received on EPA's 2007 GP Proposal (72 FR 69; January 3, 2007).

Please let me know if you have questions.

Thank You!

<< File: Sample of comments OIAI legal interpretation.docx >>

Elineth Torres
OAQPS
919-541-4347

From: Torres, Elineth
Sent: Thursday, August 17, 2017 12:48 PM
To: Rodman, Sonja <Rodman.Sonja@epa.gov>; Lamason, Bill <Lamason.Bill@epa.gov>; McLamb, Marguerite <McLamb.Marguerite@epa.gov>; Vetter, Rick <Vetter.Rick@epa.gov>
Subject: RE: OIAI discussion-follow-up

Sonja and others,

Thank you for your time this morning.

Attached is the OIAI Options Pager we shared with OAQPS and OAR. Please feel free to provide comments on it.

As for next steps, I will update the draft letter of intent to incorporate the discussion we had this morning. I will send the updated version for review to all of you. I will need feedback on the letter NLT COB 08/28. Bill and I will be meeting with Peter on 08/29 on this matter.

Let me know if you have any questions.

Thank You,

Elineth Torres
OAQPS
919-541-4347

-----Original Appointment-----
From: Torres, Elineth
Sent: Wednesday, August 16, 2017 11:26 AM
To: Torres, Elineth; Rodman, Sonja; Lamason, Bill; McLamb, Marguerite; Vetter, Rick; RTP-OAQPS-S[redacted] Ex. 6 - Personal Privacy SPPD/Phone-Line/RTP-OAQPS-BLDG-C
Subject: OIAI discussion- draft document attached
When: Thursday, August 17, 2017 10:00 AM-10:30 AM (UTC-05:00) Eastern Time (US & Canada).
Where: RTP-D201-Max40/RTP-Bldg-D

D-201; Call-in-number 919-541-4332.

Update on Approach- Letter of Intent
Discuss updated version- see attachment.

<< File: Draft 2017 OIAI Letter of Intent_081617.docx >>

To: Rodman, Sonja[Rodman.Sonja@epa.gov]; Dalcher, Debra[dalcher.debra@epa.gov]
From: Jordan, Scott
Sent: Fri 1/19/2018 2:42:59 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

Scott, here you go. I could have briefly listed all of the points presented on the plain reading of the statue again, but instead just referred to previous discussions.

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

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

Ex. 5 - Attorney Client

Thank you, Debra

To: McLamb, Marguerite[McLamb.Marguerite@epa.gov]
Cc: Dalcher, Debra[dalcher.debra@epa.gov]
From: Lamason, Bill
Sent: Wed 11/29/2017 7:49:38 PM
Subject: OIAI Memo

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]
Cc: Lamason, Bill[Lamason.Bill@epa.gov]
From: Eck, Janet
Sent: Mon 1/29/2018 5:56:06 PM
Subject: Dalcher Reg Agenda Entries
nPB Reg Agenda Entry.docx
OIAI Reg Agenda Entry.docx

Hi Debra, As mentioned in my previous email, attached are the Reg Agenda Entries, SAN 4908 and 5562. Both are marked as "Other" for EO 13771. This info is not visible on the screen shot. Please consider the EO 13771 designation, the stage of rulemaking (proposal, final or completed) and update your abstract accordingly. Make any other changes you believe may be necessary.

Please send me your edits by COB Friday, 2/2. Thanks for your help.

To: Jordan, Scott[Jordan.Scott@epa.gov]; Dalcher, Debra[dalcher.debra@epa.gov]
From: Dalcher, Debra
Sent: Fri 1/19/2018 2:37:18 PM
Subject: Re: OIAI - Revised Memo post Harlow Meeting - Scott's Comments
OIAI.Revised OIAI memorandum.SJJ+DD.1.18.18+SJJ + DD 1.19.18.docx

Scott, here you go. I could have briefly listed all of the points presented on the plain reading of the statue again, but instead just referred to previous discussions.

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

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: Thursday, January 18, 2018 7:04 PM
To: Jordan, Scott
Cc: Dalcher, Debra; Lamason, Bill
Subject: Revised Memo post Marlow Meeting

Ex. 5 - Deliberative Process

Thank you, Debra

To: Dalcher, Debra[dalcher.debra@epa.gov]
Cc: Lamason, Bill[Lamason.Bill@epa.gov]; Torres, Elineth[Torres.Elineth@epa.gov]
From: McLamb, Marguerite
Sent: Wed 11/8/2017 3:11:31 PM
Subject: RE: OIAI: memo replacing policy interpretation

May I share the draft memo with her, or is it better to wait until Bill talks with Peter?

****

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 9:58 AM
To: McLamb, Marguerite
Cc: Lamason, Bill; Torres, Elineth
Subject: RE: OIAI: memo replacing policy interpretation

Good Morning Marguerite,

Thank you for your review. I was wondering if you had an opportunity to touch base with Sonja regarding process (who does what, when J)?

Thank you, Debra

From: Lamason, Bill
Sent: Tuesday, November 07, 2017 4:13 PM
To: McLamb, Marguerite <McLamb.Marguerite@epa.gov>; Torres, Elineth <Torres.Elineth@epa.gov>
Cc: Dalcher, Debra <dalcher.debra@epa.gov>
Subject: RE: OIAI: memo replacing policy interpretation

Thanks Marguerite! Bill

From: McLamb, Marguerite
Sent: Tuesday, November 07, 2017 3:27 PM
To: Torres, Elineth <Torres.Elineth@epa.gov<mailto:Torres.Elineth@epa.gov>>
Cc: Dalcher, Debra <dalcher.debra@epa.gov<mailto:dalcher.debra@epa.gov>>; Lamason, Bill <Lamason.Bill@epa.gov<mailto:Lamason.Bill@epa.gov>>
Subject: RE: OIAI: memo replacing policy interpretation

Hi, all,
Attached is the memo with my suggestions. **Ex. 5 - Deliberative Process**
Ex. 5 - Deliberative Process
Best,
Marguerite

From: Torres, Elineth

Sent: Tuesday, November 07, 2017 12:17 PM
To: McLamb, Marguerite <McLamb.Marguerite@epa.gov<mailto:McLamb.Marguerite@epa.gov>>
Cc: Dalcher, Debra <dalcher.debra@epa.gov<mailto:dalcher.debra@epa.gov>>; Lamason, Bill <Lamason.Bill@epa.gov<mailto:Lamason.Bill@epa.gov>>
Subject: OIAI: memo replacing policy interpretation

Marguerite,

Take a look at the attached memo. **Ex. 5 - Deliberative Process**

Ex. 5 - Deliberative Process

I am in the office until 3:30pm today, then out until Monday. Debra is the alternate POC on this action. Bill wants to share a version of this memo with Peter tomorrow with the caveat that we still need OGC's input. Let me or Debra know if you have comments/edits on this version.

Finally, I told Bill that you are going to be talking with Sonja about this version of the memo and next steps regarding OGC involvement.

Thank you!

Elineth Torres
OAQPS
919-541-4347

To: Dalcher, Debra[dalcher.debra@epa.gov]
From: Torres, Elineth
Sent: Tue 11/14/2017 2:09:38 PM
Subject: examples
Memo replacing OIAI with proposed 2007 interpretation_11_14_17 ET.docx

See examples, read and edit as needed- only one not there is the colocation issue of the wood furniture MACT.

Ex. 5 - Deliberative Process

Elineth Torres

OAQPS

919-541-4347

To: Dalcher, Debra[dalcher.debra@epa.gov]
From: McLamb, Marguerite
Sent: Tue 11/28/2017 9:01:18 PM
Subject: RE: OIAI Memo
image001.gif

Hi, Debra,
Sonja has the memo. We are on a phone prep session for the RTR oral argument on Thursday, and I hope to chat with her about the memo after this ends at 5 pm.
Thanks for checking in!
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: Tuesday, November 28, 2017 3:51 PM
To: McLamb, Marguerite
Subject: OIAI Memo

Hi Marguerite,

Just checking in to see where we are on the memo. Didn't see an email so wasn't sure if it was in OGC's hands yet for review.

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: Barnett, Keith[Barnett.Keith@epa.gov]
Cc: Dalcher, Debra[dalcher.debra@epa.gov]
From: Lamason, Bill
Sent: Mon 11/20/2017 4:10:11 PM
Subject: Re: Today is my CDO. Brian Storey is acting. However, I am checking emails and I am available to confer on the Brick Affidavit if necessary. 919-673-2552

Keith, Can you check your email for a message from Debra Dalcher on OIAI? She needs help from you responding to a comment from OGC. Thanks! Bill

Sent from my iPhone

On Nov 20, 2017, at 9:44 AM, Barnett, Keith <Barnett.Keith@epa.gov> wrote:

Keith Barnett

Minerals and Manufacturing Group Leader

919-541-5605

To: Vetter, Rick[Vetter.Rick@epa.gov]; Rodman, Sonja[Rodman.Sonja@epa.gov]
Cc: Dalcher, Debra[dalcher.debra@epa.gov]
From: Torres, Elineth
Sent: Tue 11/14/2017 1:49:02 PM
Subject: comment excerpts on statutory/legal interpretation received on EPA's 2007 GP Proposal
Sample of comments OIAI legal interpretation.docx

Rick,
I am attaching a sample of comment excerpts on statutory/legal interpretation received on EPA's 2007 GP Proposal (72 FR 69; January 3, 2007).

Please let me know if you have questions.

Thank You!

Elineth Torres
OAQPS
919-541-4347

From: Torres, Elineth
Sent: Thursday, August 17, 2017 12:48 PM
To: Rodman, Sonja <Rodman.Sonja@epa.gov>; Lamason, Bill <Lamason.Bill@epa.gov>; McLamb, Marguerite <McLamb.Marguerite@epa.gov>; Vetter, Rick <Vetter.Rick@epa.gov>
Subject: RE: OIAI discussion-follow-up

Sonja and others,

Thank you for your time this morning.

Attached is the OIAI Options Pager we shared with OAQPS and OAR. Please feel free to provide comments on it.

As for next steps, I will update the draft letter of intent to incorporate the discussion we had this morning. I will send the updated version for review to all of you. I will need feedback on the letter NLT COB 08/28. Bill and I will be meeting with Peter on 08/29 on this matter.

Let me know if you have any questions.

Thank You,

Elineth Torres
OAQPS
919-541-4347

-----Original Appointment-----
From: Torres, Elineth
Sent: Wednesday, August 16, 2017 11:26 AM
To: Torres, Elineth; Rodman, Sonja; Lamason, Bill; McLamb, Marguerite; Vetter, Rick; RTP-OAQPS-Ex. 6 - Personal Privacy SPPD/Phone-Line/RTP-OAQPS-BLDG-C
Subject: OIAI discussion- draft document attached
When: Thursday, August 17, 2017 10:00 AM-10:30 AM (UTC-05:00) Eastern Time (US & Canada).
Where: RTP-D201-Max40/RTP-Bldg-D

D-201; Call-in-number Ex. 6 - Personal Privacy

Update on Approach- Letter of Intent
Discuss updated version- see attachment.

<< File: Draft 2017 OIAI Letter of Intent_081617.docx >>

To: Dalcher, Debra[dalcher.debra@epa.gov]
Cc: Lamason, Bill[Lamason.Bill@epa.gov]; Rodman, Sonja[Rodman.Sonja@epa.gov]
From: Jordan, Scott
Sent: Fri 1/19/2018 1:34:04 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

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 - Deliberative Process

Ex. 5 - Deliberative Process

Thank you, Debra

To: Lassiter, Penny[Lassiter.Penny@epa.gov]
Cc: Lamason, Bill[Lamason.Bill@epa.gov]
From: Dalcher, Debra
Sent: Mon 11/20/2017 4:02:24 PM
Subject: Examples Currently Included in the OIAI draft memo

Hi folks, I am working on the OIAI memo and currently addressing comments from Sonya.

Current Text in Memo -

Ex. 5 - Deliberative Process

Sonja Comment: Ex. 5 - Deliberative Process

Ex. 5 - Deliberative Process

Debra: 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: Dalcher, Debra[dalcher.debra@epa.gov]
Cc: Lamason, Bill[Lamason.Bill@epa.gov]; Torres, Elineth[Torres.Elineth@epa.gov]
From: McLamb, Marguerite
Sent: Wed 11/8/2017 3:07:11 PM
Subject: RE: OIAI: memo replacing policy interpretation

Not yet, but we are planning to speak at 11:30. I'll get back to you after that!

****

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 9:58 AM
To: McLamb, Marguerite
Cc: Lamason, Bill; Torres, Elineth
Subject: RE: OIAI: memo replacing policy interpretation

Good Morning Marguerite,

Thank you for your review. I was wondering if you had an opportunity to touch base with Sonja regarding process (who does what, when J)?

Thank you, Debra

From: Lamason, Bill
Sent: Tuesday, November 07, 2017 4:13 PM
To: McLamb, Marguerite <McLamb.Marguerite@epa.gov>; Torres, Elineth <Torres.Elineth@epa.gov>
Cc: Dalcher, Debra <dalcher.debra@epa.gov>
Subject: RE: OIAI: memo replacing policy interpretation

Thanks Marguerite! Bill

From: McLamb, Marguerite
Sent: Tuesday, November 07, 2017 3:27 PM
To: Torres, Elineth <Torres.Elineth@epa.gov<mailto:Torres.Elineth@epa.gov>>
Cc: Dalcher, Debra <dalcher.debra@epa.gov<mailto:dalcher.debra@epa.gov>>; Lamason, Bill <Lamason.Bill@epa.gov<mailto:Lamason.Bill@epa.gov>>
Subject: RE: OIAI: memo replacing policy interpretation

Hi, all,
Attached is the memo with my suggestions. **Ex. 5 - Deliberative Process**
Ex. 5 - Deliberative Process
Best,
Marguerite

From: Torres, Elineth

Sent: Tuesday, November 07, 2017 12:17 PM
To: McLamb, Marguerite <McLamb.Marguerite@epa.gov<mailto:McLamb.Marguerite@epa.gov>>
Cc: Dalcher, Debra <dalcher.debra@epa.gov<mailto:dalcher.debra@epa.gov>>; Lamason, Bill <Lamason.Bill@epa.gov<mailto:Lamason.Bill@epa.gov>>
Subject: OIAI: memo replacing policy interpretation

Marguerite,

Take a look at the attached memo. Ex. 5 - Deliberative Process
Ex. 5 - Deliberative Process
Ex. 5 - Deliberative Process This is the first draft.

I am in the office until 3:30pm today, then out until Monday. Debra is the alternate POC on this action. Bill wants to share a version of this memo with Peter tomorrow with the caveat that we still need OGC's input. Let me or Debra know if you have comments/edits on this version.

Finally, I told Bill that you are going to be talking with Sonja about this version of the memo and next steps regarding OGC involvement.

Thank you!

Elineth Torres
OAQPS
919-541-4347

To: Dalcher, Debra[dalcher.debra@epa.gov]
From: Srivastava, Ravi
Sent: Tue 11/28/2017 1:46:02 PM
Subject: Docket_index
Docket_index.xlsx

Thanks,

Ravi

Ravi Srivastava, Ph.D.

Technical Programs Director

Sector Policies and Programs Division

Office of Air Quality Planning and Standards

Environmental Protection Agency

Mail Code D205-01

Research Triangle Park, NC 27711

Office: (919) 541-3444

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]
From: Dalcher, Debra
Sent: Mon 11/20/2017 3:39:04 PM
Subject: OIAI - Coating Sector Examples

Text from the draft memo: **Ex. 5 - Deliberative Process**

Ex. 5 - Deliberative Process

Sonya comment: **Ex. 5 - Deliberative Process**

Ex. 5 - Deliberative Process

We will need to be very specific in this memo to include the examples.

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]
Cc: Lamason, Bill[Lamason.Bill@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, Sonja, and Scott on 12/4 and 12/5.

Ex. 5 - Deliberative Process

To: Srivastava, Ravi[Srivastava.Ravi@epa.gov]; Dalcher, Debra[dalcher.debra@epa.gov]
From: Lamason, Bill
Sent: Mon 1/29/2018 5:34:57 PM
Subject: FW: News Clips – January 29, 2018

Not sure if you get this. Noticed articles on emission factors (MPG) and OIAI. B

From: Bremer, Kristen
Sent: Monday, January 29, 2018 12:10 PM
Subject: News Clips – January 29, 2018

News Clips – January 29, 2018

Air News

•□□□□□□□ Bad Science Underlies EPA's Air Pollution Program *(Center for Public Integrity)*

•□□□□□□□ EPA withdraws regulation on 'major sources' of pollution *(CNN)*

•□□□□□□□ EPA kills Clinton-era industrial standards *(Greenwire)*

•□□□□□□□ The Trump administration is lifting key controls on toxic air pollution *(Vox)*

•□□□□□□□ 2018 Environmental Performance Index: Air quality top public health threat *(Yale News)*

Climate

•□□□□□□□ Coal will falter without carbon capture — Moody's *(Climatewire)*

•□□□□□□□ Records show EPA chief's role in removing climate web pages *(The Hill)*

•□□□□□□□ Trump says Earth is 'too cold' and ice is expanding *(Climatewire)*

•□□□□□□□ First EPA chief: GOP climate change denial 'a threat to the country' *(The Hill)*

Reg Reform

•□□□□□□□ Trump reg czar pushes back against critics *(Greenwire)*

•□□□□□□□ Week ahead: EPA chief to face grilling on reg rollback *(The Hill)*

On the Hill

•□□□□□□□ Lawmakers to announce 'cap-and-dividend' bill today *(Climatewire)*

IRIS

•□□□□□□□ Dourson Calls On EPA To Expand IRIS Despite Program's Uncertain Future *(Inside EPA)*

Other News

•□□□□□□□ Top environmental group preparing to sue Trump's EPA *(The Hill)*

•□□□□□□□ Ohio State associate professor among scientists pushing back against EPA ban *(Columbus Dispatch)*

•□□□□□□□ "People will get sick and die": how Scott Pruitt is strangling the EPA *(Vox)*

•□□□□□□□ In reversal, EPA deals setback to controversial gold mining proposal in Alaska *(Washington Post)*

…And in Happier News

•□□□□□□□ New youth basketball league kicks off in Durham *(WTVD)*

Bad Science Underlies EPA's Air

Pollution Program

The Center for Public Integrity

By: Rachel Leven

Published: January 29, 2018

Engineer Jim Southerland was hired by the U.S. Environmental Protection Agency in 1971 to join the nascent war on air pollution. He came to relish the task, investigating orange clouds from an ammunition plant in Tennessee and taking air samples from strip mines in Wyoming. Among his proudest accomplishments: helping the agency develop a set of numbers called emission factors—values that enable regulators to estimate atmospheric discharges from power plants, oil refineries, chemical plants and other industrial operations.

By the time Southerland left the EPA in 1996, he was "frustrated and ticked off," he says, because the numbers he had helped develop were being misused. The original aim had been to paint a broad-brush picture of pollution. Instead, the numbers—meant to represent average emissions from industrial activities—were incorporated into permits stipulating how much pollution individual facilities could release. This happened despite EPA warnings that about half of these sites would discharge more than the models predicted. "These factors were not intended for permits," says Southerland, now retired and living in Cary, N.C.

The number of emission factors used by the EPA since Southerland's time has proliferated and stands at 22,693. The agency itself admits most are unreliable: It rates about 62 percent as "below average" or "poor." Nearly 22 percent are not rated at all. About 17 percent earned grades of "average" or better and only one in six has ever been updated. There is a slew of common problems, such as poor accounting for emissions from aging equipment.

The upshot: in some cases, major polluters are using flawed numbers to calculate emissions of substances such as benzene, a carcinogen, and methane, a powerful greenhouse gas. Regulators at times are flying blind. The factors color everything we know about air quality and many of the decisions the EPA and state environmental agencies make, from risk assessment to rulemaking.

In an e-mail, an EPA spokeswoman told the Center for Public Integrity that the agency has been working on the problem for a decade. "EPA believes it is important to develop emissions factors that are of high quality and reliable," she wrote.

Some experts, however, say the agency has not done enough. The unreliability of the numbers has been flagged over a period of decades by the EPA's own internal watchdog and other government auditors. "This is what tells you what's being put in the air and what you're breathing," says Eric Schaeffer, former head of civil enforcement at the EPA and now executive director of the Environmental Integrity Project, an advocacy group. "You don't want those numbers to be wrong."

ACCURACY QUESTIONS

Emission factors are based on company and EPA measurements as well as external studies. They are plugged into equations to estimate total emissions from industrial activities, such as the burning of coal in boilers.

As early as the 1950s regulators in places like Los Angeles were using emission factors to try to pinpoint the origins of dangerous smog episodes. The numbers allowed them to avoid "time-consuming, expensive testing programs and extensive surveys of individual sources," according to a 1960 paper by the Los Angeles County Air Pollution Control District.

In 1965 the U.S. Public Health Service—which regulated air pollution at the time—released its first comprehensive list of factors, a document the agency would label "AP-42" in a 1968 update. The EPA, created two years later, kept revising the estimates as they became more widely used in emission inventories depicting pollution levels and sources around the country.

The EPA knew early on there were problems with the numbers. In 1989, for example, the Office of Technology Assessment—a now-defunct, nonpartisan science adviser to Congress—reported many U.S. metropolitan areas had not met their goals for controlling smog-forming ozone in part because of inaccurate emission inventories. In 1990 amendments to the Clean Air Act, Congress gave the agency six months to make sure all emissions contributing to ozone formation were assigned up-to-date, accurate factors, and directed the EPA to review the numbers every three years thereafter.

The EPA missed both deadlines. It has failed to do at least some of the three-year reviews. It claims to have created all the necessary ozone-related factors, but questions about their accuracy remain.

For decades government watchdogs, including the EPA's Office of Inspector General, have pointed out deficiencies in the factors, which drive actions ranging from enforcement cases to the drafting of regulations. "We believe the status of emission factor development…is a significant weakness that impedes achievement of major air program goals," the IG wrote in a 1996 report. The EPA's dependence on industry studies because of funding constraints could result in factors that minimized pollution, it warned. The U.S. General Accounting Office—now the Government Accountability Office—reported in 2001 that polluters rely on the estimates even though "facilities' actual emissions can, and do, vary substantially from the published factors." The EPA's IG came back with a targeted reproach in 2014, questioning the validity of factors used to estimate methane emissions from some pipelines.

Still, there was little movement. Whereas emission factors are recognized as crucial tools in understanding air quality and underpinning inventories, they tend to be forgotten. "That foundation is buried to such an extent that it's not often appreciated," says David Mobley, who worked on emission factors in the 1990s. "The urgency is rarely there."

TEST CASE IN HOUSTON

Accurate pollution data matters. Consider what happened in the ozone-plagued city of Houston, a hub of oil refining and chemical manufacturing.

The city had been using emission inventories to guide its ozone-control strategy. Air monitoring by researchers in 2000 found levels of volatile organic compounds—highly reactive ozone precursors such as benzene, known as VOCs—were 10 to 100 times higher than what had previously been estimated. The study—conducted by what was then the Texas Natural Resource Conservation Commission, the EPA and more than 40 other public, private and academic institutions—singled out as culprits VOCs such as ethylene, a flammable gas used mainly in the production of plastics.

Houston, it turned out, had focused on controlling the wrong emissions from the wrong sources to lower its ozone levels, says Daniel Cohan, an associate professor of environmental engineering at Rice University. The city changed course, expanding VOC monitoring and developing rules to reduce emissions. Ozone production rates dropped by up to 50 percent in six years, Cohan and his colleagues found in a follow-up study (pdf). The study showed reliance on emission factors alone is a bad idea, Cohan says. "We need scientists to measure these pollutants in the air to find out how much is really being emitted," he says.

The underestimation problem surfaced at individual facilities as well, including Shell's 1,500-acre petrochemical complex in the Houston suburb of Deer Park. A study begun by the City of Houston and the EPA in 2010 showed levels of benzene wafting from one Shell tank were 448 times higher than what the relevant emission factor had predicted. The discrepancy led to an EPA enforcement action; in a consent decree (pdf), Shell agreed to pay a $2.6-million fine and spend $115 million to control pollution from flaring—the burning of gas for economic or safety reasons—and other activities. Shell did not respond to requests for comment, but a spokeswoman told the *Houston Chronicle*in 2013 "the provisions of the settlement are consistent with Shell Deer Park's objectives and ongoing activities to reduce emissions at the site and upgrade our flaring infrastructure."

Despite the findings of these studies and others, the EPA did not update emission factors for the U.S. refinery and petrochemical sector until 2015, seven years after Houston had petitioned the agency to do so and two years after it was sued by environmental justice groups.

UNRELIABLE METHANE ESTIMATES

The lowballing of pollution is not limited to toxic chemicals. Many emission factors used to estimate releases of methane—a potent greenhouse gas associated with oil and natural gas development—are "far too low," says Robert Howarth, an ecology and environmental biology professor at Cornell University. Identifying how much methane these operations discharge can help scientists calculate the impact of natural gas—which in 2016 displaced coal as the nation's biggest source of electric power generation—on global warming. This is crucial to preventing "runaway climate change," Howarth says.

Much remains unknown. A 2015 study sponsored by the Environmental Defense Fund found

methane releases from oil and gas production and processing in the Barnett Shale Formation in northern Texas were 90 percent higher than what the EPA's Inventory of U.S. Greenhouse Gas Emissions had estimated.

About a third of the factors used to estimate pipeline leaks and other natural gas emissions in the most recent inventory, for 2015, are based on a 1996 study by the EPA and an industry group then known as the Gas Research Institute. The EPA's IG found (pdf) in 2014 "there was significant uncertainty in the study data," meaning the EPA's assumptions on the amount of methane that spews from pipelines "may not be valid."

The harm caused by faulty estimates extends beyond oil and gas. An emission factor designed to estimate ammonia releases from poultry farms, for example, "is probably far too low," according to a report (pdf) by the Environmental Integrity Project. These emissions contribute to problems like algae blooms, which can spread rapidly and kill marine life in waterways like the Chesapeake Bay.

"PANDORA'S BOX OF PROBLEMS"

The EPA, according to its spokesperson, has begun executing a plan to improve the science that underlies emission factors and review the estimates more frequently. Among the changes: some companies now must report pollution data electronically to the agency.

The Trump administration proposed slashing the EPA's budget by 31 percent for fiscal year 2018, although Congress has so far extended existing funding levels through a series of short-term resolutions. Progress on emission factors will hinge on "available resources," the EPA spokeswoman wrote in an e-mail, declining to specify a deadline for the project.

The agency said it does not intend to limit the use of emission factors to the purpose for which they were originally intended—to inform pollution inventories. That means, for example, the numbers will still be used in permits.

Many in industry are fine with that. When the EPA asked in a 2009 *Federal Register* notice for

suggestions on how to improve the system, companies from electric power generators to auto manufacturers argued for the status quo, saying emission factors were sometimes their only data option. Trade groups like the American Petroleum Institute and the American Chemistry Council argued their members should not be penalized if the EPA discovered a deficient factor had caused a permit to underestimate pollution. API said it worried that additional industry data supplied to the EPA to help it improve the numbers "could be misused for enforcement or other purposes." Neither group responded to requests for comment.

Public health advocates, on the other hand, want more. Some companies game the system to avoid EPA permitting fees and civil penalties, says Neil Carman, clean air director for the Lone Star Chapter of the Sierra Club in Austin. "We don't know what the emissions really are," he says. "It's a real Pandora's box of problems."

Carman and other advocates say they understand emission factors will have to be used in some circumstances, and that some types of pollution can be estimated with reasonable accuracy. They also maintain, however, that air monitoring should be more widely deployed. "Where you can do direct monitoring of emissions, that should be required," says Schaeffer, of the Environmental Integrity Project.

Schaeffer faults the EPA for giving some companies an out. It allows operators of power plants, for example, to choose between using continuous monitoring to measure fine particles or a combination of quarterly testing and emission factors. Some of these plants already have monitoring systems installed, Schaeffer says, but "it's easier to mask noncompliance using emission factors."

SHINING A "BRIGHT LIGHT" ON POLLUTION

California's Bay Area Air Quality Management District changed its approach after studies showed leaks from oil refineries in the area—known as fugitive emissions—were likely underrepresented in emission factors. "We decided, based on that information, that we needed additional ways to better identify fugitive emissions and to shine a bright light on those fugitive emissions," says Eric Stevenson, the district's director of meteorology, measurement and rules.

In 2016 the district urged refineries to install "open path" monitoring systems—which use beams of light to detect the presence of gases like benzene—and make the data available to the public in real time. Chevron installed such a system on the perimeter of its refinery in Richmond, Calif.,

in 2013.

The company did not respond to specific questions about the monitoring but said its focus “on running the refinery efficiently and investing in new technologies” has significantly reduced air pollution since the 1970s. Denny Larson, executive director of the Community Science Institute–CSI for Health and Justice, an environmental group that helps the public test for pollution, says the system in Richmond shows levels of chemicals in the air at a given moment and can alert residents to emission spikes that can trigger asthma attacks and other serious health problems.

“It’s showing lots of pollution has been flying under the radar that’s extremely toxic and problematic,” Larson says. “We can prove what we’ve always known.”

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EPA withdraws regulation on 'major sources' of pollution

CNN International

By: Veronica Stracqualursi

Published: January 27, 2018

*Washington (CNN)*The Environmental Protection Agency is withdrawing a policy that requires facilities, such as power plants, that are "major" sources of hazardous air pollutants to remain classified as major sources even if they lowered their emissions.

Rolling back the policy, which was first implemented in 1995 under the Clean Air Act, follows several moves by the Trump administration to rescind environmental regulations. Environmentalists charge that the moves have often had the effect of benefiting the industries the agency is supposed to be regulating, as opposed to protecting health and the environment.

The move allows major facilities to be reclassified as "area" sources after they reduce the air toxins they emit to levels below what defines a major source. A major source, according to the EPA's standards, emits 10 tons or more of pollutants a year or 25 tons or more of a combination of pollutants.

The EPA argued that the "once in always in" policy has been a "longstanding disincentive" to pursue technology that would cut pollution.

"It will reduce regulatory burden for industries and the states, while continuing to ensure stringent and effective controls on hazardous air pollutants," Bill Wehrum, the assistant administrator of the agency's Office of Air and Radiation, said in a statement.

The agency said it also had no statutory authority under the Clean Air Act to enforce a time limit on when a facility can be reclassified as an area source.

John Coequyt, the global climate policy director for the environmental group Sierra Club, called it an "appalling attack" on public health and clear air.

"(President Donald) Trump and (EPA Administrator Scott) Pruitt are essentially creating a massive loophole that will result in huge amounts of toxic mercury, arsenic, and lead being poured into the air we breathe, meaning this change is a threat to anyone who breathes and a benefit only to dangerous corporate polluters," Coequyt said in a statement.

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EPA kills Clinton-era industrial standards

Greenwire

By: Sean Reilly

Published: January 26, 2018

Barely two weeks after Republican lawmakers sought to scrap a Clinton-era air policy intended to limit industrial pollution, U.S. EPA air chief Bill Wehrum obliged yesterday, saying in a memo that the "once in, always in" policy ran contrary to the Clean Air Act.

Wehrum's decision, effective immediately, won swift applause from industry groups but denunciations from environmental organizations, one of which vowed to fight it "with every available tool."

The policy, dating back to 1995, had applied to factories and other "major" industrial pollution sources subject to maximum achievable control technology (MACT) standards because they annually release more than 10 tons of a single air toxic or 25 tons of any combination of hazardous pollutants.

Under the policy, the standards remained in place even if a facility's emissions dropped below the relevant thresholds on the grounds that a polluter could otherwise backslide.

But in yesterday's memo, Wehrum said that interpretation was not authorized by the "plain language" of the Clean Air Act. Revoking it "will reduce regulatory burden for industries and the states, while continuing to ensure stringent and effective controls on hazardous air pollutants," he said in an accompanying press release. EPA plans to seek public comment, he indicated in the memo.

Repeal was welcomed by Senate Environment and Public Works Chairman John Barrasso (R-Wyo.). Together with Sen. Shelley Moore Capito (R-W.Va.), Barrasso had urged EPA earlier this month to scrap the policy, saying that it in fact acted as disincentive to curb emissions (*E&E Daily*, Jan. 10). In a press release yesterday, he called Wehrum's decision "consistent with President Trump's agenda to keep America's air clean and our economy growing."

Also praising the move was the American Forest & Paper Association, where President and CEO Donna Harman said it would reduce and "remove disincentives to voluntary efforts and technical innovations that could reduce emissions."

John Walke, clean air director at the Natural Resources Defense Council, ranked repeal among the "most dangerous actions" yet taken by the Trump administration and said it "drastically weakens" protective limits on arsenic, lead and other air pollutants.

"NRDC will fight this terrible decision to unleash toxic pollutants with every available tool," Walke said.

In ending the "once, in always in" policy, Wehrum could be seen as tending to unfinished business dating back to his stint as acting EPA air chief from 2005 to 2007 during George W. Bush's administration. During that time, EPA proposed rescinding the 1995 directive but was blocked by Congress. While EPA never took final action on that 2007 proposal, Wehrum wrote yesterday, it was never withdrawn.

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The Trump administration is lifting key controls on toxic air pollution

Vox

By: Umair Irfan

Published: January 26, 2018

The Environmental Protection Agency just took a dramatic step toward deregulating some major sources of toxic air pollution, which could have huge implications for public health.

Under Section 112 of the Clean Air Act, the EPA is required to regulate facilities that emit one or more of 189 hazardous air toxics like benzene, dioxin, and lead that cause health problems such as cancer and birth defects.

A facility like a chemical plant or a factory is classified as "major" by the Clear Air Act if it has the potential to emit more than 10 tons of an individual toxic chemical or 25 tons of a combination of toxics into the air per year. Those that cross this line have to deploy the "maximum achievable control technology" (MACT) to reduce pollution as much as possible with the best hardware that's available.

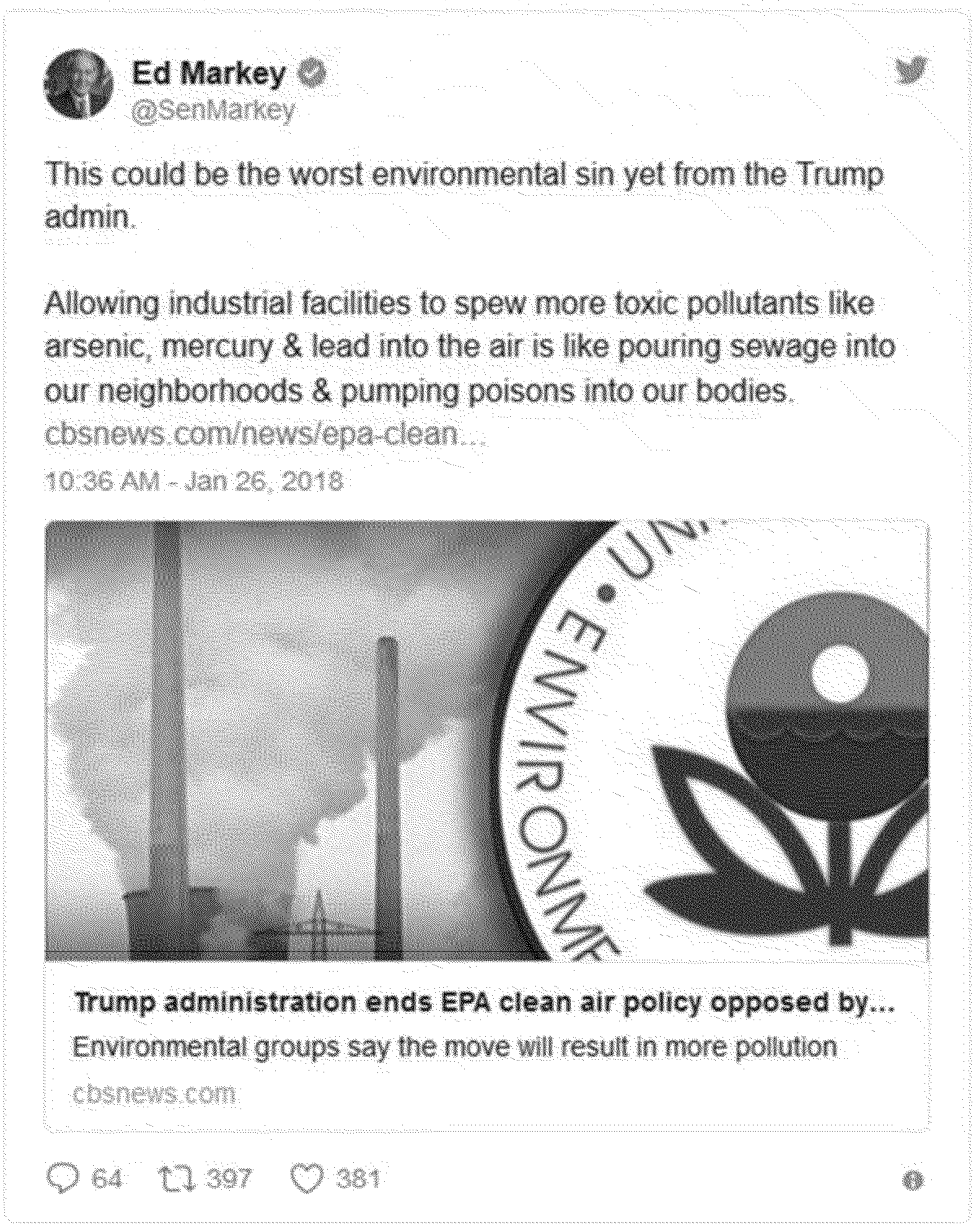
Pollution sources that are regulated under this major sources standard are subject to these regulations indefinitely. But the new EPA guidance, detailed in a memo published Thursday, ends the "once in, always in" policy based on a "plain language reading" of the Clean Air Act. That means that once a pollution source brought its air emissions below the threshold for a major source, it would be held to the standard for an "area source," or anything that isn't a "major source," instead.

In other words, once a "major source" reduces its pollution below the line, it doesn't have to keep using the best equipment to continue reducing pollution. Crucially, this rating downgrade means that air pollution from some of these facilities would suddenly be completely unregulated.

The EPA did not respond to a request for comment at the time of filing.

"The possibility seems very likely that some [downgraded] sources could actually increase their emissions as long as they don't hit the cap," said Janice Nolen, assistant vice president for national policy at the American Lung Association, who added that changing these rules would remove an important tool for the public to enforce air quality laws.

On Twitter, Sen. Ed Markey (D-MA) called it perhaps "the worst environmental sin yet from the Trump [administration]."



The policy change seems to be a favor to mainly steel, paper, and chemical companies that have argued that major sources standard Section 112 is an expensive proposition that could put them out of business.

"Withdrawal of this policy means manufacturers, oil and gas operations, and other types of industrial facilities will have greater incentive to reduce emissions," Sen. John Barrasso (R-WY),

chair of the Senate Environment and Public Works Committee, told the Washington Examiner. "Now these companies can help protect the environment without wasting time and money on unnecessary red tape."

And in a press release, Bill Wehrum, assistant administrator of EPA's Office of Air and Radiation, said the policy was intended to "reduce regulatory burden for industries and the states."

But he also claimed it would do this "while continuing to ensure stringent and effective controls on hazardous air pollutants."

This, according to John Walke, who leads the climate and clean air program at the Natural Resources Defense Council, is "word goulash. It's just nonsense."

Moving to a much lower standard would certainly "reduce regulatory burden," but it would also make the controls weaker or put the regulations in the hands of states, many of which don't allow citizens to sue for air quality permit violations. And overall, the directive would lead to a massive surge in toxic air pollution from hundreds of industries, Walke said.

The EPA release goes on to say that the old policy was "a longstanding disincentive for sources to implement voluntary pollution abatement."

This too is very dubious. If you imagine a scenario where a chemical plant brought its emissions of chlorine gas down from 50 tons per year to 15 tons with the best technology on the market, the old "once in, always in" policy made it so there was no incentive to reduce these emissions further, since the plant was already complying with the rules.

But with the possibility of getting out from under these regulations by bringing chlorine emissions below 10 tons per year, the company would invest in even better technology to reduce pollution further, according to the EPA.

However, for companies that are already below the 10-ton limit for an individual pollutant or the 25-ton limit for a group of pollutants, adhering to rules that are less strict would allow them to backslide, Walke warned.

In fact, the EPA reached a similar conclusion back in 1995. "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," read an agency memo (emphasis added).

Ann Carlson, a professor at the UCLA School of Law, added that the major source standard is designed to evolve over time, since polluters are required to meet the emissions levels achieved by the top 12 percent of all existing sources of air pollution.

"[I]f the top 12 percent improve the standards, the standards ratchet more tightly," Carlson wrote in an email. "That means that emissions can continue to fall even further."

But if a factory or plant is held to the area standard, the rate of decline in pollution could level off, or reverse, since these facilities don't have to use the best scrubbers and monitoring equipment to control their emissions.

Changing the "once in, always in" rule has been a long-running project for the EPA's Wehrum.

He previously spent six years in the EPA's air office under President George W. Bush. In between his previous and current government posts, Wehrum represented clients including the American Petroleum Institute, the American Fuel and Petrochemical Manufacturers, the American Chemistry Council, and the Utility Air Regulatory Group, many of which wanted to end the "once in, always in" rule.

In 2007, Wehrum tried to undo this policy until he was blocked by Congress. An internal EPA memo from the agency's regional directors at the time reported that changing the rule "would be detrimental to the environment and undermine the intent of the MACT program."

Earlier this month, Senate Republicans sent a letter to EPA Administrator Scott Pruitt asking repeal the air pollution policy, and Wehrum, who rejoined the EPA in November, obliged.

At this point, the memo is just a guidance document, meaning it doesn't carry the weight of law but explains how the agency is interpreting existing rules. However, the memo doesn't use the EPA's usual careful, hedging language, so it's likely intended to be the new de facto policy, circumventing the torturous rulemaking process.

The EPA plans to publish a request for comment in the federal register on the agency's interpretation of the Clean Air Act.

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2018 Environmental Performance Index: Air quality top public health threat

Yale News

By: Zachary A. Wendling

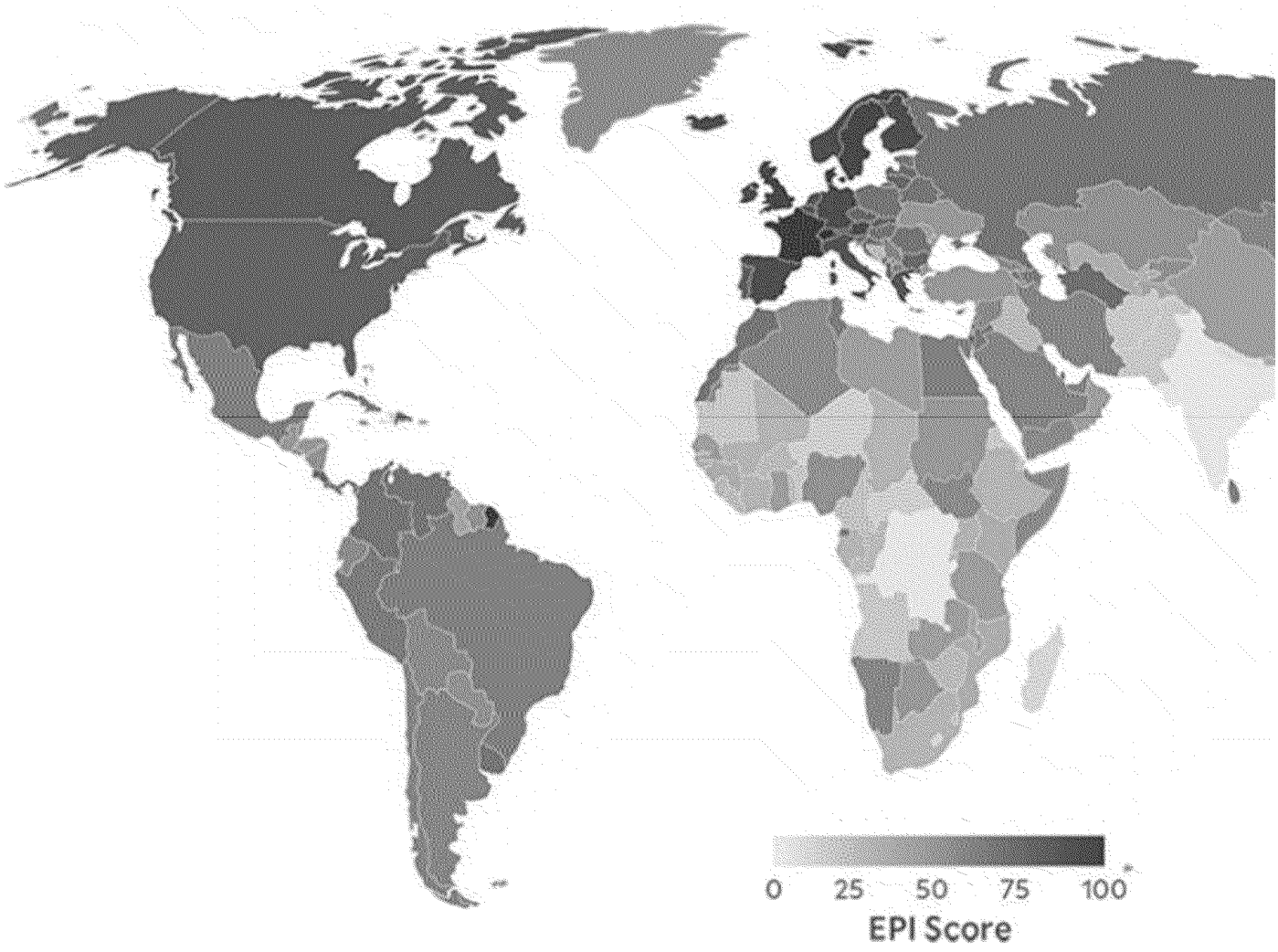
Published: January 25, 2018

The 2018 Environmental Performance Index (EPI) finds that air quality is the leading environmental threat to public health. Now in its twentieth year, the biennial report is produced by researchers at Yale and Columbia Universities in collaboration with the World Economic Forum. The tenth EPI report ranks 180 countries on 24 performance indicators across 10 issue categories covering environmental health and ecosystem vitality. Switzerland leads the world in sustainability, followed by France, Denmark, Malta, and Sweden.

Switzerland's top ranking reflects strong performance across most issues, especially air quality and climate protection. In general, high scorers exhibit long-standing commitments to protecting

public health, preserving natural resources, and decoupling greenhouse gas (GHG) emissions from economic activity.

India and Bangladesh come in near the bottom of the rankings, with Burundi, Democratic Republic of the Congo, and Nepal rounding out the bottom five. Low scores on the EPI are indicative of the need for national sustainability efforts on a number of fronts, especially cleaning up air quality, protecting biodiversity, and reducing GHG emissions, said the researchers. Some of the lowest-ranking nations face broader challenges, such as civil unrest, but the low scores for others can be attributed to weak governance, they note.



EPI Rankings

The United States places 27th in the 2018 EPI, with strong scores on some issues, such as sanitation and air quality, but weak performance on others, including deforestation and greenhouse gas emissions. This ranking puts the United States near the back of the industrialized nations, behind France (2nd), the United Kingdom (6th), Germany (13th), Italy (16th), Japan (20th), and Canada (25th).

Of the emerging economies, China and India rank 120th and 177th respectively, reflecting the strain population pressures and rapid economic growth impose on the environment, note the researchers. Brazil ranks 69th, they add, suggesting that a concerted focus on sustainability as a policy priority will pay dividends – and that the level and pace of development is just one of many factors affecting environmental performance. Sustainability outcomes among emerging economies remains highly variable.

Seychelles ranks as the most-improved country over the past decade, due largely to its commitment to combating greenhouse gas emissions. São Tomé and Príncipe, Kuwait, and Timor-Leste also increased their ranking due to several factors, including the establishment of areas protecting biodiversity and habitat. Burundi, Central African Republic, Madagascar, the Bahamas, and Latvia slipped significantly in environmental performance, largely due to sub-par performance on climate change. All trend analyses are based on backcasting this year's EPI methods on historical data.

2018 EPI Trends

The 2018 EPI offers not only a snapshot of where countries stand today but also reflects important trends in environmental performance at both the national and global levels. The global community is generally improving on a number of issues, such as health outcomes related to drinking water and sanitation and protection of marine ecosystems, while on other issues significant challenges remain.

Fisheries continue to deteriorate in most countries, with significant problems in El Salvador, Papua New Guinea, and Portugal. Substantial populations still suffer from poor air quality, most notably in India, China, and Pakistan. And on some issues, a small number of countries are

failing to address critical problems. Indonesia, Malaysia, and Cambodia, for example, have experienced significant deforestation over the past five years, reflecting broad policy failures, said the researchers.

EPI and Policy

Analysis of the policy drivers underlying the 2018 EPI rankings makes it clear that income is a major determinant of environmental success, said the researchers, noting that investments in safe drinking water and modern sanitation, in particular, translate quickly into improved environmental health results. Yet at every level of development, some countries achieve scores that exceed their peer nations with similar economic circumstances, demonstrating that good governance and careful policy choices also affect outcomes, they add.

"As the world community pursues new sustainable development goals, policymakers need to know who is leading and who is lagging on energy and environmental challenges," said Daniel C. Esty, director of the Yale Center for Environmental Law & Policy and the Hillhouse Professor at Yale University. "The 2018 EPI confirms that success with regard to sustainable development requires both economic progress that generates the resources to invest in environmental infrastructure and careful management of industrialization and urbanization that can lead to pollution that threatens both public health and ecosystems."

Watch a conversation between Professor Esty and Yale President Peter Salovey at the World Economic Forum in Davos, Switzerland below.

EPI and Global Sustainability Data

The EPI builds on the best available global data from international research entities, such as the Institute for Health Metrics and Evaluation, the World Resources Institute, and the Sea Around Us Project at the University of British Columbia, as well as international organizations such as the World Bank and the UN Food and Agriculture Organization.

Nevertheless, serious data gaps limit the ability to measure results – and particularly changes in

performance – on a number of important issues. “As the EPI project has highlighted for two decades, better data collection, reporting, and verification across a range of environmental issues are urgently needed,” said Zach Wendling, principal investigator of the 2018 EPI. “The world needs better data on sustainable agriculture, water resources, waste management, and threats to biodiversity. Supporting global data systems is one of the most important steps the world community can take to achieving sustainable development goals.”

Complete methods, data, and results — including those for individual countries — are available online here.

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Coal will falter without carbon capture — Moody's

Climatewire

By: Jean Chemnick

Published: January 29, 2018

U.S. coal production can't survive at current levels without the development of carbon capture and storage technology, a major ratings agency said last week.

Moody's Investors Service cautioned in a report released Thursday that international concern over climate change could dampen interest in U.S. exports abroad while market conditions continue to erode demand at home. The solution, it said, is to find a way to limit coal's emissions.

"The continued development of carbon capture and storage could be a game-changer for US coal producers in the long run, in that it could slow the industry's decline," Anna Zubets-Anderson, Moody's vice president and senior analyst, said in a press statement.

"Absent disruptive changes in available technology, policy and prices," Moody's report estimates that coal's share in U.S. power generation will drop between 20 and 25 percent within the next 10 years. International exports are unlikely to make up the difference, and U.S. coal producers face a "steady, secular decline."

It attributes this trend in part to investor nervousness over possible environmental regulation, which would be eased by the rise of a commercially viable CCS option. The report does not identify U.S. or international environmental policies that would necessitate the use of CCS, pointing only to the goals of the nonbinding Paris Agreement.

Support for CCS has been flagging in recent years. In the United States, an absence of federal carbon policy and increasingly inexpensive alternatives, including natural gas, have led the power sector away from using coal. Meanwhile, federal efforts to boost CCS have been inconsistent, with the current administration proposing a steep cut to the Energy Department office primarily responsible for the technology.

"The amount of research money going into CCUS [carbon capture, utilization and storage] is very small in comparison to some other areas. I don't think we're going to successfully address climate change without bringing down the cost of carbon capture and figuring out how to manage emissions that will be coming out of existing coal plants around the world for decades to come," said David Sandalow, who has held senior positions at the White House and in the State and Energy departments in past administrations and is now at the Center on Global Energy Policy at Columbia University. "I'd like to see this administration focus on technologies of the future, not technologies of the past."

White House energy adviser George David Banks has floated the idea of a "clean coal alliance" that would deploy lower-carbon fossil fuels technologies throughout the world. While it's unclear if CCS would be a priority of that project, World Coal Association CEO Benjamin Sporton said progress on the technology would be welcome.

"The Intergovernmental Panel on Climate Change has always maintained that without CCS, achieving the Paris Agreement goals is almost impossible," he noted. "This is why we are pleased to hear President Trump's support for cleaner coal technologies, which includes CCS, and urge him to work with the industry to accelerate deployment."

Support for the technology abroad has faltered, too. David Victor, director of the Laboratory on International Law and Regulation at the University of California, San Diego, noted that China lacks a policy to promote CCS, and there are currently no CCS projects under development on the European continent due to a lack of funding.

"It's easy to talk about this stuff, it's actually committing the money that's hard," he said.

Norway stands virtually alone, he said, in having a "strong, credible policy" to promote CCS, including two large offshore injection sites for carbon dioxide. The country has a strong commitment to climate change but is also driven by concern for the future of the oil and gas industry, which is an important source of its national wealth.

Gas-fired power plants could require CCS by the second half of the century as well if the world is to keep pace with the Paris Agreement's long-term objectives.

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Records show EPA chief's role in removing climate web pages

The Hill

By: Timothy Cama

Published: January 29, 2018

Environmental Protection Agency (EPA) chief Scott Pruitt was personally involved in the process to remove sections on climate change from the agency's website, records obtained by a green group show.

The Environmental Defense Fund (EDF) said the records it obtained via the Freedom of

Information Act show a high degree of involvement by Pruitt in the April 2017 process of removing climate sections and replacing several of them with a section on President Trump's executive order to roll back the Clean Power Plan.

Environmentalists have been highly critical of the EPA's decision to remove the pages, some of which still haven't been replaced and forward to a page about the removal process.

In one April email to colleagues in the EPA's communications office, Lincoln Ferguson, an adviser to Pruitt, asks how close they are to removing and replacing the Clean Power Plan section.

"The Administrator would like it to go up ASAP. He also has several other changes that need to take place," Ferguson wrote.

J.P. Freire, then the head of communications, responded, "you can tell him we . . . are just finishing up."

Ferguson then asked if the change could happen that day. "Just asking because he is asking."

In another email change, Susan Fagan in the EPA's Office of Environmental Information asks another staffer if people searching for the Clean Power Plan can be directed to the section on Trump's climate executive order, which the staffer obliged.

EDF said the records further prove the danger in hiding the climate information from the public.

"Obscuring information thwarts meaningful public participation in EPA's work to protect Americans' health and safety," Ben Levitan, an EDF attorney, said in a statement. "It reinforces serious concerns that Pruitt has predetermined that he will repeal the Clean Power Plan, and that the current rulemaking process is a sham."

EPA spokesman Jahan Wilcox defended the changes and said that the old information is still available to the public.

"We are constantly updating our website to reflect new initiatives and projects of the agency," he said. "Of course the site will be reflective of the current administration's priorities — with that said, all the content from the previous administration is still easily accessible and publicly available-through the banner across the top of our website: www.epa.gov."

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Trump says Earth is 'too cold' and ice is expanding

Climatewire

By: Zack Colman

Published: January 29, 2018

President Trump expressed deep skepticism about mainstream climate science in his first international TV interview since taking office, making incorrect statements about global temperatures and Arctic sea ice.

The statements, made in an interview with Piers Morgan during the World Economic Forum in Davos, Switzerland, are some of the lengthiest Trump has made on climate change since his inauguration more than a year ago.

They suggest that his time in the White House hasn't corrected his views on global warming. Trump has amplified misinformation related to climate science over the years — primarily through Twitter — and he resumed echoing debunked concepts yesterday.

"There is a cooling, and there's a heating. I mean, look, it used to not be climate change, it used to be global warming," he said in the interview, which aired yesterday on ITV. "That wasn't working too well because it was getting too cold all over the place."

The world, in fact, is getting warmer — not colder.

Global temperatures are steadily rising. NASA and NOAA said that 2017 was the 41st consecutive year of above-average global temperatures and that the pace of warming has accelerated. NASA recently identified last year as the second warmest since record keeping began in 1880, while NOAA said it was the third warmest — a notable feat given the lack of an El Niño, which typically raises temperatures.

This year is likely to be in the top five warmest years ever, if not the top two, according to NASA and NOAA researchers. The warmest years on record are 2016 and 2015.

Trump's comments came as his administration is readying an infrastructure push that will aim to repeal provisions of major environmental laws. The administration also has pursued a deregulatory agenda to boost fossil fuel production, hoping to usher in a period of "energy dominance" that wields energy exports as a geopolitical and economic tool — a message he and his Cabinet took to Davos last week.

"I believe in just having good cleanliness in all" regarding air and water pollution, Trump said in the interview yesterday. He also reiterated his disapproval of the Paris climate accord. But, as he has in the past, Trump said the United States might remain in the global pact under the right terms.

"First of all, it was a terrible deal for the U.S. If they made a good deal, there's always a chance we'd get back. But it was a terrible deal for the U.S. It was unfair to the U.S.," Trump said. "If somebody said, 'Go back into the Paris accord,' it would have to be a completely different deal, because we had a horrible deal."

Trump signaled an intent to withdraw from the Paris deal, but the United States cannot formally

exit until November 2020. If Trump fulfills his pledge, the United States will be the only country in the world outside the Paris Agreement. And while Trump has remarked about forcing different terms in the accord, he has not offered any details on what that means, and other nations have said they won't renegotiate the pact.

One reason Trump might consider remaining in the agreement is his relationship with French President Emmanuel Macron, Trump said yesterday. Macron has made addressing climate change a priority for his administration, following France's role in establishing the global pact in 2015.

"As usual, they took advantage of the U.S. We were in a terrible deal," Trump said. "Would I go back in? Yeah, I'd go back in. I like, as you know, I like Emmanuel. I would love to, but it's got to be a good deal for the U.S."

Aside from discussing temperatures and the Paris climate accord, Trump also dove into comments on Arctic sea ice. On that, too, he made false statements.

"The ice caps were going to melt, they were going to be gone by now, but now they're setting records," Trump said, suggesting that polar ice overall is expanding. "They're at a record level."

The Arctic and Antarctic saw record lows for sea ice last year.

Many scientists fear that the feedback loop from higher temperatures will continue to diminish sea ice, reducing reflective surfaces on Earth. The reduced albedo effect is believed to be contributing to higher temperatures as darker areas absorb more sunlight.

Scientists expressed dismay at the president's interpretation of climate science.

"This is insane," tweeted Jon Foley, executive director of the California Academy of Sciences, referring to a story about the president's comments in Britain's *Independent* newspaper. "Trump

has access to the best scientists in the world, but he gets his science information from cable tabloid shows and talk radio."

Peter Gleick, co-founder of the Pacific Institute, tweeted: "It's not surprising Trump spouts incorrect, deceptive #climate nonsense: he is scientifically illiterate, has no science advisor, and gets his only information from a talk show with people equally ignorant and intentionally misleading."

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First EPA chief: GOP climate change denial 'a threat to the country'

The Hill

By: Brandon Carter

Published: January 27, 2018

The first head of the Environmental Protection Agency (EPA) slammed President Trump and Republicans in a new interview, saying their environmental policies and denials of the threat posed by climate change are dangerous for the U.S.

"It's a threat to the country," William Ruckelshaus, the first head of the EPA who was appointed under former President Nixon, told HuffPost. "If you don't step up and take care of real problems, and don't do anything about it, lives will be sacrificed."

"They certainly are killing everything," he continued.

Ruckelshaus compared Trump's EPA chief, Scott Pruitt, to Anne Gorsuch, a former EPA administrator under President Reagan who was held in contempt of Congress after refusing to turn over records related to the mishandling of toxic waste.

"They don't believe in the mission of the agency," Ruckelshaus told HuffPost. "Neither one of them did. Anne Gorsuch did not, and I don't think Pruitt does either. They think we're over-regulating."

The former EPA head ripped Pruitt, saying he has an "ideological approach" to running the EPA, one "that affects the large contributors in his party in Oklahoma." He also slammed Pruitt's attitude toward climate change research.

"If your position is, 'I don't believe the science, therefore I'm going to get rid of all the scientists studying this, and let's not mention it in any public announcement,' that's just crazy," Ruckelshaus said. "What you want to do is more science."

In October, Pruitt formally proposed repealing former President Obama's landmark climate change rule for power plants.

Trump in June also said he would withdraw the United States from the Paris climate agreement, pulling back another part of Obama's climate work.

The Clean Power Plan was the centerpiece of America's commitment to the Paris deal.

Pruitt has also planned to hold a public debate to challenge consensus on climate change science, but that plan was put on hold last month.

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Trump reg czar pushes back against critics

Greenwire

By: Maxine Joselow

Published: January 26, 2018

The Trump administration's regulatory czar today pushed back against criticism from the left that agencies are recklessly rolling back important protections for health, safety and the environment.

"We want to be quite clear that we are not dismantling important health and safety regulations," Office of Information and Regulatory Affairs Administrator Neomi Rao told a gathering at the Brookings Institution this morning.

"We're proceeding with deregulation in a way that is careful, and we're applying the same cost-benefit standards to both deregulation and regulatory actions," Rao said.

She added, "I sometimes hear from critics that deregulation is just a way to help big business or special interests. But I think if you look closely ... what we're really focused on is lifting regulatory requirements that are no longer working for the American people."

Environmental and public interest groups have criticized the administration for seeking to repeal major rules aimed at protecting air and water quality, most notably the Clean Power Plan and the Clean Water Rule.

Some observers have accused U.S. EPA of "cooking the books" and downplaying the Clean Power Plan's benefits to society while exaggerating its costs to industry (*see related story*).

"Benefits are of course important to us," Rao said.

"As to the Clean Power Plan, those were all important concerns that were raised," she added in response to an audience member's question.

Rao's remarks came as President Trump touted his administration's push for deregulation at the World Economic Forum in Davos, Switzerland (*see related story*).

Like the president, Rao highlighted the administration's second regulatory plan, which showed that Cabinet agencies have eliminated 22 rules for every new one issued, far exceeding the original two-for-one goal (*E&E News PM*, Dec. 14, 2017).

And she sought to allay concerns about reports of fake comments on rulemakings at several agencies, including the Federal Energy Regulatory Commission (*E&E News PM*, Jan. 24).

"Since we've become aware of the problem, we've taken it extremely seriously," Rao said of the fake comments. "We are already working very hard to try to implement procedures that can cut back and eliminate these problems."

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Week ahead: EPA chief to face grilling on reg rollback

The Hill

By: Timothy Cama

Published: January 29, 2018

Environmental Protection Agency (EPA) head Scott Pruitt will head to a Senate committee this week for his first oversight hearing in that chamber since taking the job.

Pruitt is due to testify Tuesday morning as the sole witness at an Environment and Public Works Committee hearing.

The event is likely to highlight Democratic senators strong objections and Republicans' warm support for Pruitt's aggressive deregulatory agenda in his nearly one year in office.

Pruitt has started to roll back nearly all of the major elements of the Obama administration's EPA agenda, like the Clean Power Plan and the Clean Water Rule.

He has even started to dig farther back than Obama, with a regulatory change this week that lets some major polluting facilities be subject to less stringent air emissions standards.

Democrats on the Environment Committee, led by Sen. Tom Carper (D-Del.) have been vocal about their objections. They see Pruitt as one of the most dangerous administrators in the agency's history, and they are likely to be aggressive in their questioning.

The Republicans, led by Chairman John Barrasso (R-Wyo.), have also been vocal about Pruitt, often praising his environmental rollbacks. They are likely to push back hard against Democratic criticisms.

Both the House and Senate will be in session in the coming week. All eyes will also be on President Trump when he delivers his first State of the Union address Tuesday.

Expect Trump to tout his energy agenda.

Trump has highlighted his decision to open the Arctic National Wildlife Refuge to oil and natural gas drilling and pledge to pull out of the Paris climate change agreement as two of his key energy and environmental accomplishments. He's also boasted about his aggressive deregulatory agenda across the government, which he is likely to spotlight as well.

Elsewhere in the Senate, the Energy and Natural Resources Committee will vote Tuesday on four Trump administration nominees: Melissa Burnison for the Department of Energy's assistant secretary for congressional and intergovernmental affairs, Susan Combs for the Interior Department's assistant secretary for policy, management and budget, Ryan Nelson for Interior's

solicitor and Anne White for the Department of Energy's assistant secretary for environmental management.

Combs and Nelson were both nominated and had committee votes last year. But the Senate had to send them back to the White House at the end of the year because it could not get unanimous consent to hold them over to 2018.

Combs and Nelson are subject to a hold by Sen. Bill Nelson (D-Fla.). Nelson wants assurances from Interior Secretary Ryan Zinke that Florida's waters are removed from the Trump administration's upcoming offshore drilling plan.

The hold means that if Senate Majority Leader Mitch McConnell (R-Ky.) wanted to schedule votes for Combs and Nelson in the full Senate, he would need to schedule 30 hours of debate for each one.

After that Energy Committee vote, the panel will hold a hearing on natural hazards, featuring officials from the U.S. Geological Survey, the Forest Service and other stakeholders.

On the House side, the Science Committee will hold a hearing on the Energy Department's management and priorities. Lawmakers will hear from undersecretary for science Paul Dabbar and undersecretary for energy Mark Menezes.

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Lawmakers to announce 'cap-and-dividend' bill today

Climatewire

By: Josh Kurtz

Published: January 29, 2018

Democrats in the Senate and House plan to introduce "cap-and-dividend" legislation this week, a new entry into the limited debate on Capitol Hill about how to combat climate change.

The "Healthy Climate and Family Security Act," sponsored by Sen. Chris Van Hollen (D-Md.) and Rep. Don Beyer (D-Va.), would set CO2 emissions caps and auction carbon credits to the first sellers of coal, oil and natural gas into the U.S. market. The dividends would be returned to American taxpayers quarterly.

"The Healthy Climate and Family Security Act is a simple, effective, and transparent way to combat climate change while supporting economic growth and a thriving middle class," a summary sheet on the pending legislation argues. "The solution is market based, pro-growth, and is built to last."

Van Hollen and Beyer are scheduled to explain their bill in a press call this afternoon. They will be joined on the teleconference by the Rev. Lennox Yearwood, president and CEO of the Hip Hop Caucus, and Mike Tidwell, director of the Chesapeake Climate Action Network. The Sierra Club and Environmental Defense Fund are also supporting the legislation, the lawmakers said.

According to the summary provided to E&E News yesterday, the bill would:

- Use a declining cap to reduce CO2 emissions to 80 percent below 2005 levels by 2050.
- Auction carbon permits to the first sellers of oil, coal and natural gas into the U.S. market.
- Return 100 percent of auction proceeds to every American with a valid Social Security number in the form of a "Healthy Climate Dividend."
- Include border adjustment protections to ensure U.S. companies are not disadvantaged when competing against foreign competitors at home or abroad.
- Achieve additional greenhouse gas emissions reductions through the Clean Air Act and other relevant authorities.

The Treasury Department would conduct the emissions auctions and distribute the proceeds to taxpayers.

Beginning in 2019, crude oil refineries, petroleum importers, coal mines, coal importers and natural gas suppliers or processors would be required to purchase carbon permits equivalent to the amount of CO2 emitted by covered fuels. Treasury would auction these permits to those entities.

The bill would provide for the trading or sale of permits between entities and allow banking of permits for future years.

"The approach taken by this legislation will enable the United States to achieve scientifically driven reductions in greenhouse gas emissions while supporting vibrant economic growth and actually increasing incomes for an estimated 80 percent of American households," according to a release announcing today's news conference.

The measure would also require U.S. EPA to regulate within 10 years all sources of greenhouse gases that are anthropogenically emitted. Gases attributable to the production of animals for food would be exempted.

The legislation isn't likely to get much traction in the current Congress, which is overseen by Republican leaders who are largely skeptical of climate science and who have worked to scale back environmental regulations rather than embrace new ones. But it could serve to help frame the climate debate in the upcoming midterm election and would likely be more viable if Democrats were to gain control of one or both chambers in the next Congress. Even then, it would almost certainly be opposed by the Trump administration.

Van Hollen is chairman of the Democratic Senatorial Campaign Committee, and is poised to play an elevated role in climate and environmental policy now that he has joined the Environment and Public Works Committee. Beyer, a member of the House Natural Resources and Science, Space and Technology committees, has been a climate hawk since entering Congress in 2015.

The lawmakers are expected to argue that their bill would benefit both the environment and the economy.

"On an economy-wide level, the price signal placed on carbon pollution will accelerate innovation and incentivize both greater energy efficiency as well as greater use of lower-carbon energy alternatives," the bill summary says.

Democrats in both chambers have introduced carbon tax legislation, the "American Opportunity Carbon Fee Act." The lead sponsors are Sens. Sheldon Whitehouse of Rhode Island and Brian Schatz of Hawaii and Reps. David Cicilline of Rhode Island and Earl Blumenauer of Oregon.

The bipartisan Climate Solutions Caucus may also submit carbon tax legislation or other measures to address climate change before the end of this Congress. The caucus grew to 68 members last week with the addition of veteran Reps. Fred Upton (R-Mich.) and Jan Schakowsky (D-Ill.) (*Greenwire*, Jan. 26).

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Dourson Calls On EPA To Expand IRIS Despite Program's Uncertain Future

Inside EPA

By: Maria Hegstad

Published: January 26, 2018

Michael Dourson, the controversial former nominee to lead EPA's toxics office, is calling on the agency to improve and expand its influential Integrated Risk Information System (IRIS) chemical assessment program, even as the program faces an uncertain future with the Trump administration considering reducing or eliminating it entirely.

"I really encourage EPA to think deeply about IRIS and how to take it to the next level," Dourson said during a Jan. 25 interview with *Inside EPA*, shortly after news broke that Dourson is leaving his role at the agency as senior adviser on toxics to Administrator Scott Pruitt. Dourson took the position shortly after President Donald Trump nominated him to serve as EPA's assistant administrator for the Office of Chemical Safety and Pollution Prevention.

Dourson asked Trump to withdraw his nomination following prolonged opposition from Senate Democrats and a handful of Republicans, who argued that Dourson was too closely tied to industry whom he had worked with as a consultant through his non-profit group Toxicology Excellence for Risk Assessment (TERA) on numerous chemicals.

He subsequently left the agency earlier this month and is now pushing back against suggestions from the administration and others about shuttering the IRIS review program.

Among his ideas for expanding and improving the program are adopting toxicity values from other EPA programs, considering other federal agencies' risk assessments, and ensuring senior officials vet IRIS assessments.

Dourson, a toxicologist, was one of a handful of EPA risk assessors in the 1980s who built the agency's original IRIS program, with the goal of "pulling all of EPA's risk values together." Dourson left EPA in the 1990s to form his own risk assessment consulting group, which he called TERA. The group merged with the University of Cincinnati two years ago, and is now known as the university's Risk Sciences Center.

Since Dourson worked on IRIS, the program was consolidated within one center in EPA's research office, known as the National Center for Environmental Assessment (NCEA), meaning that in recent years the program has drawn less and less on the work of scientists outside NCEA and has centralized its resources.

Asked how to take IRIS to the next level, Dourson pointed to ideas he floated to the staff four years ago, when he was among the final candidates to become the staff director of the IRIS program.

The IRIS program has "always been a great concept, and there is a lot of interest in it. There are ways to improve the system, tighten up how you put the risk values together, and be more embracing of other agency risk values," he said, noting there are "lots of people in the agency doing risk values."

IRIS' risk numbers have gained much criticism as they have become more influential, with the agency using the risk values to help inform air, waste, and other policies. IRIS' risk values are often referenced by other agencies and states as well. But regulated entities regularly argue that IRIS' risk values are too conservative, and will lead EPA risk managers to make decisions that are too strict.

The program's productivity and quality has also fallen under scrutiny, with the Government Accountability Office placing it on its list of government programs at risk for waste, fraud and abuse after a 2009 review that deemed its pace of production so slow as to make the program obsolete.

And the National Academy of Sciences (NAS) in 2011 released its review of EPA's last draft IRIS assessment of formaldehyde, which included an extra chapter beyond its charge outlining recommendations to strengthen the IRIS program's approach to its work. Since then, IRIS' leaders have sought to address the recommendations, largely by adopting systematic review methodologies. A new NAS committee is set to kick off an IRIS review workshop Feb. 1-2.

IRIS' Future

The Trump administration, which has yet to release any draft or final IRIS assessments during its tenure, has indicated its interest in eliminating or cutting the program in its fiscal year 2018 budget documents.

An early 2018 budget memo from EPA's chief financial officer, released last March, proposed eliminating the program, though the final presidential budget for 2018 proposed retaining the program in a smaller form. Congress, in report language attached to its pending 2018 budget bills, suggested defunding IRIS or consolidating EPA's risk assessments programs within its

toxics office.

Already, sources have raised concern about what the president's 2019 budget may contain for IRIS, and whether the Trump administration will push ahead with plans to reduce or shutter the program.

Despite this, Dourson, who attended many meetings within EPA's toxics office and advised transition officials during his short tenure at the agency, is making the case for continuing IRIS.

Asked whether IRIS should remain in the research office -- as some environmentalists have argued to better shield it from politics in program offices like toxics -- Dourson replied, "I think the important point is IRIS is a great concept to have an agency-wide group of risk values. Having your best people, it doesn't matter who does it, as long as a senior group of EPA people are vetting it, that's the important thing. How you house it, that's really more of a management thing. I didn't really get into it in the several months I was there."

Dourson said that when IRIS was first formed, staff from NCEA, the pesticides office and water office met to discuss risk numbers the offices had crafted for various chemicals, and numbers that were agreed on were added to the IRIS database. Now, there are more people doing evaluations across the agency, such as the air and Superfund offices, he said, and he encouraged EPA to "get them all up on the system."

He also suggested that IRIS consider including some of the more recent provisional peer-reviewed toxicity values crafted by the Superfund program.

In late 2014, agency sources told *Inside EPA* that Dourson and an inside candidate, Vincent Cogliano, were the top contenders for the then-open IRIS director position. Both gave presentations to IRIS staff as part of the selection process for final candidates, where Dourson first raised the ideas, which were met with concern by staff and, after the news leaked, by environmentalists.

At the time, sources told *Inside EPA* that Dourson's presentation and a question-and-answer

session with IRIS staff raised concerns, in particular because of his proposal to boost IRIS' productivity by having external scientists -- both EPA scientists in other programs and scientists outside the agency -- produce IRIS assessments. The idea was presented as a way to address the long-standing problem of low output in the IRIS program, but doing so would likely raise conflict of interest concerns from environmentalists and others.

“I got the impression he was saying we'd work with outside groups and then have things peer-reviewed because we have too much on our plate," one agency source said at the time.

Cogliano, who now works in EPA's Office of the Science Advisor, got the IRIS director job in 2014.

Dourson now expands the idea to suggest that “at some point, it would be nice to have a federal IRIS,” including in the database risk values crafted by agencies across the federal government. He noted as an example that there are many good risk values crafted by the Agency for Toxic Substances and Disease Registry, which performs toxicological profiles similar to IRIS assessments, though they do not include cancer risk estimates.

“Newer [risk] numbers are better, they can be different [from earlier evaluations] and that is ok,” Dourson said, adding that newer numbers are generally based on newer science and therefore an improvement over older risk estimates.

Meanwhile, Dourson says he is still weighing his next professional steps. One option may be to return to the University of Cincinnati (UC). Another option appears to be re-opening TERA, as it still exists as a separate legal shell entity. Dourson also mentioned the possibility of working with UC colleagues on a big data project funded by the National Institutes of Health.

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Top environmental group preparing to sue Trump’s EPA

The Hill

By: John Bowden

Published: January 27, 2018

A top environmental advocacy group is preparing a lawsuit against the Environmental Protection Agency (EPA), helmed by Scott Pruitt, for the agency's rollback of environmental protections under the Trump administration.

Natural Resources Defense Council (NRDC) President Rhea Suh told supporters in a note obtained by the Washington Examiner on Saturday that the federal court system is the best "antidote" to Pruitt's policies.

"It's a new year, but EPA Administrator Scott Pruitt wants to roll back the clock on environmental protections and drag us back decades," Suh wrote in the letter to supporters.

"The best antidote to Pruitt's illegal attacks on our environment? Federal court," she adds. "We're gearing up to file suits on dozens of fronts in the year ahead."

In a tweet Saturday, the group also quoted former EPA chief Carol Browner, who attacked Pruitt's leadership of the agency.

"Under Pruitt, what [the EPA is] doing is conscientiously tearing the place down," Browner said.

Act Now: https://t.co/iaYC6IfX1R https://t.co/Ih9gUWATLb

— NRDC (@NRDC) January 27, 2018

In the note, Suh notes a number of priorities for the NRDC in the year ahead, including preventing Pruitt from "greenlighting" neonicotinoid pesticides, which some scientists say pose a risk to pollinating insects such as bees.

The NRDC joined a number of groups last year in an unsuccessful push against President Trump's "one in, two out" executive order, which directs federal agencies to repeal two regulations for each new one they issue.

“President Trump’s order would deny Americans the basic protections they rightly expect,” Suh said in a statement last year. “New efforts to stop pollution don’t automatically make old ones unnecessary.”

“When you make policy by tweet, it yields irrational rules,” she added. “This order imposes a false choice between clean air, clean water, safe food and other environmental safeguards.”

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Ohio State associate professor among scientists pushing back against EPA ban

The Columbus Dispatch

By: Marion Renault
Published: January 29, 2018

Scientists filed a second lawsuit last week challenging federal Environmental Protection Agency Administrator Scott Pruitt’s new policy for science advisers serving the agency.

In October, Pruitt introduced a ban on recipients of EPA research grants serving as independent advisers to the agency.

He argued the directive would improve the "independence, diversity and breadth of participation" across 23 agency committees that provide technical advice on subjects such as pesticides, pollution, environmental justice, the Great Lakes, children's health and hazardous waste.

Scientists, public-health organizations and environmentalists are carrying out a legal counterattack, criticizing the change as a de facto ban of academic researchers and an aggressive push toward an industry-friendly EPA.

Ohio State associate professor Robyn Wilson is one of a half-dozen scientists asked to step down as a result of the new rule. She refused to do that or give up her funding. In December, she joined a lawsuit filed to challenge the new rule. She is not involved in the new suit.

Wilson said Pruitt's ban unfairly forces academic and nonprofit scientists to choose between competitive grants needed to fund cutting-edge studies and the opportunity to serve as public ambassadors for that peer research.

"Scientists are being punished for being the best people to answer questions and help solve problems," Wilson said. "There's an obligation to provide that advice."

Last week, the Union of Concerned Scientists also filed a suit against Pruitt.

Michael Burger, a Columbia Law School environmental attorney representing Wilson and her co-plaintiffs, called the removal of EPA grant recipients a "purge" that threatens the committees' integrity. He said the EPA's action violates a federal law designed to ensure fairness, balance and independence in policies.

The Federal Advisory Committee Act calls for fairly balanced board membership and lays out specific conflict-of-interest policies. Pruitt's October directive exempts government officials and does not prevent industry representatives from weighing in on regulations that could directly affect their businesses.

The EPA says it will continue to depend on its science boards for independent advice.

"With ... many new priorities for the (EPA), there is always time needed for the Agency to identify and prepare for scientific review ... to provide a foundation for the Agency's policies and decisions," EPA spokesperson Jahan Wilcox said in an email.

Pruitt has appointed dozens of new experts to advisory committees, many of whom hail from industry or state government.

The Science Advisory Board's new chair, Texas toxicologist Michael Honeycutt, for example, has argued that pollutants such as mercury, arsenic and ozone are less harmful than scientific evidence suggests.

Wilson and others involved in the lawsuit say the culling of academic scientists from advisory boards fits into President Donald Trump's campaign promise to leave "little tidbits left" of the EPA.

In its first year under Pruitt, the agency has rolled back major regulations and reversed a proposed ban of an agricultural pesticide known to cause developmental damage in children.

The EPA also has reduced funding for toxic cleanups and faced a proposed 30 percent budget cut. A major, ongoing overhaul of its climate-change website has alarmed environmental scientists.

On Earth Day last spring, a Columbus March for Science was one of more than 600 rallies held worldwide.

The Trump administration "has systematically said they're not so interested in thinking about

science so much. They've changed the priorities," said Edward Avol, a clinical preventive-medicine professor at the University of Southern California who has received EPA grants and served on the agency's advisory panels. "All the way down the line, there's a business approach."

The directive paints an inaccurate picture of arbiters who make thumbs-up, thumbs-down decisions, said Joe Arvai, a University of Michigan researcher who has completed two terms on the science advisory board and also is part of a lawsuit against the new ban.

"There's nothing sexy about this work. It's not the CIA or the situation room underground. It's a lot of scientists with bad hair and B.O. talking about stuff that's boring to 99.99 percent of human beings," Arvai said.

He said people are troubled that the absence of non-industry science advisers could facilitate a rollback of water standards and air-pollution protections and set the stage for more environmental problems such as harmful algae blooms, drinking-water crises and increases in emissions of planet-warming greenhouse gases.

If anything, the special interest of academic, government-funded researchers is the protection of public health, said epidemiologist Bruce Lanphear, president-elect of the International Society for Children's Health and the Environment, who also has served on federal advisory boards. "That's our bias," Lanphear said.

Lawmakers also have gotten involved.

Sen. Sherrod Brown, D-Ohio, was one of 10 lawmakers who requested that the federal Government Accountability Office review whether the EPA's advisory-board appointment process promotes independence and balance.

"The EPA's job is to make sure Ohioans have clean air and safe water. We need qualified, independent scientists on these boards, not just representatives from the very industries the EPA is charged with overseeing," Brown said in a statement.

Wilson, who specializes in land-management decision-making and risk analysis, received EPA funding for research on harmful algae blooms.

In October, she received an email thanking her for her service on the EPA's science advisory board. It's unlikely the lawsuit will be resolved before her term expires later this year.

"Chances are it's not going to directly impact me," Wilson said. "For science, I hope it's overturned."

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"People will get sick and die": how Scott Pruitt is strangling the EPA

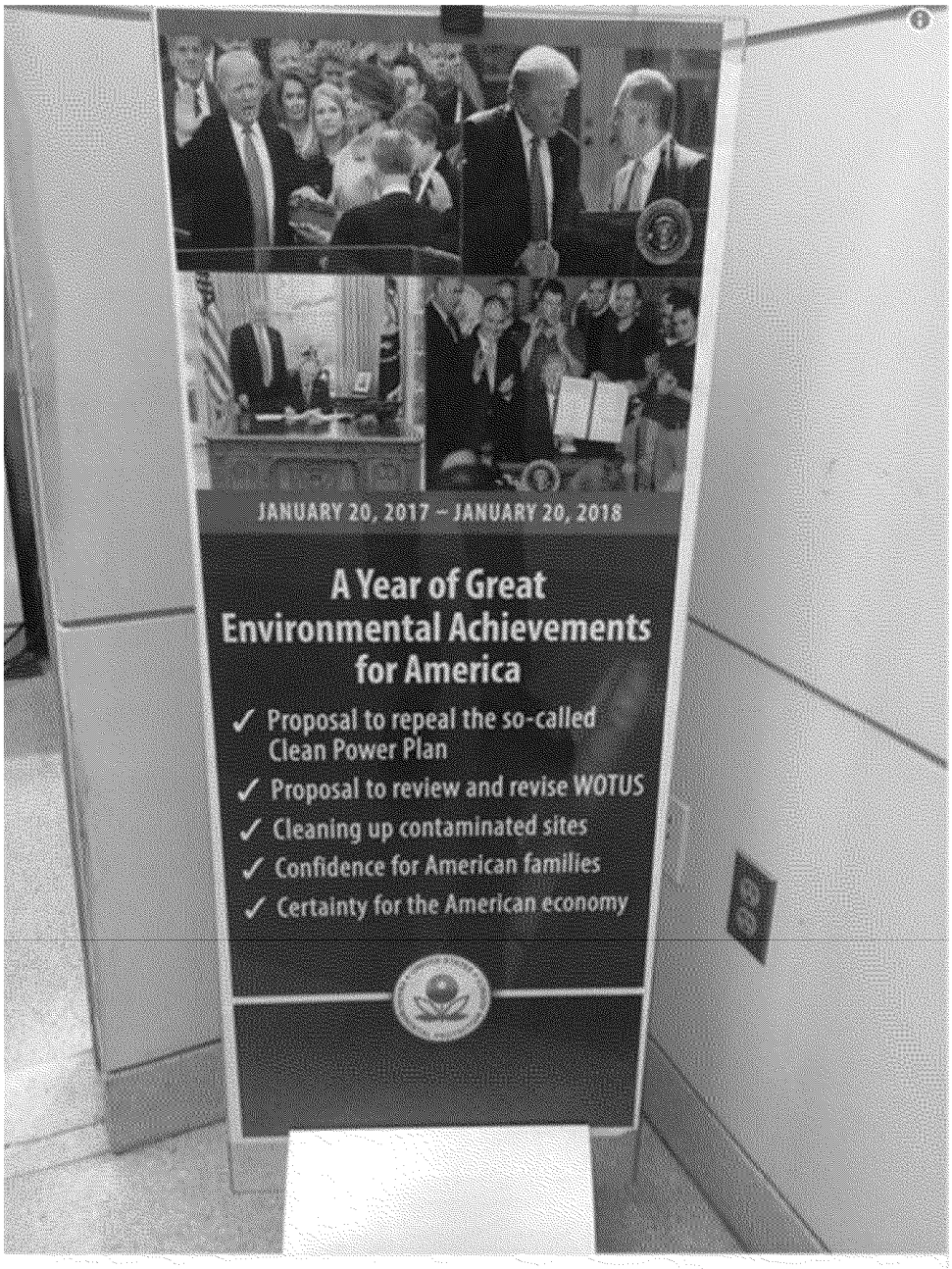
Vox

By: Umair Irfan

Published: January 29, 2018

The mandate of the head of the Environmental Protection Agency is to protect human health and enforce environmental regulations.

Yet since he was confirmed last February, EPA Administrator Scott Pruitt has worked deliberately to stall or roll back this core work of his agency, efforts he's now celebrating with posters:



Eric Lipton
@EricLiptonNYT

EPA has put these posters up at agency buildings. Celebrating regulatory rollbacks

11:07 PM - Jan 24, 2018

673 1,850 1,278

He's also taken some highly unusual, even paranoid, precautions, armoring himself with a 24/7 security detail, building a $25,000 secret phone booth in his office, spending $9,000 to sweep his office for surveillance bugs, and hiding his schedule from the public. And when one employee turned one of these posters around, Pruitt assigned a worker to look through security camera records to see who did it, Newsweek reported.

Pruitt's posters are a list of the regulatory rollbacks he's delivered to his allies in coal, oil, gas, and chemicals industries. These gifts include the reversal of a ban on chlorpyrifos, a pesticide linked to developmental problems in children.

But some of the biggest changes Pruitt has effected at the EPA have come by not doing anything at all. He's steering the EPA's work at an agonizingly slow pace, delaying and slowing the implementation of laws and running interference for many of the sectors EPA is supposed to regulate.

And with more staff and funding cuts looming, even fewer toxic chemicals and other environmental hazards will be measured, and the statues that protect against them won't be enforced.

"People will get sick and die," Christine Todd Whitman, who served as EPA administrator under President George W. Bush, told Vox. "It's that simple." Some 230,000 Americans already die each year due to hazardous chemical exposures. "You stop enforcing those regulations and that number will go way up," she said.

Chaos at the White House and on Capitol Hill has provided Pruitt cover to quietly position himself, his critics argue, as the greatest threat to the EPA in its entire existence. But some lawmakers and the courts are starting to catch onto him. Since the EPA's inception, it's been the judiciary that's again and again beaten back attempts to undermine the agency from the inside. This year is shaping up to be another defining moment.

States are now suing to block Pruitt's regulatory changes, and federal judges are starting to force him to speed up. Pruitt will have to choose between knock-down, drag-out legal fights to deliver for his allies in industry or fold and grudgingly enforce environmental rules. And whatever he decides, Congress, courts, industry, and activists will be watching.

There's a massive, unprecedented slowdown going on across the EPA

Pruitt can't simply repeal all the rules he doesn't like, so he's had to embrace a different strategy: stall.

Much of EPA's work is governed by statute, so dismantling most environmental regulations requires an arduous rule-making process that requires public comments, as well as new rules to comply with the law. And the whole endeavor is inevitably beset by lawsuits at every step.

"In order to roll back rules, you have to not just have a different policy inclination," said former EPA Administrator Gina McCarthy, who worked under President Barack Obama. "If you have a final rule, you actually have to find a flaw with the rule, you have to justify it."

But by stalling, Pruitt can effectively shift policy by doing nothing. If he leaves regulations in limbo or delays their implementation, industries get relief from environmental rules while the EPA retains plausible deniability. The net result is a drastic slowdown in the pace of work at an agency that faces a constant churn of new rules, regulations, enforcement actions, and lawsuits that affect the health, safety, and livelihoods of millions of Americans.

Here are some of the environmental rules, actions, and proposals that have become mired in the morass:

- The EPA announced it was seeking a two-year delay in implementing the 2015 Clean Water Rule, which defines the waterways that are regulated by the agency under the Clean Water Act.
- In May, the EPA dialed backtracking the health impacts of more than a dozen hazardous chemicals at the behest of a Trump appointee at the agency, Nancy Beck.
- The agency has said nothing about counties that failed to meet new ozone standards by an October 2017 deadline and now face fines.
- Environmental law enforcement has declined. By September, the Trump administration launched 30 percent fewer cases and collected 60 percent fewer fines than in the same

period under President Obama
- The EPA punted on regulations on dangerous solvents like methylene chloride, a paint stripper, that were already on track to be banned, instead moving the process to "long term action."
- The EPA asked for a six-year schedule to review 17-year-old regulations on lead paint.
- The implementation date of new safety procedures at chemical plants to prevent explosions and spills was pushed back to 2019.
- Pruitt issued a directive to end "Sue & Settle," a legal strategy that fast-tracks settlements for litigation filed against the EPA to force the agency to do its job. This means the agency will spend more time in courts fighting cases that it's likely to lose.
- The agency's enforcement division now has to get approval from headquarters before investigating potential violations of environmental regulations, slowing down efforts to catch violators of laws like the Clean Water Act.

"The problem at EPA right now is there is a chilling effect on enforcement," Jeff Ruch, executive director of Public Employees for Environmental Responsibility, told E&E News.

Even programs Pruitt ostensibly liked are suffering under his leadership, like the cleanup of highly contaminated Superfund sites. In an interview with CBS, Pruitt said he's aiming to take 27 to 30 sites fully or partially off the list this year. But he's also threatened to cut agency funds for pursuing polluters to make them pay for cleaning up these locations.

And while he's taken credit for removing seven Superfund sites from the list, that work started years before he got to the agency and was completed before he took office, as Timothy Cama reported in the Hill.

The Superfund cleanup program is now run by Albert Kelly, an Oklahoma banker who was banned for life from the industry after receiving a $125,000 federal fine and has no experience in environmental remediation. The Intercept reported that Pruitt received loans from Kelly's bank.

This is not to say that Pruitt isn't deregulating the old-fashioned way as well. Under his leadership, the EPA already has tried to roll back at least 19 environmental regulations, from undoing proposed greenhouse gas regulations to relaxing standards for ozone pollution. (The EPA did not respond to requests for comment for this article.)

Just last week, the EPA announced it was going to allow some toxic chemical polluters to be held to a lower standard under the Clean Air Act, allowing them to increase emissions of substances like mercury, lead, and dioxin. And the White House's infrastructure plan would block the EPA from evaluating and rejecting projects based on their Environmental Impact Statements, the Washington Post reported.

"He is much more organized, much more focused than the other Cabinet-level officials, who have not really taken charge of their agencies," Richard Lazarus, a professor of environmental law at Harvard University, told the New York Times. "Just the number of environmental rollbacks in this time frame is astounding."

Losing the environmental protections established by the EPA could harm millions of Americans

The EPA is essentially an environmental public health agency. Its regulations directly affect millions of Americans as it diagnoses ailments in the air, water, and soil, to name a few, and prescribes solutions.

And so far, it has a pretty great track record.

The Clean Air Act, for example, reduced conventional air pollutants by 70 percent since 1970. Substances like ozone, carbon monoxide, and lead have dangerous consequences for human health like heart attacks, strokes, and respiratory arrests.

According to one estimate, the legislation prevents 184,000 premature deaths each year and has saved $22 trillion in health care costs over a period of 20 years.

But enforcing these rules bears a cost as well, and critics say that continuing to make many of these regulations more stringent is regulatory malpractice since these rules are reaching diminishing returns, costing businesses and individuals more and more to comply with them. This is the key rationale for the White House's aim to cut back on "job-killing" regulations.

Staff cuts and unfilled positions may be part of Pruitt's strategy

It's hard to tell whether the lingering vacancies at the EPA are a deliberate effort by Pruitt to avoid the congressional scrutiny that comes with every new appointee, or a consequence of the dysfunction inside the agency and the White House.

EPA has only filled five out of 14 positions that require Senate approval a year after Trump took office. Throughout the federal government, of the 624 positions that require congressional confirmation, only 242 slots have been filled, and 244 jobs don't have any nominee at all.

Trump has suggested that many of these vacancies may never be filled.

"I'm generally not going to make a lot of the appointments that would normally be—because you don't need them," he told Forbes in November. "I mean, you look at some of these agencies, how massive they are, and it's totally unnecessary. They have hundreds of thousands of people."

The remaining EPA officials are now further constrained since the Federal Vacancies Reform Act deadline expired last November. The law prevents interim workers from performing many of their duties 300 days after inauguration.

"On Day 301, whenever that day might occur for a particular office, the office would be designated vacant, for purposes of the Vacancies Act, and only the head of the agency would be able to perform the functions and duties of that vacant office," according to the Congressional Research Service.

That means every decision that would normally fall to a lower ranking official has to be kicked up to the top office. For an agency like EPA, that means actions on monitoring the environment, pursuing polluters, and filing lawsuits end up bottlenecked at the desk of Pruitt, who has shown little appetite for fulfilling the agency's mandates to begin with.

Meanwhile, more than 700 employees have left the agency since it began to try to buy out more than 1,200 workers began last year. And more staff cuts are likely still in store, though they may not be as severe as the 20 percent workforce cut requested in the White House's initial budget.

Even Pruitt's allies are perturbed by the EPA's slow walking

Pruitt's tenure leading the EPA has enraged environmental activists, but some of his deregulation allies are unhappy with the pace of work and staffing vacancies at the agency too.

Myron Ebell, who leads the Center for Energy and Environment at the Competitive Enterprise Institute and led Pruitt's transition team at the EPA, warned that not having enough staff in place means that the agency will miss statutory deadlines on regulations, leaving it open to further lawsuits that will sap time and money that could otherwise go toward permanently shrinking the scope of the agency.

"I started complaining, 'Where are the nominees?' in March," Ebell said. "I think over time, this is going to catch up with them. They're going to have failures and obstacles if they don't have people in play."

Another factor, according to Ebell, is that many of the career civil servants at the EPA are not on board with Pruitt, offering less-than-enthusiastic support for the Back to Basics agenda.

"The acting general counsel at EPA is a very competent lawyer and he's a very nice guy but he's not going to help Scott Pruitt implement his agenda," Ebell said. "He's going to slow walk that."

This is dimming the prospects for rolling back many of the big prizes for anti-regulation Republicans like Pruitt, like undoing the 2009 endangerment finding for carbon dioxide, EPA's legal basis for regulating greenhouse gases. These repeals stand to be long, messy fights that cut across law and science.

Many of these regulations took years to put together and will require years to take apart, endeavors that would likely not resolve until well into President Trump's second term.

"It's very clear to me that there's no real intent to redo these things because there's not a schedule to do these things, and it takes years for a process to revise these rules," said former administrator McCarthy.

Instead, it seems the EPA is working to prevent the existing greenhouse gas regulations from going into effect as it scrambles to come up with a replacement rule for greenhouse gases by 2019.

Pruitt's allies' concern is that without getting these rollbacks enshrined in law, many of EPA's environmental regulations could snap back into place under a future administration.

But while the executive branch is slowing down environmental regulations, it's speeding up judicial nominations. Many of these new judges are expected to rule on Pruitt's agenda.

And Pruitt, for his part, may be padding his resume for a run for office. Pruitt has demurred when asked about his political ambitions, but Oklahoma Gov. Mary Fallin hits her term limit in 2018, and Oklahoma Sen. James Inhofe plans to retire in 2020. He shot down swirling rumors that he may even be angling for the post of US attorney general should Jeff Sessions step down.

The courts are losing their patience with the agency and are now forcing Pruitt's hand

Federal agencies like the EPA have broad license to interpret law. Under the Chevron doctrine, courts defer to agencies to interpret statutes on issues that Congress hasn't addressed head-on.

Pruitt described his approach as paring back EPA's regulations down to the bare minimum authorized by Congress.

"We aren't deregulating," he told the National Review. "We're regulating in accordance with the law."

However, federal courts don't agree and are no longer deferring to the new administration. Courts have already blocked the EPA's efforts to suspend rules on methane emissions and denied the EPA's request to spend years researching lead paint, instead giving the agency 90 days to come up with a new regulation.

"I think you're going to see courts get more involved in the work of the agency," said former EPA general counsel Avi Garbow, who served under President Obama. "That judicial patience cannot be counted on forever."

Now others are taking a page from Pruitt's old playbook. Already eight states are suing EPA for failing to expand ozone regulations. The EPA has set a target date of April 30 for designating areas of the country that are not meeting the new, stricter ozone standard.

In January 16 interview with CBS, Pruitt said that ozone is something "we most definitely have to regulate." Michael Honeycutt, the new chair of EPA's Science Advisory Board, said cutting ozone regulations would have a "negative health benefit."

Meanwhile, other states are suing the department for not controlling air pollution moving across state lines. Some of the scientists who were ousted from the EPA's advisory boards are now suing the agency arguing that their removal violates the Federal Advisory Committee Act. Public lawsuits are also going forward to try to force the agency's hand to fight climate change.

And there are also some regulations Pruitt supports. He wants to remove lead from all drinking water in the United States in 10 years and has started taking comments on revising rules for water pipes. He also wants to control leaks of methane, the key ingredient in natural gas and a potent greenhouse gas.

All the while, lawmakers are also growing increasingly suspicious about Pruitt's activities and are launching investigations. Michael Dourson, a former chemical industry consultant who was nominated to lead the EPA's Office of Chemical Safety and Pollution Prevention, withdrew his name from consideration after facing stiff opposition from Congress.

Senate Democrats are preparing to grill Pruitt when he testifies this week before the Senate Environment and Public Works Committee. They are already putting together their agenda for the EPA administrator should they clinch control of the chamber this fall.

This means that in the coming year, the EPA will have to speed up its work as a regulator or face stiff legal consequences. "I do not think the agency is capable of replicating in 2018 the same degree of affirmative regulatory output that we saw in 2017," Garbow said.

The laws that govern the EPA require action, and whether those demands come from Congress, the courts, or constituents, the agency needs to produce results that stand up to legal challenges from all sides on a deadline, Garbow said. The goal is not just to give the regulatory certainty that industries crave, but to protect American lives. And Pruitt may soon find out that doing nothing, or even very little, is not an option.

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In reversal, EPA deals setback to controversial gold mining proposal in Alaska

The Washington Post

By: Juliet Eilperin and Brady Dennis

Published: January 26, 2018

Environmental Protection Agency Administrator Scott Pruitt announced late Friday that he will not scrap the agency's 2014 determination that a large-scale mining operation could irreparably harm Alaska's Bristol Bay water-shed.

His decision, which falls short of blocking a proposed gold and copper mine in the region outright, represents a surprising twist in a years-long battle that has pitted a Canadian-owned mining company against commercial fishing operators, native Alaskans and conservationists determined to protect the world's largest sockeye salmon fishery.

Last spring, shortly after meeting with the top executive from the project's main backer, Northern Dynasty Minerals, Pruitt directed EPA staff to revisit the Obama-era decision to short-circuit the project using a provision of the Clean Water Act. The 2014 decision came after several years of scientific study during which the EPA determined that the mining operation could cause "significant and irreversible harm" to the area's fish habitat.

On Friday, after receiving more than a million public comments and consulting with tribal governments and others, the EPA said it will leave the previous administration's determination in place while it takes additional comments. The announcement said the decision "neither deters nor derails the application process" for the mine.

"It is my judgment at this time that any mining projects in the region likely pose a risk to the abundant natural resources that exist there," Pruitt said. "Until we know the full extent of that risk, those natural resources and world-class fisheries deserve the utmost protection."

Source: Environmental Protection Agency

THE WASHINGTON POST

An entity known as Pebble Limited Partnership has eyed the spot in southwestern Alaska, where the headwaters of several rivers converge, as a possible mine site for more than 15 years. But Northern Dynasty Minerals didn't file its first formal application for a federal permit until December.

The EPA's announcement Friday noted that it "stands ready" to work with the mining company and the Army Corps of Engineers in reviewing the permitting application for the project.

Pebble Limited Partnership and its supporters, including Alaskan politicians such as Sen. Lisa Murkowski (R), had criticized the Obama administration for issuing what amounted to a preemptive veto of the project. They argued that tapping the mineral reserves buried underneath the tundra will generate well-paying jobs for local residents and additional revenue for the state and federal government.

But opponents of the mine countered that any spill could imperil one of the world's great fisheries, which accounts for roughly a fourth of the global supply of sockeye salmon.

In a statement released by the EPA, Gov. Bill Walker (I) thanked the agency "for listening to my input, as well as the input of thousands of Alaskans who oppose rescinding" the Obama-era assessment. Walker said he had discussed the mine repeatedly with Pruitt, "and I have shared with him my belief that in the Bristol Bay region we should prioritize the resource that has sustained generations and must continue to do so in perpetuity."

Southwestern Alaska contains a reservoir of gold worth an estimated $120 billion. The lakes and tributaries in the region feed into Bristol Bay and a fishery that generates $500 million a year.

In a statement Friday evening, Northern Dynasty Minerals appeared undeterred by the EPA's shift. It noted that a settlement agreement with the agency last year provided "an unfettered opportunity" to proceed through the permitting process for the Pebble Mine project.

"We have every confidence that Pebble's ultimate project design will meet the rigorous environmental standards enforced in Alaska and the U.S.," chief executive Ron Thiessen said. "We expect the permitting process for Pebble to advance expeditiously over the next few years."

Bob Irvin, president of the advocacy group American Rivers, said the EPA's decision likely was prompted by the legal challenges the agency would have faced if Pruitt failed to go through the same lengthy administrative process that the Obama administration undertook when it ruled against Pebble Mine.

"What they figured out is that you can't just immediately reverse actions that were taken by the

previous administration if those actions" were done legally, he said. "You actually have to be able to justify your decision. . . . They are learning they can't just run roughshod over the legal requirements."

The Obama administration conducted a three-year review before deciding that, as Irvin put it, "this was basically the worst place in the world to locate a mine," given its proximity to Bristol Bay's stock of sockeye salmon.

Irvin said he suspects Pruitt's move is part of a larger effort to "green" his image politically. The EPA chief recently met with Moms Clean Air Force, a group formed to combat air pollution. And he has made a high-profile push to ramp up cleanups at a handful of Superfund sites around the country.

"But when you look at the actions he's continuing to pursue, it's clear his position hasn't changed," Irvin said. "Actions speak louder than words."

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New youth basketball league kicks off in Durham

WTVD – ABC 11

By: Julie Wilson

Published: January 28, 2018

DURHAM, North Carolina (WTVD) -- Inside the gym of Southern School of Energy and Sustainability, you'll find Marvin Bagley Jr.

"I just wanted to do something that I knew the community needed", said Bagley, the father of Duke Blue Devil Marvin Bagley III. That's why he started the Bull City Youth Basketball League.

On the basketball court and in the stands are six teams. Athletes and students in grades 4-8 of Durham Public Schools.

The league is not only for students who didn't make their own schools teams but for kids in low-income neighborhoods that may not otherwise have the opportunity to play.

While club teams require travel and Money, this league only costs time. Teams are supplied with Nike gear, including shoes, backpacks, and uniforms.

"They're doing something good here", said seventh-grade athlete Rhian Lawerence before the 1 p.m. game. She and her twin brother, Landen play for the same team. "I finally get to play with her instead of against her outside in the driveway," he said of his sister.

Bagley said that he wants the league to continue to grow and serve the community he grew up in but is having trouble finding locations with basketball courts that will allow for the teams to practice.

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To: Jordan, Scott[Jordan.Scott@epa.gov]; Dalcher, Debra[dalcher.debra@epa.gov]
Cc: Rodman, Sonja[Rodman.Sonja@epa.gov]
From: Lamason, Bill
Sent: Mon 1/29/2018 5:30:43 PM
Subject: RE: Change in Acronym (MSAS?)

Scott,

Good point. I was think OOAO but that is hard to pronounce! ☺ MM2A might work as well (MACT major to area). B

From: Jordan, Scott
Sent: Monday, January 29, 2018 11:48 AM
To: Lamason, Bill <Lamason.Bill@epa.gov>; Dalcher, Debra <dalcher.debra@epa.gov>
Cc: Rodman, Sonja <Rodman.Sonja@epa.gov>
Subject: Change in Acronym (MSAS?)

Bill and Debra –

It occurred to me that with the withdrawal of the May 1995 Seitz memo, we need to come up with a new shorthand for this work. In particular, it seems like we should stop using the phrase "once in always in" and OIAI as the shorthand for this area of policy.

Ex. 5 - Deliberative Process

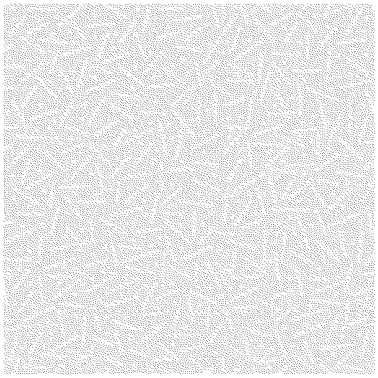
Scott Jordan

Air and Radiation Law Office

Office of General Counsel

202-564-7508

To: Dalcher, Debra[dalcher.debra@epa.gov]; Lamason, Bill[Lamason.Bill@epa.gov]
From: Eck, Janet
Sent: Fri 1/26/2018 1:46:11 PM
Subject: FW: In case you have not heard- OIAI Policy is withdrawn- see memo
OIAI-Withdrawal-Jan25-2018.pdf



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: Torres, Elineth[Torres.Elineth@epa.gov]
Cc: Dalcher, Debra[dalcher.debra@epa.gov]; Lamason, Bill[Lamason.Bill@epa.gov]
From: McLamb, Marguerite
Sent: Tue 11/7/2017 8:27:14 PM
Subject: RE: OIAI: memo replacing policy interpretation
Memo replacing OIAI with proposed 2007 interpretation_11_6_17 MM.docx

Hi, all,

Attached is the memo with my suggestions. Ex. 5 - Deliberative Process
Ex. 5 - Deliberative Process

Best,

Marguerite

From: Torres, Elineth
Sent: Tuesday, November 07, 2017 12:17 PM
To: McLamb, Marguerite <McLamb.Marguerite@epa.gov>
Cc: Dalcher, Debra <dalcher.debra@epa.gov>; Lamason, Bill <Lamason.Bill@epa.gov>
Subject: OIAI: memo replacing policy interpretation

Marguerite,

Take a look at the attached memo. Ex. 5 - Deliberative Process
Ex. 5 - Deliberative Process
Ex. 5 - Deliberative Process This is the first draft.

I am in the office until 3:30pm today, then out until Monday. Debra is the alternate POC on this action. Bill wants to share a version of this memo with Peter tomorrow with the caveat that we still need OGC's input. Let me or Debra know if you have comments/edits on this version.

Finally, I told Bill that you are going to be talking with Sonja about this version of the memo and next steps regarding OGC involvement.

Thank you!

Elineth Torres

OAQPS

919-541-4347

To: Lamason, Bill[Lamason.Bill@epa.gov]; Dalcher, Debra[dalcher.debra@epa.gov]
Cc: Torres, Elineth[Torres.Elineth@epa.gov]; Vetter, Rick[Vetter.Rick@epa.gov]; McLamb, Marguerite[McLamb.Marguerite@epa.gov]
From: Rodman, Sonja
Sent: Mon 11/20/2017 2:20:24 PM
Subject: RE: Current Version of Revision 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: Lamason, Bill
Sent: Friday, November 17, 2017 2:44 PM
To: Rodman, Sonja <Rodman.Sonja@epa.gov>; Dalcher, Debra <dalcher.debra@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

Sonja,

Sonja,

Thanks for the update. I know Debra is working to make the changes she's aware of and are resolvable at this time. My understanding was there was some material in the memo not yet reviewed by OGC so we were looking for a first look at that – I believe it was the implementation section Debra and Elineth added. I will connect with Debra early Monday and suggest we chat sometime that day to check in.

As for the docket, we can open a new docket but were considering using the 2007 docket. Please let us know if OGC has an view on which is preferable.

Thanks!

Bill

From: Rodman, Sonja
Sent: Friday, November 17, 2017 12:17 PM
To: Lamason, Bill <Lamason.Bill@epa.gov>; Dalcher, Debra <dalcher.debra@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

Ex. 5 - Attorney Client

Sonja L. Rodman

Air Toxics, Consumer Protection and Indoor Air Practice Group

(202) 564-4079

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From: Lamason, Bill
Sent: Thursday, November 16, 2017 4:53 PM
To: Dalcher, Debra <dalcher.debra@epa.gov>; Rodman, Sonja <Rodman.Sonja@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

Debra and Sonja,

Many thanks! We are making progress. I will be in the office tomorrow if there is an updated version. The memo is a priority now and I can confirm Wehrum is aware of the memo. Have reminded folks that we have much work remaining on the RTC. Thanks again!

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).

Ex. 6 - Personal Privacy

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

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, 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. **Ex. 5 - Deliberative Process**

Ex. 5 - Deliberative Process

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: Jordan, Scott[Jordan.Scott@epa.gov]
Cc: Rodman, Sonja[Rodman.Sonja@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]
Cc: Cortelyou-Lee, Jan[Cortelyou-Lee.Jan@epa.gov]; Noonan, Jenny[Noonan.Jenny@epa.gov]
From: Dalcher, Debra
Sent: Mon 1/29/2018 3:09:58 PM
Subject: FW: In case you have not heard- OIAI Policy is withdrawn- see memo

We are going to need some talking points Jackie (see below, requests to provide info at 3 meetings in the next week or so). We have a meeting with AQPD (I invited you, 1/31, Wednesday) to discuss responding to a number of queries we have received and next steps in the rulemaking.

Let me know if you would like us to take a first stab at talking points. I have a hard time writing in more generic terms vs. specific technical writing ☺.

Thanks, 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. This is fine they shared. Spoke with Peter and he wants us to speak to the memo and the upcoming rulemaking on OIAI. B

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: McLamb, Marguerite[McLamb.Marguerite@epa.gov]
Cc: Dalcher, Debra[dalcher.debra@epa.gov]; Lamason, Bill[Lamason.Bill@epa.gov]
From: Torres, Elineth
Sent: Tue 11/7/2017 5:16:47 PM
Subject: OIAI: memo replacing policy interpretation
Memo replacing OIAI with proposed 2007 interpretation_11_6_17.docx

Marguerite,

Take a look at the attached memo. **Ex. 5 - Deliberative Process**

Ex. 5 - Deliberative Process

I am in the office until 3:30pm today, then out until Monday. Debra is the alternate POC on this action. Bill wants to share a version of this memo with Peter tomorrow with the caveat that we still need OGC's input. Let me or Debra know if you have comments/edits on this version.

Finally, I told Bill that you are going to be talking with Sonja about this version of the memo and next steps regarding OGC involvement.

Thank you!

Elineth Torres

OAQPS

919-541-4347

To: Jordan, Scott[Jordan.Scott@epa.gov]
Cc: Dalcher, Debra[dalcher.debra@epa.gov]
From: Dalcher, Debra
Sent: Tue 12/5/2017 5:00:45 PM
Subject: What has caused us to revisit the policy.docx
What has caused us to revisit the policy.docx

Scott,

Kevin C. penned this document to help us gather our thoughts on how we could justify the policy change we want to reflect in the memo. The notes are mine. Thought it might be useful to share with you for review.

Debra

To: Jordan, Scott[Jordan.Scott@epa.gov]
Cc: Rodman, Sonja[Rodman.Sonja@epa.gov]
From: Dalcher, Debra
Sent: Mon 1/22/2018 8:09:30 PM
Subject: RE: Once-In-Always-In Question - NODA vs Supplemental Proposal vs New Proposal

Okay, as I mentioned this am I was given guidance from Kevin Ex. 5 - Deliberative Process Ex. 5 - Deliberative Process We will have to see what comes out of the Harlow Meeting on Wednesday with the possibility that we will need to discuss Ex. 5 - Deliberative Process Ex. 5 - Deliberative Process

Ex. 5 - Deliberative Process
Ex. 5 - Deliberative Process I am trying to nail down the scope of that with HEID.

Thank you, Debra

From: Jordan, Scott
Sent: Monday, January 22, 2018 3:01 PM
To: Dalcher, Debra <dalcher.debra@epa.gov>
Cc: Rodman, Sonja <Rodman.Sonja@epa.gov>
Subject: FW: Once-In-Always-In Question - NODA vs Supplemental Proposal vs New Proposal

Debra –

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: 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

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

Ex. 5 - Attorney Client

Ex. 5 - Attorney Client

Scott Jordan

Air and Radiation Law Office

Office of General Counsel

202-564-7508

To: Jordan, Scott[Jordan.Scott@epa.gov]
Cc: Dalcher, Debra[dalcher.debra@epa.gov]
From: Dalcher, Debra
Sent: Mon 1/22/2018 8:01:38 PM
Subject: Reclassification of Major Sources as Area Sources Under Section 112_Draft_1 22 18_1pm.docx
Reclassification of Major Sources as Area Sources Under Section 112_Draft_1 22 18_1pm.docx

Scott, see attached.

Ex. 5 - Deliberative Process

Ex. 5 - Deliberative Process

Debra

To: Jordan, Scott[Jordan.Scott@epa.gov]; Rodman, Sonja[Rodman.Sonja@epa.gov]
Cc: Dalcher, Debra[dalcher.debra@epa.gov]
From: Lamason, Bill
Sent: Thur 1/25/2018 10:36:14 PM
Subject: FW: Once In Always In Notice
OAR-18-000-3788Signed OIAI FR Notice25Jan18.pdf
FRN Notice of OIAI 01_25_18.docx
OIAI Guidance Memo Notice Action Information Form.docx
OIAI GuidanceMemoNotice FR Cover Form.pdf
OIAI GuidanceMemoNotice TypesettingRqst.pdf

Scott and Sonja, Here's the notice. Bill

From: Eck, Janet
Sent: Thursday, January 25, 2018 5:34 PM
To: Iglesias, Amber <Iglesias.Amber@epa.gov>; Henigin, Mary <Henigin.Mary@epa.gov>
Cc: Rush, Alan <Rush.Alan@epa.gov>; South, Peter <South.Peter@epa.gov>; Dalcher, Debra <dalcher.debra@epa.gov>; Lamason, Bill <Lamason.Bill@epa.gov>
Subject: Once In Always In Notice

Attached is the OIAI notice titled Issuance of Guidance Memorandum, "Reclassification of Major Sources as Area Sources Under Section 112 of the Clean Air Act." Peter was not able to complete the electronic signature in FR Dailies, so we are sending this up in hard copy. I am also including the Action Information Form, the FR Cover Form, and the Typesetting Request. We have asked for expedited review because this is a high priority Administration action, but the hard copy may cause us delays now. I will send the original signed document tomorrow by UPS. Let me know if there is anything else you need. We will need to follow up on the FR Dailies problem to figure out what has gone wrong. Thanks.

To: McLamb, Marguerite[McLamb.Marguerite@epa.gov]
Cc: Lamason, Bill[Lamason.Bill@epa.gov]; Dalcher, Debra[dalcher.debra@epa.gov]
From: Torres, Elineth
Sent: Tue 11/7/2017 1:28:39 PM
Subject: quick check-in

Marguerite,

Are you in the office today? I need to have a quick conversation with you on OIAI and the new memo we are to work on. Peter and Bill have some concerns and we want to check with you before touching basis with OGC.

If you are working from home, can you give me a call this morning?

Elineth Torres

OAQPS

919-541-4347

To: Dalcher, Debra[dalcher.debra@epa.gov]
Cc: Rodman, Sonja[Rodman.Sonja@epa.gov]
From: Jordan, Scott
Sent: Mon 1/22/2018 8:00:33 PM
Subject: FW: Once-In-Always-In Question - NODA vs Supplemental Proposal vs New Proposal

Debra –

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: 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

Ex. 5 - Attorney Client

My questions are:

Ex. 5 - Attorney Client

Ex. 5 - Attorney Client

Scott Jordan

Air and Radiation Law Office

Office of General Counsel

202-564-7508

To: Iglesias, Amber[Iglesias.Amber@epa.gov]; Henigin, Mary[Henigin.Mary@epa.gov]
Cc: Rush, Alan[Rush.Alan@epa.gov]; South, Peter[South.Peter@epa.gov]; Dalcher, Debra[dalcher.debra@epa.gov]; Lamason, Bill[Lamason.Bill@epa.gov]
From: Eck, Janet
Sent: Thur 1/25/2018 10:33:32 PM
Subject: Once In Always In Notice
OAR-18-000-3788Signed OIAI FR Notice25Jan18.pdf
FRN Notice of OIAI 01_25_18.docx
OIAI Guidance Memo Notice Action Information Form.docx
OIAI GuidanceMemoNotice FR Cover Form.pdf
OIAI GuidanceMemoNotice TypesettingRqst.pdf

Attached is the OIAI notice titled Issuance of Guidance Memorandum, "Reclassification of Major Sources as Area Sources Under Section 112 of the Clean Air Act." Peter was not able to complete the electronic signature in FR Dailies, so we are sending this up in hard copy. I am also including the Action Information Form, the FR Cover Form, and the Typesetting Request. We have asked for expedited review because this is a high priority Administration action, but the hard copy may cause us delays now. I will send the original signed document tomorrow by UPS. Let me know if there is anything else you need. We will need to follow up on the FR Dailies problem to figure out what has gone wrong. Thanks.

To: Weatherhead, Darryl[Weatherhead.Darryl@epa.gov]
Cc: Lamason, Bill[Lamason.Bill@epa.gov]; Shrager, Brian[Shrager.Brian@epa.gov]; Dalcher, Debra[dalcher.debra@epa.gov]
From: Dalcher, Debra
Sent: Mon 1/22/2018 7:42:57 PM
Subject: RE: RIA for OIAI Rule Package (either supplemental or new proposal)

Darryl,

We had a briefing with Wehrum on OIAI in December. **Ex. 5 - Deliberative Process**

Ex. 5 - Deliberative Process

I will speak with Brian tomorrow when he returns to the office. If you have thoughts on the kinds of information that the group leaders will need to put together, please share as time allows.

Thank you, Debra

From: Weatherhead, Darryl
Sent: Monday, January 22, 2018 2:29 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)

Thanks Debra,

I'll talk with Brian when he is back in the office tomorrow. Ex. 5 - Deliberative Process

Ex. 5 - Deliberative Process

Also, prior to providing input it would be good to see what document I'm contributing to. Thanks for providing the additional information last week, but you mentioned a briefing as well?

Thanks

Darryl

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)

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

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

Ex. 5 - Deliberative Process If you can respond before Monday that would be great.
Thank you, Debra

To: Rodman, Sonja[Rodman.Sonja@epa.gov]
Cc: Vetter, Rick[Vetter.Rick@epa.gov]; Lamason, Bill[Lamason.Bill@epa.gov]; Dalcher, Debra[dalcher.debra@epa.gov]; McLamb, Marguerite[McLamb.Marguerite@epa.gov]
From: Torres, Elineth
Sent: Tue 11/7/2017 1:26:12 PM
Subject: RE: OIAI Check-in

We gave Peter the updated 2-pager last week. His direction to Bill is for us to develop the memo that revises the OIAI policy based on the 2007 proposal. I am working on the first draft and will schedule a short meeting to discuss next steps.

Elineth Torres

OAQPS

919-541-4347

From: Rodman, Sonja
Sent: Monday, November 06, 2017 3:12 PM
To: Torres, Elineth <Torres.Elineth@epa.gov>
Cc: Vetter, Rick <Vetter.Rick@epa.gov>; Lamason, Bill <Lamason.Bill@epa.gov>; Dalcher, Debra <dalcher.debra@epa.gov>
Subject: RE: OIAI Check-in

Thanks Elineth. I'm trying to dig out from last week. Can you let me know where you all are on this? Thanks! – Sonja

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: Torres, Elineth
Sent: Wednesday, November 01, 2017 8:30 AM
To: Rodman, Sonja <Rodman.Sonja@epa.gov>
Cc: Vetter, Rick <Vetter.Rick@epa.gov>; Lamason, Bill <Lamason.Bill@epa.gov>; Dalcher, Debra <dalcher.debra@epa.gov>
Subject: RE: OIAI Check-in

Sonja,

Ex. 6 - Personal Privacy

We will have our meeting at 10AM and move forward with the input we get from Rick. We will circle back with you once you are in the office.

Thanks,

Elineth Torres

OAQPS

919-541-4347

From: Torres, Elineth
Sent: Wednesday, November 01, 2017 7:54 AM
To: Rodman, Sonja <Rodman.Sonja@epa.gov>
Cc: Vetter, Rick <Vetter.Rick@epa.gov>; Lamason, Bill <Lamason.Bill@epa.gov>; Dalcher, Debra <dalcher.debra@epa.gov>
Subject: RE: OIAI Check-in

Sonja,

Please let us know by email if you have any comments/edits on the options pager or feedback from your management.

Thanks,

Elineth Torres

OAQPS

919-541-4347

-----Original Appointment-----
From: Rodman, Sonja
Sent: Wednesday, November 01, 2017 7:08 AM
To: Torres, Elineth
Subject: Declined: 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

To: Jordan, Scott[Jordan.Scott@epa.gov]
Cc: Dalcher, Debra[dalcher.debra@epa.gov]; Rodman, Sonja[Rodman.Sonja@epa.gov]
From: Lamason, Bill
Sent: Thur 1/25/2018 10:19:36 PM
Subject: RE: OIAI - FR Notice Signed?

Signed by Peter a little while ago. We're not posting the notice yet (per OAR comms) and I'm still waiting on the signed copy. Peter called to tell me it was signed.

Bill

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.

To: Dalcher, Debra[dalcher.debra@epa.gov]; Shrager, Brian[Shrager.Brian@epa.gov]
Cc: Lamason, Bill[Lamason.Bill@epa.gov]
From: Weatherhead, Darryl
Sent: Mon 1/22/2018 7:28:44 PM
Subject: RE: RIA for OIAI Rule Package (either supplemental or new proposal)

Thanks Debra,

I'll talk with Brian when he is back in the office tomorrow. **Ex. 5 - Deliberative Process**

Ex. 5 - Deliberative Process

Also, prior to providing input it would be good to see what document I'm contributing to. Thanks for providing the additional information last week, but you mentioned a briefing as well?

Thanks

Darryl

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

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

Ex. 5 - Deliberative Process If you can respond before Monday that would be great.
Thank you, Debra

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]
From: Noonan, Jenny
Sent: Thur 1/25/2018 9:20:51 PM
Subject: For tomorrow
OIAI - states 13777 and call list.xlsx
OIAI - states 13777 and call list.xlsx

Debra –

Ex. 5 - Deliberative Process

I've also attached a spreadsheet with

Ex. 5 - Deliberative Process

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.

To: Dalcher, Debra[dalcher.debra@epa.gov]
From: Bernales, Barbara
Sent: Mon 11/6/2017 6:19:49 PM
Subject: RE: FDMS User Account Change Request (OIAI Rulemaking Docket)

You are very welcome!

I tried, also, to attach the Docket 'Save Search Results' report but had some technical difficulties. I just wanted to send it to you as a comparison so that if (in the future) you wanted the same information sooner, then you could retrieve it by requesting this report.

I will send it to you later once I've worked out the kinks.

Barbara Bernales

Regulatory Support Division

Office of Enterprise Information Programs

Office of Environmental Information

U.S. Environmental Protection Agency

202-566-2985

From: Dalcher, Debra
Sent: Monday, November 6, 2017 12:46 PM
To: Bernales, Barbara <bernales.barbara@epa.gov>
Cc: Scully, Carolyn <Scully.Carolyn@epa.gov>; Torres, Elineth <Torres.Elineth@epa.gov>; Lamason, Bill <Lamason.Bill@epa.gov>
Subject: RE: FDMS User Account Change Request (OIAI Rulemaking Docket)

Barbara, this is so helpful. Thank you so much. Debra

From: Bernales, Barbara
Sent: Monday, November 06, 2017 12:45 PM
To: Dalcher, Debra <dalcher.debra@epa.gov>
Cc: Scully, Carolyn <Scully.Carolyn@epa.gov>; Torres, Elineth <Torres.Elineth@epa.gov>; Lamason, Bill <Lamason.Bill@epa.gov>
Subject: RE: FDMS User Account Change Request (OIAI Rulemaking Docket)

Debra,

Attached is the Bulk Extract that I requested on your behalf. Please follow the instructions within to open the file.

Barbara Bernales

Regulatory Support Division

Office of Enterprise Information Programs

Office of Environmental Information

U.S. Environmental Protection Agency

202-566-2985

From: Dalcher, Debra
Sent: Monday, November 6, 2017 11:37 AM
To: Bernales, Barbara <bernales.barbara@epa.gov>
Cc: Scully, Carolyn <Scully.Carolyn@epa.gov>; Torres, Elineth <Torres.Elineth@epa.gov>; Lamason, Bill <Lamason.Bill@epa.gov>
Subject: RE: FDMS User Account Change Request (OIAI Rulemaking Docket)

Thank you again Barbara. We appreciate the support.

From: Bernales, Barbara
Sent: Monday, November 06, 2017 11:17 AM
To: Dalcher, Debra <dalcher.debra@epa.gov>
Cc: Scully, Carolyn <Scully.Carolyn@epa.gov>; Torres, Elineth <Torres.Elineth@epa.gov>; Lamason, Bill <Lamason.Bill@epa.gov>
Subject: RE: FDMS User Account Change Request (OIAI Rulemaking Docket)

Thanks Debra, I've requested the extract and will forward it to you once I've received it.

Barbara Bernales

Regulatory Support Division

Office of Enterprise Information Programs

Office of Environmental Information

U.S. Environmental Protection Agency

202-566-2985

From: Dalcher, Debra
Sent: Monday, November 6, 2017 9:29 AM
To: Bernales, Barbara <bernales.barbara@epa.gov>
Cc: Scully, Carolyn <Scully.Carolyn@epa.gov>; Torres, Elineth <Torres.Elineth@epa.gov>; Lamason, Bill <Lamason.Bill@epa.gov>
Subject: RE: FDMS User Account Change Request (OIAI Rulemaking Docket)
Importance: High

Barbara,

Essentially we want everything in the docket submitted by the public which is why we excluded a data range.

If you need a date range to do the search we believe that the following date range should work:
Jan 1, 2005- Dec 31, 2007

Thank you, Debra

From: Bernales, Barbara
Sent: Monday, November 06, 2017 9:06 AM
To: Dalcher, Debra <dalcher.debra@epa.gov>
Cc: Scully, Carolyn <Scully.Carolyn@epa.gov>; Torres, Elineth <Torres.Elineth@epa.gov>
Subject: RE: FDMS User Account Change Request (OIAI Rulemaking Docket)

Good Morning Debra!

Could you provide me with a specific start and end date?

Thanks!

Barbara Bernales

Regulatory Support Division

Office of Enterprise Information Programs

Office of Environmental Information

U.S. Environmental Protection Agency

202-566-2985

From: Dalcher, Debra
Sent: Monday, November 6, 2017 8:20 AM
To: Bernales, Barbara <bernales.barbara@epa.gov>
Cc: Scully, Carolyn <Scully.Carolyn@epa.gov>; Torres, Elineth <Torres.Elineth@epa.gov>
Subject: FW: FDMS User Account Change Request (OIAI Rulemaking Docket)

Good Morning Barbara

I am wondering if you could help with something. We submitted the attached request on 1 Nov for a docket extraction (an older docket, but not a large one). We submitted another a few days later and received that one already ☺.

There is some urgency associated with the above request and we are hoping someone could check to make sure it was received and also provide an update on when we can expect to receive the files.

If this does not fall in your lane, please just let me know who I can touch base with.

Thanks so much, Debra

From: Torres, Elineth
Sent: Wednesday, November 01, 2017 7:50 AM
To: FDMS <FDMS@epa.gov>
Cc: Dalcher, Debra <dalcher.debra@epa.gov>
Subject: FDMS User Account Change Request

See attached request.

Thanks.

Elineth Torres

OAQPS

919-541-4347

To: Jordan, Scott[Jordan.Scott@epa.gov]
Cc: Dalcher, Debra[dalcher.debra@epa.gov]; Rodman, Sonja[Rodman.Sonja@epa.gov]
From: Lamason, Bill
Sent: Thur 1/25/2018 8:49:22 PM
Subject: RE: OIAI - FR Notice Signed?

Will let you know. B

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.

Ex. 5 - Attorney Client

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

Ex. 5 - Deliberative Process

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

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To: Lamason, Bill[Lamason.Bill@epa.gov]
Cc: Dalcher, Debra[dalcher.debra@epa.gov]; Rodman, Sonja[Rodman.Sonja@epa.gov]
From: Jordan, Scott
Sent: Thur 1/25/2018 8:48:42 PM
Subject: OIAI - FR Notice Signed?

Thanks.

Ex. 5 - Attorney Client

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

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From: Lewis, Josh
Sent: Thursday, January 25, 2018 3:37 PM

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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>
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Ex. 5 - Deliberative Process

Thanks.

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To: Dalcher, Debra[dalcher.debra@epa.gov]
Cc: Scully, Carolyn[Scully.Carolyn@epa.gov]; Torres, Elineth[Torres.Elineth@epa.gov]; Lamason, Bill[Lamason.Bill@epa.gov]
From: Bernales, Barbara
Sent: Mon 11/6/2017 5:45:01 PM
Subject: RE: FDMS User Account Change Request (OIAI Rulemaking Docket)
You have received a FileCatalyst Webmail package from FDMS EXTRACT

Debra,

Attached is the Bulk Extract that I requested on your behalf. Please follow the instructions within to open the file.

Barbara Bernales

Regulatory Support Division

Office of Enterprise Information Programs

Office of Environmental Information

U.S. Environmental Protection Agency

202-566-2985

From: Dalcher, Debra
Sent: Monday, November 6, 2017 11:37 AM
To: Bernales, Barbara <bernales.barbara@epa.gov>
Cc: Scully, Carolyn <Scully.Carolyn@epa.gov>; Torres, Elineth <Torres.Elineth@epa.gov>; Lamason, Bill <Lamason.Bill@epa.gov>
Subject: RE: FDMS User Account Change Request (OIAI Rulemaking Docket)

Thank you again Barbara. We appreciate the support.

From: Bernales, Barbara

Sent: Monday, November 06, 2017 11:17 AM
To: Dalcher, Debra <dalcher.debra@epa.gov>
Cc: Scully, Carolyn <Scully.Carolyn@epa.gov>; Torres, Elineth <Torres.Elineth@epa.gov>; Lamason, Bill <Lamason.Bill@epa.gov>
Subject: RE: FDMS User Account Change Request (OIAI Rulemaking Docket)

Thanks Debra, I've requested the extract and will forward it to you once I've received it.

Barbara Bernales

Regulatory Support Division

Office of Enterprise Information Programs

Office of Environmental Information

U.S. Environmental Protection Agency

202-566-2985

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Sent: Monday, November 6, 2017 9:29 AM
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Cc: Scully, Carolyn <Scully.Carolyn@epa.gov>; Torres, Elineth <Torres.Elineth@epa.gov>; Lamason, Bill <Lamason.Bill@epa.gov>
Subject: RE: FDMS User Account Change Request (OIAI Rulemaking Docket)
Importance: High

Barbara,

Essentially we want everything in the docket submitted by the public which is why we excluded a data range.

If you need a date range to do the search we believe that the following date range should work:

Jan 1, 2005- Dec 31, 2007

Thank you, Debra

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Subject: RE: FDMS User Account Change Request (OIAI Rulemaking Docket)

Good Morning Debra!

Could you provide me with a specific start and end date?

Thanks!

Barbara Bernales

Regulatory Support Division

Office of Enterprise Information Programs

Office of Environmental Information

U.S. Environmental Protection Agency

202-566-2985

From: Dalcher, Debra
Sent: Monday, November 6, 2017 8:20 AM
To: Bernales, Barbara <bernales.barbara@epa.gov>
Cc: Scully, Carolyn <Scully.Carolyn@epa.gov>; Torres, Elineth <Torres.Elineth@epa.gov>

Subject: FW: FDMS User Account Change Request (OIAI Rulemaking Docket)

Good Morning Barbara

I am wondering if you could help with something. We submitted the attached request on 1 Nov for a docket extraction (an older docket, but not a large one). We submitted another a few days later and received that one already ☺.

There is some urgency associated with the above request and we are hoping someone could check to make sure it was received and also provide an update on when we can expect to receive the files.

If this does not fall in your lane, please just let me know who I can touch base with.

Thanks so much, Debra

From: Torres, Elineth
Sent: Wednesday, November 01, 2017 7:50 AM
To: FDMS <FDMS@epa.gov>
Cc: Dalcher, Debra <dalcher.debra@epa.gov>
Subject: FDMS User Account Change Request

See attached request.

Thanks.

Elineth Torres

OAQPS

919-541-4347

To: Rodman, Sonja[Rodman.Sonja@epa.gov]; Dalcher, Debra[dalcher.debra@epa.gov]
From: Jordan, Scott
Sent: Mon 1/22/2018 6:50:50 PM
Subject: RE: OIAO - Another Example of FR Notice (from Brian Doster)
2008 12 31 FR Notice re Interpretive Memo.pdf

Debra -

Ex. 5 - Attorney Client

Scott Jordan
Air and Radiation Law Office
Office of General Counsel
202-564-7508

-----Original Message-----
From: Jordan, Scott
Sent: Monday, January 22, 2018 1:10 PM
To: Rodman, Sonja <Rodman.Sonja@epa.gov>; Dalcher, Debra <dalcher.debra@epa.gov>
Subject: OIAO - Example of FR Notice from Sonja

Ex. 5 - Attorney Client

Scott Jordan
Air and Radiation Law Office
Office of General Counsel
202-564-7508

-----Original Message-----
From: Rodman, Sonja

Sent: Monday, January 22, 2018 12:42 PM
To: Jordan, Scott <Jordan.Scott@epa.gov>
Subject: FW: Notice of availability of our statutory interpretation in the RFS program

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.

-----Original Message-----
From: Orlin, David
Sent: Monday, January 22, 2018 12:34 PM
To: Rodman, Sonja <Rodman.Sonja@epa.gov>
Cc: Li, Ryland (Shengzhi) <Li.Ryland@epa.gov>
Subject: Notice of availability of our statutory interpretation in the RFS program

https://www.gpo.gov/fdsys/pkg/FR-2017-12-12/pdf/2017-26422.pdf

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]
From: Lewis, Josh
Sent: Thur 1/25/2018 8:36:47 PM
Subject: RE: OIAI Reclassification of Major Sources as Area Sources Under Section 112 _01 25 2018.docx
image2018-01-27-164839.pdf

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

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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

Ex. 5 - Deliberative Process

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

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To: Jordan, Scott[Jordan.Scott@epa.gov]; Dalcher, Debra[dalcher.debra@epa.gov]
From: Rodman, Sonja
Sent: Thur 1/25/2018 8:31:28 PM
Subject: Wehrum is signing OIAI right now

Just stepped out of a mtg to sign

Sent from my iPhone

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]
From: South, Peter
Sent: Thur 1/25/2018 8:13:56 PM
Subject: RE: 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 rev.docx

Ex. 5 - Deliberative Process

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: South, Peter[South.Peter@epa.gov]
Cc: 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]
From: Eck, Janet
Sent: Thur 1/25/2018 8:06:47 PM
Subject: Guidance Memo FR Notice
FRN Notice of Memorandum Availability 01 25 18.docx

Hi Pete, Attached is the OIAI guidance memo Federal Register notice that has been final approved by OAR. I have put this into FR Dailies. The FRL # is 9973-51-OAR. Please provide Peter's electronic signature today after Bill signs the memo. Thanks.

TRANSMISSION CHECKLIST TO WASHINGTON OPERATIONS

FR NOTICES TO BE SIGNED BY OAR

(Extension of Public Comment Period, Notice of Public Meeting or Workshop, Data Availability, Etc.)

Project Name: Issuance of Guidance Memorandum, "Reclassification of Major Sources as Area Sources Under Section 112 of the Clean Air Act"

SAN: 4908 **RIN:** 2060-AM75 **Tier:** 3 (approval date: 10/1/04)

OMB Significant (Y/N): N/A (Date:) Stat or Judicial Date:

Project Lead and Phone Number: Debra Dalcher, (919) 541-2443

Group Leader Signature and Date: Bill Lamason, (919) 541-5374 **(required)**

REQUIRED ITEMS	INCLUDED	REASON NOT INCLUDED
If your notice contains reg text, see Michael Benson/Reg Text Review	Date:	No regulatory text.
Post-It Note to OAR	✓	
Action Memo from OAQPS to OAR	✓	
Federal Register Notice (Notification) and Guidance Memorandum	✓	
Fact Sheet (if needed, confirm w/PACS)		N/A
Communications Plan (if needed, confirm w/PACS)		PACS is working on. POC Jan Cortelyou-Lee & Jenny Noonan
Action Information Form	✓	
FR Publication Cover Form	✓	
Federal Register Typesetting Request (EPA 2340-15) - signed by project lead	✓	
OGC Concurrence/Attorney Name	Date: 1/24/18	
Email confirmation from OGC agreeing that the package is ready to move forward	✓	

* = Tiering is not required for AA level signature, therefore, tiering may not have occurred. **(Revised 10/2017)**

Are there any outstanding issues and/or comments? Must this package be expedited (justify)?

ROUTING & SIGNATURE CHECKLIST

NOTICE OF ISSUANCE OF GUIDANCE PACKAGE

Project Name: Issuance of Guidance Memorandum, "Reclassification of Major Sources as Area Sources Under Section 112 of the Clean Air Act"

Project Lead and Number: Debra Dalcher, (919) 541-2443

Group Leader: Bill Lamason, (919) 541-5374

ROUTING	SIGNATURE
Bill Lamason/Group Leader	
Janet Eck/Reviewer	
SPPD Division Office	
Communication Clearance	
OAQPS	
JEck (for copying/mailing)	

Comments (If this package is to be expedited, provide date and justification):

Yes. This is an OAR priority action. Request expedited review.

Bill,

The guidance memorandum "Reclassification of Major Sources as Area Sources Under Section 112 of the Clean Air Act" is included for your final review and signature. I will sign the FR Notice announcing the availability of the guidance as soon as you have signed the memorandum and send that forward for processing.

Thank you and feel free to call me if you want to discuss or would like more information.

Peter T. (919-541-9411)

Reg Agenda Entry

NESHAP: General Provisions (Once In Always In) -- Amendments

OAR/OAQPS/SPPD | **SAN:** 4908
Tier 3 Regulation | **RIN:** 2060-AM75

Status

Status: Division Update Requested
Reports: Spring 2018 - Regulatory Agenda | **Plan Status:** No

Reviewers

Legal: Scott Jordan (202) 564-7508 | **Policy:** Karen Thundiyil ()

Internal Abstract

Instructions: This Internal Abstract is used within EPA but not shared outside of the Agency. It is provided here for comparison purposes. Do not edit this version for the Regulatory Agenda. Edit the External Abstract below.

Ex. 5 - Deliberative Process

External Abstract

Instructions: This External Abstract is the version of the abstract that the public will read in the Regulatory Agenda; this is the version you should edit for your Agenda review.

Ex. 5 - Deliberative Process

Regulatory Information

Priority Category:
Current Answer: Other Significant
Instructions: Select one of the following choices.

	Economically Significant
	Other Significant
	Substantive Nonsignificant
	Routine and Frequent
	Info/Admin/Other

Stage of Rulemaking:
Current Answer: Pending
Instructions: Select one of the following choices.

X	Prerule
	Proposed Rule
	Final Rule Stage
	Long-Term Action

	Completed Rule

CFR Citation: 40 CFR 63.1 **Legal Authority:** 42 U.S.C. 7401 et seq

Deadlines:

Deadline Description:

Potential Effects

Human Health

Question: Will this action address/concern human health impacts?

Instructions: Answer Yes, No or Undetermined. If Yes, provide an explanation.

Current Answer: Undetermined

Children's Health

Question: Is this action likely to address an adverse impact on childhood lifestages including prenatal (via exposure to women of childbearing age)? (Reg DaRRT)

Instructions: Answer Yes, No or Undetermined. If Yes, indicate if the likely impact is related to Exposure and/or Toxicity, and provide an explanation.

Current Answer: Undetermined

Environmental Justice

Question 1: Does this action involve a topic that is likely to be of particular interest to or have particular impact upon minority, low-income or indigenous populations, or tribes? (Reg DaRRT)

Instructions: Answer Yes, No or Undetermined. If yes, select from options below and provide an explanation. Selecting No means that this action is not likely to be of particular interest to these populations or tribes. Selecting Undetermined means that, given the information available at this time, the Agency does not know if these populations or tribes will be particularly interested in this action.

Current Answer: Undetermined

Question 2: If you answered Yes to the previous question, place an "X" to the left of at least one:

	The action is likely to impact the health of these populations.
	The action is likely to impact the environmental conditions of these populations.
	The action is likely to present an opportunity to address an existing disproportionate impact on these populations.
	The action is likely to result in the collection of information or data that could be used to assess potential impacts on the health or environmental conditions of these populations or tribes.
	The action is likely to affect the availability of information to these populations or tribes.
	Other reasons. Explain.

Current Answer:

Comments:

Levels of Government Affected:

Question 1: Are any levels of government affected? (Reg DaRRT)

[Instructions: Answer Yes, No or Undetermined to indicate whether the action is expected to affect a specific level of government. If Yes, answer the next question.]

Current Answer: Undetermined

Question 2: Levels Affected

[Instructions: Place an "X" to the left of at least one level of government if you answered Yes to Question 1.]

	Federal
	State
	Local
	Tribal
	Small

Current Answer:

Question 3: Describe the type of effects.
[Instructions: Place an "X" in at least one of the columns for each affected government level.]

	Likely to be involved in implementation	Likely to be regulated
Federal		
State		
Local		
Tribal		
Small		

Current answer:

	Likely to be involved in implementation	Likely to be regulated
Federal		
State		
Local		
Tribal		
Small		

Congressional Review Act (under SBREFA):
Question: Is this action major under CRA?
[Instructions: Answer Yes, No or Undetermined. If Yes, provide an explanation.]

Current answer: Undetermined

Unfunded Mandates:
Question 1: Is this action subject to Section 202 of the Unfunded Mandates Reform Act (UMRA)?
[Instructions: Answer Yes, No or Undetermined. If Yes, answer the next question.]

Current answer: Undetermined
Question 2: If your action is subject to Section 202 of UMRA, please check which category or categories are affected.
[Instructions: Place an "X" to the left of at least one.]

	Government
	Private

Current answer:

Regulatory Flexibility Act as Amended by the Small Business Regulatory Enforcement Fairness Act:
Question 1: Is this Action likely to have any impact (positive or negative) on any small entities?
[Instructions: Place an "X" to the left of at least one. If yes, answer the next question.]

	No Small Entities Affected
	Undetermined
	Small Business
	Small Government Jurisdictions
	Small Non-Profit Organizations

Current answer:
Undetermined
Question 2: Is this Action likely to have any adverse economic impact on any small entities?
[Instructions: Place an "X" to the left of at least one. If yes, answer the next question.]

	No Small Entities Affected

	Small Business
	Small Government Jurisdictions
	Small Non-Profit Organizations

Current answer:
Undetermined

Question 3: Is this Action likely to have a significant adverse economic impact on a substantial number small of small entities (SISNOSE) as defined in the Regulatory Flexibility Act?
[Instructions: Place an "X" to the left of at least one.]

	No Small Entities Affected
	Undetermined
	Small Business
	Small Government Jurisdictions
	Small Non-Profit Organizations

Current answer:
Undetermined

Federalism E.O. 13132:
Question: Is this action likely to have federalism implications as defined in E.O. 13132?
[Instructions: Answer Yes, No or Undetermined.]

Current answer: Undetermined

Energy Impacts:
Question: Is the action likely to have any significant effect on the supply, distribution or use of energy as defined in Executive Order 13211?
[Instructions: Answer Yes, No or Undetermined.]

Current answer: Undetermined

International Impacts:
Question: Will this regulatory action be likely to have international trade and investment effects, or otherwise be of international interest to our trading partners?
[Instructions: Answer Yes, No or Undetermined.]

Current answer: No

Timetable:

01/03/2007 - NPRM: 72 FR 69
03/05/2007 - NPRM Extension: 72 FR 9718

Sorting and Reference Information

Subject Code: 10 - CLEAN AIR ACT
[Instructions: Select one from 10 – Clean Air Act; 20 – Atomic Energy Act; 25 – Noise Control Act; 3 – General; 30 – FIFRA; 35 – TSCA; 40 – EPCRA; 45 – Chemical Safety Information Relief Act; 50 – RCRA; 55 – Oil Pollution Act; 60 – CERCLA; 70 – Clean Water Act; 72 – SDWA; 76 – MPRSA; 78 – SPA]

Programmatic URL:
[Instructions: Optional. Paste a URL to an EPA.gov web page that describes your action.]

Public Comment URL:

[Instructions: Optional. Paste a URL to a Regulations.gov web page that offers an opportunity for public comment.]

Docket #:
[Instructions: Where available, provide the Regulations.gov docket number assigned to your action.]

Additional Information:

Affected Industrial Sectors

Instructions: Choose NAICS codes from the 2012 U.S. NAICS Codes and Titles (http://www.census.gov/eos/www/naics/).

Agency POCs

Primary POC:
Elineth Torres/RTP/USEPA/US
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Air and Radiation
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FAX: 919 541-5600
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Public POC:

Phone:
E-Mail:

Note: Deliberative...Not Agency Policy...Do Not Quote, Cite or Distribute

Sample of comments received regarding EPA's OIAI interpretation of CAA statutory language. EPA's 2007 GP Proposal (72 FR 69; January 3, 2007)

The Utility Air Regulatory Group (UARG); Lee B. Zeugin; EPA-HQ-OAR-2004-0094-0136

"CAA § 112(a)(1). An "area source" is defined as any stationary source of hazardous air pollutants that is not a "major" source. CAA § 112(a)(2). Thus, § 112(a) contains a single factor for distinguishing between a "major source" and an "area source" -- the amount of HAPs the source "emits or has the potential to emit." Section § 112(a) does not specify when this source categorization determination must be made nor does it require that a source's classification must stay the same regardless of later changes in the source's actual emissions or its potential to emit. EPA's "once-in-always-in" policy freezes a major source's classification on the first substantive compliance date. As a result, it is inconsistent with CAA § 112(a)."

Steel Manufacturers Association (SMA) and The Specialty Steel Industry of North America (SSINA); EPA-HQ-OAR-2004-0094-0160

The 1995 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 not 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. … Is well within the authority of 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.

National Association of Manufacturers (NAM), Bryan L. Brendle, Director, Energy and Resources Policy; EPA-HQ-OAR-2004-0094-0170

Sec. 112 of the CAA, Congress clearly defines the terms "major" and "area "sources. The Act states that "a major source as a stationary source that emits or has the potential to emit considering controls" HAP above certain thresholds and all other stationary sources as "area sources." Also, regulators adopted virtually the same definition when promulgating regulations pursuant to Sec. 112. Furthermore, the EPA states that the definition of a major source does not refer to the compliance date of an applicable MACT standard nor does it include a prohibition on sources changing from major source status to area source status. If federal lawmakers had intended the above result, they could have easily referred to the date EPA promulgates an applicable MACT standard or to the date such a standard becomes a requirement for the source. Therefore, there is no "gap" in the language that regulators must bridge in order to define the term "major source," and the EPA has no authority to reference other criteria such as prevention of "backsliding" or other policies for added meaning.

Council of Industrial Boiler Owners (CIBO), Robert D. Bessette, President; EPA-HQ-OAR-2004-0094-0133

Although the statute and the regulations are clear, EPA policy has focused on additional elements not found in the statute. As EPA states, "the 1995 OIAI policy memorandum creates a dividing line between a major and minor source which 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."

Air Permitting Forum (APF) and American Petroleum Institute (API); EPA-HQ-OAR-2004-0094-0124

EPA's 1995 Policy was also internally inconsistent, establishing a one-way street not contemplated by the statutory language. Under the 1995 Policy, any source that was major on the first substantive compliance date of a particular MACT could never be considered an area source for that MACT, notwithstanding a subsequent reduction in actual and potential emissions below the major source threshold (that would qualify it as "area" for future MACT standards). Conversely, EPA would hardly suggest that a source classified as an area source on the first substantive compliance date of a MACT could never be considered "major" if it subsequently increased its emissions potential above the major source threshold. Clearly such a result would be inconsistent with the *present tense* definition of "major source."

Although not clear on its face, the 1995 Policy also appears to assume that Congress was "silent" about the temporal component of the major source definition, leading EPA to believe that it has discretion to impose a timing requirement. Such a conclusion is not warranted. There is no ambiguity in the plain language of Section 112(a)'s definition of "major source" – and EPA should not attempt to find ambiguity in this clear provision.

The Supreme Court has observed that "the final language of the legislation may reflect hard-fought compromises." *Board of Governors v. Dimension Financial Corp.*, 474 U.S. 361, 374 (1986). The Clean Air Act itself reflects compromises between economic and environmental values. *Chevron, U.S.A. v. Natural Resources Defense* Council, 467 U.S. 837, 847 (1984). One of these compromises was the establishment of the "major source" level under Section 112. Given the importance of this definition – which is central to the scope of regulation under this provision – EPA must presume that Congress intentionally crafted all of its elements. In this case, Congress determined that sources with greater than 10/25 tons per year of emissions should be regulated under the Section 112(d) major source program and others should be regulated under the area source program. Congress also evinced a clear intent to promote pollution prevention measures by sources in enacting the Clean Air Act Amendments and the Pollution Prevention Act, both in 1990. *See, e.g.,* 42 U.S.C. § 7401(c) (primary goal of the Clean Air Act to encourage or otherwise promote pollution prevention); 42 U.S.C. § 13101(a) (finding opportunities for pollution prevention often not realized because of existing regulations, and pollution prevention and source reduction more desirable than pollution control).

The 1995 Policy changed the congressional calculus by imposing major source requirements on area sources. EPA there stated:

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.

After reading in "silence" and therefore "ambiguity" – without support in the definition, the guidance reached the conclusion that the OIAI policy is "consistent with the language and structure of the Act." This conclusion, however, was not supported by any explanation as to how this policy is consistent with the definition of "major source" or the structure of Section 112 or the Act more generally. Such unsupported assertions cannot withstand scrutiny in the face of plain statutory language that contemplates a present tense determination of major or area source status.

The Synthetic Organic Chemical Manufacturers Association (SOCMA); Jeff Gunnulfsen, Senior

Manager, Government Relations; EPA-HQ-OAR-2004-0094-0132

The Clean Air Act does not compel the outcome specified in the 1995 Guidance. Section 112 simply specifies that EPA is to develop standards for major sources and for area sources. It does not specify "once a major source, always a major source." In addition, the 1995 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. It is not entitled to any deference.

Clean Air Implementation Project and American Chemistry Council (ACC), William H. Lewis, Morgan, Lewis & Bockius LLP; EPA-HQ-OAR-2004-0094-0162

EPA's OIAI policy was an attempt to rewrite the statutory and regulatory applicability criteria for HAP standards. As discussed above, in its OIAI policy, EPA premised applicability of MACT standards on whether a source was a major source at the time of a standard's "first compliance date," and provided that a source would remain permanently subject to the MACT standard even if the source subsequently became an area source. However, nothing in Part 63 or the Act itself provides that a "major source" that becomes an area source remains subject to a MACT standard that expressly applies only to "major sources." Indeed, EPA did not base the OIAI policy on express statutory or regulatory language or otherwise specify any legal authority for the position taken in the policy. Under the plain language of Part 63 and the Act, a source is "a major source" only as long as it meets the definitional criteria, *i.e .,* its HAP emissions meet or exceed either the 10 tpy or 25 tpy thresholds . If the applicability of a section 112 standard is linked exclusively to a source being a "major source," that applicability ceases when the source in question is no longer a "major source."

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

OFFICE OF
AIR AND RADIATION

MEMORANDUM

SUBJECT: Reclassification of Major Sources as Area Sources Under Section 112 of the Clean Air Act

FROM: William L. Wehrum
Assistant Administrator

1-25-18

TO: Regional Air Division Directors

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

A prior EPA guidance memorandum had taken a different position. *See* "Potential to Emit for MACT Standards – Guidance on Timing Issues." John Seitz, Director, Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency (May 16, 1995) (the "May 1995 Seitz Memorandum"). The May 1995 Seitz Memorandum set forth a policy, commonly known as "once in, always in" (the "OIAI policy"), under which "facilities may switch to area source status at any time until the 'first compliance date' of the standard," with "first compliance date" being defined to mean the "first date a source must comply with an emission limitation or other substantive regulatory requirement." May 1995 Seitz Memorandum at 5. Thereafter, under the OIAI policy, "facilities that are major sources for HAP on the 'first compliance date' are required to comply permanently with the MACT standard." *Id.* at 9.

The guidance presented here supersedes that which was contained in the May 1995 Seitz Memorandum. The OIAI policy stated in the May 1995 Seitz Memorandum is withdrawn, effective immediately.

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.

BACKGROUND

Relevant Statutory Provisions

Section 112 of the CAA establishes a multi-level regulatory structure for stationary sources of HAP, in which sources meeting a threshold amount of actual or potential HAP emissions – *i.e.*, "major sources" – are generally subject to different standards than sources with HAP emissions below the threshold.[1] Specifically, the CAA defines a "major source" to mean "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." 42 U.S.C. § 7412(a)(1). The term "area source" is defined to mean "any stationary source of hazardous air pollutants that is not a major source." *Id.* 42 U.S.C. § 7412(a)(2).[2] In contrast to the OIAI policy, the CAA contains no provision which specifies that, if a major source wishes to switch to area source status, by taking an enforceable limit on its PTE, it must do so prior to the "first compliance date," or that a major source MACT standard will continue to apply to a former major source that, subsequent to the first compliance date, takes an enforceable limit on its PTE to below the applicable thresholds.

EPA's Past Actions

Shortly after EPA began implementing individual MACT standards through rulemaking, the agency received multiple requests to clarify when a major source of HAP could avoid the requirements applicable to major sources by taking measures to limit its PTE below the major source thresholds. In response, EPA produced the May 1995 Seitz Memorandum. At that time, EPA took the position that facilities that are major sources of HAP on the first substantive compliance date of an applicable major source MACT standard must comply "permanently" with that standard, even if the source was subsequently to become an area source by limiting its PTE. The expressed basis for this OIAI policy was that this would help ensure that required reductions in HAP emissions were maintained over time. *See* May 1995 Seitz Memorandum at 9 ("A once in,

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[1] Standards for major sources are based on MACT, which is the level of control achieved by the best controlled sources in the category. *See* 42 U.S.C. § 7412 (d)(2), (d)(3). Standards for area sources may be based on MACT, but alternatively may be based on either generally available control technology (GACT) or generally available management practices that reduce HAP emissions. *Id.* 42 U.S.C. §7412(d)(2), (5).

[2] The CAA section 112 implementing regulations define "major source" and "area source" in nearly identical terms. *See* 40 CFR 63.2. ("Major source means 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, unless the Administrator establishes a lesser quantity, or in the case of radionuclides, different criteria from those specified in this sentence."; "Area source means any stationary source of hazardous air pollutants that is not a major source as defined in this part.")

always in policy ensures that the health and environmental protection provided by MACT standards is not undermined.").

Since issuing the OIAI policy, EPA has twice proposed regulatory amendments that would have altered this interpretation. In 2003, EPA proposed amendments that focused on HAP emissions reductions resulting from pollution prevention (P2) activities. Apart from certain provisions associated with EPA's National Environmental Performance Track Program, that proposal was never finalized. *See* 68 FR 26249 (May 15, 2003); 69 FR 21737 (April 22, 2004).

In 2007, EPA issued a proposed rule to replace the OIAI policy set forth in the May 1995 Seitz Memorandum. 72 FR 69 (January 3, 2007). In that proposal, EPA reviewed the provisions in CAA section 112 relevant to the OIAI interpretation, applicable regulatory language, stakeholder concerns and potential implications. *Id.* at 71-74. Based on that review, EPA proposed that a major source that is subject to a major source MACT standard would no longer be subject to that standard, if the source were to become an area source through an enforceable limitation on its PTE. Under the proposal, major sources could take such limits on its PTE and obtain "area source" status at any time and would not be required to have done so before the "first compliance date," as the OIAI policy provided. *Id.* at 70 ("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 before the major source thresholds."). EPA has never taken final action on this 2007 proposal, which has not been withdrawn.

DISCUSSION

EPA has determined that the OIAI policy articulated in the May 1995 Seitz Memorandum is contrary to the plain language of the CAA, and, therefore, must be withdrawn. Congress expressly defined the terms "major source" and "area source" in CAA section 112(a), in unambiguous language. A "major source" is a source that "emits or has the potential to emit considering controls, in the aggregate," 10 tpy or more of any single HAP or 25 tpy or more of any combination of HAP. An "area source" is defined simply to mean any stationary source that is not a "major source." The OIAI policy had envisioned a source whose PTE is *below* 10 tpy of any single HAP and 25 tpy of any combination of HAP (*i.e.*, an "area source"), but which is nevertheless subject to the requirements applicable to major sources, including major source MACT standards. Notably absent from the statutory definitions is any reference to the compliance date of a MACT standard. Furthermore, the phrase "considering controls" within the definition of "major source" indicates that measures a source adopts to lower its PTE below the major source threshold must be considered as operating to remove it from the major source category regardless of the time at which those controls are adopted.

In short, Congress placed no temporal limitations on the determination of whether a source emits or has the PTE HAP in sufficient quantity to qualify as a major source. To the extent the OIAI policy imposed such a temporal limitation (*i.e.*, before the "first compliance date"), EPA had no authority to do so under the plain language of the statute.[3]

[3] Noteworthy too is the fact that EPA, in promulgating the regulatory definitions of "major source" and "area source" contained in the General Provisions of 40 CFR part 63, copied the statutory language almost verbatim. *See*

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

Nothing in the structure of the CAA counsels against the plain language reading of the statute to allow major sources to become area sources after an applicable compliance date, just as they have long been able to become area sources before the applicable compliance date. Congress defined major and area sources differently and established different requirements for such sources. The OIAI policy, by contrast, created an artificial time limit that does not exist on the face of the statute by including a temporal limitation on when a major source can become an area source by limiting its PTE.

Many commenters on EPA's 2007 proposal had expressed the view that, by imposing that artificial time limit, the OIAI policy created a disincentive for sources to implement voluntary pollution abatement and prevention efforts, or to pursue technological innovations that would reduce HAP emissions. To the extent that the OIAI policy has long discouraged facilities from identifying and undertaking such HAP emission reduction projects, by applying the statute as written as EPA is now doing, many types of sources will be afforded meaningful incentives to undertake such projects.

The Regional offices should send this memorandum to states within their jurisdiction. Questions concerning specific issues and sources should be directed to the appropriate Regional office. Regional office staff should coordinate with Ms. Elineth Torres or Ms. Debra Dalcher, Policy and Strategies Group, Sector Policies and Programs Division (D205-02), Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone number: (919) 541-4347 or (919) 541-2443, respectively; and email address: torres.elineth@epa.gov or dalcher.debra@epa.gov, respectively.

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note 2, *supra*. EPA did not at that time include any language in those definitions that could reasonably be construed to provide support for the OIAI policy. Accordingly, the policy is contrary not only to the plain language of the CAA (which in itself is dispositive of the policy's lawfulness), but to the plain language of EPA's own regulations.

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

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.

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.

> 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

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.

> 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

"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

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.

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.

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.

> 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?

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

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

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).

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

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

> 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

> 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

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).

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

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

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

> 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

> 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

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

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

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).

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?"

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).

> 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.

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.

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

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

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

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

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

> 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

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

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.

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

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.

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.

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.

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.

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.

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).").

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.

Action Information

Action Title: Issuance of Guidance Memorandum, "Reclassification of Major Sources as Area Sources Under Section 112 of the Clean Air Act" (Tier 3; SAN 4908; RIN 2060-AM75)

Purpose: This action provides notice of the issuance of the Guidance Memorandum, "Reclassification of Major Sources as Area Sources Under Section 112 of the Clean Air Act."

Ex. 5 - Deliberative Process

Ex. 5 - Deliberative Process

Key Issues/Internal Review: None.

Legal Deadlines: None.

Timing: Because this is an Administration priority action, we are requesting expedited publication by February 1, 2018.

Current as of 3/7/2016

Cover Form and Checklist for *Federal Register* (FR) Document Submissions to the Office of Policy (OP)

Section 1: Tracking information

Contact name: Janet Eck Office/Region: OAR

Contact phone and email: (919) 541-7946, eck.janet@epa.gov

Docket # *(if applicable)*: FRL # *(if applicable)*: 9973-51-OAR

Name of document: Issuance of Guidance Memorandum, "Reclassification of Major Sources as Area Sources Under Section 112 of the Clean Air Act"

Name of File: FRN Notice of Memorandum Availability 01 25 18.docx

Other Information (alternate contacts, etc.):

Alternate Contact: Debra Dalcher, (919) 541-2443, dalcher.debra@epa.gov

Is this action subject to the Congressional Review Act (CRA)?
For questions associated with the CRA, consult the attorney assigned to your action, or visit http://intranet.epa.gov/actiondp/documents/craguidance15-10-15.pdf.

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Section 3: Checklist for Document Format and Package Components

The following section provides formatting requirements for materials included in a submission package. Requirements are based on OFR's Document Drafting Handbook. Failure to adhere to these requirements could delay the publication of your document.

- [x] 1. EPA's Billing Code is present **(6560-50-P)** on original and each copy, on the first page of each document in the upper right corner.
- [x] 2. The **title** is concise, does not contain overly specific information, and does not contain legal citations.
- [x] 3. The **SUMMARY** section is no longer than one page.
- [x] 4. The **SUMMARY** section does not contain legal citations *(i.e., CFR citations, FR citations, USC citations, etc.).*
- [x] 5. The **DATES** section is labeled "**DATES**" *(Not "EFFECTIVE DATES", etc.).*
- [ ] 6. The **Table of Contents**, if included, matches the headings in the preamble.

7. **Signature Block – Original Paper Version***

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Washington, DC 20460

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1. TITLE
Issuance of Guidance Memorandum, "Reclassification of Major Sources as Area Sources Under Section 112 of the Clean Air Act"

2. SUBMITTING ACTIVITY OAR/OAQPS/SPPD/PSG	**3. ASSIGNED FRL NUMBER** *(include alpha & numeric characters for identification)* FRL-
4. OPEN REQUISITION NUMBER	**5. BILLING CODE** 6560-50-P
6. FORWARDED TO GSA, NARS - SIGNATURE	**DATE**

7. NUMBER OF MANUSCRIPT PAGES 4 pages	**8. ESTIMATED NUMBER OF COLUMNS** 0 pages w/tables	**9. ESTIMATED COST**

10. SIGNATURE: (a) REQUESTING OFFICER Debra Dalcher Debra L. Dalcher		**11. SIGNATURE: (a) FEDERAL REGISTER DESIGNEE**	
(b) DATE 1/24/18	**(c) TELEPHONE NUMBER** (919) 541-2443	**(b) DATE**	**(c) TELEPHONE NUMBER**

12. FUNDS ARE AVAILABLE

Johnetta Heilig	Johnetta Heilig	(919) 541-5676
NAME OF FUNDS CERTIFYING OFFICER	SIGNATURE OF FUNDS CERTIFYING OFFICER	PHONE NUMBER OF FUNDS CERTIFYING OFFICER

This document is being submitted with a CD and is eligible for the 10% discount.
Please contact Johnetta Heilig for accounting data.

POC: Debra Dalcher, SPPD/PSG, (919) 541-2443

13. Financial and Accounting Data

Line	DCN (Max 7)	Budget/FYs (Max 4)	Appropriation Code (Max 6)	Budget Org/Code (Max 7)	Program Results Code (Max 9)	Object Class (Max 4)	SFO (Max 2)
1	FP8022	1819	B	53K7	000A58	2412	27
2							
3							

Line	Amount (Dollars)	(Cents)	Site/Project (Max 8)	Cost Org/Code (Max 7)
1	477	00		
2				
3				

EPA Form 2340-15 (Rev. 8- 94) Electronic and paper versions acceptable. (WebForms v1.0)
Previous editions are obsolete.

COPY 1 – PRINTING MANAGEMENT OFFICER

Compass Data Warehouse Document Review Compass Document: RQ 1853FP8022 01/24/2018 12:32:32 Welcome

Document Summary:
Doc Type: RQ
Doc No: 1853FP8022
External Doc No:
Commitment Date: 01/24/18
Closed Date:
Servicing Finance Office: CFC
Original Amount: $477.00
Available Amount: $477.00
Description:
Extended Description:

Document Details: Expand

Line#	Line Amt	Obligated Amt	Refunded Amt	Available Amt	BFY	Fund	Org	Program	Project	FOC	CostOrg	Comments	Extende
1	$477.00	$0.00		$477.00	20182019	B	53K7	000A58	n/a	2412		Federal Register SPPD PSG 1/24/18	

Document Activity:

Warehouse Homepage
EPA Web Home | EPA Navigation
https://V1742TRTAY006.RTP.EPA.GOV/neis/ifms_doc.resolve
This web page was last updated on 09/14/2017.
For issues, please contact: The OCFO Sytem Help Desk - OCFOSS.team-Help@epa.gov or (202) 564-OCFO (6236)

To: Dalcher, Debra[dalcher.debra@epa.gov]
From: Lamason, Bill
Sent: Tue 1/9/2018 7:51:15 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

Debra, FYI. Since we're talking with Harlow tomorrow thought you should be aware of this testimony. Please do not forward without checking with me. Thanks! Bill

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

To: Jared Rothstein[rothsteinj@socma.com]
From: Dalcher, Debra
Sent: Tue 1/30/2018 7:33:24 PM
Subject: RE: EPA "Once In, Always In" HAP Policy

Jared,

The list of MACT standards that have been delegated to each state can be found in 63.99.

Thank you, Debra

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]
From: Cortelyou-Lee, Jan
Sent: Wed 1/31/2018 7:10:40 PM
Subject: Talking Points - Overview.docx
Talking Points - Overview.docx

Heres a draft to get us started.

To: Barnett, Keith[Barnett.Keith@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]; McLamb, Marguerite[McLamb.Marguerite@epa.gov]; French, Chuck[French.Chuck@epa.gov]; Dalcher, Debra[dalcher.debra@epa.gov]; Boyd, Rochelle[Boyd.Rochelle@epa.gov]
From: Torres, Elineth
Sent: Tue 9/26/2017 12:28:07 PM
Subject: OIAI draft internal memo
Draft 2017 OIAI Memo post Peter feedback 09_13_17_CLEAN.docx

As discussed last week, attached is the latest version of the OIAI draft memo. Please do not share with others.

Thanks,

Elineth Torres

OAQPS

919-541-4347

To: Dalcher, Debra[dalcher.debra@epa.gov]
From: Torres, Elineth
Sent: Mon 11/6/2017 2:24:32 PM
Subject: FW: FDMS User Account Change Request (OIAI Rulemaking Docket)

It seems that Jan 1, 2005- Dec 31, 2007 should cover everything that is in the docket.

Elineth Torres

OAQPS

919-541-4347

From: Bernales, Barbara
Sent: Monday, November 06, 2017 9:06 AM
To: Dalcher, Debra <dalcher.debra@epa.gov>
Cc: Scully, Carolyn <Scully.Carolyn@epa.gov>; Torres, Elineth <Torres.Elineth@epa.gov>
Subject: RE: FDMS User Account Change Request (OIAI Rulemaking Docket)

Good Morning Debra!

Could you provide me with a specific start and end date?

Thanks!

Barbara Bernales

Regulatory Support Division

Office of Enterprise Information Programs

Office of Environmental Information

U.S. Environmental Protection Agency

202-566-2985

From: Dalcher, Debra
Sent: Monday, November 6, 2017 8:20 AM
To: Bernales, Barbara <bernales.barbara@epa.gov>
Cc: Scully, Carolyn <Scully.Carolyn@epa.gov>; Torres, Elineth <Torres.Elineth@epa.gov>
Subject: FW: FDMS User Account Change Request (OIAI Rulemaking Docket)

Good Morning Barbara

I am wondering if you could help with something. We submitted the attached request on 1 Nov for a docket extraction (an older docket, but not a large one). We submitted another a few days later and received that one already ☺.

There is some urgency associated with the above request and we are hoping someone could check to make sure it was received and also provide an update on when we can expect to receive the files.

If this does not fall in your lane, please just let me know who I can touch base with.

Thanks so much, Debra

From: Torres, Elineth
Sent: Wednesday, November 01, 2017 7:50 AM
To: FDMS <FDMS@epa.gov>
Cc: Dalcher, Debra <dalcher.debra@epa.gov>
Subject: FDMS User Account Change Request

See attached request.

Thanks.

Elineth Torres

OAQPS

919-541-4347

From: Dalcher, Debra
Importance: Normal
Subject: Accepted: OIAI debrief
Start Date/Time: Thur 9/28/2017 6:00:00 PM
End Date/Time: Thur 9/28/2017 6:30:00 PM

From: Dalcher, Debra
Location: RTP-D201-Max40/RTP-Bldg-D; RTP-OAQPS Ex. 5 - Attorney Client PPD/Phone-Line/RTP-OAQPS-BLDG-C
Importance: High
Subject: OIAI re. (Pollution Prevention re. Coatings, Industrial Boilers, etc.)
Start Date/Time: Tue 11/14/2017 3:00:00 PM
End Date/Time: Tue 11/14/2017 3:30:00 PM

To: Torres, Elineth[Torres.Elineth@epa.gov]
From: Dalcher, Debra
Sent: Thur 9/28/2017 2:13:17 PM
Subject: RE: OIAI debrief

Elineth, can we move this back 30 minutes. Ravi just scheduled over your meeting ☹

-----Original Appointment-----
From: Torres, Elineth
Sent: Thursday, September 28, 2017 8:03 AM
To: Torres, Elineth; Dalcher, Debra
Subject: OIAI debrief
When: Thursday, September 28, 2017 1:30 PM-2:00 PM (UTC-05:00) Eastern Time (US & Canada).
Where:

From: Dalcher, Debra
Importance: Normal
Subject: Accepted: OIAI debrief
Start Date/Time: Thur 9/28/2017 5:30:00 PM
End Date/Time: Thur 9/28/2017 6:00:00 PM

To: French, Chuck[French.Chuck@epa.gov]
From: Dalcher, Debra
Sent: Thur 12/7/2017 9:07:46 PM
Subject: Emailing: Factsheet_GP Proposed Amendments.pdf, 2007 OIAI FRN proposal.pdf
Factsheet_GP Proposed Amendments.pdf
2007 OIAI FRN proposal.pdf

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

Factsheet_GP Proposed Amendments.pdf
2007 OIAI FRN proposal.pdf

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.

From: Dalcher, Debra
Location: Elineth's office
Importance: Normal
Subject: Accepted: OIAI check-in
Start Date/Time: Wed 9/27/2017 12:30:00 PM
End Date/Time: Wed 9/27/2017 1:00:00 PM

To: Srivastava, Ravi[Srivastava.Ravi@epa.gov]
From: Dalcher, Debra
Sent: Thur 11/16/2017 6:26:15 PM
Subject: RE: Troubleshooting Files

☺

From: Srivastava, Ravi
Sent: Thursday, November 16, 2017 1:25 PM
To: Dalcher, Debra <dalcher.debra@epa.gov>
Subject: RE: Troubleshooting Files

Debra,

Thanks. I have checked all 3 and they all terminated with the same error. It seems one or more files is either a scan, or is empty, or somehow is unreadable. I will now try to find those files.

Ravi

From: Dalcher, Debra
Sent: Thursday, November 16, 2017 1:23 PM
To: Srivastava, Ravi <Srivastava.Ravi@epa.gov>
Subject: RE: Troubleshooting Files

Ravi,

I added a third troubleshoot case at the same location. I am guessing you don't need it, but figured I would keep everything in one place.

D

From: Dalcher, Debra
Sent: Thursday, November 16, 2017 11:18 AM
To: Srivastava, Ravi <Srivastava.Ravi@epa.gov>
Subject: Troubleshooting Files

G:\USER\SHARE__PSG\Once In Always In\Ravi_OIAI\Troubleshoot Case 1

G:\USER\SHARE__PSG\Once In Always In\Ravi_OIAI\Troubleshoot Case 2

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: 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]
Bcc: Dalcher, Debra[dalcher.debra@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

From: Dalcher, Debra
Location: Elineth's office
Importance: Normal
Subject: Accepted: OIAI follow-up
Start Date/Time: Tue 9/26/2017 1:30:00 PM
End Date/Time: Tue 9/26/2017 2:30:00 PM

To: Srivastava, Ravi[Srivastava.Ravi@epa.gov]
From: Dalcher, Debra
Sent: Thur 11/16/2017 6:23:04 PM
Subject: RE: Troubleshooting Files

Ravi,

I added a third troubleshoot case at the same location. I am guessing you don't need it, but figured I would keep everything in one place.

D

From: Dalcher, Debra
Sent: Thursday, November 16, 2017 11:18 AM
To: Srivastava, Ravi <Srivastava.Ravi@epa.gov>
Subject: Troubleshooting Files

G:\USER\SHARE__PSG\Once In Always In\Ravi_OIAI\Troubleshoot Case 1

G:\USER\SHARE__PSG\Once In Always In\Ravi_OIAI\Troubleshoot Case 2

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: Srivastava, Ravi[Srivastava.Ravi@epa.gov]
From: Dalcher, Debra
Sent: Thur 11/16/2017 4:18:25 PM
Subject: Troubleshooting Files

G:\USER\SHARE__PSG\Once In Always In\Ravi_OIAI\Troubleshoot Case 1

G:\USER\SHARE__PSG\Once In Always In\Ravi_OIAI\Troubleshoot Case 2

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: Barnett, Keith[Barnett.Keith@epa.gov]
Cc: Lamason, Bill[Lamason.Bill@epa.gov]
Bcc: Dalcher, Debra[dalcher.debra@epa.gov]
From: Dalcher, Debra
Sent: Mon 1/22/2018 5:58:32 PM
Subject: FW: CMS ASSIGNMENT AL-18-000-3332
EPA response to Sens Barrasso Capito on onceinalwaysin.docx

Keith,

Ex. 5 - Deliberative Process

Thank you, Debra

From: Dalcher, Debra
Sent: Monday, January 22, 2018 7:11 AM
To: Morales, Mariel <Morales.Mariel@epa.gov>
Subject: RE: CMS ASSIGNMENT AL-18-000-3332

Mariel,

Ex. 5 - Deliberative Process

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,

Ex. 5 - Deliberative Process

Mariel Morales

Communications Specialist

OAQPS/SPPD

U.S. Environmental Protection Agency

(919) 541-9774

From: Dalcher, Debra
Location: D220D/Call in number x Ex. 6 - Personal Privacy
Importance: Normal
Subject: Accepted: OIAI Check in (coordination with Kevin)
Start Date/Time: Mon 11/6/2017 6:00:00 PM
End Date/Time: Mon 11/6/2017 7:00:00 PM

From: Dalcher, Debra
Location: RTP-D201-Max40/RTP-Bldg-D; RTP-OAQPS Ex. 6 - Personal Privacy -SPPD/Phone-Line/RTP-OAQPS-BLDG-C
Importance: Normal
Subject: Accepted: OIAI Discussion: Principle-based policy
Start Date/Time: Wed 9/20/2017 7:00:00 PM
End Date/Time: Wed 9/20/2017 7:30:00 PM

To: Jordan, Scott[Jordan.Scott@epa.gov]
Bcc: Dalcher, Debra[dalcher.debra@epa.gov]
From: Dalcher, Debra
Sent: Thur 1/25/2018 1:31:50 PM
Subject: FW: Examples as Requested

Just FYI Scott,

Ex. 5 - Attorney Client

Debra

From: Lamason, Bill
Sent: Wednesday, January 24, 2018 3:25 PM
To: Cortelyou-Lee, Jan <Cortelyou-Lee.Jan@epa.gov>; Dalcher, Debra <dalcher.debra@epa.gov>
Subject: RE: Examples as Requested

Ex. 5 - Attorney Client

Ex. 5 - Attorney Client

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.

Ex. 5 - Attorney Client

Ex. 5 - Attorney Client

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: Lamason, Bill[Lamason.Bill@epa.gov]
From: Dalcher, Debra
Sent: Thur 11/16/2017 3:59:41 PM
Subject: FW: Current version of the examples in the draft OIAI memo - Comment today if possible

From: Dalcher, Debra
Sent: Thursday, November 16, 2017 10:59 AM
To: Eddinger, Jim <Eddinger.Jim@epa.gov>
Subject: RE: Current version of the examples in the draft OIAI memo - Comment today if possible

Thanks Jim.

From: Eddinger, Jim
Sent: Thursday, November 16, 2017 10:55 AM
To: Barnett, Keith <Barnett.Keith@epa.gov>; Dalcher, Debra <dalcher.debra@epa.gov>; Lassiter, Penny <Lassiter.Penny@epa.gov>
Subject: RE: Current version of the examples in the draft OIAI memo - Comment today if possible

Ex. 5 - Deliberative Process

Jim

James Eddinger

Energy Strategies Group

Sector Policies and Programs Division

919-541-5426

too.

From: Barnett, Keith
Sent: Thursday, November 16, 2017 9:45 AM
To: Dalcher, Debra <dalcher.debra@epa.gov>; Lassiter, Penny <Lassiter.Penny@epa.gov>; Eddinger, Jim <Eddinger.Jim@epa.gov>
Subject: RE: Current version of the examples in the draft OIAI memo - Comment today if possible

Ex. 5 - Deliberative Process

Keith Barnett

Minerals and Manufacturing Group Leader

919-541-5605

From: Dalcher, Debra
Sent: Thursday, November 16, 2017 7:37 AM
To: Lassiter, Penny <Lassiter.Penny@epa.gov>; Eddinger, Jim <Eddinger.Jim@epa.gov>; Barnett, Keith <Barnett.Keith@epa.gov>
Subject: Current version of the examples in the draft OIAI memo - Comment today if possible

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: Eddinger, Jim[Eddinger.Jim@epa.gov]
From: Dalcher, Debra
Sent: Thur 11/16/2017 3:59:29 PM
Subject: RE: Current version of the examples in the draft OIAI memo - Comment today if possible

Thanks Jim.

From: Eddinger, Jim
Sent: Thursday, November 16, 2017 10:55 AM
To: Barnett, Keith <Barnett.Keith@epa.gov>; Dalcher, Debra <dalcher.debra@epa.gov>; Lassiter, Penny <Lassiter.Penny@epa.gov>
Subject: RE: Current version of the examples in the draft OIAI memo - Comment today if possible

It looks fine to me,

Jim

James Eddinger

Energy Strategies Group

Sector Policies and Programs Division

919-541-5426

too.

From: Barnett, Keith
Sent: Thursday, November 16, 2017 9:45 AM
To: Dalcher, Debra <dalcher.debra@epa.gov>; Lassiter, Penny <Lassiter.Penny@epa.gov>; Eddinger, Jim <Eddinger.Jim@epa.gov>
Subject: RE: Current version of the examples in the draft OIAI memo - Comment today if possible

This looks fine to me.

Keith Barnett

Minerals and Manufacturing Group Leader

919-541-5605

From: Dalcher, Debra
Sent: Thursday, November 16, 2017 7:37 AM
To: Lassiter, Penny <Lassiter.Penny@epa.gov>; Eddinger, Jim <Eddinger.Jim@epa.gov>; Barnett, Keith <Barnett.Keith@epa.gov>
Subject: Current version of the examples in the draft OIAI memo - Comment today if possible

We have also observed in implementing the MACT program some situations where sources have limited their PTE to area source level or have made technological changes eliminating the source of HAP, but because changes were made after the first compliance date of a specific MACT standard the sources must comply with that respective MACT standard, obtain and maintain a title V permit and pay annual emission-based fees. For example, we have been aware of facilities

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: Jordan, Scott[Jordan.Scott@epa.gov]
Cc: Lamason, Bill[Lamason.Bill@epa.gov]; Rodman, Sonja[Rodman.Sonja@epa.gov]
Bcc: Dalcher, Debra[dalcher.debra@epa.gov]
From: Dalcher, Debra
Sent: Mon 1/22/2018 2:07:48 PM
Subject: RE: OIAI Revision - Addressed Sonja's Comments w Ex. 5 - Deliberative Process

Good Morning Scott, thank you.

Ex. 5 - Deliberative Process

Debra

From: Jordan, Scott
Sent: Monday, January 22, 2018 9:05 AM
To: Dalcher, Debra <dalcher.debra@epa.gov>
Cc: Lamason, Bill <Lamason.Bill@epa.gov>; Rodman, Sonja <Rodman.Sonja@epa.gov>
Subject: OIAI Revision - Addressed Sonja's Comments w/1 exception re "effective immediately"

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 3:41 PM
To: Jordan, Scott <Jordan.Scott@epa.gov>
Cc: Dalcher, Debra <dalcher.debra@epa.gov>; Lamason, Bill <Lamason.Bill@epa.gov>
Subject: Addressed Sonja's Comments w/1 exception

Scott,

Ex. 5 - Attorney Client

Thank you, Debra

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

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 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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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: Jordan, Scott[Jordan.Scott@epa.gov]
From: Dalcher, Debra
Sent: Thur 1/18/2018 8:06:36 PM
Subject: Re: Basics of Chevron Deference

Thanks you, Debra

From: Jordan, Scott
Sent: Thursday, January 18, 2018 2:46:05 PM
To: Dalcher, Debra
Subject: Basics of Chevron Deference

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 2:32 PM
To: Jordan, Scott <Jordan.Scott@epa.gov>
Subject: Re: OIAI - Scott Comments on OIAI Memo (Subject to Today's Meeting)

Scott,

Do you have anything that summarizes Chevron II you can share? Thanks, Debra

---

From: Jordan, Scott
Sent: Thursday, January 18, 2018 11:28:18 AM
To: Dalcher, Debra
Cc: Rodman, Sonja
Subject: OIAI - Scott Comments on OIAI Memo (Subject to Today's Meeting)

Debra –

Ex. 5 - Attorney Client

Ex. 5 - Attorney Client

Scott Jordan

Air and Radiation Law Office

Office of General Counsel

202-564-7508

To: Lamason, Bill[Lamason.Bill@epa.gov]
From: Dalcher, Debra
Sent: Thur 11/30/2017 5:14:00 PM
Subject: Re: first cut at revising OIAI memo - Scott's comments

Just call me. I already spoke to Marguerite and I have the pen until Monday am. On Monday am we will touch base before Peter discussion.

D

From: Lamason, Bill
Sent: Thursday, November 30, 2017 12:11:20 PM
To: Dalcher, Debra
Subject: RE: first cut at revising OIAI memo - Scott's comments

Ex. 5 - Deliberative Process

From: Dalcher, Debra
Sent: Thursday, November 30, 2017 11:58 AM
To: Lamason, Bill <Lamason.Bill@epa.gov>
Subject: Fw: first cut at revising OIAI memo - Scott's comments

FYI. Debra

From: McLamb, Marguerite
Sent: Thursday, November 30, 2017 11:29 AM
To: Dalcher, Debra
Subject: FW: first cut at revising OIAI memo - Scott's comments

FYI, below. I just wrapped up meetings and will call in about 10 minutes.

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

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

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. 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: Jordan, Scott[Jordan.Scott@epa.gov]
Cc: Rodman, Sonja[Rodman.Sonja@epa.gov]
From: Dalcher, Debra
Sent: Thur 1/18/2018 8:04:31 PM
Subject: Re: OIAI - Choice of NODA vs New Proposed Rule

Ex. 5 - Attorney Client

From: Jordan, Scott
Sent: Thursday, January 18, 2018 2:55:22 PM
To: Dalcher, Debra
Cc: Rodman, Sonja
Subject: OIAI - Choice of NODA vs New Proposed Rule

Dabra –

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 2:40 PM
To: Jordan, Scott <Jordan.Scott@epa.gov>

Subject: Re: OIAI - Scott Comments on OIAI Memo (Subject to Today's Meeting)

Ex. 5 - Attorney Client

From: Jordan, Scott
Sent: Thursday, January 18, 2018 11:28:18 AM
To: Dalcher, Debra
Cc: Rodman, Sonja
Subject: OIAI - Scott Comments on OIAI Memo (Subject to Today's Meeting)

Debra –

Ex. 5 - Attorney Client

Scott Jordan

Air and Radiation Law Office

Office of General Counsel

202-564-7508

To: Dunkins, Robin[Dunkins.Robin@epa.gov]
From: Dalcher, Debra
Sent: Tue 11/21/2017 2:34:05 PM
Subject: RE: OIAI - Coating Sector Examples

Great, thank you. Debra

From: Dunkins, Robin
Sent: Tuesday, November 21, 2017 8:10 AM
To: Dalcher, Debra <dalcher.debra@epa.gov>
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

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 - 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: 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]
From: Dalcher, Debra
Sent: Tue 11/21/2017 12:41:55 PM
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: 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]
Bcc: Dalcher, Debra[dalcher.debra@epa.gov]
From: Dalcher, Debra
Sent: Tue 1/16/2018 8:55:51 PM
Subject: RE: Once in always in

Hi Cheryl,

Ex. 5 - Deliberative Process

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: Torres, Elineth[Torres.Elineth@epa.gov]
From: Dalcher, Debra
Sent: Tue 11/14/2017 3:33:31 PM
Subject: Docket_OIAI Summary of Comments.xlsx
Docket_OIAI Summary of Comments.xlsx

☺

To: Jordan, Scott[Jordan.Scott@epa.gov]
Cc: Lamason, Bill[Lamason.Bill@epa.gov]
From: Dalcher, Debra
Sent: Tue 12/5/2017 9:24:02 PM
Subject: RE: OIAI memo_12 5 version - with Scott comments

Thank you Scott. I will review/address your comments.

Debra

From: Jordan, Scott
Sent: Tuesday, December 05, 2017 2:53 PM
To: Dalcher, Debra <dalcher.debra@epa.gov>
Cc: Lamason, Bill <Lamason.Bill@epa.gov>
Subject: OIAI memo_12 5 version - with Scott comments

Debra -

Ex. 5 - Attorney Client

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

Ex. 5 - Attorney Client

To: Lamason, Bill[Lamason.Bill@epa.gov]
From: Dalcher, Debra
Sent: Mon 1/22/2018 8:53:51 PM
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

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 - Deliberative Process

Debra

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]
Bcc: Dalcher, Debra[dalcher.debra@epa.gov]
From: Dalcher, Debra
Sent: Mon 11/20/2017 3:39:05 PM
Subject: OIAI - Coating Sector Examples

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: Jordan, Scott[Jordan.Scott@epa.gov]
Cc: Rodman, Sonja[Rodman.Sonja@epa.gov]
Bcc: Dalcher, Debra[dalcher.debra@epa.gov]
From: Dalcher, Debra
Sent: Mon 1/22/2018 8:09:31 PM
Subject: RE: Once-In-Always-In Question - NODA vs Supplemental Proposal vs New Proposal

Ex. 5 - Deliberative Process

Thank you, Debra

From: Jordan, Scott
Sent: Monday, January 22, 2018 3:01 PM
To: Dalcher, Debra <dalcher.debra@epa.gov>
Cc: Rodman, Sonja <Rodman.Sonja@epa.gov>
Subject: FW: Once-In-Always-In Question - NODA vs Supplemental Proposal vs New Proposal

Debra –

Here is information provided by Aditi on the differences between NODAs, supplemental proposals and new proposals.

The upshot is that we should be able to call what we are doing a supplemental proposal.

Ex. 5 - Attorney Client

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

OAR is trying to figure out whether the follow-on rulemaking (in which we will be proposing regulatory text to put in place EPA's new plain language reading) is properly called a NODA, a supplemental proposal or a new proposal. (As you may recall, EPA in 2007 proposed to make a reg text change similar to what we will be proposing here, but on a different rationale.) Also, they have told me that they are inclined to call it a supplemental proposal, for optics reasons.

My questions are:

Ex. 5 - Attorney Client

Scott Jordan

Air and Radiation Law Office

Office of General Counsel

202-564-7508

From: Gunasekara, Mandy
Location: 5415 WJCN | Conference Line (202) 991-0477 Conference ID: Ex. 6 - Personal Privacy
Importance: Normal
Subject: Meet with Kinder Morgan
Start Date/Time: Tue 2/13/2018 2:30:00 PM
End Date/Time: Tue 2/13/2018 3:30:00 PM
RE: EPA Meeting Request
RE: Follow Up on Meeting with Administrator Pruitt
RE: EPA Meeting Request
KM EPA Air Meeting Talking Points Draft 02092018.pptx

To: Gunasekara, Mandy; David Harlow; Woods, Clint; Cozzie, David; Lassiter, Penny; Schwab, Justin; Srinivasan, Gautam; Wayland, Richard; Fox, Tyler; Keating, Martha; Jenkins, Scott; Wood, Anna; Santiago, Juan; Wesson, Karen

Subject: Meet with Kinder Morgan

Re: 1. NSPS OOOOa; 2. NAAQS Reform; 3. NAAQS NO2 1-hour Standard and AERMOD; 4. SSM SIP Call; 5. EPA Regulations and Plain Writing Act.

Conference Line Ex. 6 - Personal Privacy

Conference ID: Ex. 6 - Personal Privacy

Mandy to open line

Outside Attendees:

1. Reji George, Director, Air Permitting & Compliance (APC); 2. Karen Nielsen, Manager, APC; and, 3. Tom Hutchins, VP, EH&S.

Handout provided by Kinder Morgan is attached.

KINDER MORGAN

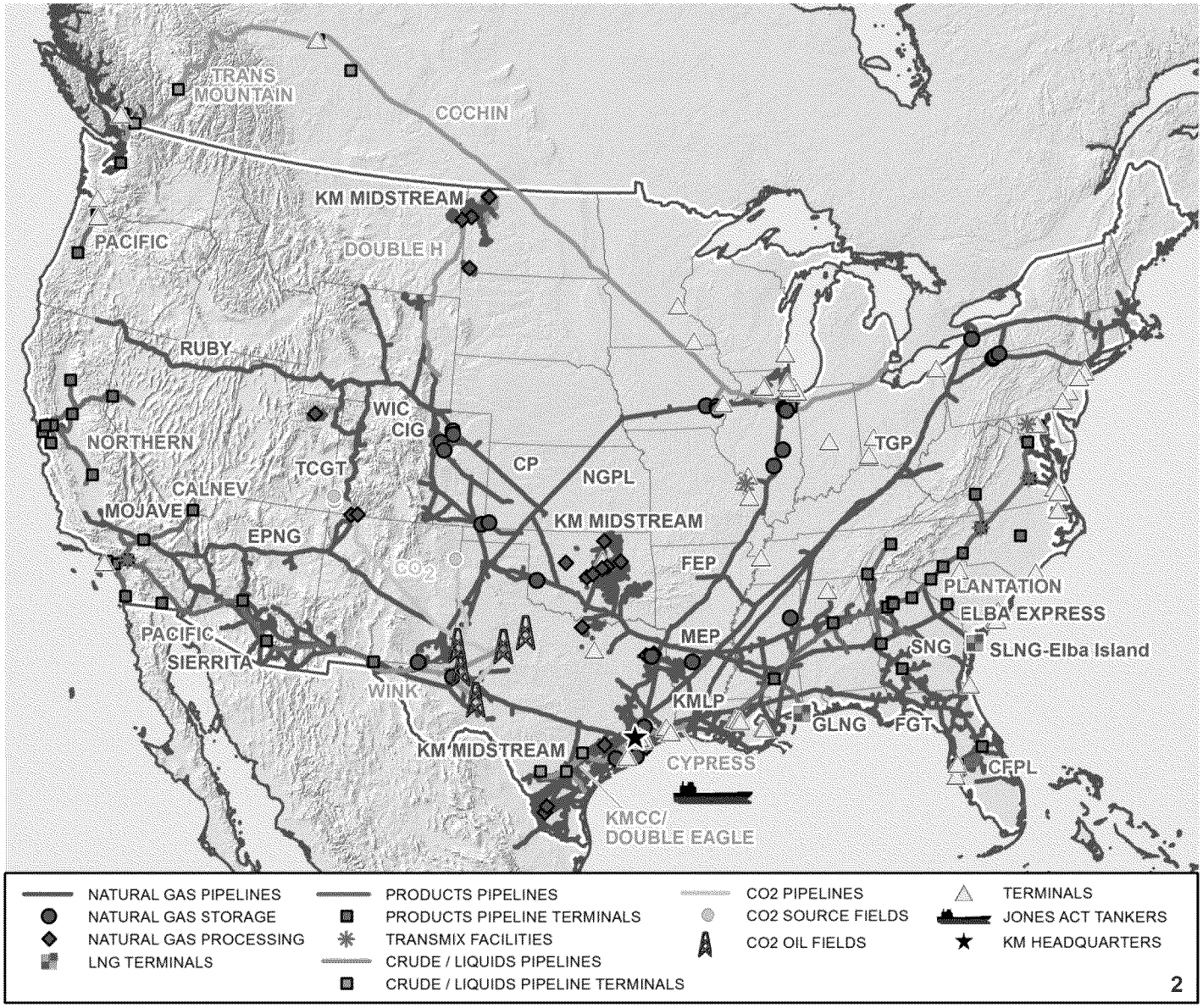
February 13, 2018
Meeting with EPA

KINDER MORGAN INC.

Unparalleled Asset Footprint

One of the Largest Energy Infrastructure Companies in North America

- Largest natural gas transmission network in North America
  - Own or operate ~70,000 miles of natural gas pipeline
  - Connected to every important natural gas resource play in the U.S.
- Largest independent transporter of petroleum products in North America
  - Transport ~2.1 MMBbl/d
- Largest transporter of CO_2 in North America
  - Transport ~1.3 Bcf/d of CO_2
- Largest independent terminal operator in North America
  - Own or operate ~155 terminals
  - ~152 MMBbls liquids capacity
  - Handle ~53 MMtons of dry bulk products
  - Own 16 Jones Act vessels
- Only Oilsands pipeline serving the West Coast
  - Transports ~300 MBbl/d to Vancouver / Washington State; planned expansion takes capacity to 890 MBbl/d



KINDER MORGAN

Kinder Morgan Appreciates the Work EPA is Doing

- **KM appreciates the actions EPA has taken to date**
  - NSR guidance
  - Once in Always In NESHAP
  - Permit Streamlining
  - OAQPS working with PRCI on AERMOD Project

- **KM supports and would like to assist EPA in making workable adjustments to 40 CFR 60 Subpart OOOOa**

KINDER MORGAN

U.S. EPA – Oil & Gas Emission Standards

NSPS OOOOa Technical Concerns

- **Delay of Repair**
  - Requiring repairs and replacement of leaking components after unscheduled and emergency vent blowdowns and compressor station shutdowns is not feasible in many cases for safe and reliable pipeline operations
  - **KM Commented on NODA – Supporting INGAA Language Fix**
  - § 60.5397a(h)(2) If the repair or replacement is technically infeasible, would require a vent blowdown, a compressor station shutdown, a well shutdown or well shut-in, or would be unsafe to repair during operation of the unit, the repair or replacement must be completed during the next *scheduled* compressor station shutdown *for maintenance*, well shutdown, well shut-in, ~~after an unscheduled, planned or emergency vent blowdown~~ or within 2 years~~, whichever is earlier~~.

    Delay of repair will be allowed beyond the next scheduled compressor station shutdown for maintenance if (a) replacement parts cannot be acquired before the next scheduled shutdown for maintenance or (b) the delay is attributable to other good cause that makes a sooner repair impracticable and/or would lead to excess emissions. The operator must document: the location and nature of the leak, the date the leak was added to the delay of repair list, the basis for delaying the repair, the date replacement parts were ordered, the vendor providing the parts, and the anticipated delivery date. Replacement parts must be promptly ordered after determining it is necessary to delay the repair and the repair must be completed within 30 business days of receipt of the replacement parts, during the next scheduled maintenance shutdown after the parts are received if the repair requires a shutdown, or within 30 business days after the cause of delay ceases to exist.

KINDER MORGAN

U.S. EPA – Oil & Gas Emission Standards

NSPS OOOOa Technical Concerns, con't.

- **LDAR Requirement Should be Annual for Compressor Stations**
  - Consistent with GHGRP Subpart W requirements
  - Data indicates increased frequency of LDAR inspections does not significantly decrease overall methane emissions

- **Third Party Ancillary Equipment**
  - KM Commented on NODA – Supporting GPA
  - EPA should amend Section 60.5365a(i) to read as follows:

    Except as provided in § 60.5365a(i)(2), the collection of fugitive emissions components *owned, operated, or leased by the producer* at a well site, as defined in § 60.5430a, *to the point of custody transfer*, is an affected facility.

  - Kinder Morgan notes the third-party ancillary equipment issue is present at compressor stations in addition to well sites. Therefore, Kinder Morgan recommends EPA amends Section 60.5365a(j) to read as follows:

    The collection of fugitive emissions components *owned, operated, or leased by the compressor station operator* at a compressor station as defined in § 60.5430a, *after the point of custody transfer,* is an affected facility.

KINDER MORGAN

U.S. EPA – Oil & Gas Emission Standards

NSPS OOOOa Technical Concerns, con't.

- **Modification to a Compressor Station Definition**
  - Causes confusion when work is done on compressors. Suggested Language fix:

    § 60.5365a(j) The collection of fugitive emissions components at a compressor station, as defined in § 60.5430a, is an affected facility. For purposes of § 60.5397a, a "modification" to a compressor station occurs when:

    (1) An additional compressor is installed at a compressor station; or (2) One or more compressors at a compressor station is replaced by one or more compressors of greater total horsepower than the *driver(s) of the* compressor(s) being replaced. When one or more compressor~~s~~ *driver* is replaced by one or more compressor~~s~~ *driver* of an equal or smaller total horsepower than the compressor(s) *driver* being replaced, installation of the replacement compressor(s) *driver(s)* does not trigger a modification of the compressor station for purposes of § 60.5397a.

- **Conflicting resurvey timeframe requirements**
  - Conflicting resurvey timeframe requirements in § 60.5397a(h)3 and § 60.5397a(h)3i suggested language:

    § 60.5397a(h)3 Each repaired or replaced fugitive emissions component must be resurveyed as soon as practicable, but no later than 30 days after being repaired, to ensure that there are no fugitive emissions.
    (i) For repairs that cannot be made during the monitoring survey when the fugitive emissions are initially found, the operator may resurvey the repaired fugitive emissions components using either Method 21 or optical gas imaging ~~within 30 days of finding such fugitive emissions~~

KINDER MORGAN

U.S. EPA – Greenhouse Gas Reporting Program Subpart W

- **Streamlining of GHGRP Subpart W and OOOOa Monitoring Events**
  - The latest GHGRP Subpart W rule revisions of November 30, 2016 were intended to synchronize & streamline the monitoring for OOOOa and GHGRP Subpart W
    - Further complicated the Subpart W reporting for OOOOa sources due to the quarterly monitoring frequency of OOOOa.
  - If OOOOa monitoring frequency is changed from quarterly to annual:
    - Benefits of LDAR will still be retained with reduced burden and cost for operators
    - A single annual monitoring event will meet the OOOOa and Subpart W requirements simultaneously
    - The original goal of streamlining & synchronizing OOOOa and Subpart W monitoring can be fully realized
    - Minimal and possibly no rule revisions to Subpart W would be needed to accomplish this streamlining

- **Update Methane Emission Factors Using Current Data**
  - GHGRP Subpart W Data has been reported by Operators since 2011
  - Subpart W Reporting is time and resource intensive
  - Pipeline Research Council International (PRCI) Emission Factor analysis using annual Subpart W monitoring data collected under the GHGRP since 2011
    - Results show compressor emission factors are significantly lower than factors currently being used in GHG Inventory

KINDER MORGAN

National Ambient Air Quality Standards (NAAQS)

- **AERMOD and One-Hour NAAQS Issues (NO2)**
  - The current model is not capable of demonstrating compliance with 1 hr standard. The model over predicts for low stacks.
  - EPA should issue guidance or an advisory to states and regulated community acknowledging the issue and not require one-hour modeling until the model is fixed.
  - Continue to support existing coordination between PRCI, INGAA and EPA developing fixes.
- **NAAQS Reform presented in 10/25/2017 response to EO 13783**
  - KM supports EPA reform efforts on NAAQS.
  - Concerns with the timing of implementations of NAAQS within the required 5 year review period. Within 5 year review period, often technology does not exist to comply with lower standard.
  - The frequency of NAAQS revisions result in overlapping requirements to be implemented in a short time frame, resulting in uncertainty for planned and permitted facilities.
  - Frequent revisions of standards result in a backlog of SIPs to be reviewed and delays SIP approval by EPA.

KINDER MORGAN

EPA Regulations should Adhere to Plain Writing Act

- **EPA should apply plain language requirements to air quality regulations for guidance**
- **KM takes compliance very seriously**
  - When regulations are written in an overly complicated fashion, operators are vulnerable to enforcement due to interpretation nuances even when they are committed to doing the right thing
  - Making regulations difficult to understand is counterproductive
- **Examples**
  - 40 CFR Part 63 Subpart ZZZZ compliance requirements for reciprocating engines differ dependent on specific makes/models/dates of engines
  - EPA and operators have had to develop several documents to guide compliance. The guidance itself is difficult to follow
  - KM recommends streamlining rules to the extent possible, especially in cases where the complexity outweighs any environmental benefit
  - Definitions differ between different CAA regulations (i.e., NSPS, NESHAP, GHGRP)

KINDER MORGAN

Startup, Shutdown and Malfunction Emissions

- **Current Status?**

- **Work practices during SSM events are suitable. In line with NSPS and NESHAPs for combustion sources.**
  - Recommend EPA document the emission standard compliance limitations associated with the original rulemaking for NSPS and NESHAPs.

KINDER MORGAN

EPA Topics and Next Steps

- Does EPA have other topics?
- Next Steps?

To: Hutchins, Thomas D (Tom)[Thomas_Hutchins@kindermorgan.com]
Cc: Harlow, David[harlow.david@epa.gov]
From: Dominguez, Alexander
Sent: Mon 1/22/2018 7:34:03 PM
Subject: RE: EPA Meeting Request

Tom,

You are confirmed for an hour meeting on Tuesday, February 13 at 9:30am with Mandy Gunasekara.

Directions and procedures to 1200 Pennsylvania Avenue NW:
Metro: If you come by Metro get off at the Federal Triangle metro stop. Exit the metro station and go up two sets of escalators to the surface level and turn right. You will see a short staircase and wheelchair ramp leading to a set of glass doors with the EPA logo - that is the William Jefferson Clinton Federal Building, North Entrance.

Taxi: Direct the taxi to drop you off on 12th Street NW, between Constitution and Pennsylvania Avenues, at the elevator for the Federal Triangle metro stop - this is almost exactly half way between the two avenues on 12th Street NW. Facing the building with the EPA logo and American flags, walk toward the building and take the glass door on your right hand side with the escalators going down to the metro on your left – that is the North Lobby of the William Jefferson Clinton building.

Security Procedures: A government issued photo id is required to enter the building and it is suggested you arrive 15 minutes early in order to be cleared and arrive at the meeting room on time. Upon entering the lobby, the meeting attendees will be asked to pass through security and provide a photo ID for entrance. Let the guards know that you were instructed to call Ex. 6 - Personal Privacy for a security escort. Ex. 6 - Personal Privacy

Please send me a list of participants in advance of the meeting and feel free to contact me should you need any additional information.

Best,
Alex

Alex Dominguez
Policy Analyst to the Principal Deputy
Office of Air and Radiation
U.S. Environmental Protection Agency

-----Original Message-----
From: Hutchins, Thomas D (Tom) [mailto:Thomas_Hutchins@kindermorgan.com]
Sent: Monday, January 22, 2018 11:39 AM
To: Dominguez, Alexander <dominguez.alexander@epa.gov>
Cc: Harlow, David <harlow.david@epa.gov>
Subject: Re: EPA Meeting Request

Alex,

Will you be able to confirm 2/13 at 9:30 am will still work or will it be after the CR is passed?

I would like to make travel arrangements this week if possible.

Thanks for your support.

Sent from my iPhone
Thomas D. Hutchins
713-420-7918 Office
713-705-0683 Cell
Thomas_hutchins@kindermorgan.com<mailto:Thomas_hutchins@kindermorgan.com>

On Jan 19, 2018, at 9:24 PM, Hutchins, Thomas D (Tom)
<Thomas_Hutchins@kindermorgan.com<mailto:Thomas_Hutchins@kindermorgan.com>> wrote:

Alex,

I confirmed 2/13 at 9:30 am will work.

We would like an hour for the meeting . Will that work?

I will provide the list of topics next week.

Thank you for arranging the meeting.

Employee Observations - It's not a gotcha - it's "I've got your back!"

Driving Continuous Improvements in People Safety and the Environment; Air Quality, Environmental Compliance and Remediation.
Thomas D. Hutchins, PE
EH&S VP
Kinder Morgan Natural Gas Pipelines
713-420-7918 - Office
713-445-9272 - Fax
713-705-0683 - Cell
Thomas_hutchins@kindermorgan.com<mailto:Thomas_hutchins@kindermorgan.com>

Call 811 before you dig!
<image001.png><http://www.the811promise.com/>

From: Hutchins, Thomas D (Tom)
Sent: Wednesday, January 17, 2018 12:19 PM
To: Dominguez, Alexander
Cc: Harlow, David
Subject: Re: EPA Meeting Request

Alex,

Thank you for the email and proposed dates and times.

Monday will not work, but Tuesday at 9:30 am should work.

Please allow me to confirm Tuesday will work. I will confirm the date & time with you later this week.
Sent from my iPhone
Thomas D. Hutchins
713-420-7918 Office
713-705-0683 Cell
Thomas_hutchins@kindermorgan.com<mailto:Thomas_hutchins@kindermorgan.com>

On Jan 17, 2018, at 11:50 AM, Dominguez, Alexander
<dominguez.alexander@epa.gov<mailto:dominguez.alexander@epa.gov>> wrote:
[This email message was received from the Internet and came from outside of Kinder Morgan]

Hey Tom,

I have taken over Mandy's scheduling for the time being and happy to set something up.

Would you be available Monday, February 12th at 10:00AM or Tuesday (02/13) at 9:30AM?

Best,
Alex

Alex Dominguez
Policy Analyst to the Principal Deputy
Office of Air and Radiation
U.S. Environmental Protection Agency

-----Original Message-----
From: Hutchins, Thomas D (Tom) [mailto:Thomas_Hutchins@kindermorgan.com]
Sent: Friday, January 12, 2018 10:41 PM
To: Atkinson, Emily <Atkinson.Emily@epa.gov<mailto:Atkinson.Emily@epa.gov>>
Cc: Harlow, David <harlow.david@epa.gov<mailto:harlow.david@epa.gov>>
Subject: FW: Follow Up on Meeting with Administrator Pruitt

Emily,

This time with the correct email address.

Employee Observations - It's not a gotcha - it's "I've got your back!"

Driving Continuous Improvements in People Safety and the Environment; Air Quality, Environmental Compliance and Remediation.

Thomas D. Hutchins, PE

EH&S VP

Kinder Morgan Natural Gas Pipelines

713-420-7918 - Office

713-445-9272 - Fax

713-705-0683 - Cell

Thomas_hutchins@kindermorgan.com<mailto:Thomas_hutchins@kindermorgan.com>

Call 811 before you dig!

-----Original Message-----

From: Hutchins, Thomas D (Tom)

Sent: Friday, January 12, 2018 9:33 PM

To: 'Harlow, David'

Cc: 'emily.atkinson@epa.gov<mailto:emily.atkinson@epa.gov>'

Subject: RE: Follow Up on Meeting with Administrator Pruitt

David,

I appreciate your thoughts and prayers. Ex. 6 - Personal Privacy Ex. 6 - Personal Privacy

Concerning the topics for the follow up meeting, they are:

1. OOOOa;
2. Start up, Shut down and Malfunction SIP Emissions; and,
3. Once In Always In Policy.

Is there anything else you or Mandy would want to discuss? What EPA representatives would you envision participating in the meeting?

A meeting the week of Feb 5 or 12 would work for us.

I look forward to hearing back from Emily on the potential meeting dates?

Employee Observations - It's not a gotcha - it's "I've got your back!"

Driving Continuous Improvements in People Safety and the Environment; Air Quality, Environmental Compliance and Remediation.

Thomas D. Hutchins, PE

EH&S VP

Kinder Morgan Natural Gas Pipelines

713-420-7918 - Office

713-445-9272 - Fax

713-705-0683 - Cell

Thomas_hutchins@kindermorgan.com<mailto:Thomas_hutchins@kindermorgan.com>

Call 811 before you dig!

-----Original Message-----

From: Harlow, David [mailto:harlow.david@epa.gov]

Sent: Monday, January 08, 2018 9:03 AM

To: Hutchins, Thomas D (Tom)

Subject: Re: Follow Up on Meeting with Administrator Pruitt

[This email message was received from the Internet and came from outside of Kinder Morgan]

Ex. 6 - Personal Privacy

Sent from my iPhone

> On Jan 8, 2018, at 9:56 AM, Hutchins, Thomas D (Tom) <Thomas_Hutchins@kindermorgan.com<mailto:Thomas_Hutchins@kindermorgan.com>> wrote:

>

> David,

>

> Thank you for the email, Emily's contact information and specific topics for discussion.

>

> I have a grandson dealing with a serious medical issue and am helping support my son and daughter in law.

>

> It will be later this week before I follow up with Emily.

>

> Sent from my iPhone

> Thomas D. Hutchins

> 713-420-7918 Office

> 713-705-0683 Cell

> Thomas_hutchins@kindermorgan.com<mailto:Thomas_hutchins@kindermorgan.c<mailto:Thomas_hutchins@kindermorgan.com%3cmailto:Thomas_hutchins@kindermorgan.c>

> om>

>

> On Jan 8, 2018, at 8:18 AM, Harlow, David <harlow.david@epa.gov<mailto:harlow.david@epa.gov<mailto:harlow.david@epa.gov%3cmailto:harlow.david@epa.gov>>> wrote:

>

> [This email message was received from the Internet and came from

> outside of Kinder Morgan]

>

>

> Tom,

>

> To close the loop on this, if you or your people there would be so good as to contact Emily Atkinson, whom I am cc'ing on this email, to initiate a "formal" request, as it were, for a meeting, Emily will be happy to work with you to arrange for a suitable date and time. (While I think email would work best all around, I believe her office number is 202-564-1850).

>

> Based on your having mentioned your wish to follow up on some of the matters discussed with the Administrator back on December 7, my assumption is that top of the agenda would be NSPS OOOOa. If you all should have any other/additional air-related topics to discuss, please let Emily know, so that she/we can arrange to have the right people from our end available (e.g., program staff) to participate, in addition to Mandy and me.

>

> 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<mailto:Harlow.David@epa.gov<mailto:Harlow.David@epa.gov%3cmailto:Harlow.David@epa.gov>>

>

> -----Original Message-----

> From: Harlow, David

> Sent: Friday, January 5, 2018 8:08 PM

> To: Hutchins, Thomas D (Tom)

> <Thomas_Hutchins@kindermorgan.com<mailto:Thomas_Hutchins@kindermorgan.com><mailto:Thomas_Hutchins@kindermorgan.

> com>>

> Subject: Re: Follow Up on Meeting with Administrator Pruitt

>

> Tom,

>

> Please accept my apologies for taking so long to get back to you. I'm afraid I let the afternoon get away from me.

>

> I'd be delighted to have a follow up meeting to discuss those matters

> that were at issue when you and your colleagues were here meeting with

> the Administrator, Samantha, and me on December 8. As you will recall,

> Bill himself was recused from participating in that meeting due to his

> prior representation of your company. As this remains the case, I

> would propose that Mandy Gunasekara, our Principal Deputy Assistant

> Administrator, participate this time around. (She would have done so

> last month, of course, but was on travel that particular day.)

>

> The best way to proceed, I think, is for you to get in contact with Emily Atkinson, the Office Manager for the OAR "immediate office." She oversees the scheduling for those of us here. I will get back in touch with you on Monday, via email, with some contact information for Emily. She'll be able to help us find a mutually convenient date to schedule a meeting.

>

> I look forward to seeing you again in the near future.

>

> Sent from my iPhone

>

> On Jan 5, 2018, at 2:56 PM, Hutchins, Thomas D (Tom) <Thomas_Hutchins@kindermorgan.com<mailto:Thomas_Hutchins@kindermorgan.com<mailto:Thomas_Hutchins@kindermorgan.com%3cmailto:Thomas_Hutchins@kindermorgan.com>>> wrote:

>

> David,

>

> I hope you had an enjoyable time welcoming 2018.

>

> Is there an opportunity to follow up on some of the topics included in the material provided during the December 7 meeting with you, Samantha and Administrator Pruitt.

>

> I was reading today about the improvements being made by the permit streamlining team and really appreciate their efforts and accomplishments.

>

> I look forward to hearing from you.

>

> Sent from my iPhone

> Thomas D. Hutchins

> 713-420-7918 Office

> 713-705-0683 Cell

> Thomas_hutchins@kindermorgan.com<mailto:Thomas_hutchins@kindermorgan.c<mailto:Thomas_hutchins@kindermorgan.com%3cmailto:Thomas_hutchins@kindermorgan.c>

> om><mailto:Thomas_hutchins@kindermorgan.com>

>

To: Dominguez, Alexander[dominguez.alexander@epa.gov]
From: Atkinson, Emily
Sent: Wed 1/17/2018 4:42:05 PM
Subject: RE: Follow Up on Meeting with Administrator Pruitt

So if he wants OAQPS then I would start with just adding in Mike Koerber, Anna Wood, Peter Tsirigotis and Pete South. I think Clint is also involved in this so he could be a cc.

Thanks Alex!

From: Dominguez, Alexander
Sent: Wednesday, January 17, 2018 11:39 AM
To: Atkinson, Emily <Atkinson.Emily@epa.gov>
Subject: FW: Follow Up on Meeting with Administrator Pruitt

Is it okay for me to set up at this point or you generally wait for him to give you names of OAQPS staff?

From: Harlow, David
Sent: Tuesday, January 16, 2018 11:44 PM
To: Atkinson, Emily <Atkinson.Emily@epa.gov>
Cc: Gunasekara, Mandy <Gunasekara.Mandy@epa.gov>; Dominguez, Alexander <dominguez.alexander@epa.gov>
Subject: Re: Follow Up on Meeting with Administrator Pruitt

Emily,

Yes, I think relevant staff should attend. These issues -- "once in/always in," OOOOa, and SSM, are all OAQPS issues. Will follow up with specific names later.

Forty-five minutes is fine.

Thank you.

Sent from my iPhone

On Jan 16, 2018, at 10:04 AM, Atkinson, Emily <Atkinson.Emily@epa.gov> wrote:

David and Mandy - please advise if this is a meeting you want to take alone or if you want staff to join you (and if so, please provide the names or at least the offices you want represented). The list of topics he wants to cover is highlighted below. And is 45 minutes enough time?

-----Original Message-----
From: Hutchins, Thomas D (Tom) [mailto:Thomas_Hutchins@kindermorgan.com]
Sent: Friday, January 12, 2018 10:41 PM
To: Atkinson, Emily <Atkinson.Emily@epa.gov>
Cc: Harlow, David <harlow.david@epa.gov>
Subject: FW: Follow Up on Meeting with Administrator Pruitt

Emily,

This time with the correct email address.

Employee Observations - It's not a gotcha - it's "I've got your back!"

Driving Continuous Improvements in People Safety and the Environment; Air Quality, Environmental Compliance and Remediation.

Thomas D. Hutchins, PE

EH&S VP

Kinder Morgan Natural Gas Pipelines

713-420-7918 - Office

713-445-9272 - Fax

713-705-0683 - Cell

Thomas_hutchins@kindermorgan.com

Call 811 before you dig!

-----Original Message-----

From: Hutchins, Thomas D (Tom)

Sent: Friday, January 12, 2018 9:33 PM

To: 'Harlow, David'

Cc: 'emily.atkinson@epa.gov'

Subject: RE: Follow Up on Meeting with Administrator Pruitt

David,

I appreciate your thoughts and prayers. Ex. 6 - Personal Privacy

Ex. 6 - Personal Privacy

Concerning the topics for the follow up meeting, they are:

1. OOOOa;
2. Start up, Shut down and Malfunction SIP Emissions; and,
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713-445-9272 - Fax

713-705-0683 - Cell

Thomas_hutchins@kindermorgan.com

Call 811 before you dig!

-----Original Message-----

From: Harlow, David [mailto:harlow.david@epa.gov]

Sent: Monday, January 08, 2018 9:03 AM

To: Hutchins, Thomas D (Tom)

Subject: Re: Follow Up on Meeting with Administrator Pruitt

[This email message was received from the Internet and came from outside of Kinder Morgan]

Ex. 6 - Personal Privacy

Sent from my iPhone

> On Jan 8, 2018, at 9:56 AM, Hutchins, Thomas D (Tom) <Thomas_Hutchins@kindermorgan.com> wrote:

>

> David,

>

> Thank you for the email, Emily's contact information and specific topics for discussion.

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> I have a grandson dealing with a serious medical issue and am helping support my son and daughter in law.

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> Sent from my iPhone

> Thomas D. Hutchins

> 713-420-7918 Office

> 713-705-0683 Cell

> Thomas_hutchins@kindermorgan.com<mailto:Thomas_hutchins@kindermorgan.c

> om>

>

> On Jan 8, 2018, at 8:18 AM, Harlow, David
<harlow.david@epa.gov<mailto:harlow.david@epa.gov>> wrote:

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> [This email message was received from the Internet and came from

> outside of Kinder Morgan]

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> Tom,

>

> To close the loop on this, if you or your people there would be so good as to contact Emily Atkinson, whom I am cc'ing on this email, to initiate a "formal" request, as it were, for a meeting, Emily will be happy to work with you to arrange for a suitable date and time. (While I think email would work best all around, I believe her office number is 202-564-1850).

>

> Based on your having mentioned your wish to follow up on some of the matters discussed with the Administrator back on December 7, my assumption is that top of the agenda would be NSPS OOOOa. If you all should have any other/additional air-related topics to discuss, please let Emily know, so that she/we can arrange to have the right people from our end available (e.g., program staff) to participate, in addition to Mandy and me.

>

> 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<mailto:Harlow.David@epa.gov>

>

> -----Original Message-----

> From: Harlow, David

> Sent: Friday, January 5, 2018 8:08 PM

> To: Hutchins, Thomas D (Tom)

> <Thomas_Hutchins@kindermorgan.com<mailto:Thomas_Hutchins@kindermorgan.

> com>>

> Subject: Re: Follow Up on Meeting with Administrator Pruitt

>

> Tom,

>

> Please accept my apologies for taking so long to get back to you. I'm afraid I let the afternoon get away from me.

>

> I'd be delighted to have a follow up meeting to discuss those matters

> that were at issue when you and your colleagues were here meeting with

> the Administrator, Samantha, and me on December 8. As you will recall,

> Bill himself was recused from participating in that meeting due to his

> prior representation of your company. As this remains the case, I

> would propose that Mandy Gunasekara, our Principal Deputy Assistant

> Administrator, participate this time around. (She would have done so

> last month, of course, but was on travel that particular day.)

>

> The best way to proceed, I think, is for you to get in contact with Emily Atkinson, the Office Manager for the OAR "immediate office." She oversees the scheduling for those of us here. I will get back in touch with you on Monday, via email, with some contact information for Emily. She'll be able to help us find a mutually convenient date to schedule a meeting.

>

> I look forward to seeing you again in the near future.

>

> Sent from my iPhone

>

> On Jan 5, 2018, at 2:56 PM, Hutchins, Thomas D (Tom) <Thomas_Hutchins@kindermorgan.com<mailto:Thomas_Hutchins@kindermorgan.com>> wrote:

>

> David,

>

> I hope you had an enjoyable time welcoming 2018.

>

> Is there an opportunity to follow up on some of the topics included in the material provided during the December 7 meeting with you, Samantha and Administrator Pruitt.

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> I was reading today about the improvements being made by the permit streamlining team and really appreciate their efforts and accomplishments.

>

> I look forward to hearing from you.

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> Sent from my iPhone

> Thomas D. Hutchins

> 713-420-7918 Office

> 713-705-0683 Cell

> Thomas_hutchins@kindermorgan.com<mailto:Thomas_hutchins@kindermorgan.c

> om><mailto:Thomas_hutchins@kindermorgan.com>

>

To: OAQPS SMT1[OAQPS_SMT1@epa.gov]; OAQPS SMT2[OAQPS_SMT2@epa.gov]
From: South, Peter
Sent: Wed 12/13/2017 3:29:21 PM
Subject: Bill W and Team Visit to RTP on 12/18
AA Wehrum RTP visit draft agenda v 4 12_18_17.docx

I have attached the agenda for Monday—please call me or Mike K with any questions.

Pete South

OAR/OAQPS/IO

U.S. EPA

office: 919 541-5359

cell: 919 599-7213

To: Lewis, Josh[Lewis.Josh@epa.gov]; Koerber, Mike[Koerber.Mike@epa.gov]
From: South, Peter
Sent: Mon 12/11/2017 9:24:46 PM
Subject: RE: draft agenda
AA Wehrum RTP visit draft agenda 12_18_17.docx

Hi Josh,

Mike and I made a couple adjustments (mostly due to meetings on Bill's calendar): see attached agenda:

From: Lewis, Josh
Sent: Monday, December 11, 2017 3:50 PM
To: Koerber, Mike <Koerber.Mike@epa.gov>
Cc: South, Peter <South.Peter@epa.gov>
Subject: RE: draft agenda

Looks good to me. We can start moving things around on Bill's calendar tomorrow…if any changes between now and then let me know.

Josh

From: Koerber, Mike
Sent: Monday, December 11, 2017 12:29 PM
To: Lewis, Josh <Lewis.Josh@epa.gov>
Cc: South, Peter <South.Peter@epa.gov>
Subject: draft agenda

Josh: Here is a draft. Let me know what you think.

Mike

To: Koerber, Mike[Koerber.Mike@epa.gov]
From: South, Peter
Sent: Mon 12/11/2017 4:18:18 PM
Subject: updated agenda
AA Wehrum RTP visit draft agenda 12_18_17.docx

To: Koerber, Mike[Koerber.Mike@epa.gov]
From: South, Peter
Sent: Mon 12/11/2017 4:02:08 PM
Subject: RE: Wehrum Visit
AA Wehrum RTP visit draft agenda 12_18_17.docx

Draft agenda attached (I didn't move wood heaters).

From: Koerber, Mike
Sent: Monday, December 11, 2017 10:42 AM
To: South, Peter <South.Peter@epa.gov>
Subject: FW: Wehrum Visit

How about 1 pm for the all hands?

From: Wayland, Richard
Sent: Monday, December 11, 2017 10:42 AM
To: Koerber, Mike <Koerber.Mike@epa.gov>
Subject: Wehrum Visit

Mike… just FYI in case Bill comes down next Monday the 18th. I am in Charlotte the night before and so if Bill does come down, I will likely not be in the office until late morning/noon time frame. Just FYI in case there are specific meetings with Bill around any AQAD issues that day.

Thanks

Chet

Richard A. "Chet" Wayland | Director | Air Quality Assessment Division - Mail Code C304-02 | Office of Air Quality Planning & Standards | U.S. Environmental Protection Agency | Research Triangle Park, NC 27711 | Desk: 919-541-4603 | Cell: 919-606-0548 |

To: Koerber, Mike[Koerber.Mike@epa.gov]; South, Peter[South.Peter@epa.gov]
Cc: Iglesias, Amber[Iglesias.Amber@epa.gov]
From: Henigin, Mary
Sent: Thur 1/25/2018 7:41:40 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

We will await the final "ok" from you.

Mary

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.

Draft Agenda for RTP Visit—Version 5
William Wehrum, Assistant Administrator, Office of Air and Radiation
December 18, 2017

9:15 to 10:00	Residential Wood Heaters NSPS
10:00 to 10:45	Prep Meeting for Mission Measures—OAQPS not participating
11:00 to 11:45	Informational Briefing Regarding Review of 111(b) and 111(d)
12:00 to 12:45	Meet with the NSR Team
1:00 to 1:45	OAQPS All Hands (C111, RTP EPA Auditorium C111 a, b, c)
2:00 to 2:45	Once-in, Always-in Policy Revision
3:00 to 4:00	Pre-brief for Option Selection for NO2 Primary NAAQS
4:15	Depart for Airport

Draft Agenda for RTP Visit—Version 4
William Wehrum, Assistant Administrator, Office of Air and Radiation
December 18, 2017

10:00 to 10:45	Prep Meeting for Mission Measures—OAQPS not participating
11:00 to 11:45	Informational Briefing Regarding Review of 111(b) and 111(d)
12:00 to 12:45	Meet with the NSR Team
1:00 to 1:45	OAQPS All Hands (C111, RTP EPA Auditorium C111 a, b, c)
2:00 to 2:45	Once-in, Always-in Policy Revision
3:00 to 3:45	Pre-brief for Option Selection for NO2 Primary NAAQS
4:00 to 4:45	Residential Wood Heaters NSPS

Draft Agenda for RTP Visit—Version 2
William Wehrum, Assistant Administrator, Office of Air and Radiation
December 18, 2017

9:42 am	Arrive RDU Flight AA #### (Mike pickup)
10:00 to 10:45	Prep Meeting for Mission Measures (currently on Bill W calendar—leave as is)
11:00 to 11:45	Informational Briefing Regarding Review of 111(b) and 111(d) (currently on calendar at 1:00 on Monday—move to Monday at 11:00) *
12:00 to 12:45	Meet with the NSR Team (new meeting)
1:00 to 1:45	OAQPS All Hands (C111, EPA Auditorium) (new meeting) **
2:00 to 2:45	Once-in, Always-in Policy Revision (move from Wednesday, 12/20 at 4:00—move to Monday at 2:00)
3:00 to 3:45	Pre-brief for Option Selection for NO2 Primary NAAQS (currently on calendar on Monday at 3:00, leave as is) ***
4:00 to 4:45	Residential Wood Heaters NSPS (move from Wednesday, 12/20, at 1:30—move to Monday at 4:00)****
5:00	Depart for RDU Airport (Flight AA #### departing 7:02 pm)

Assumptions:

*AF&PA delegated: Assume Bill W will delegate AF&PA meeting (currently on calendar on Monday, 12/18, at 11:00).

**Biomass moved (currently on calendar on Monday, 12/18, at 1:00—move to Wednesday, 12/20 at some other time)

*** Title V Petitions Strategy for TX Refineries Part II (currently on Monday, 12/18, at 3:00—delete this meeting and extend Title V Petitions Strategy for TX Refineries Part I currently scheduled on Wednesday, 12/13, at 9:00 to 10:00 (New time would be 9:00 to 10:30 on Wednesday, 12/13).

****SO2 Primary NAAQS Overview moved (currently on calendar on Monday, 12/18, at 4:00—move to Wednesday, 12/20, at 1:30—switch with Residential Wood Heaters currently on Wednesday, 12/20, at 1:30)

Draft Agenda for RTP Visit
William Wehrum, Assistant Administrator, Office of Air and Radiation
January 18, 2017

9:42 am	Arrive RDU Flight AA #### (Mike pickup)
10:00 to 10:45	Briefing on 2017 Regional Haze Rule Revisions (moved from Wednesday, 12/20)
11:00 to 11:45	Informational Briefing Regarding Review of 111(b) and 111(d) (currently on calendar at 1:00 on Monday—moved to 11:00)
12:00 to 12:45	Meet with the NSR Team (new meeting)
1:00 to 1:45	OAQPS All Hands (C111, EPA Auditorium)
2:00 to 2:45	Once-in, Always-in Policy Revision (moved from Wednesday, 12/20 at 4:00)
3:00 to 3:45	Pre-brief for Option Selection for NO2 Primary NAAQS (currently on calendar on Monday, same time)
4:00 to 4:45	Residential Wood Heaters NSPS (moved from Wednesday, 12/20, at 1:30)
5:00	Depart for RDU Airport (Flight AA #### departing 7:02 pm)

Note:

SO2 Primary NAAQS Overview (currently on calendar on Monday at 4:00—moved to Wednesday at 1:30—switched with Residential Wood Heaters)

Draft Agenda for RTP Visit
William Wehrum, Assistant Administrator, Office of Air and Radiation
January 18, 2017

9:42 am	Arrive RDU Flight AA #### (Mike pickup)
10:00 to 10:45	Briefing on 2017 Regional Haze Rule Revisions (moved from Wednesday, 12/20)
11:00 to 11:45	Informational Briefing Regarding Review of 111(b) and 111(d) (currently on calendar at 1:00 on Monday)
12:00 to 12:45	Meet with the NSR Team (new meeting)
1:00 to 1:45	OAQPS All Hands (C111, EPA Auditorium)
2:00 to 2:45	Once-in, Always-in Policy Revision (moved from Wednesday, 12/20)
3:00 to 3:45	Pre-brief for Option Selection for NO2 Primary NAAQS (currently on calendar)
4:00 to 4:45	SO2 Primary NAAQS Overview (currently on calendar)
5:00	Depart for RDU Airport (Flight AA #### departing 7:02 pm)

To: Loving, Shanita[Loving.Shanita@epa.gov]
From: Koerber, Mike
Sent: Mon 12/4/2017 8:43:44 PM
Subject: FW: OAQPS/OAR Mtg Rqsts-Once-in, Always-in Policy Revision
Wehrum Meeting Request-Once-in, Aways-in Policy Revision.docx

Shanita – I think Lala sent you this meeting request last week. Do you know where it is in the queue? No pressure, just asking. Thank you.

Mike

From: Eck, Janet
Sent: Thursday, November 30, 2017 4:22 PM
To: Alston, Lala <Alston.Lala@epa.gov>; South, Peter <South.Peter@epa.gov>; Koerber, Mike <Koerber.Mike@epa.gov>
Cc: Johnson, Tanya <Johnson.Tanya@epa.gov>; McKinney, Voronina <mckinney.voronina@epa.gov>; Lamason, Bill <Lamason.Bill@epa.gov>; Dalcher, Debra <dalcher.debra@epa.gov>; Thompson, Fred <Thompson.Fred@epa.gov>; French, Chuck <French.Chuck@epa.gov>; Culligan, Kevin <Culligan.Kevin@epa.gov>; Conner, Lisa <Conner.Lisa@epa.gov>; McLamb, Marguerite <McLamb.Marguerite@epa.gov>; Srivastava, Ravi <Srivastava.Ravi@epa.gov>
Subject: OAQPS/OAR Mtg Rqsts-Once-in, Always-in Policy Revision

Attached are OAQPS/OAR meeting request forms for a briefing with Bill Wehrum regarding the Once-in, Always-in Policy Revision for your review and approval. Thanks.

To: Dominguez, Alexander[dominguez.alexander@epa.gov]
Cc: South, Peter[South.Peter@epa.gov]
From: Koerber, Mike
Sent: Mon 1/22/2018 9:20:44 PM
Subject: RE: EPA Meeting Request

Alex: For us, please invite Bill Lamason, David Cozzie, Megan Brachtl, and Penny Lassiter. Not sure if you also want OGC there – if so, then you could include Gautam (he can delegate to staff, as appropriate).

Mike

From: Dominguez, Alexander
Sent: Monday, January 22, 2018 2:41 PM
To: Koerber, Mike <Koerber.Mike@epa.gov>
Subject: FW: EPA Meeting Request

Hey Mike – See below for details but I have confirmed the meeting with Kinder Morgan for Tuesday, Feb. 13 at 9:30 (re: QuadOa, SSM, and Once In Always In). Mandy asked for OAQPS staff to attend. Do you know who would be best for me to send the calendar invite to?

Thank,

Alex

From: Hutchins, Thomas D (Tom) [mailto:Thomas_Hutchins@kindermorgan.com]
Sent: Friday, January 19, 2018 10:26 PM
To: Dominguez, Alexander <dominguez.alexander@epa.gov>
Cc: Harlow, David <harlow.david@epa.gov>
Subject: RE: EPA Meeting Request

Alex,

I confirmed 2/13 at 9:30 am will work.

We would like an hour for the meeting . Will that work?

I will provide the list of topics next week.

Thank you for arranging the meeting.

Employee Observations - It's not a gotcha - it's "I've got your back!"

Driving Continuous Improvements in People Safety and the Environment; Air Quality, Environmental Compliance and Remediation.

Thomas D. Hutchins, PE

EH&S VP

Kinder Morgan Natural Gas Pipelines

713-420-7918 - Office

713-445-9272 - Fax

713-705-0683 - Cell

Thomas_hutchins@kindermorgan.com

Call 811 before you dig!

From: Hutchins, Thomas D (Tom)
Sent: Wednesday, January 17, 2018 12:19 PM
To: Dominguez, Alexander
Cc: Harlow, David
Subject: Re: EPA Meeting Request

Alex,

Thank you for the email and proposed dates and times.

Monday will not work, but Tuesday at 9:30 am should work.

Please allow me to confirm Tuesday will work. I will confirm the date & time with you later this week.

Sent from my iPhone

Thomas D. Hutchins

713-420-7918 Office

713-705-0683 Cell

Thomas_hutchins@kindermorgan.com

On Jan 17, 2018, at 11:50 AM, Dominguez, Alexander <dominguez.alexander@epa.gov> wrote:

[This email message was received from the Internet and came from outside of Kinder Morgan]

Hey Tom,

I have taken over Mandy's scheduling for the time being and happy to set something up.

Would you be available Monday, February 12th at 10:00AM or Tuesday (02/13) at 9:30AM?

Best,

Alex

Alex Dominguez

Policy Analyst to the Principal Deputy

Office of Air and Radiation

U.S. Environmental Protection Agency

-----Original Message-----
From: Hutchins, Thomas D (Tom) [mailto:Thomas_Hutchins@kindermorgan.com]
Sent: Friday, January 12, 2018 10:41 PM
To: Atkinson, Emily <Atkinson.Emily@epa.gov>
Cc: Harlow, David <harlow.david@epa.gov>
Subject: FW: Follow Up on Meeting with Administrator Pruitt

Emily,

This time with the correct email address.

Employee Observations - It's not a gotcha - it's "I've got your back!"

Driving Continuous Improvements in People Safety and the Environment; Air Quality, Environmental Compliance and Remediation.

Thomas D. Hutchins, PE

EH&S VP

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713-445-9272 - Fax

713-705-0683 - Cell

Thomas_hutchins@kindermorgan.com

Call 811 before you dig!

-----Original Message-----

From: Hutchins, Thomas D (Tom)

Sent: Friday, January 12, 2018 9:33 PM

To: 'Harlow, David'

Cc: 'emily.atkinson@epa.gov'

Subject: RE: Follow Up on Meeting with Administrator Pruitt

David,

Ex. 6 - Personal Privacy

Concerning the topics for the follow up meeting, they are:

1. OOOOa;
2. Start up, Shut down and Malfunction SIP Emissions; and,
3. Once In Always In Policy.

Is there anything else you or Mandy would want to discuss? What EPA representatives would you envision participating in the meeting?

A meeting the week of Feb 5 or 12 would work for us.

I look forward to hearing back from Emily on the potential meeting dates?

Employee Observations - It's not a gotcha - it's "I've got your back!"

Driving Continuous Improvements in People Safety and the Environment; Air Quality, Environmental Compliance and Remediation.

Thomas D. Hutchins, PE

EH&S VP

Kinder Morgan Natural Gas Pipelines

713-420-7918 - Office

713-445-9272 - Fax

713-705-0683 - Cell

Thomas_hutchins@kindermorgan.com

Call 811 before you dig!

-----Original Message-----

From: Harlow, David [mailto:harlow.david@epa.gov]

Sent: Monday, January 08, 2018 9:03 AM

To: Hutchins, Thomas D (Tom)

Subject: Re: Follow Up on Meeting with Administrator Pruitt

[This email message was received from the Internet and came from outside of Kinder Morgan]

Ex. 6 - Personal Privacy

Sent from my iPhone

> On Jan 8, 2018, at 9:56 AM, Hutchins, Thomas D (Tom) <Thomas_Hutchins@kindermorgan.com> wrote:

>

> David,

>

> Thank you for the email, Emily's contact information and specific topics for discussion.

>

> I have a grandson Ex. 6 - Personal Privacy

Ex. 6 - Personal Privacy

>

> It will be later this week before I follow up with Emily.

>

> Sent from my iPhone

> Thomas D. Hutchins

> 713-420-7918 Office

> 713-705-0683 Cell

> Thomas_hutchins@kindermorgan.com<mailto:Thomas_hutchins@kindermorgan.c

> om>

>

> On Jan 8, 2018, at 8:18 AM, Harlow, David <harlow.david@epa.gov<mailto:harlow.david@epa.gov>> wrote:

>

> [This email message was received from the Internet and came from

> outside of Kinder Morgan]

>

>

> Tom,

>

> To close the loop on this, if you or your people there would be so good as to contact Emily Atkinson, whom I am cc'ing on this email, to initiate a "formal" request, as it were, for a meeting, Emily will be happy to work with you to arrange for a suitable date and time. (While I think email would work best all around, I believe her office number is Ex. 6 - Personal Privacy Ex. 6 - Personal Privacy

>

> Based on your having mentioned your wish to follow up on some of the matters discussed with the Administrator back on December 7, my assumption is that top of the agenda would be NSPS OOOOa. If you all should have any other/additional air-related topics to discuss, please let Emily know, so that she/we can arrange to have the right people from our end available (e.g., program staff) to participate, in addition to Mandy and me.

>

> 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<mailto:Harlow.David@epa.gov>

>

> -----Original Message-----

> From: Harlow, David

> Sent: Friday, January 5, 2018 8:08 PM

> To: Hutchins, Thomas D (Tom)

> <Thomas_Hutchins@kindermorgan.com<mailto:Thomas_Hutchins@kindermorgan.

> com>>

> Subject: Re: Follow Up on Meeting with Administrator Pruitt

>

> Tom,

>

> Please accept my apologies for taking so long to get back to you. I'm afraid I let the afternoon get away from me.

>

> I'd be delighted to have a follow up meeting to discuss those matters

> that were at issue when you and your colleagues were here meeting with

> the Administrator, Samantha, and me on December 8. As you will recall,

> Bill himself was recused from participating in that meeting due to his

> prior representation of your company. As this remains the case, I

> would propose that Mandy Gunasekara, our Principal Deputy Assistant

> Administrator, participate this time around. (She would have done so

> last month, of course, but was on travel that particular day.)

>

> The best way to proceed, I think, is for you to get in contact with Emily Atkinson, the Office Manager for the OAR "immediate office." She oversees the scheduling for those of us here. I will get back in touch with you on Monday, via email, with some contact

information for Emily. She'll be able to help us find a mutually convenient date to schedule a meeting.

>

> I look forward to seeing you again in the near future.

>

> Sent from my iPhone

>

> On Jan 5, 2018, at 2:56 PM, Hutchins, Thomas D (Tom) <Thomas_Hutchins@kindermorgan.com<mailto:Thomas_Hutchins@kindermorgan.com>> wrote:

>

> David,

>

> I hope you had an enjoyable time welcoming 2018.

>

> Is there an opportunity to follow up on some of the topics included in the material provided during the December 7 meeting with you, Samantha and Administrator Pruitt.

>

> I was reading today about the improvements being made by the permit streamlining team and really appreciate their efforts and accomplishments.

>

> I look forward to hearing from you.

>

> Sent from my iPhone

> Thomas D. Hutchins

> 713-420-7918 Office

> 713-705-0683 Cell

> Thomas_hutchins@kindermorgan.com<mailto:Thomas_hutchins@kindermorgan.c

> om><mailto:Thomas_hutchins@kindermorgan.com>

>

To: South, Peter[South.Peter@epa.gov]; OAQPS SMT2[OAQPS_SMT2@epa.gov]; OAQPS SMT1[OAQPS_SMT1@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]
From: Koerber, Mike
Sent: Fri 12/15/2017 3:50:11 PM
Subject: RE: Materials in prep for Bill W et al. visit to RTP on 12/18
AA Wehrum RTP visit final agenda 12_18_17 (002) revised.docx

Please note the time changes below - i.e., the All Hands is now at 11:15 am. Let me know if you have any questions.

Mike

From: South, Peter
Sent: Thursday, December 14, 2017 4:07 PM
To: OAQPS SMT2 <OAQPS_SMT2@epa.gov>; OAQPS SMT1 <OAQPS_SMT1@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: Materials in prep for Bill W et al. visit to RTP on 12/18

FYI--agenda and materials in prep for Monday. Thanks.

9:15 to 10:00	Residential Wood Heaters NSPS EPA RTP Location: C401A Call in number: Ex. 6 - Personal Privacy; Participant Code: Ex. 6 - Personal Privacy
10:00 to 10:45	Prep Meeting for Mission Measures--OAQPS not participating EPA RTP Location: C401A *No materials*
11:15 to 12:00	OAQPS All Hands EPA RTP Location: RTP EPA Auditorium C111a, b, c

	Call-in number: 919-541-4105 (no code necessary) *No materials*
12:00 to 12:45	General Discussion re: NSR Team EPA RTP Location: C401A Call in number: Ex. 6 - Personal Privacy) *No materials*
1:00 to 1:45	Informational Briefing Regarding Review of 111(b) and 111(d) EPA RTP Location: C401A Call in number: Ex. 6 - Personal Privacy
2:00 to 2:45	Once-in, Always-in Policy Revision Location: C401A Call in number: Ex. 6 - Personal Privacy Participant Code: Ex. 6 - Personal Privacy << 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: Ex. 6 - Personal Privacy Participant Code Ex. 6 - Personal Privacy << File: NO2 NAAQS Option Select 12_18_17.pptx >>
4:15	Depart for Airport

To: South, Peter[South.Peter@epa.gov]
From: Koerber, Mike
Sent: Fri 12/15/2017 1:09:53 PM
Subject: RE: Materials in prep for Bill W et al. visit to RTP on 12/18

FYI - I had to send this to Bill (again) this morning. Apparently, your emails are not getting through???

From: South, Peter
Sent: Thursday, December 14, 2017 4:07 PM
To: OAQPS SMT2 <OAQPS_SMT2@epa.gov>; OAQPS SMT1 <OAQPS_SMT1@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: Materials in prep for Bill W et al. visit to RTP on 12/18

FYI--agenda and materials in prep for Monday. Thanks.

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1:00 to 1:45	OAQPS All Hands

	EPA RTP Location: RTP EPA Auditorium C111 a, b, c Call in number: Ex. 6 - Personal Privacy no code necessary) *No materials*
2:00 to 2:45	Once-in, Always-in Policy Revision Location: C401A Call in number: Ex. 6 - Personal Privacy; Participant Code: Ex. 6 - Personal Privacy
3:00 to 4:00	Pre-brief for Option Selection for NO2 Primary NAAQS Location: C401A Call in number: Ex. 6 - Personal Privacy; Participant Code: Ex. 6 - Personal Privacy
4:15	Depart for Airport

To: Lewis, Josh[Lewis.Josh@epa.gov]
From: Koerber, Mike
Sent: Thur 12/14/2017 9:56:56 PM
Subject: FW: Materials in prep for Bill W et al. visit to RTP on 12/18

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 >>

	Residential Wood Heaters NSPS
	EPA RTP Location: C401A
9:15 to 10:00	Call in number: Ex. 6 - Personal Privacy Participant Code: Ex. 6 - Personal Privacy
	<< File: HPBA and PFI BW 12_18_17.docx >>
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10:00 to 10:45	*No materials*
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	<< File: CAA 111 Briefing 12_18_17.pptx >>
	General Discussion re: NSR Team
	EPA RTP Location: C401A
12:00 to 12:45	Call in number: Ex. 6 - Personal Privacy no code necessary)
	No materials
	OAQPS All Hands
	EPA RTP Location: RTP EPA Auditorium C111 a, b, c
1:00 to 1:45	Call in number: Ex. 6 - Personal Privacy o code necessary)

No materials

Once-in, Always-in Policy Revision

Location: C401A

2:00 to 2:45 Call in number: Ex. 6 - Personal Privacy Participant Code: Ex. 6 - Personal Privacy

<< File: OIAI Options 12_18_17.docx >>

Pre-brief for Option Selection for NO2 Primary NAAQS

Location: C401A

3:00 to 4:00 Call in number: Ex. 6 - Personal Privacy Participant Code: Ex. 6 - Personal Privacy

<< File: NO2 NAAQS Option Select 12_18_17.pptx >>

4:15

Depart for Airport

To: Koerber, Mike[Koerber.Mike@epa.gov]
From: Koerber, Mike
Sent: Thur 12/14/2017 9:56:24 PM
Subject: RE: Materials in prep for Bill W et al. visit to RTP on 12/18

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

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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

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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

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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.

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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 >>

	Residential Wood Heaters NSPS
	EPA RTP Location: C401A
9:15 to 10:00	Call in number: Ex. 6 - Personal Privacy Participant Code: Ex. 6 - Personal Privacy
	<< File: HPBA and PFI BW 12_18_17.docx >>
	Prep Meeting for Mission Measures—OAQPS not participating
	EPA RTP Location: C401A
10:00 to 10:45	*No materials*
	Informational Briefing Regarding Review of 111(b) and 111(d)
	EPA RTP Location: C401A
11:00 to 11:45	Call in number: 919 541-4105 (no code necessary)
	<< File: CAA 111 Briefing 12_18_17.pptx >>
	General Discussion re: NSR Team
	EPA RTP Location: C401A
12:00 to 12:45	Call in number: Ex. 6 - Personal Privacy (no code necessary)
	No materials
	OAQPS All Hands
	EPA RTP Location: RTP EPA Auditorium C111 a, b, c
1:00 to 1:45	Call in number: Ex. 6 - Personal Privacy no code necessary)

No materials

Once-in, Always-in Policy Revision

Location: C401A

2:00 to 2:45 Call in number: Ex. 6 - Personal Privacy Participant Code: Ex. 6 - Personal Privacy

<< File: OIAI Options 12_18_17.docx >>

Pre-brief for Option Selection for NO2 Primary NAAQS

Location: C401A

3:00 to 4:00 Call in number: Ex. 6 - Personal Privacy Participant Code: Ex. 6 - Personal Privacy

<< File: NO2 NAAQS Option Select 12_18_17.pptx >>

4:15

Depart for Airport

To: Lewis, Josh[Lewis.Josh@epa.gov]
Cc: South, Peter[South.Peter@epa.gov]
From: Koerber, Mike
Sent: Thur 12/14/2017 9:16:17 PM
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 >>

	Residential Wood Heaters NSPS
	EPA RTP Location: C401A
9:15 to 10:00	Call in number: Ex. 6 - Personal Privacy Participant Code: Ex. 6 - Personal Privacy
	<< 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: Ex. 6 - Personal Privacy (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: Ex. 6 - Personal Privacy (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: Ex. 6 - Personal Privacy (no code necessary) *No materials*
2:00 to 2:45	Once-in, Always-in Policy Revision Location: C401A Call in number: Ex. 6 - Personal Privacy, Participant Code: Ex. 6 - Personal Privacy << 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 Ex. 6 - Personal Privacy Participant Code: Ex. 6 - Personal Privacy
	<< File: NO2 NAAQS Option Select 12_18_17.pptx >>
4:15	Depart for Airport

To: Santiago, Juan[Santiago.Juan@epa.gov]; Lamason, Bill[Lamason.Bill@epa.gov]; Wood, Anna[Wood.Anna@epa.gov]; Tsirigotis, Peter[tsirigotis.peter@epa.gov]; 'Wayland, Richard'[wayland.richard@epa.gov]
Cc: Johnson, Yvonne W[Johnson.Yvonnew@epa.gov]; South, Peter[South.Peter@epa.gov]
From: Koerber, Mike
Sent: Tue 12/12/2017 9:29:26 PM
Subject: FW: A few OAQPS items
NSR Improvement Projects - summary work plan 12-12-17.docx

FYI- Here is the version of the NSR Workplan that was shared with OAR. Thank you for your work on this. I suspect that we will get feedback from Bill soon – perhaps as part of the NSR discussion on Monday.

Mike

From: Koerber, Mike
Sent: Tuesday, December 12, 2017 12:26 PM
To: Lewis, Josh <Lewis.Josh@epa.gov>; Cyran, Carissa <Cyran.Carissa@epa.gov>
Subject: A few OAQPS items

Josh, Carissa: Here are a few things to share with Bill:

•□□□□□□□□ NSR Workplan – Attached is an updated version of what we sent last week. This version identifies our estimated schedule and a few key issues needing Bill's feedback.

To: Lamason, Bill[Lamason.Bill@epa.gov]
Cc: Santiago, Juan[Santiago.Juan@epa.gov]; French, Chuck[French.Chuck@epa.gov]
From: Koerber, Mike
Sent: Tue 12/12/2017 2:57:54 PM
Subject: RE: SPPD - OIAI input on NSR Improvement Project pager

Thanks, Bill. This is great. I will accept all edits and forward the final version to OAR.

Mike

From: Lamason, Bill
Sent: Tuesday, December 12, 2017 8:25 AM
To: Koerber, Mike <Koerber.Mike@epa.gov>
Cc: Santiago, Juan <Santiago.Juan@epa.gov>; French, Chuck <French.Chuck@epa.gov>
Subject: SPPD - OIAI input on NSR Improvement Project pager

Mike,

Please see the attached mark up. Thanks! Bill

To: Lewis, Josh[Lewis.Josh@epa.gov]
Cc: South, Peter[South.Peter@epa.gov]
From: Koerber, Mike
Sent: Mon 12/11/2017 5:28:49 PM
Subject: draft agenda
AA Wehrum RTP visit draft agenda 12_18_17 (003)rev.docx

Josh: Here is a draft. Let me know what you think.

Mike

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]
From: Koerber, Mike
Sent: Mon 12/11/2017 3:54:43 PM
Subject: Updated paper
NSR Improvement Projects - summary work plan 12-11-17 Revision1.docx

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: Lewis, Josh[Lewis.Josh@epa.gov]
From: Koerber, Mike
Sent: Mon 12/11/2017 3:32:45 PM
Subject: RE: Title V petitions meetings on Wednesday

Will do. Thanks, Josh. Are you in DC today or did you go to Ann Arbor? If you are in DC, then can we talk about scheduling the ozone briefing for the Adminstrator.

Mike

From: Lewis, Josh
Sent: Monday, December 11, 2017 10:31 AM
To: Koerber, Mike <Koerber.Mike@epa.gov>; South, Peter <South.Peter@epa.gov>
Subject: RE: Title V petitions meetings on Wednesday

Sure we can do that. Speaking of Monday, can you send me later today a proposed agenda for the day? Here's what I know is in play:

- NO2, SO2, and a 111(b) v. 111(d) discussion are already on the calendar;

- Woodheaters, RH, OIAI all are on the calendar for Wednesday but we can bump one or more of them to Monday

- Bill wants some time w/ the NSR team

- We just got a meeting request for an "overview of the SSM policy"

- OGC wants to do a briefing on "Legal Strategy for the 2008 ozone NAAQS Transport FIP deadlines"

From: Koerber, Mike
Sent: Monday, December 11, 2017 10:23 AM
To: Lewis, Josh <Lewis.Josh@epa.gov>; South, Peter <South.Peter@epa.gov>
Subject: RE: Title V petitions meetings on Wednesday

Sounds like a plan. Maybe we can do Part 2 on Monday?

From: Lewis, Josh
Sent: Monday, December 11, 2017 10:21 AM
To: Koerber, Mike <Koerber.Mike@epa.gov>; South, Peter <South.Peter@epa.gov>
Subject: Title V petitions meetings on Wednesday

I'm just now seeing both Part 1 and Part 2 are scheduled for Wednesday. Wondering if that's ok or if we should look to reschedule Part 2 to a later date…which realistically would be mid - next week.

Josh

To: Lewis, Josh[Lewis.Josh@epa.gov]
Cc: Henigin, Mary[Henigin.Mary@epa.gov]; South, Peter[South.Peter@epa.gov]
From: Koerber, Mike
Sent: Thur 1/25/2018 7:44:20 PM
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: South, Peter[South.Peter@epa.gov]
From: Koerber, Mike
Sent: Thur 1/25/2018 7:33:44 PM
Subject: FW: OIAI.Reclassification of Major Sources as Area Sources Under Section 112 Draft_01 25 2018-Final OGC Comments.1.25.18_PSG.docx

From: Lamason, Bill
Sent: Thursday, January 25, 2018 2:30 PM
To: Harlow, David <harlow.david@epa.gov>; Culligan, Kevin <Culligan.Kevin@epa.gov>
Cc: Dalcher, Debra <dalcher.debra@epa.gov>; Lewis, Josh <Lewis.Josh@epa.gov>; Koerber, Mike <Koerber.Mike@epa.gov>
Subject: RE: OIAI.Reclassification of Major Sources as Area Sources Under Section 112 Draft_01 25 2018-Final OGC Comments.1.25.18_PSG.docx

David,

Thanks! Great news! I'll pass along Josh's suggestion to the folks handling the cleanup and are almost done.

We were planning to send the memo to the OAQPS-DC office via Mary Henigin and she can help Josh however needed. We will hold the FR in RTP for Peter's signature after your clearance and Bill signs the memo. I'm copying Mike Koerber who coordinates with Mary on these actions for us and determine how best to move the memo fastest.

Thanks again!

Bill L.

From: Harlow, David
Sent: Thursday, January 25, 2018 2:19 PM
To: Lamason, Bill <Lamason.Bill@epa.gov>; Culligan, Kevin <Culligan.Kevin@epa.gov>
Cc: Dalcher, Debra <dalcher.debra@epa.gov>; Lewis, Josh <Lewis.Josh@epa.gov>
Subject: RE: OIAI.Reclassification of Major Sources as Area Sources Under Section 112
Draft_01 25 2018-Final OGC Comments.1.25.18_PSG.docx

Bill Wehrum has approved all the revisions/edits that we've been discussing. So please do finalize the memorandum for Bill's signature.

I'm not sure what is the best way to proceed in terms of getting the final version physically up here, but the simplest approach would seem to be that you send the final, to-be-signed version as an attachment in an email to Josh. I'll leave it up to you two to "discuss among yourselves," as it were.

Meanwhile, I'll review the *Federal Register* notice and then get back to you with, presumably, approval to finalize as well.

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: Shaw, Betsy[Shaw.Betsy@epa.gov]
Cc: Page, Steve[Page.Steve@epa.gov]
From: Koerber, Mike
Sent: Wed 10/4/2017 9:10:25 PM
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

To: Lamason, Bill[Lamason.Bill@epa.gov]; Tsirigotis, Peter[Tsirigotis.Peter@epa.gov]
From: Koerber, Mike
Sent: Wed 10/4/2017 9:09:02 PM
Subject: RE: ECOS is forming a workgroup on Once In, Always In

Thanks!

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

To: Wood, Anna[Wood.Anna@epa.gov]
From: Koerber, Mike
Sent: Fri 1/12/2018 5:16:13 PM
Subject: FW: NMA meeting: Backgrounder in prep for tomorrow's meeting (DO NOT POST OR DISTRIBUTE IN MEETING ROOM)
NMA backgr 1_12_18 rev.docx

Anna – FYI, the topic of fugitives came up this morning and Bill indicated that he likely would be adding this to his list. That was about the extent of the conversation, but David may talk more with you about this.

Mike

From: South, Peter
Sent: Thursday, January 11, 2018 5:18 PM
To: Harnett, Bill <Harnett.Bill@epa.gov>; Koerber, Mike <Koerber.Mike@epa.gov>; OAQPS WOPS <OAQPS_WOPS@epa.gov>; OAR Briefings <OAR_Briefings@epa.gov>
Cc: Tsirigotis, Peter <Tsirigotis.Peter@epa.gov>; Koerber, Mike <Koerber.Mike@epa.gov>; Culligan, Kevin <Culligan.Kevin@epa.gov>; Harvey, Reid <Harvey.Reid@epa.gov>; Harnett, Bill <Harnett.Bill@epa.gov>; Ashley, John <ashley.john@epa.gov>; Conner, Lisa <Conner.Lisa@epa.gov>; Eck, Janet <Eck.Janet@epa.gov>; Johnson, Tanya <Johnson.Tanya@epa.gov>; McKinney, Voronina <mckinney.voronina@epa.gov>; McLamb, Marguerite <McLamb.Marguerite@epa.gov>; Mills, Kathy <Mills.Kathy@epa.gov>; Morales, Mariel <Morales.Mariel@epa.gov>; Pemberton, Wanda <Pemberton.Wanda@epa.gov>; Srivastava, Ravi <Srivastava.Ravi@epa.gov>; Thompson, Fred <Thompson.Fred@epa.gov>; Johnson, Yvonne W <Johnson.Yvonnew@epa.gov>; Wood, Anna <Wood.Anna@epa.gov>
Subject: RE: NMA meeting: Backgrounder in prep for tomorrow's meeting (DO NOT POST OR DISTRIBUTE IN MEETING ROOM)

Please use the attached document—two additional pages at end on transport (pages 6-7).

I apologize for the inconvenience.

Thank you.

From: South, Peter
Sent: Thursday, January 11, 2018 3:58 PM
To: Harnett, Bill <Harnett.Bill@epa.gov>; Koerber, Mike <Koerber.Mike@epa.gov>; OAQPS

WOPS <OAQPS_WOPS@epa.gov>; OAR Briefings <OAR_Briefings@epa.gov>
Cc: Tsirigotis, Peter <tsirigotis.peter@epa.gov>; Koerber, Mike <koerber.mike@epa.gov>; Culligan, Kevin <Culligan.Kevin@epa.gov>; Harvey, Reid <Harvey.Reid@epa.gov>; Harnett, Bill <harnett.bill@epa.gov>; Ashley, John <ashley.john@epa.gov>; Conner, Lisa <Conner.Lisa@epa.gov>; Eck, Janet <Eck.Janet@epa.gov>; Johnson, Tanya <Johnson.Tanya@epa.gov>; McKinney, Voronina <mckinney.voronina@epa.gov>; McLamb, Marguerite <McLamb.Marguerite@epa.gov>; Mills, Kathy <Mills.Kathy@epa.gov>; Morales, Mariel <Morales.Mariel@epa.gov>; Pemberton, Wanda <Pemberton.Wanda@epa.gov>; Srivastava, Ravi <Srivastava.Ravi@epa.gov>; Thompson, Fred <Thompson.Fred@epa.gov>
Subject: NMA meeting: Backgrounder in prep for tomorrow's meeting (DO NOT POST OR DISTRIBUTE IN MEETING ROOM)

I have attached a backgrounder in prep for Bill's meeting with NMA tomorrow.

Please call me or Mike Koerber with any questions relating to this information.

Thank you.

Pete South

OAR/OAQPS/IO

U.S. EPA

office: 919 541-5359

cell: 919 599-7213

)rganizer	Wehrum, Bill
ubject	Meeting with National Mining Association (Confirmed)
ocation	WJC-N 5400 + Ex. 6 - Personal Privacy Participant Code: Ex. 6 - Personal Privacy
tart time	Fri 1/12/2018 11:00 AM All day event
nd time	Fri 1/12/2018 11:45 AM

Rescheduling from Thursday, 12/21/17 to a new time in 2018
To Discuss: The Clean Power Plan, New Source Review, and Ozone Transport

To: Wehrum, Bill; Harlow, David; Gunasekara, Mandy; Lewis, Josh; Woods, Clint; Tsirigotis, Peter
Culligan, Kevin
Outside Attendee(s):

- Harold P. Quinn, President and Chief Executive Officer of the National Mining Association
- Bruce Watzman Senior Vice President, Regulatory Affairs of NMA
- Katie Sweeney, Senior Vice President, Legal Affairs, and General Counsel of the NMA
- Margaret Campbell, both outside attorneys for NMA with the law firm of Troutman Sande
- Peter Glaser, Attorney, Troutman Sanders

Confirmed: 1/12 at 11:00 am ET... | RE: Request of National Mining... | RE: Confirmed: 1/12 at 11:00 a...

To: Harnett, Bill[harnett.bill@epa.gov]
Cc: Wood, Anna[Wood.Anna@epa.gov]; Rao, Raj[Rao.Raj@epa.gov]; Santiago, Juan[Santiago.Juan@epa.gov]
From: Koerber, Mike
Sent: Tue 1/2/2018 2:38:03 PM
Subject: FW: A few OAQPS items
NSR Improvement Projects - summary work plan 12-12-17.docx

Bill – Here is the latest version of the NSR workplan that was shared with OAR. Let me know if you have any questions.

Mike

From: Koerber, Mike
Sent: Tuesday, December 12, 2017 12:26 PM
To: Lewis, Josh <Lewis.Josh@epa.gov>; Cyran, Carissa <Cyran.Carissa@epa.gov>
Subject: A few OAQPS items

Josh, Carissa: Here are a few things to share with Bill:

•□□□□□□□□ NSR Workplan – Attached is an updated version of what we sent last week. This version identifies our estimated schedule and a few key issues needing Bill's feedback.

Draft Agenda for RTP Visit
William Wehrum, Assistant Administrator, Office of Air and Radiation
December 18, 2017

9:42 am	Arrive RDU Flight AA #### (Mike pickup)
10:00 to 10:45	Briefing on 2017 Regional Haze Rule Revisions (moved from Wednesday, 12/20)
11:00 to 11:45	Informational Briefing Regarding Review of 111(b) and 111(d) (currently on calendar at 1:00 on Monday—moved to 11:00)
12:00 to 12:45	Meet with the NSR Team (new meeting)
1:00 to 1:45	OAQPS All Hands (C111, EPA Auditorium)
2:00 to 2:45	Once-in, Always-in Policy Revision (moved from Wednesday, 12/20 at 4:00)
3:00 to 3:45	Pre-brief for Option Selection for NO2 Primary NAAQS (currently on calendar on Monday, same time)
4:00 to 4:45	Residential Wood Heaters NSPS (moved from Wednesday, 12/20, at 1:30)
5:00	Depart for RDU Airport (Flight AA #### departing 7:02 pm)

Note:

SO2 Primary NAAQS Overview (currently on calendar on Monday at 4:00—moved to Wednesday at 1:30—switched with Residential Wood Heaters)

From: RTP-OAQPS Ex. 6 - Personal Privacy SPPD/Phone-Line/RTP-OAQPS-BLDG-C
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 2:45:00 PM

Your request was accepted.

Sent by Microsoft Exchange Server 2016

From: RTP-D201-Max40/RTP-Bldg-D
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 2:45:00 PM

Your request was accepted.

Sent by Microsoft Exchange Server 2016

From: McLamb, Marguerite
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

From: Dalcher, Debra
Location: RTP-D201-Max40/RTP-Bldg-D; RTP-OAQPS-Ex. 6 - Personal Privacy-SPPD/Phone-Line/RTP-OAQPS-BLDG-C
Importance: High
Subject: OIAI re. (Pollution Prevention re. Coatings, Industrial Boilers, etc.)
Start Date/Time: Tue 11/14/2017 3:00:00 PM
End Date/Time: Tue 11/14/2017 3:30:00 PM

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: Barnett, Keith
Sent: Mon 11/20/2017 4:13:34 PM
Subject: RE: Ex. 6 - Personal Privacy However, I am checking emails and I am available to confer on the Brick Affidavit if necessary. Ex. 6 - Personal Privacy

Already sent to my coating team and Brian Storey

Keith Barnett

Minerals and Manufacturing Group Leader

919-541-5605

From: Lamason, Bill
Sent: Monday, November 20, 2017 11:10 AM
To: Barnett, Keith <Barnett.Keith@epa.gov>
Cc: Dalcher, Debra <dalcher.debra@epa.gov>
Subject: Re: Ex. 6 - Personal Privacy However, I am checking emails and I am available to confer on the Brick Affidavit if necessary. Ex. 6 - Personal Privacy

Keith, Can you check your email for a message from Debra Dalcher on OIAI? She needs help from you responding to a comment from OGC. Thanks! Bill

Sent from my iPhone

On Nov 20, 2017, at 9:44 AM, Barnett, Keith <Barnett.Keith@epa.gov> wrote:

Keith Barnett

Minerals and Manufacturing Group Leader

919-541-5605

From: Lamason, Bill
Location: RTP-OAQPS-Ex. 6 - Personal Privacy SPPD/Phone-Line/RTP-OAQPS-BLDG-C
Importance: Normal
Subject: Call in number for OIAI call
Start Date/Time: Wed 1/10/2018 6:00:00 PM
End Date/Time: Wed 1/10/2018 6:30:00 PM

From: Dalcher, Debra
Location: RTP-OAQPS-919-541-4332-SPPD/Phone-Line/RTP-OAQPS-BLDG-C
Importance: Normal
Subject: OIAI Discussion - Agenda will be Added / Memo w/SJ Edits Attached
Start Date/Time: Mon 1/8/2018 4:00:00 PM
End Date/Time: Mon 1/8/2018 5:00:00 PM
OIAI.RevisedOIAImemorandum_1 5 2018+ SJJ 1.8.18.docx

Agenda

Wehrum Version of Memo

•□□□□□□□□ Discussion on the content of the memo.

Ex. 5 - Deliberative Process

Ex. 5 - Deliberative Process

o No reference to a RTC like document.

•□□□□□□□□ RTC Like Document

Ex. 5 - Deliberative Process

Ex. 5 - Deliberative Process

•□□□□□□□□ Reoccurring Themes: legal issues, permitting, pollution prevention, SSM…

Ex. 5 - Deliberative Process

Ex. 5 - Deliberative Process

Ex. 5 - Deliberative Process

- □□□□□□□□ Supplemental Proposal

Ex. 5 - Deliberative Process

Ex. 5 - Deliberative Process

Ex. 5 - Deliberative Process

From: Dalcher, Debra
Location: RTP-D201-Max40/RTP-Bldg-D; RTP-OAQPS-Ex. 6 - Personal Privacy SPPD/Phone-Line/RTP-OAQPS-BLDG-C
Importance: High
Subject: OIAI re. (Pollution Prevention re. Coatings, Industrial Boilers, etc.) - Write-up Added
Start Date/Time: Tue 11/14/2017 3:00:00 PM
End Date/Time: Tue 11/14/2017 3:30:00 PM

Ex. 5 - Deliberative Process

From: Lamason, Bill
Location: D201/Call in number Ex. 6 - Personal Privacy
Importance: Normal
Subject: 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

Check in. Kevin available until 10 am. Thank! Bill

From: Lamason, Bill
Location: D220D/Call in number Ex. 6 - Personal Privacy
Importance: Normal
Subject: OIAI Check in (coordination with Kevin)
Start Date/Time: Mon 11/6/2017 6:00:00 PM
End Date/Time: Mon 11/6/2017 7:00:00 PM

Looks like all but Chuck are available at this time. We'll catch him after the call.

From: Perez, Idalia
Location: Ex. 6 - Personal Privacy code: Ex. 6 - Personal Privacy
Importance: Normal
Subject: Larger ADD Call (Oct - Mar, every 4 weeks)
Start Date/Time: Mon 11/6/2017 9:00:00 PM
End Date/Time: Mon 11/6/2017 10:00:00 PM

New recurring invite for larger ADD call. Agenda and materials will be posted prior to the call.

Please accept this invite to add it to your calendar.

Idalia M. Pérez, Ph.D. | OAR Lead Region Coordinator
U.S. Environmental Protection Agency – Region 9

75 Hawthorne St. (AIR-1), San Francisco, CA 94105
P: 415.972.3248 | email: perez.idalia@epa.gov

OAR Lead Region SharePoint Site

From: Torres, Elineth
Location: BLO
Importance: Normal
Subject: OIAI Discussion
Start Date/Time: Thur 10/5/2017 6:00:00 PM
End Date/Time: Thur 10/5/2017 6:30:00 PM

From: Torres, Elineth
Location: RTP-D201-Max40/RTP-Bldg-D
Importance: Normal
Subject: 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

We will continue our OIAI principle-based discussion initiated on 9/20.
Feel free to bring your lunch.

Thanks,

Elineth

To: Perez, Idalia[Perez.Idalia@epa.gov]; Air Division Directors and Deputies[Air_Division_Directors_and_Deputies@epa.gov]; Air Division Directors Call List[Air_Division_Directors_Call_List@epa.gov]; South, Mia[South.Mia@epa.gov]; Sutton, Tia[sutton.tia@epa.gov]; Burch, Julia[Burch.Julia@epa.gov]; Keating, Martha[keating.martha@epa.gov]; Salgado, Omayra[Salgado.Omayra@epa.gov]; Kornylak, Vera S.[Kornylak.Vera@epa.gov]; Hassett-Sipple, Beth[Hassett-Sipple.Beth@epa.gov]; Senter, Stephen[Senter.Stephen@epa.gov]; Wright, Rhonda[Wright.Rhonda@epa.gov]
Cc: Holloway, Mike[Holloway.Mike@epa.gov]; Keller, Jennifer[Keller.Jennifer@epa.gov]
REVISED DRAFT SIP Training Agenda.docx

Update: Adding agenda.

Biweekly Air Division Directors Conference Call

Conference Line: 866-299-3188
Participant Passcode: 707-6865

Date: Monday, February 5th, 2018
Time: 4:00 Eastern Time

Agenda

4:00 - Roll Call

Attendees	
R1:	OAQPS:
R2:	OAP:
R3:	OTAQ:
R4:	ORIA:
R5:	OGC:
R6:	OAPPS:
R7:	ORD:
R8:	OECA:
R9:	OPMO:
R10:	IO:

4:05 - Updates on SIP Lean, Betsy Shaw

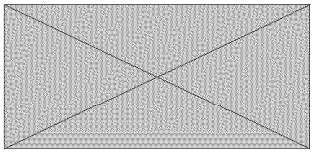
4:15 - SIP training (revised and rescheduled), Vera Kornylak

4:20 - Once in Always in, OAQPS

4:40 - DERA School Bus Rebates, Jennifer Keller or Mike Moltzen

4:45 - SIP Consistency, Becky Weber

To: Lamason, Bill[Lamason.Bill@epa.gov]
From: Environmental Law360
Sent: Mon 1/29/2018 8:27:36 AM
Subject: [SPAM-Sender] 4 Takeaways From DOI's About-Face On Migratory Bird Kills



ENVIRONMENTAL

Monday, January 29, 2018

TOP NEWS

Analysis

4 Takeaways From DOI's About-Face On Migratory Bird Kills

The Trump administration Interior Department has departed from decades of agency precedent by stating it won't criminally prosecute individuals and companies for the accidental injuring or killing of migratory birds — dramatically reducing pressure on energy and communications businesses and setting up a legal battle with environmentalists. Here are 4 big takeaways from the DOI's decision. **Read more »**

EPA Backtracks, Now Says Pebble Mine May Be Too Risky

The U.S. Environmental Protection Agency on Friday said it's having second thoughts about letting plans for a massive open-pit mine in Alaska near the world's largest sockeye salmon fishery proceed, suggesting the environmental concerns may be too great to allow the project to go forward — a win for green groups that oppose the mine. **Read more »**

EPA Formaldehyde Rule Delay 'Eviscerates' Law, Enviros Say

Environmental groups and the U.S. Environmental Protection Agency fought before a California federal judge Friday over whether the agency should be allowed to push back the deadline for the industry to comply with new formaldehyde emissions standards, with the groups arguing the delay effectively "eviscerates" the statute. **Read more »**

Kimberly-Clark, Others To Pay $3.9M In Bay Pollution Spat

Three current and former property owners in the Port Gardner Bay Area in the state of Washington, including Kimberly-Clark Corp., have said they will cough up about $3.9 million collectively for alleged damages to natural resources, according to a proposed deal filed Thursday. **Read more »**

POLICY & REGULATION

EPA Yanks Once-In, Always-In Air Pollution Policy

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Earthjus

The U.S. Environmental Protection Agency on Thursday rescinded a 1995 policy that said any facility considered to be a "major" polluter under the Clean Air Act could never be recategorized as a less prolific polluter. **Read more »**

EU Eyes New Rules To Boost Collective Consumer Actions

The European Commission expressed dissatisfaction on Friday at the progress that member states have made during the past several years in implementing consistent collective redress mechanisms that would allow consumers to band together to sue over privacy, environmental, antitrust and a range of other violations, and promised to propose a new framework by the spring. **Read more »**

BLM OKs Federal Land Exchange With Agua Caliente Tribe

The U.S. Bureau of Land Management on Thursday gave final environmental approval to a proposed land exchange between the agency and the Agua Caliente Band of Cahuilla Indians that would reduce the "checkerboard" land ownership within a national monument in Southern California. **Read more »**

Pa. Gov, DEP Say Reforms, More Staff Will Cut Permit Delays

Pennsylvania Gov. Tom Wolf and the secretary of the Department of Environmental Protection on Friday outlined a plan to reduce permitting delays amid frustration from the oil and gas industry, pushing simplified bureaucracy, increased staffing and legislative changes. **Read more »**

LITIGATION

Records Law Doesn't Apply To Pipeline Co., La. Judge Says

A Louisiana state judge on Thursday denied a bid by a coalition of activists that requested records from the company building a 163-mile crude oil pipeline in the state, denying the groups' arguments that the public records law applied to a private entity. **Read more »**

Zoo Tries To Nix Judge In PETA Suit Over Animal Dwellings

A Maryland zoo moved Thursday to disqualify the judge in a suit brought by animal rights group People for the Ethical Treatment of Animals over allegedly substandard conditions for endangered animals, arguing he had conducted independent internet research and expressed concern for animals that called his objectivity into question. **Read more »**

Analysis

High Court Fight Pits Tribal Rights Against $2B Repair Tab

The U.S. Supreme Court's decision to weigh a Ninth Circuit ruling that the state of Washington must replace hundreds of culverts to protect Native American tribes' salmon fishing will test how far the justices are willing to go to protect tribal treaty rights in the face of what Washington claims will be a nearly $2 billion outlay. **Read more »**

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LEGAL INDUSTRY

How #MeToo Is Changing Internal Investigations

Lawyers who run internal investigations are getting plenty of new work amid the recent wave of high-profile sexual harassment and assault allegations. They're also facing new risks and demands. **Read more »**

Pa. Atty Accused Of Stealing To Buy Sex Toys Loses License

A fired attorney charged with breaking into her former firm to steal money and credit cards that she used to purchase sex toys online has had her law license suspended, Pennsylvania authorities said Thursday. **Read more »**

Analysis

Why Compliance Is Keeping Corporate Counsel Up At Night

Even as the presidential administration enters its second year talking big about its plans to ease regulation, corporate counsel report their primary concern for the coming year is the management of government regulation and compliance. Here is why this one issue weighs so heavily on the minds of in-house counsel. **Read more »**

Ethics Training For Attys Should Aim Higher, Sotomayor Says

The education of lawyers should be improved to include a more robust ethics training that goes beyond merely setting a floor for acceptable conduct, U.S. Supreme Court Sonia Sotomayor said Friday during an event at the University of Houston Law Center. **Read more »**

GC Cheat Sheet: The Hottest Corporate News Of The Week

The NBA's general counsel told lawmakers it's time for legalized sports betting, experts shared with Law360 ways companies and their legal counsel can prepare for potential worksite enforcements by federal immigration officials, and Baker Donelson Bearman Caldwell & Berkowitz PC announced its hire of GE Capital's former general counsel. These are some of the stories in corporate legal news you may have missed in the past week. **Read more »**

In Case You Missed It: Hottest Firms And Stories On Law360

For those who missed out, here's a look back at the law firms, stories and expert analyses that generated the most buzz on Law360 last week. **Read more »**

Podcast

Law360's Pro Say: The Decline And Fall Of Sedgwick LLP

On the latest episode of Law360's Pro Say podcast, the team does a post mortem on the fall of BigLaw fixture Sedgwick LLP, discusses a Starbucks case that may give landlords a

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legal roadmap to stop store closures, explains a case barring a strip club from enforcing "sham" arbitration pacts, and reviews a musical sendup of Preet Bharara. **Read more »**

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Katz Marshall

Kirkland & Ellis

Latham & Watkins

Maclay Murray

McDerm Will

Morgan Lewis

Orrick Herringt

Paul Weiss

Perkins Coie

Quinn Emanue

Schwabe Williams

Sedgwic LLP

Sidley Austin

Skadder

Stroock & Stroock

Weil Gotshal

WilmerH

Zuckerm Spaeder

COMPA

7-Eleven Inc.

America Bar Associat

BP p.l.c.

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Briggs & Stratton Corporat

British Broadca Corp.

Cato Institute

Center for Constitu Rights

Consilio LLC

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Faceboc

General Electric Capital Corp.

Google Inc.

Home Box Office Inc.

Houston Astros

Insuranc Europe Ltd.

JELD-WEN Inc.

Jackson Jaguars

Kate Spade & Co.

Kimberly Clark Corporat

Major

League
Baseball
Inc.

Massach
Bay
Transpo
Authority

Miramax
Film
Corp.

NFL
Enterpris
LLC

National
Basketb
Associat

Natural
Resourc
Defense
Council

New
England
Patriots

New
York
City Bar
Associat

New
York
Times
Co.

Northern
Dynasty
Minerals
Ltd.

Phillips
66

Robert
Half
Internati
Inc.

Sierra Club

Sinclair Broadca Group, Inc.

Sony Corporat

Starbuck Corporat

Toys "R" Us Inc.

Twitter Inc.

Volkswa

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Yahoo! Inc.

GOVERI AGENCI

Agua Caliente Band of Cahuilla Indians

Army Corps of Enginee

Bureau of Land Manage

Californi Air Resourc Board

Equal

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Commis

Europea
Commis

Federal
Commur
Commis

Federal
Trade
Commis

Fish
and
Wildlife
Service

Internal
Revenue
Service

Jamesto
S'Klallan
Tribe

Lower
Elwha
Klallam
Tribe

NAFTA

New
York
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General'
Office

New
York
State
Senate

Pennsyl
Supreme
Court

Securitie
and
Exchang

Commis

Suquam Tribe

Tulalip Tribes of Washing

U.S. Army

U.S. Departm of Agricultu

U.S. Departm of Justice

U.S. Departm of the Interior

U.S. Environr Protectic Agency

U.S. Forest Service

U.S. Supreme Court

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Sidley Austin

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Hogan Lovells

Hunton & Williams

Jackson Lewis

Jones Day

Kanji & Katzen

Katz Marshall

Kirkland & Ellis

Latham & Watkins

Maclay Murray

McDermott Will

Orrick Herrington

Paul Weiss

Quinn Emanuel

Schwabe Williamson

Skadden

Stroock & Stroock

Weil Gotshal

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EverBank Financial Corp.

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Google Inc.

Home Box Office Inc.

Houston Astros

Insurance Europe Ltd.

JELD-WEN Inc.

Kate Spade & Co.

Kimberly-Clark Corporation

Major League Baseball Inc.

Massachusetts Bay Transportation Authority

Miramax Film Corp.

National Basketball Association

Natural Resources Defense Council

New England Patriots

New York City Bar Association

New York Times Co.

Northern Dynasty Minerals Ltd.

Phillips 66

Robert Half International Inc.

Sierra Club

Sinclair Broadcast Group, Inc.

Sony Corporation

Starbucks Corporation

Toys "R" Us Inc.

Twitter Inc.

Volkswagen

Weyerhaeuser Co.

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GOVERNMENT AGENCIES
U.S. Department of Justice

U.S. Environmental Protection Agency

U.S. Supreme Court

Army Corps of Engineers

Bureau of Land Management

Equal Employment Opportunity Commission

Fish and Wildlife Service

Suquamish Tribe

U.S. Army

Agua Caliente Band of Cahuilla Indians

California Air Resources Board

European Commission

Federal Communications Commission

Federal Trade Commission

Internal Revenue Service

Jamestown S'Klallam Tribe

Lower Elwha Klallam Tribe

NAFTA

New York Attorney General's Office

New York State Senate

Pennsylvania Supreme Court

Securities and Exchange Commission

Tulalip Tribes of Washington

U.S. Department of Agriculture

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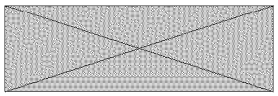
To: washington_update@lists.4cleanair.org[washington_update@lists.4cleanair.org]; epa@lists.4cleanair.org[epa@lists.4cleanair.org]; mjo@lists.4cleanair.org[mjo@lists.4cleanair.org]; members@lists.4cleanair.org[members@lists.4cleanair.org]
From: epa@lists.4cleanair.org
Sent: Fri 1/26/2018 10:40:42 PM
Subject: The Washington Update



Howdy Friends,

It's been a week of things done quickly, starting with a quick government shutdown, and then a quick trip to see 400 of our closest clean air friends at the National Air Quality Conference in Austin Texas. We took our time rounding up this week's clean air news for you though! In this week's *Washington Update:*

- EPA's withdrawal of the Once-In-Always-In policy,
- NACAA's new "4yi" factsheet in air quality sensors,
- Congress's approval of another Continuing Resolution to end the government shutdown,
- The National Air Quality Conference in Austin,
- EPA's request that the court pause litigation as the agency "revisits" the Regional Haze Rule,
- EPA's request that the court delay farm reporting requirements and
- States' requests for leave to intervene in litigation seeking expansion of the Ozone Transport Region.

Also, take a look at the calendar for next week – it includes NACAA's Winter Board of Directors and Committee Chairs' Meeting.

For those of y'all we met in Texas, it's great to know you, and I'm so glad we're friends!

Download this week's *Washington Update* here:

http://www.4cleanair.org/sites/default/files/Documents/012618wklyupdate.pdf

Have a nice (slow!) weekend.

My best, Miles

Miles Keogh

Executive Director

National Association of Clean Air Agencies

444 North Capitol Street, NW, Suite 307

Washington, DC 20001

Phone: (202) 624-7864

mkeogh@4cleanair.org

www.4cleanair.org

@WeAre4CleanAir

From: RTP-OAQPS Ex. 6 - Personal Privacy -SPPD/Phone-Line/RTP-OAQPS-BLDG-C
Location: D220D/Bill's OFfice, Ex. 6 - Personal Privacy
Importance: Normal
Subject: Accepted: 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

Your request was accepted.

Sent by Microsoft Exchange Server 2016

To: Eck, Janet[Eck.Janet@epa.gov]
Cc: Dalcher, Debra[dalcher.debra@epa.gov]
Sent: Thur 1/25/2018 7:33:28 PM
Subject: Transmittal Instructions for OIAI

Janet, Per Mike:

Send to Mike and Pete with copy to Mary,

Include language noting the OAR has cleared the wording in both the memo and FR.

The memo needs to be prepared for Bill Wehrum's signature.

The notice will be signed by Peter.

From: Dalcher, Debra
Location: RTP-OAQPS-Ex. 6 - Personal Privacy-SPPD/Phone-Line/RTP-OAQPS-BLDG-C
Importance: High
Subject: Canceled: OIAI Memo Update - Guidance from Peter T
Start Date/Time: Mon 1/8/2018 8:30:00 PM
End Date/Time: Mon 1/8/2018 9:00:00 PM

Ex. 5 - Deliberative Process

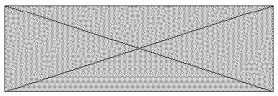
Synthetic Minor Source

From: Dalcher, Debra
Location: RTP-OAQPS-Ex. 6 - Personal Privacy-SPPD/Phone-Line/RTP-OAQPS-BLDG-C
Importance: Normal
Subject: OIAI Memo Update - Guidance from Peter T
Start Date/Time: Mon 1/8/2018 8:30:00 PM
End Date/Time: Mon 1/8/2018 9:00:00 PM

Ex. 5 - Deliberative Process

Synthetic Minor Source

To: washington_update@lists.4cleanair.org[washington_update@lists.4cleanair.org]; epa@lists.4cleanair.org[epa@lists.4cleanair.org]; mjo@lists.4cleanair.org[mjo@lists.4cleanair.org]; members@lists.4cleanair.org[members@lists.4cleanair.org]
From: epa@lists.4cleanair.org
Sent: Fri 1/12/2018 9:41:54 PM
Subject: The Washington Update



Friends, in the course of the week here in DC we've gone from epic "bomb cyclone" cold (or as Montana calls it, "January") to short-sleeve-shirt weather (or as Pima County AZ calls it, "January"). We've had a rollercoaster week for clean air news too, including:

- Senators' recommendation that EPA rescind the "Once In, Always In" policy,
- FERC's rejection of DOE's coal and nuclear resilience payment proposal,
- SCOTUS's denial of petitions to review two CAA cases,
- Washington Governor Inslee's proposed statewide carbon tax,
- EPA's annual reports on light-duty vehicle fuel economy and GHG emissions,
- A state-local coalition's call for Administrator Pruitt to withdraw the proposed CPP repeal and recuse himself,
- NOAA's findings that 2017 was the nation's most expensive weather and climate disaster year and third warmest year on record,
- EPA's status report to the court on its review of the 2015 ozone NAAQS,
- The re-nomination of administrative and judicial appointments not confirmed in 2017 including nominees for two key environmental posts,
- EPA's adjustment of monetary civil penalties,
- Extension of the comment period for the CPP repeal proposal and announcement of additional public hearing dates,
- Publication of the third round of SO2 area designations, and
- Launch of a new EPA website on deregulation activities.

Don't forget to take a look at what's on tap for next week!

Download it here:

http://www.4cleanair.org/sites/default/files/Documents/011218wklyupdate.pdf

Have a great weekend! (FYI, the NACAA offices will be closed Monday to observe Martin Luther King, Jr. Day.)

My best, Miles

Miles Keogh

Executive Director

National Association of Clean Air Agencies

444 North Capitol Street, NW, Suite 307

Washington, DC 20001

Phone: (202) 624-7864

mkeogh@4cleanair.org

www.4cleanair.org

@WeAre4CleanAir

To: Dalcher, Debra[dalcher.debra@epa.gov]
From: Lamason.Bill@epa.gov
Sent: Mon 1/22/2018 12:29:19 PM
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

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-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: 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

To: Harlow, David[harlow.david@epa.gov]
Sent: Thur 1/25/2018 3:49:48 PM
Subject: FW: Once-In-Always-In Guidance Memorandum
OIAI.Memo. Reclassification of Major Sources as Area Sources Under Section
112_2018_01_24_Draft_Justin OGC 1.25.18.docx

David, Take a look at these "preview" edits from Scott. In addition to adding the phrase

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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From: RTP-OAQPS Ex. 6 - Personal Privacy -SPPD/Phone-Line/RTP-OAQPS-BLDG-C
Location: RTP-OAQPS-Ex. 6 - Personal Privacy 6-SPPD/Phone-Line/RTP-OAQPS-BLDG-C
Importance: Normal
Subject: Accepted: Call in number for OIAI call
Start Date/Time: Wed 1/10/2018 6:00:00 PM
End Date/Time: Wed 1/10/2018 6:30:00 PM

Your request was accepted.

Sent by Microsoft Exchange Server 2016

From: Lamason, Bill
Importance: Normal
Subject: Hold for Permits APM call - OIAI/MM2A to be mentioned sometime in this time block
Start Date/Time: Wed 2/7/2018 7:00:00 PM
End Date/Time: Wed 2/7/2018 9:00:00 PM

From: Dalcher, Debra
Location: RTP-OAQPS Ex. 6 - Personal Privacy PPD/Phone-Line/RTP-OAQPS-BLDG-C
Importance: High
Subject: Canceled: OIAI Memo Update - Guidance from Peter T
Start Date/Time: Mon 1/8/2018 8:30:00 PM
End Date/Time: Mon 1/8/2018 9:00:00 PM

Ex. 6 - Personal Privacy

Synthetic Minor Source

To: OAQPS SPPD GL[OAQPS_SPPD_GL@epa.gov]
Cc: Penny Lassiter[Lassiter.Penny@epa.gov]; Culligan, Kevin[Culligan.Kevin@epa.gov]; McLamb, Marguerite[mclamb.marguerite@epa.gov]; Conner, Lisa[Conner.Lisa@epa.gov]; Pemberton, Wanda[Pemberton.Wanda@epa.gov]; Shrager, Brian[Shrager.Brian@epa.gov]
Sent: Thur 1/25/2018 8:57:10 PM
Subject: FW: OIAI Memo
image2018-01-27-164839.pdf

FYI. See attached.

Also posted at this link if you need to direct folks to the memo.
https://www.epa.gov/stationary-sources-air-pollution/reclassification-major-sources-area-sources-under-section-112-clean

From: Shrager, Brian
Location: Kevin to call Bill's office - Ex. 6 - Personal Privacy /D220D - Bill's office
Importance: Normal
Subject: Accepted: 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

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

OFFICE OF
AIR AND RADIATION

MEMORANDUM

SUBJECT: Reclassification of Major Sources as Area Sources Under Section 112 of the Clean Air Act

FROM: William L. Wehrum
Assistant Administrator

1-25-18

TO: Regional Air Division Directors

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

A prior EPA guidance memorandum had taken a different position. *See* "Potential to Emit for MACT Standards – Guidance on Timing Issues." John Seitz, Director, Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency (May 16, 1995) (the "May 1995 Seitz Memorandum"). The May 1995 Seitz Memorandum set forth a policy, commonly known as "once in, always in" (the "OIAI policy"), under which "facilities may switch to area source status at any time until the 'first compliance date' of the standard," with "first compliance date" being defined to mean the "first date a source must comply with an emission limitation or other substantive regulatory requirement." May 1995 Seitz Memorandum at 5. Thereafter, under the OIAI policy, "facilities that are major sources for HAP on the 'first compliance date' are required to comply permanently with the MACT standard." *Id.* at 9.

The guidance presented here supersedes that which was contained in the May 1995 Seitz Memorandum. The OIAI policy stated in the May 1995 Seitz Memorandum is withdrawn, effective immediately.

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.

BACKGROUND

Relevant Statutory Provisions

Section 112 of the CAA establishes a multi-level regulatory structure for stationary sources of HAP, in which sources meeting a threshold amount of actual or potential HAP emissions – *i.e.*, "major sources" – are generally subject to different standards than sources with HAP emissions below the threshold.[1] Specifically, the CAA defines a "major source" to mean "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." 42 U.S.C. § 7412(a)(1). The term "area source" is defined to mean "any stationary source of hazardous air pollutants that is not a major source." *Id.* 42 U.S.C. § 7412(a)(2).[2] In contrast to the OIAI policy, the CAA contains no provision which specifies that, if a major source wishes to switch to area source status, by taking an enforceable limit on its PTE, it must do so prior to the "first compliance date," or that a major source MACT standard will continue to apply to a former major source that, subsequent to the first compliance date, takes an enforceable limit on its PTE to below the applicable thresholds.

EPA's Past Actions

Shortly after EPA began implementing individual MACT standards through rulemaking, the agency received multiple requests to clarify when a major source of HAP could avoid the requirements applicable to major sources by taking measures to limit its PTE below the major source thresholds. In response, EPA produced the May 1995 Seitz Memorandum. At that time, EPA took the position that facilities that are major sources of HAP on the first substantive compliance date of an applicable major source MACT standard must comply "permanently" with that standard, even if the source was subsequently to become an area source by limiting its PTE. The expressed basis for this OIAI policy was that this would help ensure that required reductions in HAP emissions were maintained over time. *See* May 1995 Seitz Memorandum at 9 ("A once in,

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[1] Standards for major sources are based on MACT, which is the level of control achieved by the best controlled sources in the category. *See* 42 U.S.C. § 7412 (d)(2), (d)(3). Standards for area sources may be based on MACT, but alternatively may be based on either generally available control technology (GACT) or generally available management practices that reduce HAP emissions. *Id.* 42 U.S.C. §7412(d)(2), (5).

[2] The CAA section 112 implementing regulations define "major source" and "area source" in nearly identical terms. *See* 40 CFR 63.2. ("Major source means 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, unless the Administrator establishes a lesser quantity, or in the case of radionuclides, different criteria from those specified in this sentence."; "Area source means any stationary source of hazardous air pollutants that is not a major source as defined in this part.")

always in policy ensures that the health and environmental protection provided by MACT standards is not undermined.").

Since issuing the OIAI policy, EPA has twice proposed regulatory amendments that would have altered this interpretation. In 2003, EPA proposed amendments that focused on HAP emissions reductions resulting from pollution prevention (P2) activities. Apart from certain provisions associated with EPA's National Environmental Performance Track Program, that proposal was never finalized. *See* 68 FR 26249 (May 15, 2003); 69 FR 21737 (April 22, 2004).

In 2007, EPA issued a proposed rule to replace the OIAI policy set forth in the May 1995 Seitz Memorandum. 72 FR 69 (January 3, 2007). In that proposal, EPA reviewed the provisions in CAA section 112 relevant to the OIAI interpretation, applicable regulatory language, stakeholder concerns and potential implications. *Id.* at 71-74. Based on that review, EPA proposed that a major source that is subject to a major source MACT standard would no longer be subject to that standard, if the source were to become an area source through an enforceable limitation on its PTE. Under the proposal, major sources could take such limits on its PTE and obtain "area source" status at any time and would not be required to have done so before the "first compliance date," as the OIAI policy provided. *Id.* at 70 ("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 before the major source thresholds."). EPA has never taken final action on this 2007 proposal, which has not been withdrawn.

DISCUSSION

EPA has determined that the OIAI policy articulated in the May 1995 Seitz Memorandum is contrary to the plain language of the CAA, and, therefore, must be withdrawn. Congress expressly defined the terms "major source" and "area source" in CAA section 112(a), in unambiguous language. A "major source" is a source that "emits or has the potential to emit considering controls, in the aggregate," 10 tpy or more of any single HAP or 25 tpy or more of any combination of HAP. An "area source" is defined simply to mean any stationary source that is not a "major source." The OIAI policy had envisioned a source whose PTE is *below* 10 tpy of any single HAP and 25 tpy of any combination of HAP (*i.e.*, an "area source"), but which is nevertheless subject to the requirements applicable to major sources, including major source MACT standards. Notably absent from the statutory definitions is any reference to the compliance date of a MACT standard. Furthermore, the phrase "considering controls" within the definition of "major source" indicates that measures a source adopts to lower its PTE below the major source threshold must be considered as operating to remove it from the major source category regardless of the time at which those controls are adopted.

In short, Congress placed no temporal limitations on the determination of whether a source emits or has the PTE HAP in sufficient quantity to qualify as a major source. To the extent the OIAI policy imposed such a temporal limitation (*i.e.*, before the "first compliance date"), EPA had no authority to do so under the plain language of the statute.[3]

[3] Noteworthy too is the fact that EPA, in promulgating the regulatory definitions of "major source" and "area source" contained in the General Provisions of 40 CFR part 63, copied the statutory language almost verbatim. *See*

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

Nothing in the structure of the CAA counsels against the plain language reading of the statute to allow major sources to become area sources after an applicable compliance date, just as they have long been able to become area sources before the applicable compliance date. Congress defined major and area sources differently and established different requirements for such sources. The OIAI policy, by contrast, created an artificial time limit that does not exist on the face of the statute by including a temporal limitation on when a major source can become an area source by limiting its PTE.

Many commenters on EPA's 2007 proposal had expressed the view that, by imposing that artificial time limit, the OIAI policy created a disincentive for sources to implement voluntary pollution abatement and prevention efforts, or to pursue technological innovations that would reduce HAP emissions. To the extent that the OIAI policy has long discouraged facilities from identifying and undertaking such HAP emission reduction projects, by applying the statute as written as EPA is now doing, many types of sources will be afforded meaningful incentives to undertake such projects.

The Regional offices should send this memorandum to states within their jurisdiction. Questions concerning specific issues and sources should be directed to the appropriate Regional office. Regional office staff should coordinate with Ms. Elineth Torres or Ms. Debra Dalcher, Policy and Strategies Group, Sector Policies and Programs Division (D205-02), Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone number: (919) 541-4347 or (919) 541-2443, respectively; and email address: torres.elineth@epa.gov or dalcher.debra@epa.gov, respectively.

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note 2, *supra*. EPA did not at that time include any language in those definitions that could reasonably be construed to provide support for the OIAI policy. Accordingly, the policy is contrary not only to the plain language of the CAA (which in itself is dispositive of the policy's lawfulness), but to the plain language of EPA's own regulations.

To: Shrager, Brian[Shrager.Brian@epa.gov]; Howard, Jodi[Howard.Jodi@epa.gov]
Cc: Lamason, Bill[Lamason.Bill@epa.gov]
From: Conner, Lisa
Sent: Thur 11/2/2017 3:03:58 PM
Subject: FW: DOC Report - draft Action Plan (OAR).docx
DOC Report - draft Action Plan (OAR).docx

I meant to send this to you as well.

From: Conner, Lisa
Sent: Thursday, November 02, 2017 11:03 AM
To: OAQPS SPPD GL <OAQPS_SPPD_GL@epa.gov>; Boyd, Rochelle <Boyd.Rochelle@epa.gov>; Srivastava, Ravi <Srivastava.Ravi@epa.gov>; McLamb, Marguerite <McLamb.Marguerite@epa.gov>; Thompson, Fred <Thompson.Fred@epa.gov>; Tsirigotis, Peter <Tsirigotis.Peter@epa.gov>; Culligan, Kevin <Culligan.Kevin@epa.gov>; French, Chuck <French.Chuck@epa.gov>; Eck, Janet <Eck.Janet@epa.gov>; Pemberton, Wanda <Pemberton.Wanda@epa.gov>
Subject: DOC Report - draft Action Plan (OAR).docx

Hi everyone,

Following up on the discussion from Tuesday's staff meeting, we have received an updated Action Plan table from the DOC report. It seems they've added an item for us for which we have to provide an response – item 7: Unified Coatings Rule (Keith Barnett). They have also added a new list with a few additional items in a second table that did not make the high priority list. They are not asking for input for "potentially responsive actions," however, we may want to be prepared. In particular, this second table mentions "Once-in, Always-in" policy.

We can still edit the document as we see fit, but Mike says "Don't know yourself out." We still do not know if the Reg Reform Task Force will seek any response from us. I have removed the HON from the examples given. Any other suggested edits are welcome. Thanks.

To: Bradfield, John[Bradfield.John@epa.gov]; Hanks, Katie[hanks.katie@epa.gov]; Spence, Kelley[Spence.Kelley@epa.gov]; Schrock, Bill[Schrock.Bill@epa.gov]
Cc: Lamason, Bill[Lamason.Bill@epa.gov]; Lassiter, Penny[Lassiter.Penny@epa.gov]
From: Dunkins, Robin
Sent: Wed 1/31/2018 11:27:30 PM
Subject: FW: OIAI

FYI...

Bill/Penny, I will discuss with you further in staff meeting tomorrow.

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
dunkins.robin@epa.gov

-----Original Message-----
From: Hunt, Tim [mailto:Tim_Hunt@afandpa.org]
Sent: Wednesday, January 31, 2018 4:14 PM
To: Dunkins, Robin <Dunkins.Robin@epa.gov>
Subject: OIAI

Ex. 5 - Deliberative Process

Tim Hunt
Sent from my iPhone

To: Lamason, Bill[Lamason.Bill@epa.gov]; Schell, Bob[Schell.Bob@epa.gov]; Fruh, Steve[Fruh.Steve@epa.gov]; Barnett, Keith[Barnett.Keith@epa.gov]; Lassiter, Penny[Lassiter.Penny@epa.gov]; Cozzie, David[Cozzie.David@epa.gov]; Dunkins, Robin[Dunkins.Robin@epa.gov]; Boyd, Rochelle[Boyd.Rochelle@epa.gov]
Cc: Thompson, Fred[Thompson.Fred@epa.gov]; French, Chuck[French.Chuck@epa.gov]
From: French, Chuck
Sent: Wed 11/1/2017 9:09:10 PM
Subject: SPPD Budget Planning - Program Review Briefing for Steve Page
FY18 Program Review-SPPD-10-30-2017.ppt

Hi GLs,

As you may know, the briefing with Steve Page is now scheduled for Monday (11/6/2017). Attached are the revised slides. See attached.

Let me know if you have questions, etc…

Thanks.

Chuck

To: Lamason, Bill[Lamason.Bill@epa.gov]
Cc: Thompson, Fred[Thompson.Fred@epa.gov]; Torres, Elineth[Torres.Elineth@epa.gov]; Dalcher, Debra[dalcher.debra@epa.gov]
From: Johnson, Yvonne W
Sent: Wed 11/1/2017 8:05:56 PM
Subject: RE: need your assistance for AFPM-EPA Nov 2 Meeting

I totally understand and I told them that I could not guarantee your availability since they just submitted those topics today. I will wait to hear back from you.

Thank you,

Yvonne W. Johnson

Special Assistant to the Director

Air Quality Policy Division

Office of Air Quality Planning & Standards

U.S. Environmental Protection Agency

919-541-3921

johnson.yvonnew@epa.gov

From: Lamason, Bill
Sent: Wednesday, November 01, 2017 4:01 PM
To: Johnson, Yvonne W <Johnson.Yvonnew@epa.gov>
Cc: Thompson, Fred <Thompson.Fred@epa.gov>; Torres, Elineth <Torres.Elineth@epa.gov>; Dalcher, Debra <dalcher.debra@epa.gov>
Subject: FW: need your assistance for AFPM-EPA Nov 2 Meeting
Importance: High

Yvonne,

Fred forwarded your request to me as my group is on point for Once-in-Always-in. I will need to connect with Elineth Torres in the morning to see if we can sit in and listen to their input at 11:30 am tomorrow. However, it is premature to share any potential policy options at this point or even timing so might be a short, one-sided discussion. We also have nothing we can offer on the other two topics on short notice.

Once I circle with Elineth in the morning we'll confirm our availability and who will attend for the Once-in-Always-In topic.

Thanks!

Bill

From: Thompson, Fred
Sent: Wednesday, November 01, 2017 3:45 PM
To: Lamason, Bill <Lamason.Bill@epa.gov>
Subject: FW: need your assistance for AFPM-EPA Nov 2 Meeting
Importance: High

Bill – Sent per our conversation. Thanks! Fred

Frederick J. Thompson

Associate Director

Sector Policies & Programs Division

U.S. EPA, RTP, NC 27711

919.541.2707

From: Johnson, Yvonne W
Sent: Wednesday, November 01, 2017 12:53 PM
To: Thompson, Fred <Thompson.Fred@epa.gov>
Subject: need your assistance for AFPM-EPA Nov 2 Meeting
Importance: High

The American Fuel & Petrochemical Manuf (AFPM) group is coming to EPA/RTP tomorrow, Nov 2. They wanted to talk about NSR reform but I just received their final agenda and they have added once-in-always-in and smart sectors as topics. I was wondering if SPPD could join the meeting at 11:30 for these topics as well as hear their thoughts on "Shifting EPA Jurisdiction over Regulatory Interpretations and Applicability Determinations from the EPA Regional Offices and the OECA to OAQPS." Please see attached agenda. If interested could you please tell me who I should be working with in SPPD. I look forward to hearing back from you.

Attendees:

Name	Company
David Friedman	AFPM
Matthew Hodges	Valero Energy
Michael Hopperton	BP
David Pavlich	Phillips 66

Thank you,

Yvonne W. Johnson

Special Assistant to the Director

Air Quality Policy Division

Office of Air Quality Planning & Standards

U.S. Environmental Protection Agency

919-541-3921

johnson.yvonnew@epa.gov

From: Rodman, Sonja
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: McLamb, Marguerite
Sent: Mon 11/13/2017 2:00:54 PM
Subject: Re: OIAI Check in

Excellent. Thanks!

On Nov 13, 2017, at 7:59 AM, Lamason, Bill <Lamason.Bill@epa.gov> wrote:

Marguerite, I spoke with Elineth and Debra this morning and we agreed that Sonja's participation would be helpful. I'll add her to the meeting and may need to move to a time she is available. Thanks! Bill

-----Original Appointment-----
From: McLamb, Marguerite
Sent: Thursday, November 09, 2017 2:05 PM
To: Lamason, Bill
Subject: Accepted: OIAI Check in
When: Monday, November 13, 2017 9:15 AM-10:00 AM (UTC-05:00) Eastern Time (US & Canada).
Where: D201/Call in number 919-541-4486

Bill – would you like to add Sonja to this call? Her involvement as early as possible may likely be helpful given the tight turnaround.
Best,
Marguerite

From: Vetter, Rick
Location: D201/Call in number [redacted] Ex. 6 - Personal Privacy
Importance: Normal
Subject: Accepted: FW: 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

Bill - I'll call in for the call, but am scheduled to talk to Sonja about this at 11, so I may need to defer some input until I've talked with Sonja. Rick

To: Lamason, Bill[Lamason.Bill@epa.gov]
Cc: Chapman, Apple[Chapman.Apple@epa.gov]
From: Messina, Edward
Sent: Wed 12/6/2017 11:00:38 PM
Subject: Once-in-always-in

Thanks for call. Can you let us know when/if a meeting with Bill W is scheduled? Do you think we might get an invite?

Ed Mcssina

Director

Monitoring, Assistance, and Media Programs Division

U.S. EPA

1200 Pennsylvania Ave., N.W. (MC-2227A)

Washington, DC 20460

p: (202) 564-1191

f: (202) 564-0050

From: Microsoft Outlook
Location: D201/Call in number Ex. 6 - Personal Privacy
Importance: Normal
Subject: Meeting Forward Notification: 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

Your meeting was forwarded

Rodman, Sonja has forwarded your meeting request to additional recipients.

Meeting
OIAI Check in

Meeting Time
Monday, November 13, 2017 9:15 AM-10:00 AM.

Recipients
Vetter, Rick

All times listed are in the following time zone: (UTC-05:00) Eastern Time (US & Canada)

Sent by Microsoft Exchange Server

To: Lamason, Bill[Lamason.Bill@epa.gov]
From: Torres, Elineth
Sent: Wed 10/4/2017 7:20:20 PM
Subject: OIAI option document for review
OIAI Options Pager 10_04_17b Working Doc.docx

Bill,

Attached is the updated OIAI option document. We can discuss it tomorrow at 2PM.

Thanks,

Elineth Torres

OAQPS

919-541-4347

To: Torres, Elineth[Torres.Elineth@epa.gov]
Cc: Lamason, Bill[Lamason.Bill@epa.gov]; McKinney, Voronina[mckinney.voronina@epa.gov]
From: Johnson, Tanya
Sent: Tue 10/3/2017 2:17:01 PM
Subject: RE: Meeting with Peter

Ok, got it.

From: Torres, Elineth
Sent: Tuesday, October 03, 2017 9:54 AM
To: Johnson, Tanya <Johnson.Tanya@epa.gov>
Cc: Lamason, Bill <Lamason.Bill@epa.gov>
Subject: Meeting with Peter

Tanya,

Bill asked me to coordinate with you to schedule a meeting with Peter for next week on the Once In, Always In topic.

Bill has a 1/1 with Peter on 10/10 that he said it can use for the meeting but to work it will have to be rescheduled to either Wednesday, Oct 11 or Thursday, Oct 12. Or a new meeting can be scheduled for either Oct 11 or 12.

We need at least 30 mins.

Topic: Update on OIAI

Invitees: Bill Lamason, Debra Dalcher, Marguerite McLamb and Elineth Torres

Preferred dates: Oct 11/Oct 12

Thanks for your help. Let me know if you have questions.

Elineth Torres

OAQPS

919-541-4347

To: Johnson, Tanya[Johnson.Tanya@epa.gov]
Cc: Lamason, Bill[Lamason.Bill@epa.gov]
From: Torres, Elineth
Sent: Tue 10/3/2017 1:53:37 PM
Subject: Meeting with Peter

Tanya,

Bill asked me to coordinate with you to schedule a meeting with Peter for next week on the Once In, Always In topic.

Bill has a 1/1 with Peter on 10/10 that he said it can use for the meeting but to work it will have to be rescheduled to either Wednesday, Oct 11 or Thursday, Oct 12. Or a new meeting can be scheduled for either Oct 11 or 12.

We need at least 30 mins.

Topic: Update on OIAI

Invitees: Bill Lamason, Debra Dalcher, Marguerite McLamb and Elineth Torres

Preferred dates: Oct 11/Oct 12

Thanks for your help. Let me know if you have questions.

Elineth Torres

OAQPS

919-541-4347

To: Lamason, Bill[Lamason.Bill@epa.gov]
From: Noonan, Jenny
Sent: Thur 1/25/2018 8:10:53 PM
Subject: RE: OIAI.Reclassification of Major Sources as Area Sources Under Section 112 Draft_01 25 2018-Final OGC Comments.1.25.18_PSG.docx

Thanks. I am optimistic that this plan is the one that Jackie/Jan has developed.

From: Lamason, Bill
Sent: Thursday, January 25, 2018 2:58 PM
To: Ashley, Jackie <Ashley.Jackie@epa.gov>
Cc: Noonan, Jenny <Noonan.Jenny@epa.gov>
Subject: FW: OIAI.Reclassification of Major Sources as Area Sources Under Section 112 Draft_01 25 2018-Final OGC Comments.1.25.18_PSG.docx

FYI. Presume you need to know this for timing outreach of calls/emails. Bill

From: Harlow, David
Sent: Thursday, January 25, 2018 2:52 PM
To: Lamason, Bill <Lamason.Bill@epa.gov>; Culligan, Kevin <Culligan.Kevin@epa.gov>
Cc: Dalcher, Debra <dalcher.debra@epa.gov>; Lewis, Josh <Lewis.Josh@epa.gov>; Koerber, Mike <Koerber.Mike@epa.gov>
Subject: RE: OIAI.Reclassification of Major Sources as Area Sources Under Section 112 Draft_01 25 2018-Final OGC Comments.1.25.18_PSG.docx

Great, thank you.

Also, just a reminder about something I believe I may have mentioned, if only in passing, during our conference call, which is that communications made to the public about the issuance of the memorandum is being handled out of HQ in accordance with a comms plan developed by OAR in conjunction with the press/public relations people here. So, until that plan has been rolled out, which should/will take place later this afternoon, all "internal" communications (*e.g.*, from OAQPS to the Regions) about the

memorandum should be placed on hold so that the planned roll-out doesn't get "stepped on," as it were.

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: Lamason, Bill
Sent: Thursday, January 25, 2018 2:30 PM
To: Harlow, David <harlow.david@epa.gov>; Culligan, Kevin <Culligan.Kevin@epa.gov>
Cc: Dalcher, Debra <dalcher.debra@epa.gov>; Lewis, Josh <Lewis.Josh@epa.gov>; Koerber, Mike <Koerber.Mike@epa.gov>
Subject: RE: OIAI.Reclassification of Major Sources as Area Sources Under Section 112 Draft_01 25 2018-Final OGC Comments.1.25.18_PSG.docx

David,

Thanks! Great news! I'll pass along Josh's suggestion to the folks handling the cleanup and are almost done.

We were planning to send the memo to the OAQPS-DC office via Mary Henigin and she can help Josh however needed. We will hold the FR in RTP for Peter's signature after your clearance and Bill signs the memo. I'm copying Mike Koerber who coordinates with Mary on these actions for us and determine how best to move the memo fastest.

Thanks again!

Bill L.

From: Harlow, David
Sent: Thursday, January 25, 2018 2:19 PM
To: Lamason, Bill <Lamason.Bill@epa.gov>; Culligan, Kevin <Culligan.Kevin@epa.gov>
Cc: Dalcher, Debra <dalcher.debra@epa.gov>; Lewis, Josh <Lewis.Josh@epa.gov>
Subject: RE: OIAI.Reclassification of Major Sources as Area Sources Under Section 112
Draft_01 25 2018-Final OGC Comments.1.25.18_PSG.docx

Bill Wehrum has approved all the revisions/edits that we've been discussing. So please do finalize the memorandum for Bill's signature.

I'm not sure what is the best way to proceed in terms of getting the final version physically up here, but the simplest approach would seem to be that you send the final, to-be-signed version as an attachment in an email to Josh. I'll leave it up to you two to "discuss among yourselves," as it were.

Meanwhile, I'll review the *Federal Register* notice and then get back to you with, presumably, approval to finalize as well.

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

From: McLamb, Marguerite
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

Bill - would you like to add Sonja to this call? Her involvement as early as possible may likely be helpful given the tight turnaround.
Best,
Marguerite

To: Barnett, Keith[Barnett.Keith@epa.gov]
From: Dalcher, Debra
Sent: Thur 11/16/2017 3:29:34 PM
Subject: RE: Current version of the examples in the draft OIAI memo - Comment today if possible

Thanks Keith.

From: Barnett, Keith
Sent: Thursday, November 16, 2017 9:45 AM
To: Dalcher, Debra <dalcher.debra@epa.gov>; Lassiter, Penny <Lassiter.Penny@epa.gov>; Eddinger, Jim <Eddinger.Jim@epa.gov>
Subject: RE: Current version of the examples in the draft OIAI memo - Comment today if possible

This looks fine to me.

Keith Barnett

Minerals and Manufacturing Group Leader

919-541-5605

From: Dalcher, Debra
Sent: Thursday, November 16, 2017 7:37 AM
To: Lassiter, Penny <Lassiter.Penny@epa.gov>; Eddinger, Jim <Eddinger.Jim@epa.gov>; Barnett, Keith <Barnett.Keith@epa.gov>
Subject: Current version of the examples in the draft OIAI memo - Comment today if possible

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: Lamason, Bill[Lamason.Bill@epa.gov]
From: Lassiter, Penny
Sent: Thur 1/18/2018 5:08:53 PM
Subject: RE: OIAI.RevisedOIAImemorandum_1 5 2018+ SJJ 1.8.18 (003).docx

Got it. Thanks.

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: Lamason, Bill
Sent: Thursday, January 18, 2018 12:08 PM
To: Lassiter, Penny <Lassiter.Penny@epa.gov>
Cc: Dalcher, Debra <dalcher.debra@epa.gov>
Subject: 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: Lamason, Bill[Lamason.Bill@epa.gov]
From: Johnson, Tanya
Sent: Wed 11/29/2017 8:53:19 PM
Subject: RE: OIAI with Peter

Ok, got it.

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: Lamason, Bill[Lamason.Bill@epa.gov]
From: Eck, Janet
Sent: Wed 12/6/2017 1:34:26 PM
Subject: FW: Wehrum Meeting Request - Once-In-Always-In Policy Revision
Wehrum Meeting Request - Once-in Aways-in Policy Revision.docx

FYI. Thanks.

From: Alston, Lala
Sent: Tuesday, December 05, 2017 4:42 PM
To: Loving, Shanita <Loving.Shanita@epa.gov>; Atkinson, Emily <Atkinson.Emily@epa.gov>
Cc: Alston, Lala <Alston.Lala@epa.gov>; South, Peter <South.Peter@epa.gov>; Shryock, Alice <shryock.alice@epa.gov>; Johnson, Tanya <Johnson.Tanya@epa.gov>; McKinney, Voronina <mckinney.voronina@epa.gov>; Eck, Janet <Eck.Janet@epa.gov>
Subject: Wehrum Meeting Request - Once-In-Always-In Policy Revision

Wehrum Meeting Request for scheduling.

Thank you,

Lala

Lala Alston

US/EPA/OAR/OAQPS/IO – MC-C404-04

Research Triangle Park, NC 27711

Phone: (919) 541-5616

To: Lamason, Bill[Lamason.Bill@epa.gov]; Cozzie, David[Cozzie.David@epa.gov]
From: French, Chuck
Sent: Wed 11/15/2017 8:49:34 PM
Subject: FW: Draft Agenda for Tomorrow (please send me your hot issues by 4:00 today)

FYI. See below.

From: French, Chuck
Sent: Wednesday, November 15, 2017 3:47 PM
To: South, Peter <South.Peter@epa.gov>
Cc: Peter Tsirigotis <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: Lamason, Bill[Lamason.Bill@epa.gov]
Cc: Godfrey, Janice[Godfrey.Janice@epa.gov]
From: Lassiter, Penny
Sent: Wed 9/20/2017 6:43:26 PM
Subject: OIAI example

Bill,

Here is an example that I am aware of.

Ex. 5 - Deliberative Process

Ex. 5 - Deliberative Process

Aerospace Mfg & Rework Facs - 40 CFR 63, Subpart GG

Oil & Natural Gas Production Facs - 40 CFR 63, Subpart HH

Wood Furniture Mfg. - 40 CFR 63, Subpart JJ

"Surface Coating" - 40 CFR 63, Subpart IIII (auto & Truck), JJJJ (Paper), KKKK (Metal Can), MMMM (misc.), NNNN (Large Appliance), OOOO (Fabric), RRRR (Metal Furniture), SSSS (Metal Coil)

Halogenated Solvent Cleaners - 40 CFR 63, Subpart T

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: Lamason, Bill
Sent: Tuesday, August 08, 2017 3:14 PM
To: Lassiter, Penny <Lassiter.Penny@epa.gov>
Subject: Draft 2017 OIAI Memorandum_08082017_markup.docx

Penny, Per our discussion, see end of third paragraph. Please share your examples/cases with Elineth and follow up with her if you have any questions.

Thanks! Bill

To: McLamb, Marguerite[McLamb.Marguerite@epa.gov]
From: Dalcher, Debra
Sent: Tue 11/28/2017 9:02:20 PM
Subject: RE: OIAI Memo

Okay, thanks for the update Marguerite.

Debra

-----Original Message-----
From: McLamb, Marguerite
Sent: Tuesday, November 28, 2017 4:01 PM
To: Dalcher, Debra <dalcher.debra@epa.gov>
Subject: RE: OIAI Memo

Hi, Debra,
Sonja has the memo. We are on a phone prep session for the RTR oral argument on Thursday, and I hope to chat with her about the memo after this ends at 5 pm.
Thanks for checking in!
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: Tuesday, November 28, 2017 3:51 PM
To: McLamb, Marguerite
Subject: OIAI Memo

Hi Marguerite,

Just checking in to see where we are on the memo. Didn't see an email so wasn't sure if it was in OGC's hands yet for review.

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: McLamb, Marguerite[McLamb.Marguerite@epa.gov]
From: Dalcher, Debra
Sent: Tue 11/28/2017 8:51:44 PM
Subject: OIAI Memo

Hi Marguerite,

Just checking in to see where we are on the memo. Didn't see an email so wasn't sure if it was in OGC's hands yet for review.

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]
Cc: Lamason, Bill[Lamason.Bill@epa.gov]
From: Jordan, Scott
Sent: Thur 1/25/2018 12:04:40 PM
Subject: OIAI Memo - Additional text re creating incentive to implement pollution abatement and prevention efforts

Sonja and Bill –

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

-----Original Message-----
From: Rodman, Sonja
Sent: Wednesday, January 24, 2018 9:00 PM
To: Jordan, Scott <Jordan.Scott@epa.gov>

Subject: FW: Another question

Ex. 5 - Attorney Client

Sonja L. Rodman

Air Toxics, Consumer Protection and Indoor Air Practice Group

(202) 564-4079

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-----Original Message-----

From: Lamason, Bill

Sent: Wednesday, January 24, 2018 8:54 PM

To: Rodman, Sonja <Rodman.Sonja@epa.gov>

Subject: Another question

Sonja, FYI.

Ex. 5 - Attorney Client

from my iPhone

To: Lamason, Bill[Lamason.Bill@epa.gov]
From: Janet L. Greenberg
Sent: Fri 1/26/2018 4:07:32 PM
Subject: Fw: area source under 63 MMMM

Mr. Lamason,

We are very interested in the memo issued yesterday:

https://www.epa.gov/newsreleases/reducing-regulatory-burdens-epa-withdraws-once-always-policy-major-sources-under-clean

regarding the reclassification of Major Sources as Area Sources under the MACT standards. We wish to send a comment to you, to ensure that the notice published by EPA will cover a specific situation encountered by one of our clients.

40 CFR 63 Subpart MMMM (National Emission Standard for Hazardous Air Pollutants: Surface Coating of Miscellaneous Metal Parts and Products) applies only to operations located at major sources of hazardous air pollutants (HAP) (10 tons per year of any one HAP or 25 tons per year of any combination of HAP). Our client does not currently have the potential to emit (PTE) these quantities of HAP, nor did the site have this PTE prior to the effective date of this regulation. However, they did not have an enforceable PTE registration in place prior to the effective date of the regulation.

The coating booth began operations in 2004, after January 2, 2004, the promulgation date of the regulation. It has never been a major source, thus, the site could not have become affected by this regulation until it missed the APD-CERT deadline to enforceably certify its PTE on January 2, 2007, which is the date the regulation became effective for existing sources. The old EPA guidance contained this requirement:

Today's guidance clarifies that facilities may switch to area source status at any time until the "first compliance date" of the standard.

However, the site did not submit an enforceable certification of these area source potential emission rates on form APD-CERT to TCEQ until March 19, 2007, after the effective compliance date of the regulation of January 2, 2007. Because of the "once in, always in" policy, the site has done their best to comply with this regulation.

Compliance with 63 MMMM has been a significant burden for this small site, which ultimately has nearly discontinued certain of their coating operations, partially due to the difficulty in

obtaining acceptable, affordable paints in the small quantities needed for their operations. Distributors were not able to offer cost-effective low-HAP solutions to them that still met the needs and warranty requirements of their customers.

But will our client now be able to cease sending semi-annual reports under 63 MMMM, and also no longer be subject to the requirements of this regulation, since they have long since registered their area source status? Their area source PTE registration just happened to be 2 months after the "first compliance date" of the regulation.

We would appreciate your help and advice in bringing this issue to a close for this small facility.

Thanks,

Janet L. Greenberg, P.E.

GREEN Environmental Consulting, Inc.

10322 Ivyridge Rd.

Houston, TX 77043

Phone 713-932-8942

JGreen@green-envi.com

www.green-envi.com

To: Torres, Elineth[Torres.Elineth@epa.gov]
Cc: Lamason, Bill[Lamason.Bill@epa.gov]
From: Lassiter, Penny
Sent: Wed 9/20/2017 1:00:28 PM
Subject: OIAI Discussion: Principle-based policy

Elineth,

It's my understanding that the webinar from 2-3 today on Unauthorized Disclosure is mandatory, and is overlapping with this meeting. Are you planning to adjust this OIAI meeting? Thanks.

Subject: OIAI Discussion: Principle-based policy
Location: RTP-D201-Max40/RTP-Bldg-D; RTP-OAQPS-SPPD/Phone-Line/RTP-OAQPS-BLDG-C

Ex. 6 - Personal Privacy

Start: Wed 9/20/2017 2:30 PM
End: Wed 9/20/2017 3:30 PM

Recurrence: (none)

Meeting Status: Accepted

Organizer: Torres, Elineth
Required Attendees: Barnett, Keith; Caparoso, Jennifer; Cozzie, David; Dunkins, Robin; Fruh, Steve; Lamason, Bill; Lassiter, Penny; Schell, Bob; McLamb, Marguerite; French, Chuck; Dalcher, Debra; Boyd, Rochelle

Call-in number 919-541-4486.

****

All,

Attached is the updated version of the OIAI backgrounder we prepared for OAQPS IO last June. This version incorporates the latest thinking from Peter and OGC regarding next steps. Please do not share the attached document with others.

The purpose of the 9/20 meeting is to discuss and get input on the draft guiding principles for Sub-option B: Principle-based policy. See page 3 of attached document.

Thanks,
Elineth

To: Lamason, Bill[Lamason.Bill@epa.gov]
Cc: Eck, Janet[Eck.Janet@epa.gov]
From: Pemberton, Wanda
Sent: Fri 1/26/2018 3:36:55 PM
Subject: RE: Once-in-Always-in policy withdrawn

Hi Bill,

FYI . . . .one of my Regional contacts was made aware of this last night . . . . please see the time of the email query below.

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

From: Vyas, Himanshu
Sent: Thursday, January 25, 2018 6:27 PM
To: Pemberton, Wanda <Pemberton.Wanda@epa.gov>
Subject: Once-in-Always-in policy withdrawn

Good afternoon Wanda,

Ex. 5 - Deliberative Process

Thanks!

EPA today issued a guidance memorandum that withdraws the long-standing Once-In-Always-In policy for sources of hazardous air pollutants. EPA states:

"On January 25, 2018, 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 at any time, provided the facility limits its potential to emit below major source thresholds."

https://www.epa.gov/stationary-sources-air-pollution/reclassification-major-sources-area-sources-under-section-112-clean

EPA states in its memo that it will soon publish a notice in the *Federal Register* to take comment on regulatory text that will reflect this guidance.

Himanshu Vyas
Environmental Engineer
U.S. EPA, Region III
Office of Permits and State Programs (3AP10)
1650 Arch Street

Philadelphia, PA 19103-2029

Phone: 215-814-2112

FAX: 215-814-2134

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To: Morales, Mariel[Morales.Mariel@epa.gov]
From: Dalcher, Debra
Sent: Wed 12/13/2017 12:14:59 PM
Subject: RE: OIAI 1-pager

Thank you Mariel. I will check that.

Debra

From: Morales, Mariel
Sent: Tuesday, December 12, 2017 1:08 PM
To: Dalcher, Debra <dalcher.debra@epa.gov>
Subject: OIAI 1-pager

Hi Debra,

I took a look at the hard copy of the pager you gave me. Overall, it looks fine. The one thing I did notice was that under the "issue" section. The text in the sub bullets are different sizes. I'd double check that.

Mariel Morales

Communications Specialist

OAQPS/SPPD

U.S. Environmental Protection Agency

(919) 541-9774

To: Lamason, Bill[Lamason.Bill@epa.gov]
Cc: Lassiter, Penny[Lassiter.Penny@epa.gov]
From: Tsirigotis, Peter
Sent: Thur 1/25/2018 1:22:38 AM
Subject: Fwd: Revised Draft OIAI Memo
Reclassification of Major Sources as Area Sources Under Section 112_.pdf
ATT00001.htm

FYI

Begin forwarded message:

From: "Harlow, David" <harlow.david@epa.gov>
Date: January 24, 2018 at 6:59:46 PM EST
To: "Tsirigotis, Peter" <Tsirigotis.Peter@epa.gov>
Cc: "Wehrum, Bill" <Wehrum.Bill@epa.gov>, "Gunasekara, Mandy" <Gunasekara.Mandy@epa.gov>
Subject: FW: Revised Draft OIAI Memo

Peter,

Ex. 5 - Deliberative Process

Ex. 5 - Deliberative Process

Ex. 5 - Deliberative Process

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: Wehrum, Bill
Sent: Wednesday, January 24, 2018 6:50 PM
To: Szabo, Aaron L. EOP/CEQ Ex. 6 - Personal Privacy
Cc: Gunasekara, Mandy <Gunasekara.Mandy@epa.gov>; Harlow, David <harlow.david@epa.gov>
Subject: Revised Draft OIAI Memo

Aaron – Please see the attached revised version. Please let me know if you have any further thoughts. Thanks for your input.

To: South, Peter[South.Peter@epa.gov]
Cc: Eck, Janet[Eck.Janet@epa.gov]; Lamason, Bill[Lamason.Bill@epa.gov]
From: Fruh, Steve
Sent: Tue 1/16/2018 4:15:54 PM
Subject: Re: NESHAP ZZZZ (Once In Always In) Policy

Mr Kane called me back earlier today and I told him EPA was working on a public communication that should be available soon and should also help provide clarity.

Sent from my iPhone

On Jan 16, 2018, at 10:28 AM, South, Peter <South.Peter@epa.gov> wrote:

Great—thanks!

From: Fruh, Steve
Sent: Tuesday, January 16, 2018 9:29 AM
To: South, Peter <South.Peter@epa.gov>
Cc: Eck, Janet <Eck.Janet@epa.gov>; Lamason, Bill <Lamason.Bill@epa.gov>
Subject: Re: NESHAP ZZZZ (Once In Always In) Policy

I left a message last week and will follow up today and will confirm.

Sent from my iPhone

On Jan 16, 2018, at 8:49 AM, South, Peter <South.Peter@epa.gov> wrote:

Hi Steve,

I think this is the second time this individual has contacted OAR-IO (I forwarded the initial email from Emily last week to Bill L—I believe he forwarded on to you).

Can you or your staff follow-up with Mr. Kane today and send me an email following the call. I'd like to confirm with Emily that we contacted this individual and answered his question(s).

Thanks and give me a call with any questions.

From: Atkinson, Emily
Sent: Friday, January 12, 2018 12:09 PM
To: South, Peter <South.Peter@epa.gov>
Subject: FW: NESHAP ZZZZ (Once In Always In) Policy

This person is following up looking for information. Could you all get in touch with them?

From: Alan Kane [mailto:alanjkane@comcast.net]
Sent: Friday, January 12, 2018 11:44 AM
To: Atkinson, Emily <Atkinson.Emily@epa.gov>
Cc: DeCiutiis, Paul E. <paul.deciutiis@gmail.com>; Hamm, Russell <rhammenviro@gmail.com>
Subject: Re: NESHAP ZZZZ (Once In Always In) Policy

Emily, did you receive this email?

Thanks

Alan Kane

From: "Alan Kane" <alanjkane@comcast.net>
To: "Atkinson Emily" <Atkinson.Emily@EPA.gov>
Cc: "Alan J Kane" <alanjkane@comcast.net>, "Paul E. DeCiutiis" <paul.deciutiis@gmail.com>, "Russell Hamm" <rhammenviro@gmail.com>
Sent: Tuesday, January 9, 2018 10:49:22 AM
Subject: NESHAP ZZZZ (Once In Always In) Policy

Emily, I am trying to find a contact within EPA that may be able to help with the

following situation.

I am working on a specific instance concerning the punitive nature of complying with the MACT ZZZZ rules resulting from the 1995 EPA Policy know as the "Once In Always In". The facility has installed the necessary controls in the form of oxidation catalyst and air fuel ratio controllers to meet current MACT ZZZZ and NSPS JJJJ requirements but since it was done without having a federally enforceable limit the facility must remain a Major Source. It can be demonstrated through the required stack testing that the facility is actually a true minor source and has been for many years. I would like to discuss this situation in more detail when it's convenient.

Thanks,

Alan Kane

To: Lamason, Bill[Lamason.Bill@epa.gov]
Cc: Lassiter, Penny[Lassiter.Penny@epa.gov]
From: Tsirigotis, Peter
Sent: Thur 1/25/2018 1:22:20 AM
Subject: Fwd: OIAI Memo

FYI.

Begin forwarded message:

From: "Harlow, David" <harlow.david@epa.gov>
Date: January 24, 2018 at 6:24:49 PM EST
To: "Wehrum, Bill" <Wehrum.Bill@epa.gov>, "Gunasekara, Mandy" <Gunasekara.Mandy@epa.gov>, "Tsirigotis, Peter" <Tsirigotis.Peter@epa.gov>
Subject: RE: OIAI Memo

To follow up here, yes, I am working on it now. Should have something shortly.

Ex. 5 - Deliberative Process

And that, by the way, is going to be the "deliverable" from my end: a separate Word document containing the stand-alone paragraph, so that it can be reviewed independently, revised separately, and the, when finalized, plugged directly into the otherwise finished memo early tomorrow in advance of final overall production.

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: Wehrum, Bill
Sent: Wednesday, January 24, 2018 6:21 PM
To: Gunasekara, Mandy <Gunasekara.Mandy@epa.gov>; Tsirigotis, Peter <Tsirigotis.Peter@epa.gov>
Cc: Harlow, David <harlow.david@epa.gov>
Subject: OIAI Memo

Ex. 5 - Deliberative Process

To: Santiago, Juan[Santiago.Juan@epa.gov]; Lamason, Bill[Lamason.Bill@epa.gov]; Wood, Anna[Wood.Anna@epa.gov]; Tsirigotis, Peter[Tsirigotis.Peter@epa.gov]; Wayland, Richard[Wayland.Richard@epa.gov]
Cc: Johnson, Yvonne W[Johnson.Yvonnew@epa.gov]; South, Peter[South.Peter@epa.gov]
From: Koerber, Mike
Sent: Tue 12/12/2017 9:29:25 PM
Subject: FW: A few OAQPS items
NSR Improvement Projects - summary work plan 12-12-17.docx

FYI- Here is the version of the NSR Workplan that was shared with OAR. Thank you for your work on this. I suspect that we will get feedback from Bill soon – perhaps as part of the NSR discussion on Monday.

Mike

From: Koerber, Mike
Sent: Tuesday, December 12, 2017 12:26 PM
To: Lewis, Josh <Lewis.Josh@epa.gov>; Cyran, Carissa <Cyran.Carissa@epa.gov>
Subject: A few OAQPS items

Josh, Carissa: Here are a few things to share with Bill:

•□□□□□□□□ NSR Workplan – Attached is an updated version of what we sent last week. This version identifies our estimated schedule and a few key issues needing Bill's feedback.

To: Fruh, Steve[Fruh.Steve@epa.gov]
Cc: Eck, Janet[Eck.Janet@epa.gov]; Lamason, Bill[Lamason.Bill@epa.gov]
From: South, Peter
Sent: Tue 1/16/2018 3:28:32 PM
Subject: RE: NESHAP ZZZZ (Once In Always In) Policy

Great—thanks!

From: Fruh, Steve
Sent: Tuesday, January 16, 2018 9:29 AM
To: South, Peter <South.Peter@epa.gov>
Cc: Eck, Janet <Eck.Janet@epa.gov>; Lamason, Bill <Lamason.Bill@epa.gov>
Subject: Re: NESHAP ZZZZ (Once In Always In) Policy

I left a message last week and will follow up today and will confirm.

Sent from my iPhone

On Jan 16, 2018, at 8:49 AM, South, Peter <South.Peter@epa.gov> wrote:

Hi Steve,

I think this is the second time this individual has contacted OAR-IO (I forwarded the initial email from Emily last week to Bill L—I believe he forwarded on to you).

Can you or your staff follow-up with Mr. Kane today and send me an email following the call. I'd like to confirm with Emily that we contacted this individual and answered his question(s).

Thanks and give me a call with any questions.

From: Atkinson, Emily
Sent: Friday, January 12, 2018 12:09 PM
To: South, Peter <South.Peter@epa.gov>
Subject: FW: NESHAP ZZZZ (Once In Always In) Policy

This person is following up looking for information. Could you all get in touch with them?

From: Alan Kane [mailto:alanjkane@comcast.net]
Sent: Friday, January 12, 2018 11:44 AM
To: Atkinson, Emily <Atkinson.Emily@epa.gov>
Cc: DeCiutiis, Paul E. <paul.deciutiis@gmail.com>; Hamm, Russell <rhammenviro@gmail.com>
Subject: Re: NESHAP ZZZZ (Once In Always In) Policy

Emily, did you receive this email?

Thanks

Alan Kane

From: "Alan Kane" <alanjkane@comcast.net>
To: "Atkinson Emily" <Atkinson.Emily@EPA.gov>
Cc: "Alan J Kane" <alanjkane@comcast.net>, "Paul E. DeCiutiis" <paul.deciutiis@gmail.com>, "Russell Hamm" <rhammenviro@gmail.com>
Sent: Tuesday, January 9, 2018 10:49:22 AM
Subject: NESHAP ZZZZ (Once In Always In) Policy

Emily, I am trying to find a contact within EPA that may be able to help with the following situation.

I am working on a specific instance concerning the punitive nature of complying with the MACT ZZZZ rules resulting from the 1995 EPA Policy know as the "Once In Always In". The facility has installed the necessary controls in the form of oxidation catalyst and air fuel ratio controllers to meet current MACT ZZZZ and NSPS JJJJ requirements but since it was done without having a federally

enforceable limit the facility must remain a Major Source. It can be demonstrated through the required stack testing that the facility is actually a true minor source and has been for many years. I would like to discuss this situation in more detail when it's convenient.

Thanks,

Alan Kane

To: South, Peter[South.Peter@epa.gov]
Cc: Eck, Janet[Eck.Janet@epa.gov]; Lamason, Bill[Lamason.Bill@epa.gov]
From: Fruh, Steve
Sent: Tue 1/16/2018 2:28:38 PM
Subject: Re: NESHAP ZZZZ (Once In Always In) Policy

I left a message last week and will follow up today and will confirm.

Sent from my iPhone

On Jan 16, 2018, at 8:49 AM, South, Peter <South.Peter@epa.gov> wrote:

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Sent: Friday, January 12, 2018 12:09 PM
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Emily, did you receive this email?

Thanks

Alan Kane

From: "Alan Kane" <alanjkane@comcast.net>
To: "Atkinson Emily" <Atkinson.Emily@EPA.gov>
Cc: "Alan J Kane" <alanjkane@comcast.net>, "Paul E. DeCiutiis" <paul.deciutiis@gmail.com>, "Russell Hamm" <rhammenviro@gmail.com>
Sent: Tuesday, January 9, 2018 10:49:22 AM
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Thanks,

Alan Kane

To: Lamason, Bill[Lamason.Bill@epa.gov]
From: Johnson, Tanya
Sent: Thur 11/30/2017 3:44:02 PM
Subject: RE: OIAI with Peter

He was rushing to another meeting and I wasn't sure if it was to staff meeting. I will leave the meeting where I have it right now.

From: Lamason, Bill
Sent: Thursday, November 30, 2017 10:35 AM
To: Johnson, Tanya <Johnson.Tanya@epa.gov>
Subject: Re: OIAI with Peter

Ok. Thanks. Bill

Sent from my iPhone

On Nov 30, 2017, at 10:29 AM, Johnson, Tanya <Johnson.Tanya@epa.gov> wrote:

I booked it for Monday, but will speak with him after he gets out of his meeting.

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 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

From: Dalcher, Debra
Location: RTP-D201-Max40/RTP-Bldg-D; RTP-OAQPS-Ex. 6 - Personal Privacy-SPPD/Phone-Line/RTP-OAQPS-BLDG-C
Importance: High
Subject: OIAI re. (Pollution Prevention re. Coatings, Industrial Boilers, etc.) - Write-up Added
Start Date/Time: Tue 11/14/2017 3:00:00 PM
End Date/Time: Tue 11/14/2017 3:30:00 PM

Ex. 5 - Deliberative Process

From: Vetter, Rick
Location: D220D/Call in number x4486
Importance: Normal
Subject: Accepted: OIAI Check in (coordination with Kevin)
Start Date/Time: Mon 11/6/2017 6:00:00 PM
End Date/Time: Mon 11/6/2017 7:00:00 PM

To: Bernales, Barbara[bernales.barbara@epa.gov]
Cc: Scully, Carolyn[Scully.Carolyn@epa.gov]; Torres, Elineth[Torres.Elineth@epa.gov]
From: Dalcher, Debra
Sent: Mon 11/6/2017 1:20:23 PM
Subject: FW: FDMS User Account Change Request (OIAI Rulemaking Docket)
OIAI Docket Bulk Download Request 11_1_17.docx

Good Morning Barbara

I am wondering if you could help with something. We submitted the attached request on 1 Nov for a docket extraction (an older docket, but not a large one). We submitted another a few days later and received that one already ☺.

There is some urgency associated with the above request and we are hoping someone could check to make sure it was received and also provide an update on when we can expect to receive the files.

If this does not fall in your lane, please just let me know who I can touch base with.

Thanks so much, Debra

From: Torres, Elineth
Sent: Wednesday, November 01, 2017 7:50 AM
To: FDMS <FDMS@epa.gov>
Cc: Dalcher, Debra <dalcher.debra@epa.gov>
Subject: FDMS User Account Change Request

See attached request.

Thanks.

Elineth Torres

OAQPS

919-541-4347

From: McLamb, Marguerite
Location: D220D/Call in number Ex. 6 - Personal Privacy
Importance: Normal
Subject: Accepted: OIAI Check in (coordination with Kevin)
Start Date/Time: Mon 11/6/2017 6:00:00 PM
End Date/Time: Mon 11/6/2017 7:00:00 PM

From: RTP-OAQPS Ex. 6 - Personal Privacy 6-SPPD/Phone-Line/RTP-OAQPS-BLDG-C
Location: D220D/Call in number Ex. 6 - Personal Privacy
Importance: Normal
Subject: Accepted: OIAI Check in (coordination with Kevin)
Start Date/Time: Mon 11/6/2017 6:00:00 PM
End Date/Time: Mon 11/6/2017 7:00:00 PM

Your request was accepted.

Sent by Microsoft Exchange Server 2016

To: Lamason, Bill[Lamason.Bill@epa.gov]
From: Johnson, Tanya
Sent: Thur 11/30/2017 3:04:30 PM
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: Lamason, Bill[Lamason.Bill@epa.gov]
Cc: Chapman, Apple[Chapman.Apple@epa.gov]
From: Messina, Edward
Sent: Thur 12/7/2017 10:02:21 PM
Subject: Re: Once-in-always-in

Ok. Thx.

Sent from my iPhone

On Dec 7, 2017, at 2:14 PM, Lamason, Bill <Lamason.Bill@epa.gov> wrote:

Ed,

It was good connecting with you.

We do not know when the Wehrum meeting will be and OECA is not on the invite list.

Bill

From: Messina, Edward
Sent: Wednesday, December 06, 2017 6:01 PM
To: Lamason, Bill <Lamason.Bill@epa.gov>
Cc: Chapman, Apple <Chapman.Apple@epa.gov>
Subject: Once-in-always-in

Thanks for call. Can you let us know when/if a meeting with Bill W is scheduled? Do you think we might get an invite?

Ed Messina

Director

Monitoring, Assistance, and Media Programs Division

U.S. EPA

1200 Pennsylvania Ave., N.W. (MC-2227A)

Washington, DC 20460

p: (202) 564-1191

f: (202) 564-0050

To: Cozzie, David[Cozzie.David@epa.gov]; Boyd, Rochelle[Boyd.Rochelle@epa.gov]; Lassiter, Penny[Lassiter.Penny@epa.gov]; Lamason, Bill[Lamason.Bill@epa.gov]; Schell, Bob[Schell.Bob@epa.gov]; Fruh, Steve[Fruh.Steve@epa.gov]; Barnett, Keith[Barnett.Keith@epa.gov]; Dunkins, Robin[Dunkins.Robin@epa.gov]
From: French, Chuck
Sent: Tue 12/19/2017 7:46:39 PM
Subject: Questions/bullets for Peter by 4:00pm on Thursday (12/21)

Hi GLs,

Peter is requesting bullets/questions. If you have any hot/important rules (or other actions or issues) for which you need resolution, decision or feedback over the next month (and no briefing is being scheduled), please send me a few **short** bullets regarding the action/issue by 4:00pm on Thursday (12/21). If you have a briefing coming up soon regarding the rule/issue (e.g., OIAI) then no bullets are needed. If you've sent a 1-pager recently regarding the topic that went to OAR (e.g., Asbestos CTPS) then just send me 1 bullet such as the following:

Alternative Work Practice for Asbestos Cement Pipe Replacement Proposed Rule: We would like to know if Bill has reviewed the 1-pager sent to OAR on December 4, and if a decision has been made as to who will sign the action, OAQPS or OAR?

If you have a rule or issue for which no pager has been developed recently (e.g., maybe PVC?) and you need decision or resolution on that rule or issue over the next month, please send a few short bullets that briefly describe the rule/issue and tees up the appropriate questions, etc..

Let me know if you have questions.

Thanks.

Chuck

Phone: 919-541-7912

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

Thank you. – Sonja

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 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: Lamason, Bill[Lamason.Bill@epa.gov]
From: Johnson, Tanya
Sent: Mon 12/18/2017 6:00:19 PM
Subject: RE: OIAI Options 12_18_17.docx

Thanks. Pete South shot it to me.

From: Lamason, Bill
Sent: Monday, December 18, 2017 12:55 PM
To: Johnson, Tanya <Johnson.Tanya@epa.gov>
Cc: Dalcher, Debra <dalcher.debra@epa.gov>
Subject: OIAI Options 12_18_17.docx

Tanya, Per your request. We'll bring a few hard copies also. Bill

To: Lamason, Bill[Lamason.Bill@epa.gov]
From: Tsirigotis, Peter
Sent: Tue 1/9/2018 7:11:14 PM
Subject: Fwd: 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

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

To: Lamason, Bill[Lamason.Bill@epa.gov]
Cc: French, Chuck[French.Chuck@epa.gov]; Fruh, Steve[Fruh.Steve@epa.gov]
From: South, Peter
Sent: Tue 1/9/2018 5:56:58 PM
Subject: RE: NESHAP ZZZZ (Once In Always In) Policy

Great—thanks. I think he may have also called the OAQPS front office number (I asked Alice S to send him to Steve F, due to RICE).

If you or Steve F would follow-up with him to ensure he receives an answer to his question(s).

From: Lamason, Bill
Sent: Tuesday, January 09, 2018 12:54 PM
To: South, Peter <South.Peter@epa.gov>
Cc: French, Chuck <French.Chuck@epa.gov>; Fruh, Steve <Fruh.Steve@epa.gov>
Subject: RE: NESHAP ZZZZ (Once In Always In) Policy

Pete,

Thanks. Quad ZZZZ (RICE MACT) is in Steve's group. We'll work with them on follow up on the Once-in-Always-in question.

Bill

From: South, Peter
Sent: Tuesday, January 09, 2018 12:37 PM
To: Lamason, Bill <Lamason.Bill@epa.gov>
Cc: French, Chuck <French.Chuck@epa.gov>
Subject: FW: NESHAP ZZZZ (Once In Always In) Policy

Hi Bill,

Would you be able to follow-up with Mr. Kane wrt his question(s)? (you may need to coordinate with Ravi, etc.)

Thanks and feel free to call me with any questions.

From: Atkinson, Emily
Sent: Tuesday, January 09, 2018 12:05 PM
To: South, Peter <South.Peter@epa.gov>; Koerber, Mike <Koerber.Mike@epa.gov>
Subject: FW: NESHAP ZZZZ (Once In Always In) Policy

Hi Pete and Mike,

This person is looking for information . . . . could you all get back to him?

Emily

From: Alan Kane [mailto:alanjkane@comcast.net]
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To: Atkinson, Emily <Atkinson.Emily@epa.gov>
Cc: Alan J Kane <alanjkane@comcast.net>; DeCiutiis, Paul E. <paul.deciutiis@gmail.com>; Russell Hamm <rhammenviro@gmail.com>
Subject: NESHAP ZZZZ (Once In Always In) Policy

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Major Source. It can be demonstrated through the required stack testing that the facility is actually a true minor source and has been for many years. I would like to discuss this situation in more detail when it's convenient.

Thanks,

Alan Kane

To: Lamason, Bill[Lamason.Bill@epa.gov]
From: French, Chuck
Sent: Mon 11/20/2017 11:39:50 PM
Subject: RE: Peter's Example Regarding re. 129 rules

Thanks!

From: Lamason, Bill
Sent: Monday, November 20, 2017 6:13 PM
To: Dalcher, Debra <dalcher.debra@epa.gov>
Cc: French, Chuck <French.Chuck@epa.gov>
Subject: RE: Peter's Example Regarding re. 129 rules

Great note! Thanks! Bill

PS – Copying Chuck since he was in on the discussion as well. B

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 re. 129 rules

Kevin, Marguerite

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: Lamason, Bill[Lamason.Bill@epa.gov]
Cc: French, Chuck[French.Chuck@epa.gov]
From: South, Peter
Sent: Tue 1/9/2018 5:36:52 PM
Subject: FW: NESHAP ZZZZ (Once In Always In) Policy

Hi Bill,

Would you be able to follow-up with Mr. Kane wrt his question(s)? (you may need to coordinate with Ravi, etc.)

Thanks and feel free to call me with any questions.

From: Atkinson, Emily
Sent: Tuesday, January 09, 2018 12:05 PM
To: South, Peter <South.Peter@epa.gov>; Koerber, Mike <Koerber.Mike@epa.gov>
Subject: FW: NESHAP ZZZZ (Once In Always In) Policy

Hi Pete and Mike,

This person is looking for information . . . . could you all get back to him?

Emily

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To: Atkinson, Emily <Atkinson.Emily@epa.gov>
Cc: Alan J Kane <alanjkane@comcast.net>; DeCiutiis, Paul E. <paul.deciutiis@gmail.com>; Russell Hamm <rhammenviro@gmail.com>
Subject: NESHAP ZZZZ (Once In Always In) Policy

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Thanks,

Alan Kane

To: Lamason, Bill[Lamason.Bill@epa.gov]
From: Srivastava, Ravi
Sent: Mon 11/20/2017 3:12:08 PM
Subject: Can you add me to your 11:30 with Peter on OIAI? I would like to sit in to inform myself. Thanks.

Thanks,

Ravi

Ravi Srivastava, Ph.D.

Technical Programs Director

Sector Policies and Programs Division

Office of Air Quality Planning and Standards

Environmental Protection Agency

Mail Code D205-01

Research Triangle Park, NC 27711

Office: (919) 541-3444

To: Lamason, Bill[Lamason.Bill@epa.gov]
From: Tsirigotis, Peter
Sent: Thur 11/16/2017 10:27:53 PM
Subject: Re: Current Version of Revision Memo

Thank you bill. Let's discuss next week.

On Nov 16, 2017, at 5:08 PM, Lamason, Bill <Lamason.Bill@epa.gov> wrote:

<image001.gif>
Peter, FYI. Bill

From: Lamason, Bill
Sent: Thursday, November 16, 2017 5:08 PM
To: Culligan, Kevin <Culligan.Kevin@epa.gov>
Cc: French, Chuck <French.Chuck@epa.gov>
Subject: FW: Current Version of Revision Memo

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

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: 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

<Memo replacing OIAI with proposed 2007 interpretation_11_16_17_430.docx>

To: Lamason, Bill[Lamason.Bill@epa.gov]
From: Ashley, Jackie
Sent: Thur 1/25/2018 10:23:09 PM
Subject: Fwd: Signed today: Reclassification of Major Sources as Area Sources Under Section 112 of the Clean Air Act

FYI

Begin forwarded message:

From: "Ashley, Jackie" <Ashley.Jackie@epa.gov>
Date: January 25, 2018 at 5:21:02 PM EST
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: Jenny Noonan <Noonan.Jenny@epa.gov>, Jan Cortelyou-Lee <Cortelyou-Lee.Jan@epa.gov>, "Bremer, Kristen" <bremer.kristen@epa.gov>, "Terry, Sara" <Terry.Sara@epa.gov>, Lora Strine <Strine.Lora@epa.gov>
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: Lamason, Bill[Lamason.Bill@epa.gov]; Fruh, Steve[Fruh.Steve@epa.gov]
From: French, Chuck
Sent: Thur 12/14/2017 2:32:13 PM
Subject: FW: Revised Agenda for Bill W and Team Visit to RTP on 12/18
AA Wehrum RTP visit final agenda 12_18_17.docx

See attached.

From: South, Peter
Sent: Thursday, December 14, 2017 9:28 AM
To: OAQPS SMT2 <OAQPS_SMT2@epa.gov>; OAQPS SMT1 <OAQPS_SMT1@epa.gov>
Subject: Revised Agenda for Bill W and Team Visit to RTP on 12/18

I have attached the revised agenda in prep for 12/18.

To: Lamason, Bill[Lamason.Bill@epa.gov]
From: Howard, Jodi
Sent: Tue 1/30/2018 1:02:38 PM
Subject: RE: PSG update

Thanks. FYI - J Ex. 6 - Personal Privacy

From: Lamason, Bill
Sent: Friday, January 26, 2018 4:20 PM
To: Dalcher, Debra <dalcher.debra@epa.gov>; Godfrey, Janice <Godfrey.Janice@epa.gov>; Goehl, Eric <Goehl.Eric@epa.gov>; Howard, Jodi <Howard.Jodi@epa.gov>; Schaefer, John <Schaefer.John@epa.gov>; Shrager, Brian <Shrager.Brian@epa.gov>; Torres, Elineth <Torres.Elineth@epa.gov>
Subject: PSG update

Dear PSG,

In lieu of our cancelled PSG staff meeting yesterday, I am passing along a few notes.

- Bill Wehrum will be in RTP 2/1/18. Attached is a draft schedule. Brian will be leading a briefing for him on the RTR program, there is an Oil and Gas briefing and a group leader meeting with Bill. The RTR meeting will be in SPPD space so you may seem him and others from the OAR IO.

- Per my email yesterday, the OIAI memo is out. With Elineth out, Debra, Kevin Culligan and I will be handling calls/emails. Follow up rulemaking schedule TBD.

- We are being asked to work pick up work on delegations by OGC and Region 10 (on behalf of regions). I will sit in a call with them on Tuesday am have so far not committed to taking this on. Elyse and Jeremy started working on this and we've not had resources available since.

- Ex. 6 - Personal Privacy

Ex. 6 - Personal Privacy

Ex. 6 - Personal Privacy

Ex. 6 - Personal Privacy

Ex. 6 - Personal Privacy

Ex. 6 - Personal Privacy

Bill

To: Eck, Janet[Eck.Janet@epa.gov]
Cc: Lamason, Bill[Lamason.Bill@epa.gov]
From: Schaefer, John
Sent: Mon 1/29/2018 7:31:37 PM
Subject: FW: Dalcher Reg Agenda Entries
nPB Reg Agenda Entry.docx
OIAI Reg Agenda Entry.docx

Hi Janet,

Ex. 5 - Deliberative Process

John

From: Dalcher, Debra
Sent: Monday, January 29, 2018 2:25 PM
To: Schaefer, John <Schaefer.John@epa.gov>
Cc: Eck, Janet <Eck.Janet@epa.gov>; Lamason, Bill <Lamason.Bill@epa.gov>
Subject: FW: Dalcher Reg Agenda Entries

John,

See Janet's email below on nPB. Thank you, Debra

From: Eck, Janet
Sent: Monday, January 29, 2018 12:56 PM
To: Dalcher, Debra <dalcher.debra@epa.gov>
Cc: Lamason, Bill <Lamason.Bill@epa.gov>
Subject: Dalcher Reg Agenda Entries

Hi Debra, As mentioned in my previous email, attached are the Reg Agenda Entries, SAN 4908 and 5562. Both are marked as "Other" for EO 13771. This info is not visible on the screen shot. Please consider the EO 13771 designation, the stage of rulemaking (proposal, final or completed) and update your abstract accordingly. Make any other changes you believe may be necessary.

Please send me your edits by COB Friday, 2/2. Thanks for your help.

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)*

OAR Meeting Request Form
For Bill Wehrum

Date of this Request: 12/05/2017

Scheduling Point of Contact: Lala Alston, 919-541-5616
Technical Point of Contact: Peter Tsirigotis, 919-541-9411

Subject: Once-in, Always-in Policy Revision

Purpose: Overview of potential approaches to revising the Once-in, Always-in policy under section 112 of the CAA.

- Next ADP Milestone: (specify early guidance, options selection, etc.); meeting scheduled on: __/__/__;
- If applicable, due date to: OP __/__/__ (_ days review); OMB: __/__/__ (days review);
- Legal deadline: Settlement agreement due date is __/__/__.
- Other firm deadline

(Only list one date for first possible date; and one date for last possible date for meetings):

First possible date for meeting: 12/13/2017
Last possible date for meeting: 12/14/2017
Duration: 1 hour

Requested Audio / Video (*Mark with "X" if requested*)

__X__ **Video Location(s):** RTP, DC
List video locations needed (e.g., RTP, DC, Regions)– HQ will set up a bridge if needed

__X_ **HQ Conference Line:**
If requested, HQ staff will provide in meeting invite

____ **Non-HQ Conference Line:**
If you plan to use a non-HQ conference line, include it here

Invitees (please list by Office and in Outlook format, e.g. *Last, First*):
Please include the key OGC and/or Regional representatives as appropriate. Only key invitees are listed by office; others are cc:

Office/Org	Name (*Last, First*)
OAR	Gunasekara, Mandy; Harlow, David; Lewis, Josh;
OAQPS	Page, Steve; Koerber, Mike; Harnett, Bill; Tsirigotis, Peter; Lamason, Bill; Dalcher, Debra; Wood, Anna; Kornylak, Vera
OGC	Rodman, Sonja; Jordan, Scott; Vetter, Rick;
Schedulers to cc:	Alston, Lala; Johnson, Tanya; McKinney, Voronina; Eck, Janet

HQ Meeting Briefing Materials: Must provide to OAQPS IO by 5:00pm, 2 days before meeting.

Revised 6/2017

To: Culligan, Kevin[Culligan.Kevin@epa.gov]
Cc: Dalcher, Debra[dalcher.debra@epa.gov]
From: Torres, Elineth
Sent: Thur 11/2/2017 2:01:17 PM
Subject: NRDC comments 2007 OIAI proposal
Comment_National_Resources_Defence_Council_(NRDC) May 4 2007 (1).pdf

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

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

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.

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.

> 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

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.

> 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

"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

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.

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.

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.

> 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?

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

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

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).

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

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

> 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

> 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

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).

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

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

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

> 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

> 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

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

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

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).

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?"

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).

> 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.

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.

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

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

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

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

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

> 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

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

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.

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

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.

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.

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.

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.

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.

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).").

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.

JOHN BARRASSO, WYOMING, *CHAIRMAN*

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JOHN BOOZMAN, ARKANSAS
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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:

- 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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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

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

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.

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.

From: Lamason, Bill
Location: D220D/Call in number Ex. 6 - Personal Privacy
Importance: Normal
Subject: OIAI Check in (coordination with Kevin)
Start Date/Time: Mon 11/6/2017 6:00:00 PM
End Date/Time: Mon 11/6/2017 7:00:00 PM

Looks like all but Chuck are available at this time. We'll catch him after the call.

To: Johnson, Yvonne W[Johnson.Yvonnew@epa.gov]
Cc: Thompson, Fred[Thompson.Fred@epa.gov]; Torres, Elineth[Torres.Elineth@epa.gov]; Dalcher, Debra[dalcher.debra@epa.gov]
From: Lamason, Bill
Sent: Thur 11/2/2017 12:24:37 PM
Subject: RE: need your assistance for AFPM-EPA Nov 2 Meeting

Yvonne,

After checking with Elineth, we have to beg off the meeting. Due to the short notice we're unable to send anyone. However, we are interested in their input so if they bring up OIAI, here's a few talking points.

1) We're aware of and evaluating the input gathered under the request for ideas by both the Department of Commerce and EPA.

2) We're beginning to consider what changes may be needed (for OIAI and other 111/112/ programs).

3) You'll share with us whatever suggestions they share with you today.

Thanks!

Bill

From: Johnson, Yvonne W
Sent: Wednesday, November 01, 2017 4:06 PM
To: Lamason, Bill <Lamason.Bill@epa.gov>
Cc: Thompson, Fred <Thompson.Fred@epa.gov>; Torres, Elineth <Torres.Elineth@epa.gov>; Dalcher, Debra <dalcher.debra@epa.gov>
Subject: RE: need your assistance for AFPM-EPA Nov 2 Meeting

I totally understand and I told them that I could not guarantee your availability since they just submitted those topics today. I will wait to hear back from you.

Thank you,

Yvonne W. Johnson

Special Assistant to the Director

Air Quality Policy Division

Office of Air Quality Planning & Standards

U.S. Environmental Protection Agency

919-541-3921

johnson.yvonnew@epa.gov

From: Lamason, Bill
Sent: Wednesday, November 01, 2017 4:01 PM
To: Johnson, Yvonne W <Johnson.Yvonnew@epa.gov>
Cc: Thompson, Fred <Thompson.Fred@epa.gov>; Torres, Elineth <Torres.Elineth@epa.gov>; Dalcher, Debra <dalcher.debra@epa.gov>
Subject: FW: need your assistance for AFPM-EPA Nov 2 Meeting
Importance: High

Yvonne,

Fred forwarded your request to me as my group is on point for Once-in-Always-in. I will need to connect with Elineth Torres in the morning to see if we can sit in

and listen to their input at 11:30 am tomorrow. However, it is premature to share any potential policy options at this point or even timing so might be a short, one-sided discussion. We also have nothing we can offer on the other two topics on short notice.

Once I circle with Elineth in the morning we'll confirm our availability and who will attend for the Once-in-Always-In topic.

Thanks!

Bill

From: Thompson, Fred
Sent: Wednesday, November 01, 2017 3:45 PM
To: Lamason, Bill <Lamason.Bill@epa.gov>
Subject: FW: need your assistance for AFPM-EPA Nov 2 Meeting
Importance: High

Bill – Sent per our conversation. Thanks! Fred

Frederick J. Thompson

Associate Director

Sector Policies & Programs Division

U.S. EPA, RTP, NC 27711

919.541.2707

From: Johnson, Yvonne W
Sent: Wednesday, November 01, 2017 12:53 PM
To: Thompson, Fred <Thompson.Fred@epa.gov>
Subject: need your assistance for AFPM-EPA Nov 2 Meeting
Importance: High

The American Fuel & Petrochemical Manuf (AFPM) group is coming to EPA/RTP tomorrow, Nov 2. They wanted to talk about NSR reform but I just received their final agenda and they have added once-in-always-in and smart sectors as topics. I was wondering if SPPD could join the meeting at 11:30 for these topics as well as hear their thoughts on "Shifting EPA Jurisdiction over Regulatory Interpretations and Applicability Determinations from the EPA Regional Offices and the OECA to OAQPS." Please see attached agenda. If interested could you please tell me who I should be working with in SPPD. I look forward to hearing back from you.

Attendees:

Name	Company
David Friedman	AFPM
Matthew Hodges	Valero Energy
Michael Hopperton	BP
David Pavlich	Phillips 66

Thank you,

Yvonne W. Johnson

Special Assistant to the Director

Air Quality Policy Division

Office of Air Quality Planning & Standards

U.S. Environmental Protection Agency

919-541-3921

johnson.yvonnew@epa.gov

To: Messina, Edward[Messina.Edward@epa.gov]
Cc: Chapman, Apple[Chapman.Apple@epa.gov]
From: Lamason, Bill
Sent: Thur 12/7/2017 7:14:03 PM
Subject: RE: Once-in-always-in

Ed,

It was good connecting with you.

We do not know when the Wehrum meeting will be and OECA is not on the invite list.

Bill

From: Messina, Edward
Sent: Wednesday, December 06, 2017 6:01 PM
To: Lamason, Bill <Lamason.Bill@epa.gov>
Cc: Chapman, Apple <Chapman.Apple@epa.gov>
Subject: Once-in-always-in

Thanks for call. Can you let us know when/if a meeting with Bill W is scheduled? Do you think we might get an invite?

Ed Messina

Director

Monitoring, Assistance, and Media Programs Division

U.S. EPA

1200 Pennsylvania Ave., N.W. (MC-2227A)

Washington, DC 20460

p: (202) 564-1191

f: (202) 564-0050

To: Lassiter, Penny[Lassiter.Penny@epa.gov]
From: Lamason, Bill
Sent: Tue 1/23/2018 7:26:04 PM
Subject: Checking on Memo that needs to go up to DC

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

From: Lamason, Bill
Location: BLO
Importance: Normal
Subject: Accepted: OIAI Discussion
Start Date/Time: Thur 10/5/2017 6:00:00 PM
End Date/Time: Thur 10/5/2017 6:30:00 PM

From: Lamason, Bill
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

To: Johnson, Tanya[Johnson.Tanya@epa.gov]; Torres, Elineth[Torres.Elineth@epa.gov]
Cc: McKinney, Voronina[mckinney.voronina@epa.gov]
From: Lamason, Bill
Sent: Tue 10/3/2017 2:20:30 PM
Subject: RE: Meeting with Peter

Thanks Elineth and Tanya. Point of clarification – my next one-on-one is scheduled for Wednesday Oct. 11th but at a time Debra cannot join us. Would prefer a date on the 11th or 12th if we can work it in. Thanks! B

From: Johnson, Tanya
Sent: Tuesday, October 03, 2017 10:17 AM
To: Torres, Elineth <Torres.Elineth@epa.gov>
Cc: Lamason, Bill <Lamason.Bill@epa.gov>; McKinney, Voronina <mckinney.voronina@epa.gov>
Subject: RE: Meeting with Peter

Ok, got it.

From: Torres, Elineth
Sent: Tuesday, October 03, 2017 9:54 AM
To: Johnson, Tanya <Johnson.Tanya@epa.gov>
Cc: Lamason, Bill <Lamason.Bill@epa.gov>
Subject: Meeting with Peter

Tanya,

Bill asked me to coordinate with you to schedule a meeting with Peter for next week on the Once In, Always In topic.

Bill has a 1/1 with Peter on 10/10 that he said it can use for the meeting but to work it will have to be rescheduled to either Wednesday, Oct 11 or Thursday, Oct 12. Or a new meeting can be scheduled for either Oct 11 or 12.

We need at least 30 mins.

Topic: Update on OIAI

Invitees: Bill Lamason, Debra Dalcher, Marguerite McLamb and Elineth Torres

Preferred dates: Oct 11/Oct 12

Thanks for your help. Let me know if you have questions.

Elineth Torres

OAQPS

919-541-4347

From: Lamason, Bill
Location: D201/Call in number Ex. 6 - Personal Privacy
Importance: Normal
Subject: 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

Check in. Kevin available until 10 am. Thank! Bill

To: McLamb, Marguerite[McLamb.Marguerite@epa.gov]
Cc: Torres, Elineth[Torres.Elineth@epa.gov]; Dalcher, Debra[dalcher.debra@epa.gov]
From: Lamason, Bill
Sent: Mon 11/13/2017 12:59:15 PM
Subject: RE: OIAI Check in

Marguerite, I spoke with Elineth and Debra this morning and we agreed that Sonja's participation would be helpful. I'll add her to the meeting and may need to move to a time she is available. Thanks! Bill

-----Original Appointment-----
From: McLamb, Marguerite
Sent: Thursday, November 09, 2017 2:05 PM
To: Lamason, Bill
Subject: Accepted: OIAI Check in
When: Monday, November 13, 2017 9:15 AM-10:00 AM (UTC-05:00) Eastern Time (US & Canada).
Where: D201/Call in number Ex. 6 - Personal Privacy

Bill - would you like to add Sonja to this call? Her involvement as early as possible may likely be helpful given the tight turnaround.
Best,
Marguerite

To: Penny Lassiter[Lassiter.Penny@epa.gov]; Peter Tsirigotis[Tsirigotis.Peter@epa.gov]
Cc: Culligan, Kevin[Culligan.Kevin@epa.gov]
From: Lamason, Bill
Sent: Thur 1/25/2018 7:59:09 PM
Subject: FW: OIAI.Reclassification of Major Sources as Area Sources Under Section 112 Draft_01 25 2018-Final OGC Comments.1.25.18_PSG.docx

Penny and Peter, Memo is en route to signature. We are embargoed from communicating externally until the desk statement is released at about 3:30 pm. Mike, Jenny and Jackie are also aware. B

From: Harlow, David
Sent: Thursday, January 25, 2018 2:52 PM
To: Lamason, Bill <Lamason.Bill@epa.gov>; Culligan, Kevin <Culligan.Kevin@epa.gov>
Cc: Dalcher, Debra <dalcher.debra@epa.gov>; Lewis, Josh <Lewis.Josh@epa.gov>; Koerber, Mike <Koerber.Mike@epa.gov>
Subject: RE: OIAI.Reclassification of Major Sources as Area Sources Under Section 112 Draft_01 25 2018-Final OGC Comments.1.25.18_PSG.docx

Great, thank you.

Also, just a reminder about something I believe I may have mentioned, if only in passing, during our conference call, which is that communications made to the public about the issuance of the memorandum is being handled out of HQ in accordance with a comms plan developed by OAR in conjunction with the press/public relations people here. So, until that plan has been rolled out, which should/will take place later this afternoon, all "internal" communications (*e.g.*, from OAQPS to the Regions) about the memorandum should be placed on hold so that the planned roll-out doesn't get "stepped on," as it were.

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: Lamason, Bill
Sent: Thursday, January 25, 2018 2:30 PM
To: Harlow, David <harlow.david@epa.gov>; Culligan, Kevin <Culligan.Kevin@epa.gov>
Cc: Dalcher, Debra <dalcher.debra@epa.gov>; Lewis, Josh <Lewis.Josh@epa.gov>; Koerber, Mike <Koerber.Mike@epa.gov>
Subject: RE: OIAI.Reclassification of Major Sources as Area Sources Under Section 112 Draft_01 25 2018-Final OGC Comments.1.25.18_PSG.docx

David,

Thanks! Great news! I'll pass along Josh's suggestion to the folks handling the cleanup and are almost done.

We were planning to send the memo to the OAQPS-DC office via Mary Henigin and she can help Josh however needed. We will hold the FR in RTP for Peter's signature after your clearance and Bill signs the memo. I'm copying Mike Koerber who coordinates with Mary on these actions for us and determine how best to move the memo fastest.

Thanks again!

Bill L.

From: Harlow, David
Sent: Thursday, January 25, 2018 2:19 PM
To: Lamason, Bill <Lamason.Bill@epa.gov>; Culligan, Kevin <Culligan.Kevin@epa.gov>
Cc: Dalcher, Debra <dalcher.debra@epa.gov>; Lewis, Josh <Lewis.Josh@epa.gov>
Subject: RE: OIAI.Reclassification of Major Sources as Area Sources Under Section 112
Draft_01 25 2018-Final OGC Comments.1.25.18_PSG.docx

Bill Wehrum has approved all the revisions/edits that we've been discussing. So please do finalize the memorandum for Bill's signature.

I'm not sure what is the best way to proceed in terms of getting the final version physically up here, but the simplest approach would seem to be that you send the final, to-be-signed version as an attachment in an email to Josh. I'll leave it up to you two to "discuss among yourselves," as it were.

Meanwhile, I'll review the *Federal Register* notice and then get back to you with, presumably, approval to finalize as well.

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: Eck, Janet[Eck.Janet@epa.gov]
From: Lamason, Bill
Sent: Wed 12/6/2017 1:48:45 PM
Subject: RE: Wehrum Meeting Request - Once-In-Always-In Policy Revision

Thanks! Good to know. B

From: Eck, Janet
Sent: Wednesday, December 06, 2017 8:34 AM
To: Lamason, Bill <Lamason.Bill@epa.gov>
Subject: FW: Wehrum Meeting Request - Once-In-Always-In Policy Revision

FYI. Thanks.

From: Alston, Lala
Sent: Tuesday, December 05, 2017 4:42 PM
To: Loving, Shanita <Loving.Shanita@epa.gov>; Atkinson, Emily <Atkinson.Emily@epa.gov>
Cc: Alston, Lala <Alston.Lala@epa.gov>; South, Peter <South.Peter@epa.gov>; Shryock, Alice <shryock.alice@epa.gov>; Johnson, Tanya <Johnson.Tanya@epa.gov>; McKinney, Voronina <mckinney.voronina@epa.gov>; Eck, Janet <Eck.Janet@epa.gov>
Subject: Wehrum Meeting Request - Once-In-Always-In Policy Revision

Wehrum Meeting Request for scheduling.

Thank you,

Lala

Lala Alston

US/EPA/OAR/OAQPS/IO – MC-C404-04

Research Triangle Park, NC 27711

Phone: (919) 541-5616

From: Lamason, Bill
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

From: Lamason, Bill
Location: D201/Call in numbe Ex. 6 - Personal Privacy
Importance: Normal
Subject: 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

Check in. Kevin available until 10 am. Thank! Bill

From: Lamason, Bill
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

From: Lamason, Bill
Location: RTP-D201-Max40/RTP-Bldg-D; RTP-OAQPS-Ex. 6 - Personal Privacy SPPD/Phone-Line/RTP-OAQPS-BLDG-C
Importance: Normal
Subject: Accepted: OIAI Discussion: Principle-based policy
Start Date/Time: Wed 9/20/2017 7:00:00 PM
End Date/Time: Wed 9/20/2017 7:30:00 PM

To: Lassiter, Penny[Lassiter.Penny@epa.gov]; Torres, Elineth[Torres.Elineth@epa.gov]
From: Lamason, Bill
Sent: Wed 9/20/2017 1:45:55 PM
Subject: RE: OIAI Discussion: Principle-based policy

Penny, We noticed that and are considering options, including meeting today for 30 minutes and having a second session if needed. Please stay tuned. Thanks! Bill

---

From: Lassiter, Penny
Sent: Wednesday, September 20, 2017 9:00 AM
To: Torres, Elineth <Torres.Elineth@epa.gov>
Cc: Lamason, Bill <Lamason.Bill@epa.gov>
Subject: OIAI Discussion: Ex. 5 - Deliberative Process

Elineth,

Ex. 5 - Deliberative Process

Thanks.

Subject:	OIAI Discussion: Principle-based policy
Location:	RTP-D201-Max40/RTP-Bldg-D; RTP-OAQPS-Ex. 6 - Personal Privacy SPPD/Phone-Line/RTP-OAQPS-BLDG-C
Start:	Wed 9/20/2017 2:30 PM
End:	Wed 9/20/2017 3:30 PM
Recurrence:	(none)
Meeting Status:	Accepted
Organizer:	Torres, Elineth
Required Attendees:	Barnett, Keith; Caparoso, Jennifer; Cozzie, David; Dunkins, Robin; Fruh, Steve; Lamason, Bill; Lassiter, Penny; Schell, Bob; McLamb, Marguerite; French, Chuck; Dalcher, Debra; Boyd, Rochelle

Call-in number Ex. 6 - Personal Privacy

****

All,

Attached is the updated version of the OIAI backgrounder we prepared for OAQPS IO last June. This version incorporates the latest thinking from Peter and OGC regarding next steps. Please do not share the attached document with others.

The purpose of the 9/20 meeting is to discuss and get input on the draft Ex. 5 - Deliberative Process
Ex. 5 - Deliberative Process **See page 3 of attached document.**

Thanks,
Elineth

To: Culligan, Kevin[Culligan.Kevin@epa.gov]; Penny Lassiter[Lassiter.Penny@epa.gov]
From: Lamason, Bill
Sent: Thur 1/25/2018 6:49:18 PM
Subject: FW: OIAI.Reclassification of Major Sources as Area Sources Under Section 112 Draft_01 25 2018-Final OGC Comments.1.25.18_PSG.docx

FYI. Where we are in process. He has memo and FR that we worked out with OGC. B

From: Harlow, David
Sent: Thursday, January 25, 2018 1:45 PM
To: Lamason, Bill <Lamason.Bill@epa.gov>
Subject: RE: OIAI.Reclassification of Major Sources as Area Sources Under Section 112 Draft_01 25 2018-Final OGC Comments.1.25.18_PSG.docx

Thank you. I'll take a quick look at these.

Meanwhile, Kevin just came by re: the highlighted text, and we've reached an understanding as to that.

My plan, as I believe I mentioned before, is to try to catch Bill Wehrum for a couple/few minutes between his ongoing back-to-back meetings now to verify that I and Mandy have made the right call as to the earlier/more substantive revisions – subsequent to our call, I filled in Mandy as to what we'd discussed, and she concurred – and then (finally!) we should be good to go.

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: Lamason, Bill
Sent: Thursday, January 25, 2018 1:41 PM
To: Harlow, David <harlow.david@epa.gov>; Culligan, Kevin <Culligan.Kevin@epa.gov>
Cc: Dalcher, Debra <dalcher.debra@epa.gov>
Subject: OIAI.Reclassification of Major Sources as Area Sources Under Section 112 Draft_01 25 2018-Final OGC Comments.1.25.18_PSG.docx

David, These are the final edits. Kevin will discuss the yellow highlighted text with you. If you do not connect, please call me.

We await OAR approval. Thanks! Bill

From: Lamason, Bill
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

From: Lamason, Bill
Location: RTP-OAQPS-Ex. 6 - Personal Privacy-SPPD/Phone-Line/RTP-OAQPS-BLDG-C
Importance: Normal
Subject: Accepted: OIAI Memo Update - Guidance from Peter T
Start Date/Time: Mon 1/8/2018 8:30:00 PM
End Date/Time: Mon 1/8/2018 9:00:00 PM

From: Lamason, Bill
Location: WJC-N 5400 + Video with OAQPS + Ex. 6 - Personal Privacy Participant Code: Ex. 6 - Personal Privacy
Ex. 6 - Personal Privacy
Importance: Normal
Subject: Accepted: Once-in, Always-in Policy Revision
Start Date/Time: Mon 12/18/2017 7:00:00 PM
End Date/Time: Mon 12/18/2017 8:00:00 PM

To: Dalcher, Debra[dalcher.debra@epa.gov]; Godfrey, Janice[Godfrey.Janice@epa.gov]; Goehl, Eric[Goehl.Eric@epa.gov]; Howard, Jodi[Howard.Jodi@epa.gov]; Schaefer, John[Schaefer.John@epa.gov]; Shrager, Brian[Shrager.Brian@epa.gov]; Steiner, Elyse[Steiner.Elyse@epa.gov]; Torres, Elineth[Torres.Elineth@epa.gov]
From: Lamason, Bill
Sent: Mon 9/18/2017 2:37:24 PM
Subject: My one on one with Peter is now scheduled for tomorrow, 9/18

Let me know if you have something I need to raise to him. Have the list from last week when I was bumped.

However, first half will be on OIAI.

Thanks! Bill

From: Lamason, Bill
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

From: Lamason, Bill
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

From: Lamason, Bill
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: Lamason, Bill
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: Lamason, Bill
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

To: Johnson, Tanya[Johnson.Tanya@epa.gov]
From: Lamason, Bill
Sent: Thur 11/30/2017 3:35:05 PM
Subject: Re: OIAI with Peter

Ok. Thanks. Bill

Sent from my iPhone

On Nov 30, 2017, at 10:29 AM, Johnson, Tanya <Johnson.Tanya@epa.gov> wrote:

I booked it for Monday, but will speak with him after he gets out of his meeting.

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

Tanya,

Ex. 6 - Personal Privacy

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: Lamason, Bill
Sent: Wed 1/10/2018 9:07:17 PM
Subject: RE: See Item #1

Saw it. Thanks! B

From: Dalcher, Debra
Sent: Wednesday, January 10, 2018 3:51 PM
To: Lamason, Bill <Lamason.Bill@epa.gov>
Subject: FW: See Item #1

1st article.

From: Bradfield, John
Sent: Wednesday, January 10, 2018 12:39 PM
To: Dalcher, Debra <dalcher.debra@epa.gov>
Subject: See Item #1

If you didn't look at this already, you need to. I don't think these guys are going to wait for Elineth.

John Bradfield

Environmental Engineer

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From: Bremer, Kristen

Sent: Wednesday, January 10, 2018 12:18 PM
Subject: News Clips – January 10, 2018

News Clips – January 10, 2018

Air News

- Republicans press EPA to scrap Clinton-era policy *(E&E Daily)*
- Bill Would Roll Back State Air Pollution Regulations *(WORT-FM)*
- Why Air Pollution Is a Socioeconomic Issue *(JSTOR Daily)*

Clean Power Plan

- Dem AGs ask Pruitt to recuse himself from climate rule repeal process *(The Hill)*
- Trump's critics pan repeal in his hometown *(Energywire)*

Climate

- How a Coal Baron's Wish List Became President Trump's To-Do List *(New York Times)*
- National Academies launch climate communication push *(Greenwire)*
- Climate webpages erased, obscured under Trump — report *(Climatewire)*

Staffing

- Success: EPA set to reduce staff 50% in Trump's first term *(Washington Examiner)*
- EPA staffing falls to Reagan-era levels *(The Hill)*
- Senate Democrats Query Pruitt On New EPA Advisors' Conflicts Of Interest *(Inside EPA)*
- IG to audit Pruitt's hiring *(Greenwire)*

Other News

- Senators request records on 2 advisory panel members *(Greenwire)*
- Watchdog sues for reorganization comments *(Greenwire)*
- EPA brings 'sue and settle' ban into 2018, environmentalists concern grows *(Gray DC)*

- Inhofe dubious about Pruitt's AG interest *(E&E Daily)*

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- Oregon's 'kid governor' inaugurated, wants to stop bullying *(Oregonian)*

Republicans press EPA to scrap Clinton-era policy

E&E Daily

By: Sean Reilly

Published: January 10, 2018

U.S. EPA should scrap a Clinton-era policy that industry groups argue can act as a burdensome disincentive to cutting air emissions, two senior Republicans on the Senate Environment and Public Works Committee urged yesterday.

The 1995 "once in, always in" policy requires a pollution source "to comply with stringent emissions standards even if the source later lowers its emissions below the 'major source' thresholds that triggered the standards the first place," EPW Chairman John Barrasso of Wyoming and Sen. Shelley Moore Capito of West Virginia said in a letter to EPA chief Scott Pruitt. Capito chairs the panel's Clean Air and Nuclear Safety Subcommittee.

Those standards, known as Maximum Achievable Control Technology (MACT), apply to factories or other pollution sources that annually releases more than 10 tons of a single air toxic or 25 tons of any combination of such hazardous pollutants.

In launching the policy, a senior EPA official at the time suggested polluters could temporarily

cut their emissions below the "major source" thresholds but then later "backslide."

"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," John Seitz, then head of the Office of Air Quality Planning and Standards, wrote in the 1995 memo.

But at an EPW Committee hearing two months ago, Ross Eisenberg of the National Association of Manufacturers said the policy was counterproductive.

Under the status quo, Eisenberg said in prepared testimony, "once a manufacturer's emissions are below the MACT-required limits, there are very few regulatory reasons why the manufacturer would drive them even lower" (*E&E Daily*, Nov. 16, 2017).

During George W. Bush's administration, EPA in early 2007 sought to rescind the directive but was blocked by Congress. The agency's acting air chief at that time was Bill Wehrum, who returned to the post on a permanent basis late last year after winning Senate confirmation.

EPA press aides did not reply to an email late yesterday asking whether Pruitt has come to a decision.

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Bill Would Roll Back State Air Pollution Regulations

WORT-FM

By: WORT News Department and Nina Kravinsky

Published: January 9, 2018

The bill gives the [Wisconsin] Department of Natural Resources three years to repeal any air pollution regulations that go beyond federal regulations.

A Republican author of the bill Sen. Duey Stroebel notes the bill would allow the DNR to reinstate regulations it deems necessary.

"It really just seems to be a common sense way to make sure we are on the cutting-edge of these things that can be emitted into our environment," Stroebel says.

Legislative attorneys say the state regulates well over 300 pollutants that the federal government doesn't.

An earlier version of the bill would have given the DNR until the end of 2018 to rid the state of those regulations, but an amendment on the version of the bill passed today extended that period to three years.

Democratic Representative Jimmy Anderson says he worries stripping away regulations could open the door for companies to pollute the air.

"It's seems to me that it's very possible that by removing these tools from the DNR, it makes it very easy for businesses in the future to be emitting these pollutants that could make women, children and families sick," Anderson says. "It makes me very concerned."

But one of the bill's authors, Representative Jesse Kremer says the bill doesn't take power away from the DNR, it just requires them to revisit regulations that might no longer be necessary.

Environmentalists, meanwhile say this scale of an attempt to roll back air pollution regulation is likely to cause serious harm not only to the environment, but to human health.

Sarah Barry with Clean Wisconsin spoke about those concerns at a public hearing on the bill in the fall.

"With all the information we have now about air pollutant exposure, we should not defy common sense and go back to the drawing board by repealing these regulations," Barry says.

Plus, the DNR estimates repealing those regulations could cost about $50,000 and the state would lose around $25, 000 in permit fees for pollution sources along with other payments.

The bill's passage in committee today paves the way for the full Senate to vote on the bill.

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Why Air Pollution Is a Socioeconomic Issue

JSTOR Daily

By: James MacDonald

Published: January 10, 2018

Climate change, ozone depletion, and other environmental ills are widely discussed effects of air pollution. Less well-known, at least in the developed world, are the lethal short-term public health impacts of breathing polluted air. In fact, up to 6.5 million deaths globally every year may be attributed to air pollution.

Too much pollution can pose a health risk to anyone, but whether it is lethal or not mostly depends on the person's underlying health status. The highest rates of mortality are among the elderly, or those who for whatever reason are susceptible to cardiovascular damage. Existing heart or breathing conditions can increase risk. High concentrations of single pollutants,

e.g. particulate material or ozone, are more deadly compared to smaller simultaneous concentrations of many different pollutants. For vulnerable populations, even short-term exposure can be lethal; one exceptionally polluted day can kill a vulnerable person. However, even low-level chronic exposure over prolonged periods can reduce life expectancy.

Poverty exposes people to various stressors, such as polluted water, that increase pollution susceptibility.

On the other end of the age scale, infants under the age of one are also extra susceptible. Studies on the subject found that both respiratory disease and Sudden Infant Death Syndrome (SIDS) are associated with higher rates of particulate air pollution. The exact reason remains unclear. In adults excessive particulates can stimulate dangerous allergic reactions, inflammation, or changes in heart rhythm, and it could be that these problems are difficult for an infant's immature system to tolerate. As with adults, socioeconomic factors play a major role. All of the studies of infant deaths control for socioeconomic factors; the recent research finds that pollution kills the most infants in poorer and developing countries. For children, SIDS risk increases when there is a smoker in the household, and more affluent or more educated people are less likely to smoke.

Socioeconomic factors affect adults as well. Deaths proximally caused by air pollution are more common on hot days that already stress an older or younger body. So economically disadvantaged people who cannot afford air conditioning, for instance, are more vulnerable. They may be exposed to more heat or even more pollution if they open a window to cool off. In general, poverty exposes people to various stressors, such as polluted water, that increase pollution susceptibility.

In other words, it isn't so much that air pollution kills people directly, it's that more people would be alive without it.

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Dem AGs ask Pruitt to recuse himself from climate rule repeal process

The Hill

By: Timothy Cama

Published: January 9, 2018

The Democratic attorneys general of 12 states say Environmental Protection Agency (EPA) Administrator Scott Pruitt needs to recuse himself from all matters related to the repeal of the Obama administration's climate change rule for power plants.

The attorneys general, led by California Attorney General Xavier Becerra, say Pruitt's criticisms of the Clean Power Plan and his attempt in his previous job as Oklahoma's attorney general to fight it make him irreparably biased against it.

Becerra led his colleagues and the top law enforcement officials of five cities, one county and the District Of Columbia in submitting a formal request to the EPA outlining their objections.

"He has made a name for himself as someone who will do everything in his power to ax this important environmental policy, and he cannot credibly claim to have an open mind about it. His words speak for themselves," Becerra said in a statement Tuesday.

"The Clean Power Plan would reduce coal and gas-fired power plant emissions by 16 percent by 2030, while avoiding 3,500 premature deaths per year. This is what Administrator Pruitt is against," Becerra said. "He ought to do his job and protect our environment instead of catering to the fossil fuel industry."

The 30-page comment argues the public's "constitutional and statutory rights to due process and fairness in an administrative rulemaking proceeding are violated" when a decisionmaker like Pruitt acts in such a closed-minded and prejudicial way.

Pruitt made a name for himself nationally as Oklahoma's attorney general in part by fighting the Clean Power Plan in court. He and other Republican attorneys general succeeded in getting the Supreme Court to put it on hold, but no federal court has ruled on its legal merits.

Pruitt proposed last year to repeal the rule, arguing that the Obama EPA exceeded its legal authority.

"The Obama administration pushed the bounds of their authority so far with the [Clean Power Plan] that the Supreme Court issued a historic stay of the rule, preventing its devastating effects to be imposed on the American people while the rule is being challenged in court," Pruitt said in October. "We are committed to righting the wrongs of the Obama administration by cleaning the regulatory slate."

The action aligned with President Trump's campaign promises and the wishes of nearly all Republican lawmakers, conservative states and big businesses.

But the Democratic attorneys general say Pruitt shouldn't be involved.

"Administrator Pruitt has a closed mind on the questions of whether the [Clean Power Plan] should be repealed, whether the [Clean Power Plan] is unlawful, and whether Clean Air Act … guidelines must be based only on controls imposed directly at the regulated sources," they said.

The Tuesday filing may be a preview of a legal argument the attorneys general plan to use when they inevitably sue the EPA for repealing the rule.

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Trump's critics pan repeal in his hometown

Energywire

By: Saqib Rahim

Published: January 10, 2018

NEW YORK CITY — Foes of President Trump gathered here yesterday to fulminate, fume and spout statistics about why the administration shouldn't torch the Clean Power Plan.

There's virtually no chance they'll sway the president, who has already declared President Obama's signature climate rule "gone."

New Yorkers held forth yesterday at a "people's hearing" convened by New York City Mayor Bill de Blasio and state Attorney General Eric Schneiderman, both Democrats and two of Trump's foremost antagonists on climate change. The event was held in an auditorium at the New School, about 2 miles from Trump Tower.

The event was meant as both a mockery of and a counter to the public hearings U.S. EPA is holding as it moves to end the Obama administration's climate policy. Parallel events are being held by supporters of the rule in Delaware and Maryland this week.

Participants dutifully made their case yesterday that climate change is present and dangerous, and that getting rid of the Clean Power Plan is precisely the wrong action.

"Climate change is real. It's here; it's affected me personally," said Wes Gillingham, associate director of Catskill Mountainkeeper. "Before I co-founded this organization, I farmed for a living. I experienced 200-year floods and a 500-year flood in a five-year period. ... It drowned three of my tractors and washed away 60 percent of my topsoil, putting my vegetable production out of business."

The event wasn't purely theater. State attorneys general are trying to build support for a climate insurrection. Their goal: to either deter the repeal of the Clean Power Plan, or, if they fail on that count, tie it up in court (*Climatewire*, Jan. 9).

The transcripts and comments associated with the "people's hearings" will be sent to EPA as part of its rulemaking.

Yesterday, 12 attorneys general, from 11 states and the District of Columbia, said they will not recognize the Clean Power Plan repeal if it goes through. Their reason, they said in comments submitted to EPA, is that Administrator Scott Pruitt fought the policy when he was Oklahoma's attorney general, so EPA's rulemaking has been "irreparably tainted" with him at the helm.

The attorneys general said the repeal was invalidated the moment Pruitt took the EPA job, and they called for EPA to withdraw the action. The comments came from attorneys general in California, Delaware, Hawaii, Illinois, Maine, Maryland, Massachusetts, New Mexico, New York, Oregon, Vermont, Washington and the District of Columbia; a handful of municipalities also signed on.

At the event yesterday, New York City and state officials said the rule is firmly grounded in federal law and rulings by the Supreme Court. They made clear that if the Trump administration finds otherwise, they're capable of launching flights of lawsuits in response.

City Council member Costa Constantinides called EPA's repeal proposal "rash and capricious" and said it should reconsider.

"If it doesn't reconsider, I'll be proud to stand shoulder to shoulder with our partners, our Attorney General Eric Schneiderman and our Mayor Bill de Blasio, as we bring this administration into court to have them explain their poor actions on behalf of the American people," he said.

The tone of the event was mostly calm, dispassionate, even a bit aloof. The room thinned out gradually over the five-hour hearing.

Speakers, who had to request in advance to testify, frequently came from the same major environmental and community organizations that any follower of the Clean Power Plan, or New York environmental politics, would know — like the Natural Resources Defense Council,

350.org and the American Lung Association. Some were reluctant supporters of the Clean Power Plan, saying it doesn't go far enough and is much too favorable to natural gas, but it's at least a start.

But overall, the event showed that attendees view the urgency of climate policy very differently than their opponents at the top of the federal government.

Katherine Scovik, a member of the local Sierra Club, urged the audience to evangelize for renewable energy and talk about the places where climate change has already become part of everyday life.

"This is what we have to do: We have to keep talking about these renewable energy victories till we are 100 percent renewable energy. Talk among friends, among family, among everybody, so that they know that it is reality," she said. "EPA, I ask you to address climate change, because what we're talking about here is survival, and the survival of all life."

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How a Coal Baron's Wish List Became President Trump's To-Do List

The New York Times

By: Lisa Friedman

Published: January 9, 2018

WASHINGTON — President Trump's first year in office has been a boon for the coal industry, with the Trump administration rolling back regulations on coal-fired power plants and withdrawing the United States from the Paris climate change agreement.

Environmentalists have expressed alarm at the new direction, and have complained that Mr.

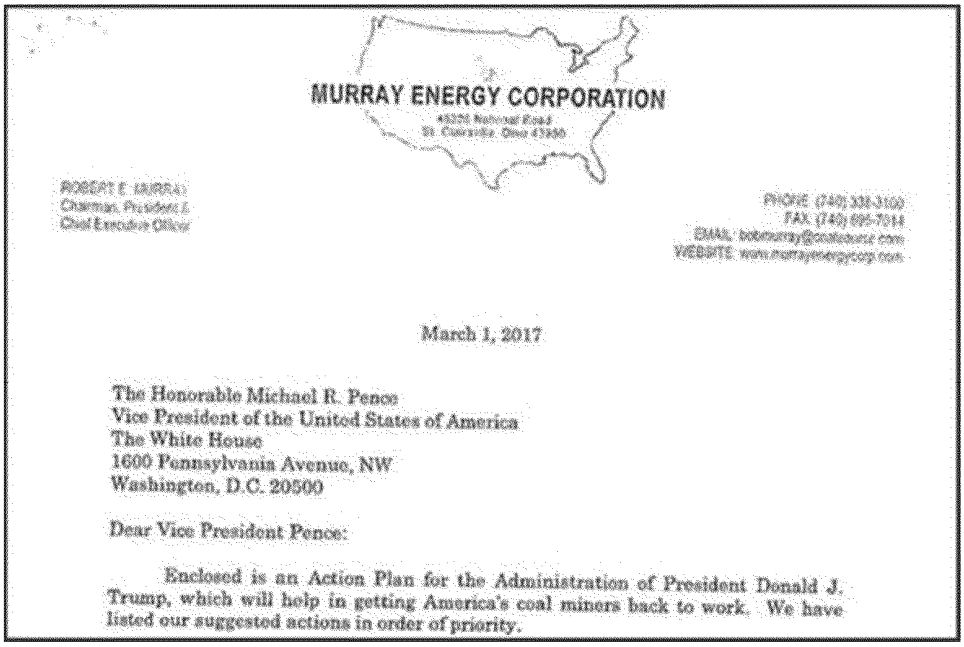
Trump was following a blueprint from the coal industry. A confidential memo written by the head of the country's largest coal mining company suggests they might not be wrong.

The memo was written by Robert E. Murray, a longtime Trump supporter who donated $300,000 to the president's inauguration. In it, Mr. Murray, the head of Murray Energy, presented Mr. Trump with a wish list of environmental rollbacks just weeks after the inauguration.

Document

Murray Energy's 'Action Plan' for the Trump Administration

Robert E. Murray's wish list of environmental rollbacks reads like a playbook for the Trump administration.



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March 1, 2017

The Honorable Michael R. Pence
Vice President of the United States of America
The White House
1600 Pennsylvania Avenue, NW
Washington, D.C. 20500

Dear Vice President Pence:

Enclosed is an Action Plan for the Administration of President Donald J. Trump, which will help in getting America's coal miners back to work. We have listed our suggested actions in order of priority.

Nearly a year later, the White House and federal agencies have completed or are on track to fulfill most of the 14 detailed requests, even with Monday's decision by federal regulators to reject a proposal by Energy Secretary Rick Perry to subsidize struggling coal and nuclear plants.

The March 1 memo, which was obtained by Senator Sheldon Whitehouse of Rhode Island and shared with The New York Times, is addressed to Vice President Mike Pence. The sweeping wish list of regulatory overhauls includes ending regulations on greenhouse gas emissions and

ozone and mine safety, as well as cutting the staff of the Environmental Protection Agency "at least in half" and overhauling the Labor Department's office of mine safety.

"I give President Trump and his administration credit for being bold, being passionate and being correct in addressing a lot of these issues that were on my list here," Mr. Murray said in an interview Tuesday.

Photographs of portions of a different memo, dated March 23 and addressed to Rick Perry, the secretary of the Department of Energy, were obtained by the magazine In These Times last year. They were taken during a meeting Mr. Murray held on March 29 with Mr. Perry and others at the Energy Department, according to the magazine.

Mr. Murray on Tuesday described the memos as very similar.

The March 1 "Action Plan for the Administration of President Donald J. Trump" is aimed, Mr. Murray wrote in the memo, at "getting America's coal miners back to work." He also asks the federal government to cut funding for carbon capture and sequestration technology — which Mr. Murray called "a pseudonym for 'no coal'" — and eliminate a 2009 E.P.A. ruling known as the endangerment finding that was the legal justification for much of the Obama administration's climate change policy.

"This list was to remain private, a list of things that needed to be done for reliable, low-cost electricity in America. That was my number one goal here, was to give guidance to the administration in an area that I have observed over 60 years," Mr. Murray said.

Critics say Mr. Murray's list and the apparent ease with which he was able to get it in front of cabinet officials and others illustrates the open-door access the Trump administration has offered energy and other industries as it moves to redirect and weaken federal regulations.

"The astonishing presumption of this list," Mr. Whitehouse, a Democrat, said. "It's an extraordinary arrogance of the fossil fuel industry based on the power they wield in Washington, D.C." He said even though Mr. Murray had bragged about the action plan on a Frontline

documentary last year, the Energy Department had declined his requests to immediately release the memo.

"The power of the fossil fuel industry around here is so great I think the industry feels they can count on simply not complying with requests," Mr. Whitehouse said.

The Energy Department did not respond to a request to discuss the memos from Mr. Murray.

The Trump administration has had an unusually close relationship with Mr. Murray. He and 10 of his miners were invited to watch the president sign an executive order to rollback President Obama's climate change regulations. He has met with Mr. Perry to discuss the needs of coal producers. His longtime attorney, Andrew Wheeler, is awaiting Senate confirmation to the No. 2 slot at the E.P.A., and David Zatezalo, the nation's new top mine safety and health regulator and previously the president of a coal mining company, told his hometown paper that Mr. Murray had encouraged him to put his hat in the ring for the job.

Jeffrey Holmstead, a lawyer with the firm Bracewell and a deputy administrator of the E.P.A. in the George W. Bush administration, called Mr. Murray's action plan "an ambitious list." While interest groups always try to influence policy in a new administration, Mr. Holmstead said Mr. Murray's status with the administration set him apart.

"I really don't think it's at all unusual that Murray would have this wish list or a set of recommendations. What makes it different is that it's pretty clear that he has a personal relationship with the president," Mr. Holmstead said. "It seems like given Mr. Murray's relationship with the president that he had more of an expectation that these things were going to be accepted or implemented."

One item not on the list yet important to Mr. Murray was an order the Federal Energy Regulatory Commission rejected Monday to subsidize struggling coal and nuclear power plants. Mr. Murray railed against that decision saying it would lead to the decommissioning of coal and nuclear power plants.

Environmental groups have accused Mr. Murray of directly asking Mr. Perry for a proposed rule to reward coal and nuclear power plants for providing "grid resiliency." The March 1 memo does not mention the grid, though photographs of the cover page of the March 23 document to Mr. Perry obtained by In These Times shows its focus is "a plan for achieving reliable and low cost electricity."

Soon after Mr. Murray's meeting at D.O.E., Mr. Perry ordered the agency to prepare a study on the country's electric grid reliability, a precursor to ordering the federal government to subsidize struggling coal and nuclear plants.

Mr. Murray and a spokesman, Gary Broadbent, said the difference between the two memos was that the one provided to Mr. Perry asked the Energy Department to study the security of the nation's power grid.

"I suggested that the study be made," Mr. Murray said. "What they did from there, the administration did. I did not have involvement in it."

One of the items on the 14-point list was an overhaul of FERC regulators, and the Trump administration accomplished that. But those Trump-appointed commissioners voted against the plan to bail out coal and nuclear.

"Obviously they forgot who appointed them right out of the box," Mr. Murray said.

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National Academies launch climate communication push

Greenwire
By: Arianna Skibell

Published: January 9, 2018

The National Academies of Sciences, Engineering and Medicine are launching an initiative to better spread their information about global warming.

The Climate Communications Initiative (CCI) aims to aggregate relevant research from the National Academies' seven divisions and effectively communicate findings to public and private decisionmakers, said spokeswoman Amanda Staudt.

"The academies have done a lot of work about how you communicate science, so this is a good opportunity to practice what we preach," Staudt told E&E News.

Each branch of the National Academies has been addressing and studying climate change for years in the areas of national security, agriculture and food security, extreme weather events, coastal communities, transportation infrastructure, resilience, ecosystems and human health.

"The National Academies have a vast library of authoritative information to help everyone from savvy citizens to responsible decision makers understand, prepare, and respond to climate change," Marcia McNutt, president of the National Academy of Sciences, said in a statement.

"This initiative facilitates access to that storehouse to help protect the many sectors of human investment from unnecessary surprises," she said.

While the shape and form of the initiative have yet to be established, a multidisciplinary advisory committee of 17 people will develop and spearhead a strategic plan.

The advisory panel will be chaired by David Titley, a professor of practice in meteorology and founding director of the Center for Solutions to Weather and Climate Risk at Pennsylvania State University. Titley is also a former Navy rear admiral.

"And that's the tip of the iceberg, because this activity is going to engage all parts of the national academy," Staudt said.

Ultimately, the National Academies aim to use the initiative as a platform to address public questions about a changing climate and create an innovate approach for sharing information with military, corporate and civic leaders to inform their policy decisions.

Staudt said the academies had been weighing the possibility of the CCI before the election, but the current political atmosphere has reinforced the need for more access to climate information.

"So certainly not a reaction to current politics," she said. "That said, we certainly recognize the discourse around climate change has become increasingly polarized, and we think the academies are well-positioned to advance this work."

President Trump has called climate change a hoax and recently tweeted that the country could use "a little bit of that good old Global Warming" to combat record-setting cold this winter.

The advisory committee is expected to hold a public meeting concerning its next steps in March.

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Climate webpages erased, obscured under Trump — report

Climatewire

By: Scott Waldman

Published: January 10, 2018

Thousands of webpages with climate change information have been removed or buried at agencies including U.S. EPA, the Interior and Energy departments and elsewhere across the government, according to a new report.

The study from the watchdog group Environmental Data & Governance Initiative tracked a year of editing of government websites and has found a drastic overhaul of public information on climate change during the Trump administration. Information that has been removed or buried includes research such as climate mitigation strategies for cities and states, a student's guide to climate change and the benefits of renewable energy.

Every administration imprints its own priorities on the government's webpages, and backers of President Trump's policies say the changes are par for the course. But critics of the new administration see a troubling pattern where information is hidden from the public.

The removal of climate information from across the federal government's web presence is evidence that the administration is not interested in engaging in an actual scientific debate about climate change, but rather stifling the truth, said Paul Edwards, a senior research scholar at Stanford University's Center for International Security and Cooperation. EPA Administrator Scott Pruitt has repeatedly called for a public debate on climate science.

"It actually certifies the point that this EPA has already decided the outcome of that debate, if there is one, and moved the needle away from human causality or even in some cases from the existence of the phenomenon at all," Edwards said. "Even though they often say the climate is changing but we don't know why, the removal of this information really goes against the idea that there still is an open question there."

During the first year of the Trump administration, the words "climate change" and "carbon" have been stripped from government websites across a wide range of agencies, including the departments of Health and Human Services, Transportation, the Interior, Energy and State, the report found. They have been replaced with vaguer terms like "sustainability" and "emissions."

The group also found a wide swath of alterations to climate change webpages. The White House no longer lists climate change as a priority. EPA, along with the departments of State and Energy, removed language related to U.S. international obligations to address climate change.

Hundreds of pages at the EPA site that were designed to help local and state governments mitigate the effects of climate change have been removed. The Interior Department scrubbed a website for tribal climate programs of the word "climate change." The National Institute of Environmental Health Sciences dropped a link to an educational fact sheet about climate change and human health.

EDGI recently discovered that the Bureau of Land Management altered and removed language and links about climate change, renewable energy and the overall mission of the agency and took down its climate change webpage without replacing it.

Burying or removing government research eliminates a primary and reliable source of information for the public, which is then forced to go elsewhere for information that may not be accurate, said Andrew Bergman, a member of the Environmental Data & Governance Initiative's Website Monitoring Committee. It also robs the public of the information it needs to comment on federal policy, he said.

"It's the federal government that really provides a place for scientists, policymakers, historians and the public to access results of scientific and policy research funded by taxpayer dollars," he said. "Removal of that information really hinders future efforts, and they also cast doubt on the consensus about issues like climate change when it's not the federal government but advocacy groups or private citizens that have to put forward the information, and it can't come from the trusted source the federal government provides."

Joseph Goffman, executive director of Harvard Law School's Environmental Law Program and a former Obama EPA official, said the report "illustrates, in a dramatic way, just how much the public at large, and the stakeholders and public officials charged with representing the public's interests, depend on the federal government to assemble and disseminate top-quality peer-reviewed scientific and technical information."

An EPA spokesman said the changes are a natural part of an administration attempt to imprint its own priorities on its public web presence.

"We are constantly updating our website to reflect new initiatives and projects of the Agency," the spokesman said. "Of course the site will be reflective of the current administration's priorities

— with that said, all the content from the previous administration is still easily accessible and publicly available — through the banner across the top of the main page of the site."

The website changes should be expected as the Trump administration weighs scientific information, said Myron Ebell, director of the Center for Energy and Environment at the Competitive Enterprise Institute and leader of Trump's EPA transition. He said there was "dubious information" on some of the Obama administration's climate-related webpages that needed to be purged.

"What constitutes dubious scientific information and what constitutes reliable scientific information is subject to political judgment," he said. "Even though EPA is part of an administration, it's not civil servants who are allowed to pursue their own agenda."

The report cautions that it's not immediately clear if the changes were made at the direction of political appointees or if they were the result of self-censorship from career employees looking to avoid controversy.

Notably, there has not been a removal of climate-related data sets, according to EDGI. Some have been buried, according to the initiative, which found that in November 2016, the climate section of the website Data.gov had 762 climate-related data sets. There are now 677 listed, but it appears the others still exist, though they are much harder to find.

Certainly, the effort to overhaul information that contradicts a political argument is not unprecedented, Stanford's Edwards said. Political appointees in the George W. Bush administration altered climate reports, he said, though that was met with significant public outcry. What's different this time are the volume of changes and the intense focus on climate change across so many agencies, he said.

"This time, it is so much more wide-ranging and systematic and specifically aimed at this one issue," he said. "So while there are many issues on which the administration has the right to declare its own policies, a lot of what is going on here is that they're simply trying to erase awareness of the existence of the issue itself, not promoting a different policy to address it, just erasing it."

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Success: EPA set to reduce staff 50% in Trump's first term

Washington Examiner

By: Paul Bedard

Published: January 9, 2018

The Environmental Protection Agency, seen by President Trump as a bloated bureaucratic whale, is on schedule to fulfill his promise to reduce its staff nearly in half by the end of his first term mostly through retirements, not cuts, according to officials.

The EPA Tuesday provided to Secrets its first year staff results which show that the agency is below levels not seen since former President Reagan's administration.

And if just those slated to retire by early 2021 leave, Administrator Scott Pruitt and his team will have reduced a staff of nearly 15,000, to below 8,000, or a reduction of 47 percent.

"We're proud to report that we're reducing the size of government, protecting taxpayer dollars and staying true to our core mission of protecting the environment," Pruitt said in a statement to Secrets.

Several agencies have succeeded in making some cuts, but EPA is taking a lead.

The numbers:

- As of January 3, 2018, the EPA has 14,162 employees.

- The last time EPA was at an actual employment level of 14,440 was in fiscal year 1988 when Reagan was president.
- 23 percent of EPA employees can retire with full benefits and another 4 percent can retire at the end of 2018.
- Additionally, another 20 percent of EPA employees will be eligible for retirement in the next five years.
- Taken together, 47 percent of the EPA will be eligible to retire with full benefits in the next 5 years.

Said an EPA official, "We're happy to be at Reagan-level employment numbers and the future retirements shows a preview of how low we could get during this administration. It would be fair to say anywhere from 25 to 47 percent of EPA could retire during this administration."

Pruitt has used buyouts to spur some of the changes and attractive retirement benefits have also led many to leave the agency. He also instituted a hiring freeze.

Under Pruitt, the agency has gone the "back to basics" of protecting the environment while shucking former President Obama's political agenda focused heavily on climate change.

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EPA staffing falls to Reagan-era levels

The Hill

By: Timothy Cama

Published: January 9, 2018

The Environmental Protection Agency's (EPA) staffing is now lower than it was in former President Reagan's final year in office.

An EPA spokeswoman said Tuesday that, as of Jan. 3, the agency had 14,162 employees, down from about 15,000 at the beginning of last year.

That's even lower than the 14,400 employees the agency had in fiscal year 1988, Reagan's final year.

The figures come after President Trump and EPA Administrator Scott Pruitt's pledges to shrink the size of the federal government as part of their efforts to demonstrate that they are saving money and reducing regulatory burdens.

"We're proud to report that we're reducing the size of government, protecting taxpayer dollars and staying true to our core mission of protecting the environment," Pruitt said in a statement.

If every EPA employee eligible to retire by 2021 does so, the EPA would have less than 8,000 employees by the end of Trump's term, a cut of nearly half.

The reductions have come from employees voluntarily leaving without being replaced, including through early retirements and buyouts.

The New York Times and ProPublica reported last month that some of the hundreds of employees who have left were key to critical missions at the agency.

For example, about 200 scientists had left as of last month, along with 96 environmental protection specialists and nine department directors, many of whom won't be replaced, the news organizations reported.

The Washington Examiner first reported on the EPA's current staffing figures Tuesday.

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Senate Democrats Query Pruitt On New EPA Advisors' Conflicts Of Interest

Inside EPA

By: Maria Hegstad

Published: January 9, 2018

Two Senate Democrats are raising concerns over EPA Administrator Scott Pruitt's recent selection of two scientists to join agency advisory panels, citing claims in public comments that the advisors have conflicts of interest because they have received funding from industry groups and saying they may lack "appropriate" scientific qualifications.

In a Jan. 9 letter to Pruitt, Senate Environment & Public Works Committee ranking member Tom Carper (D-DE) and panel member Sheldon Whitehouse (D-RI) ask for a reply by Jan. 30 to questions about the selection process for the advisors: Tony Cox as new chairman of the Clean Air Scientific Advisory Committee (CASAC) and a member of the Science Advisory Board (SAB), and Stanley Young to serve on SAB.

Cox is president of the Denver-based consulting firm Cox Associates, "specializing in quantitative health risk analysis, epidemiology, causal analytics, and operations research," according to SAB's website. Young is CEO of the consulting firm CGStat and a scientific advisor to the free-market think tank Heartland Institute, according to SAB's website.

"We are concerned that some of the newly-appointed members of these nonpartisan scientific advisory committees and boards may have financial and ethical conflicts of interest," the senators write. "In addition, some of these individuals may not possess the appropriate level of scientific expertise or credentials."

The senators' letter follows up on questions that Carper sent Pruitt last May, where he raised concerns over the agency chief's controversial decision last spring not to renew the terms of many members of EPA's Board of Scientific Counselors. Carper also faulted other actions, such

as censoring EPA staff's response to the Congressional Budget Office's questions over the cost of a House bill setting scientific standards.

The various actions combined suggest "you are engaging in a broad approach of denying the science that forms the basis of sound environmental regulation," Carper told Pruitt in that May 9 letter.

Alongside the Jan. 9 letter, Carper also released a redacted "Executive Summary Briefing" that the agency gave the senator last month in response to the May 9 letter.

The document appears to describe a Sept. 20 briefing that EPA staff who manage the CASAC and SAB held for Richard Yamada -- the top Trump administration political official in EPA's research office -- about the then-looming Sept. 30 end of the term of CASAC's former Chairwoman Ana Diez Roux.

The document includes a summary of public comments received on the candidates to be added to CASAC to fill the open position. The summary indicates that public commenters identified Cox and Young as having "possible financial conflicts of interest," "possible appearance of a lack of impartiality" and "lack of scientific expertise."

Conflict Of Interest

Four other candidates were identified in the document as potentially creating conflict of interest concerns, but of these only Cox and Young were appointed to advisory positions by Pruitt.

The document also identified 10 candidates as receiving comments from a junkscience.com email campaign claiming conflicts of interest because they received research grants from EPA -- a month before Pruitt announced his controversial new policy barring any scientist from serving on any EPA advisory panel while receiving an agency grant.

Critics filed a suit last month, challenging the policy in the U.S. District Court for the District of Columbia.

Citing the adverse comments filed on Cox and Young, Carper and Whitehouse in their new letter ask Pruitt to provide "all documents received or obtained by EPA . . . related to [Cox' and Young's] appointments to any EPA Federal Advisory Committee"; and to "explain what specific steps were taken to address potential conflicts of interest, appearance of impartiality, lack of scientific expertise, and lack of scientific credentials" for the advisors.

The senators also ask Pruitt to provide all documents relating to anyone nominated in 2017 to serve on any EPA federal advisory committee "related to potential conflicts of interest, lack of impartiality, or lack of scientific expertise or credentials."

They also ask "For each nominee who was chosen in 2017 to serve on a Federal Advisory Committee, please provide copies of any Ethics Agreements, financial disclosure forms, or Ethics Training certificates."

The senators add, "This underscores our concern that your actions to replace many highly-qualified members of these committees -- including the unprecedented action to remove any scientist who was a recipient of EPA grants from eligibility -- has led to Federal Advisory Committees that are not balanced in viewpoints, and to the appointment of committee members who are either not qualified or not impartial.

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IG to audit Pruitt's hiring

Greenwire

By: Kevin Bogardus

Published: January 9, 2018

U.S. EPA's internal watchdog plans to review Administrator Scott Pruitt's use of a special hiring authority to fill top political jobs at the agency.

In a notice dated yesterday, the EPA inspector general said it will begin "preliminary research" on the administrator office's use of its authority under the Safe Drinking Water Act to fill "administratively determined" positions.

The auditors' objective will be to determine how EPA used that authority to fill up to 30 positions. The IG launched the probe partly based on a congressional request.

"The anticipated benefit of this project is to strengthen agency policies and procedures related to filling administratively determined positions," said the notice, signed by John Trefry, forensic audits director for the IG's Office of Audit and Evaluation.

The IG's office asked for a list of all administratively determined positions filled under the Safe Drinking Water Act from January 2009 to December 2017. In addition, it requested any guidance documents related to hiring for those jobs.

The increase in "administratively determined" jobs at EPA during Pruitt's tenure has attracted scrutiny from environmental groups as well as Democrats on Capitol Hill.

Nancy Beck, deputy assistant administrator at the Office of Chemical Safety and Pollution Prevention, was hired under the authority and thus was not considered a political appointee, according to documents obtained by E&E News. That meant Beck, a former top American Chemistry Council official, didn't have to sign President Trump's ethics pledge (*Greenwire*, Aug. 8, 2017).

In October, Democrats on the House Energy and Commerce Committee pressed the EPA IG to investigate Beck's hiring and whether she was properly brought on to the agency in an "administratively determined" position (*E&E Daily*, Oct. 31, 2017).

The Government Accountability Office has also committed to investigate the Trump administration's hiring practices for political appointees at the agency (*E&E Daily*, Sept. 11, 2017).

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Senators request records on 2 advisory panel members

Greenwire

By: Sean Reilly

Published: January 9, 2018

Two Senate Democrats, citing impartiality concerns and other questions about recently named members of U.S. EPA advisory panels, asked the agency today to hand over a wide range of documents related to their appointments.

"We are concerned that some of the newly appointed members of these nonpartisan scientific advisory committees and boards may have financial and ethical conflicts of interest," Sens. Tom Carper (D-Del.) and Sheldon Whitehouse (D-R.I.) said in a letter to EPA Administrator Scott Pruitt. "In addition, some of these individuals may not possess the appropriate level of scientific expertise or credentials."

The lawmakers singled out Tony Cox, a Colorado-based consultant whom Pruitt named last fall to chair the Clean Air Scientific Advisory Committee (CASAC), and S. Stanley Young, an applied statistician from North Carolina named to the Science Advisory Board (SAB). Cox is a researcher for the oil industry, while Young is a researcher for the oil and pharmaceutical industries, they wrote.

Based on an official EPA summary of the public comments received on their nominations, the two "may have financial conflicts, may risk an appearance of impartiality, and may lack the

scientific expertise necessary to serve on one or more federal advisory committees," the letter says.

Carper and Whitehouse asked Pruitt to provide all documents received by EPA related to their appointments, as well as an explanation of all steps taken to address potential conflicts and "lack of scientific credentials."

More broadly, they also requested the financial disclosure forms and ethics training certificates for all appointees last year to EPA's almost two dozen advisory committees.

In an email this morning, an EPA spokeswoman said the agency "will respond through the proper channels."

In a separate message replying to a request for comment from E&E News, Young said the two senators "misspeak."

"I am retired and not employed by anyone," Young said. "The work I do generally results in published papers where the data and analysis code are made publicly available so my work can be checked."

Also by email, Cox said he has served as a risk analysis expert for EPA and other federal agencies over multiple administrations.

"My scientific qualifications and expertise in health risk analysis and quantitative modeling are matters of public record," he said.

While the lawmakers' letter focuses only on his work for the oil industry, Cox added, "that is only one of many strands of research and teaching I have undertaken for public sector and private sector organizations to improve the practice of risk analysis and decision-making in the public interest."

Carper is the top Democrat on the Senate Environment and Public Works Committee; Whitehouse is the ranking member of the EPW Subcommittee on Clean Air and Nuclear Safety. Their request can be read as an attempt to turn the tables on Pruitt, who last year forced more than half a dozen members off SAB and CASAC because they were also active recipients or beneficiaries of EPA grants.

Pruitt argued the new policy was intended to ensure the objectivity of panel members; in today's letter, Carper and Whitehouse said the "unprecedented action" has wrongfully excluded "qualified applicants while allowing for the appointment of industry-funded committee members who may be either not qualified or not impartial."

Both Cox and Young have at times challenged EPA's efforts to tighten air pollution standards. Young remains affiliated with the Heartland Institute, according to the website of the free-market think tank, which has received millions of dollars in funding from energy companies; at a 2015 Heartland conference, he accused EPA of using "scare tactics" (*Climatewire*, Nov. 1, 2017). Cox opposed EPA's 2015 decision to tighten its ground-level ozone standard to 70 parts per billion.

According to the summary referenced in the senators' letter, public commenters on their nominations raised questions about "possible financial conflicts of interest" and "a lack of scientific expertise."

The specific grounds for those concerns are not listed; EPA has not released the comments received last year for any of the nominees for SAB and CASAC. A Freedom of Information Act request by E&E News for those comments has been pending since the end of September 2017.

At the request of Carper and Whitehouse, the Government Accountability Office last July agreed to review EPA's process for selecting advisory committee members after Pruitt declined to reappoint some members of another panel, the Board of Scientific Counselors, to a customary second three-year term.

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Watchdog sues for reorganization

comments

Greenwire
By: Maxine Joselow

Published: January 9, 2018

A watchdog group filed suit today against the Office of Management and Budget for the public comments the agency received on reorganizing the federal government.

The six-page complaint from Public Employees for Environmental Responsibility, filed in U.S. District Court for the District of Columbia, alleges that OMB has refused to divulge those comments.

The suit comes after OMB failed to respond to the group's July 10 Freedom of Information Act request within the statutory deadline.

PEER specifically sought "a compilation of the topics addressed by the public suggestions, including a breakdown of the agencies or programs to which they were directed." It also sought any plans to incorporate suggestions into the Trump administration's policies.

President Trump signed an executive order last year to begin what he called "a long-overdue reorganization" of the executive branch's departments and agencies (*E&E Daily*, March 14, 2017).

OMB Director Mick Mulvaney — who now wears a second hat as head of the Consumer Financial Protection Bureau — was tasked with overseeing the reorganization. Under Mulvaney's watch, OMB solicited more than 100,000 suggestions from the public, said the complaint.

But after the public comment period ended, references to the reorganization were scrubbed from OMB's website, the suit states. A search today of OMB's site for the phrase "reorganization" did not turn up any documents.

"Was the White House call for public involvement just a stunt?" PEER Executive Director Jeff Ruch said in a statement. "After the suggestions were counted did anyone bother reading them?"

Ruch added, "Taco Bell's website displays much more information than the Office of Management and Budget's site now contains. In the Trump administration, the people's business is conducted as if by a privately-held corporation."

The suit echoes concerns from some members of Congress. At a Dec. 14 hearing, Sen. Heidi Heitkamp (D-N.D.) said she was "a little concerned" that OMB hadn't updated the Senate Homeland Security and Governmental Affairs Committee on the reorganization.

"Ever since OMB announced that they are in fact looking at reorganization ... we haven't been able to get anyone from OMB to give us a status report," said Heitkamp, ranking member of the Regulatory Affairs and Federal Management Subcommittee.

"If we are going to be successful in doing our oversight," she said, "we're going to need cooperation from OMB. And I'm a little concerned that we're not getting it right now."

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EPA brings 'sue and settle' ban into 2018, environmentalists concern grows

Gray DC

By: Kellie Meyer

Published: January 9, 2018

WASHINGTON -- In cold winter months, with rising electric prices, Alaskans turn to wood and coal to heat their homes. But it's increasing the level of air pollution in towns like Fairbanks.

"When we go and sue we are not trying to tell the agency make a certain decision we're just telling the agency start the process to make a decision," Joshua Stebbins, Managing Attorney with the Sierra Club said.

The Sierra Club sued the Environmental Protection Agency for failing to address air quality issues in Fairbanks quickly enough. The club credits its action with speeding up the government 's planning process. But now, the EPA will bar groups from suing them.

"No more is this agency going to engage in regulation through litigation and I think engage in abusive practices which we have in the past," EPA Administrator Scott Pruitt said.

Scott Pruitt said the process he calls 'sue and settle' allowed interest groups to bypass the process and ultimately led to bad rules.

But President Clinton's former EPA Administrator said Pruitt can't simply opt out of court.

"These rights are provided in the law and people have the right to hold the EPA and Administrator Pruitt accountable for doing its' job," Carol Browner said.

Browner is pushing back against the EPA's new directive. She believes anyone, from members of the public to environmental groups, has the right to sue the EPA.

The EPA isn't the only federal agency that's been forced to act after settling a lawsuit, but they 're the first of Trump's agencies to argue it's immune to it. No word yet if any other agencies will take a similar stance.

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Inhofe dubious about Pruitt's AG interest

E&E Daily

By: Geof Koss

Published: January 10, 2018

A close ally of U.S. EPA Administrator Scott Pruitt is dismissing the former Oklahoma attorney general's interest in replacing Jeff Sessions as the nation's top law enforcement officer.

"I don't believe it because I would know it," Sen. Jim Inhofe (R-Okla.) said yesterday, adding, "I do have conversations with him on a regular basis."

Citing unnamed sources, several news outlets reported last week that Pruitt had expressed interest in becoming attorney general if the position becomes available (*E&E News PM*, Jan. 5).

Pruitt's purported interest, which an EPA spokesman denied, comes as the embattled Sessions faces criticism surrounding his decision to recuse himself from the investigation into Russian meddling in the 2016 election. President Trump has long harbored a grudge against the former Republican senator for his recusal.

Inhofe said he would prefer Pruitt remain at EPA "because I think he'd do more good there."

The agency "deals with a lot of the issues that are going to be consistent with what the president is trying to do in expanding the economy," Inhofe added.

Senate Environment and Public Works Chairman John Barrasso (R-Wyo.) said yesterday he had not had any discussion with Pruitt about becoming attorney general, and noted he still expects the EPA chief to appear before his committee on Jan. 31 (*E&E News PM*, Nov. 16, 2017).

"We're looking forward to having him in front of the committee," Barrasso told E&E News.

Sen. Tom Carper (D-Del.), the ranking member on EPW, smiled when asked about Pruitt's alleged interest in becoming attorney general.

"I'd heard another rumor for a year, and that is he might try to succeed Jim Inhofe as a U.S. senator," Carper told E&E News. "And that would be a better option, I think."

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Oregon's 'kid governor' inaugurated, wants to stop bullying

The Oregonian

By: Gordon R. Friedman

Published: January 9, 2018

SALEM -- Eleven-year-old Dom Peters, inaugurated as Oregon's first "kid governor" on Monday, said he hopes to use his newfound soapbox to spread a message that kids should not bully each other.

Peters is a fifth-grader at Willamette Valley Christian School, located in Brooks. He applied for the first annual kid governor contest, which asks Oregon's youth to record a short video on a topic of their choice and complete several civics lessons. Peters was elected by fifth-graders across the state from a field of eight finalists. His "term" lasts one year.

Though Peters' title as kid governor comes with no real powers, Monday's ceremony was carried out with full pomp and circumstance.

There was a full invocation, live rendition of the national anthem and a presentation of the colors by a local Boy Scouts troop. Peters' family, friends and classmates filled the chamber of the Oregon Senate, including the side aisles and gallery.

But before the inauguration came a bit of education.

Secretary of State Dennis Richardson, who spearheaded bringing the civics program to Oregon, gave a short lecture on the executive branch. Senate President Peter Courtney, D-Salem, spoke on the legislative branch. And Paul De Muniz, a former chief justice of the Oregon Supreme Court, spoke about the judicial branch. Their message was that Oregon's government is precious, and its branches are co-equal and dependent on each other for success.

De Muniz administered the oath of office to Peters, who was sporting a three-piece suit.

Peters highlighted his platform during his inaugural address and a press conference.

Dom Peters, Oregon's first Kid Governor and a fifth grader at Willamette Valley Christian School, holds his first press conference at the state Capitol in Salem, Ore., Monday, Jan. 8, 2018. (Anna Reed/Statesman Journal via AP)

"I really hope I can make a difference in Oregon to stop bullying," Peters said. He said the first step is to remind classmates to work together and be kind to each other.

Peters said he is writing a book about bullying that he hopes to give to kids across the state. He said he also started a "Super Kind Helpers' Club" at his school to help others be watchful for bullying.

"I've seen a lot of bullying and I've been bullied," Peters said. "Being bullied doesn't feel good."

Though Peters picked a platform, being kid governor also requires him to learn about the functions of government and help teach those lessons to other Oregon fifth grades. That's the real aim of the contest, Richardson said. He called it "participatory democracy in action."

Peters told reporters that he was nervous to accept his position as kid governor -- probably not

unlike how real governors feel on their first day in office. And though he said his position comes with a bit of gravitas, it isn't going to his head.

"I don't want people to think I have a lot of authority," he said. "I'm just a kid."

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From: Lamason, Bill
Location: WJC-N 5400 + Video with OAQPS + Ex. 6 - Personal Privacy Participant Code: Ex. 6 - Personal Privacy
Ex. 6 - Personal Privacy
Importance: Normal
Subject: Accepted: Once-in, Always-in Policy Revision
Start Date/Time: Wed 12/20/2017 9:00:00 PM
End Date/Time: Wed 12/20/2017 10:00:00 PM

From: Lamason, Bill
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: Lamason, Bill
Location: RTP-OAQPS Ex. 6 - Personal Privacy SPPD/Phone-Line/RTP-OAQPS-BLDG-C
Importance: Normal
Subject: Call in number for OIAI call
Start Date/Time: Wed 1/10/2018 6:00:00 PM
End Date/Time: Wed 1/10/2018 6:30:00 PM

To: Torres, Elineth[Torres.Elineth@epa.gov]
Cc: Dalcher, Debra[dalcher.debra@epa.gov]; McLamb, Marguerite[McLamb.Marguerite@epa.gov]
From: Lamason, Bill
Sent: Thur 9/7/2017 12:37:01 PM
Subject: RE: Updated OIAI memo 09_05_17

Elineth,

This looks like what we discussed. Great job re-writing. Let's get this on to the next steps - to OGC for their review and to Peter?

Thanks again!

Bill

From: Torres, Elineth
Sent: Tuesday, September 05, 2017 1:29 PM
To: Lamason, Bill <Lamason.Bill@epa.gov>
Cc: Dalcher, Debra <dalcher.debra@epa.gov>; McLamb, Marguerite <McLamb.Marguerite@epa.gov>
Subject: Updated OIAI memo 09_05_17

Bill,

Attached is the latest version of the OIAI memo. Big thanks to Marguerite for her review and edits.

In this version we have tried to incorporate Peter's input of last week. Please review the memo and let us know if you have comments/edits.

After your review, I will send the memo to OGC for their review.

Thanks,

Elineth Torres

OAQPS

919-541-4347

To: Tsirigotis, Peter[Tsirigotis.Peter@epa.gov]
From: Lamason, Bill
Sent: Fri 12/8/2017 2:09:38 PM
Subject: Re: Call my cell when you can.

Called your cell left message. Heard from Eric that Fred needs the OiAI memo and he's getting Debra to send. Can talk for the next couple of hours. Bill

Sent from my iPhone

> On Dec 8, 2017, at 7:55 AM, Tsirigotis, Peter <Tsirigotis.Peter@epa.gov> wrote:
>

To: Torres, Elineth[Torres.Elineth@epa.gov]
Cc: Debra Dalcher[dsdalcher@gmail.com]
From: Lamason, Bill
Sent: Tue 9/12/2017 8:48:11 PM
Subject: RE: OIAI Backgrounder for discussion with GLs

Elineth,

Thanks! I started to mark up the pager as if it was info for the discussion and then realized the audience for the pager is higher management. I think a slight adjustment is needed and we have two options.

Ex. 5 - Deliberative Process

Hope this helps. Will continue to review tomorrow. Thanks!

Bill

From: Torres, Elineth
Sent: Tuesday, September 12, 2017 9:52 AM
To: Lamason, Bill <Lamason.Bill@epa.gov>
Cc: Dalcher, Debra <dalcher.debra@epa.gov>
Subject: OIAI Backgrounder for discussion with GLs

Bill,

I updated the OIAI backgrounder to reflect the current approach/direction from Peter. I intend to use this document for our discussion with GLs, focusing on the next steps and principles. Please review and let me know if you have any edits and comments before I attach the document to the 9/20 meeting invite.

Thanks,

Elineth Torres

OAQPS

919-541-4347

To: Barnett, Keith[Barnett.Keith@epa.gov]
From: Lamason, Bill
Sent: Tue 9/5/2017 8:54:15 PM
Subject: RE: Draft OIAI document for OGC review

Keith,

We can chat. Ex. 5 - Deliberative Process

Ex. 5 - Deliberative Process

Bill

From: Barnett, Keith
Sent: Tuesday, September 05, 2017 9:00 AM
To: Lamason, Bill <Lamason.Bill@epa.gov>; OAQPS SPPD GL <OAQPS_SPPD_GL@epa.gov>
Cc: Tsirigotis, Peter <Tsirigotis.Peter@epa.gov>; Thompson, Fred <Thompson.Fred@epa.gov>; French, Chuck <French.Chuck@epa.gov>; Culligan, Kevin <Culligan.Kevin@epa.gov>
Subject: RE: Draft OIAI document for OGC review

Bill:

Ex. 5 - Deliberative Process

Keith Barnett
Minerals and Manufacturing Group Leader
919-541-5605

From: Lamason, Bill
Sent: Thursday, August 24, 2017 12:32 PM
To: OAQPS SPPD GL <OAQPS_SPPD_GL@epa.gov>
Cc: Tsirigotis, Peter <Tsirigotis.Peter@epa.gov>; Thompson, Fred <Thompson.Fred@epa.gov>; French, Chuck <French.Chuck@epa.gov>; Culligan, Kevin <Culligan.Kevin@epa.gov>
Subject: FW: Draft OIAI document for OGC review

Folks,

As mentioned in the GLs only discussion this morning, attached below is the

latest version of the OIAI memo. Please keep this close hold as it is only circulating to a few OGC and SPPD folks. Please provide any initial comments you may have by noon Monday.

Thanks!

Bill

From: Torres, Elineth
Sent: Thursday, August 24, 2017 10:19 AM
To: Versace, Paul <Versace.Paul@epa.gov>; Vetter, Rick <Vetter.Rick@epa.gov>; Rodman, Sonja <Rodman.Sonja@epa.gov>
Cc: Lamason, Bill <Lamason.Bill@epa.gov>; McLamb, Marguerite <McLamb.Marguerite@epa.gov>; Dalcher, Debra <dalcher.debra@epa.gov>
Subject: Draft OIAI document for OGC review

All,

Attached is the draft OIAI document for OGC review. **Ex. 5 - Deliberative Process** Ex. 5 - Deliberative Process We will be meeting with Peter on Tuesday, August 29 @1PM to discuss the document. I am requesting OGC input by noon on Monday, August 28.

In addition to the draft OIAI document, I am attaching a sample of comment excerpts on statutory/legal interpretation received on EPA's 2007 GP Proposal (72 FR 69; January 3, 2007).

Please let me know if you have questions.

Thank You!

<< File: Draft 2017 OIAI Letter of Intent_v3 CLEAN.docx >> << File: Sample of comments OIAI legal interpretation.docx >>

Elineth Torres
OAQPS
919-541-4347

From: Lamason, Bill
Location: RTP-D201-Max40/RTP-Bldg-D
Importance: Normal
Subject: Accepted: 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

From: Lamason, Bill
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: South, Peter[South.Peter@epa.gov]
From: Lamason, Bill
Sent: Thur 1/25/2018 8:21:43 PM
Subject: RE: OIAI Reclassification of Major Sources as Area Sources Under Section 112 _01 25 2018.docx

Thanks! B

From: South, Peter
Sent: Thursday, January 25, 2018 3:14 PM
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.

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)*

From: Goehl, Eric
Location: D220D/Bill's OFfice, Ex. 6 - Personal Privacy
Importance: Normal
Subject: Accepted: 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

From: Godfrey, Janice
Location: D220D/Bill's OFfice Ex. 6 - Personal Privacy
Importance: Normal
Subject: Accepted: 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

From: Shrager, Brian
Location: D220D/Bill's OFfice Ex. 6 - Personal Privacy
Importance: Normal
Subject: Accepted: 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

From: Caparoso, Jennifer
Location: PLO
Importance: Normal
Subject: OIAI
Start Date/Time: Wed 9/27/2017 2:00:00 PM
End Date/Time: Wed 9/27/2017 2:30:00 PM

From: Lassiter, Penny
Location: RTP-D201-Max40/RTP-Bldg-D; RTP-OAQPS Ex. 6 - Personal Privacy SPPD/Phone-Line/RTP-OAQPS-BLDG-C
Importance: Normal
Subject: Accepted: OIAI Discussion: Principle-based policy
Start Date/Time: Wed 9/20/2017 7:00:00 PM
End Date/Time: Wed 9/20/2017 7:30:00 PM

From: Rodman, Sonja
Location: by phone
Importance: Normal
Subject: OIAI
Start Date/Time: Thur 11/9/2017 6:00:00 PM
End Date/Time: Thur 11/9/2017 6:30:00 PM

From: Lamason, Bill
Location: D201/Call in number Ex. 6 - Personal Privacy
Importance: Normal
Subject: 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

Check in. Kevin available until 10 am. Thank! Bill

From: Rodman, Sonja
Importance: Normal
Subject: OIAI
Start Date/Time: Tue 11/21/2017 4:30:00 PM
End Date/Time: Tue 11/21/2017 5:00:00 PM

From: Rodman, Sonja
Importance: Normal
Subject: OIAI
Start Date/Time: Tue 11/21/2017 4:30:00 PM
End Date/Time: Tue 11/21/2017 5:00:00 PM

From: Rodman, Sonja
Location: by phone
Importance: Normal
Subject: OIAI
Start Date/Time: Thur 11/9/2017 6:00:00 PM
End Date/Time: Thur 11/9/2017 6:30:00 PM

To: McLamb, Marguerite[McLamb.Marguerite@epa.gov]
From: Rodman, Sonja
Sent: Thur 11/30/2017 4:57:38 PM
Subject: Automatic reply: first cut at revising OIAI memo - Scott's comments

I will be out of office until Monday, December 4. Paul Versace will be the acting group leader for the air toxics group in my absence.

To: McLamb, Marguerite[McLamb.Marguerite@epa.gov]
From: McLamb, Marguerite
Sent: Mon 11/27/2017 9:24:26 PM
Subject: OIAI 11.27.2017
OIAI 11.27.2017.docx

To: Dalcher, Debra[dalcher.debra@epa.gov]
From: McLamb, Marguerite
Sent: Wed 11/8/2017 7:53:48 PM
Subject: RE: Memo replacing OIAI with proposed 2007 interpretation_11_6_17 MM (002).docx

****
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,

Ex. 5 - Deliberative Process

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
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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

From: Culligan, Kevin
Location: RTP-OAQPS-919-541-4332-SPPD/Phone-Line/RTP-OAQPS-BLDG-C
Importance: Normal
Subject: FW: OIAI Discussion - Agenda will be Added / Memo w/SJ Edits Attached
Start Date/Time: Mon 1/8/2018 4:00:00 PM
End Date/Time: Mon 1/8/2018 5:00:00 PM
OIAI.RevisedOIAImemorandum_1 5 2018+ SJJ 1.8.18.docx

-----Original Appointment-----
From: Dalcher, Debra
Sent: Friday, January 05, 2018 3:00 PM
To: Dalcher, Debra; Jordan, Scott; Culligan, Kevin
Cc: Lamason, Bill
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

Ex. 5 - Deliberative Process

Ex. 5 - Deliberative Process

Ex. 5 - Deliberative Process

To: McLamb, Marguerite[McLamb.Marguerite@epa.gov]
From: McLamb, Marguerite
Sent: Tue 11/21/2017 7:56:27 PM
Subject: 2007 OIAI proposal
2007 OIAI NPRM.pdf

****

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: McLamb, Marguerite
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: McLamb, Marguerite
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

From: McLamb, Marguerite
Location: by phone
Importance: Normal
Subject: Accepted: OIAI
Start Date/Time: Thur 11/9/2017 6:00:00 PM
End Date/Time: Thur 11/9/2017 6:30:00 PM

To: Torres, Elineth[Torres.Elineth@epa.gov]
From: McLamb, Marguerite
Sent: Tue 11/7/2017 5:32:56 PM
Subject: RE: OIAI: memo replacing policy interpretation

Ok, thanks!

From: Torres, Elineth
Sent: Tuesday, November 07, 2017 12:29 PM
To: McLamb, Marguerite <McLamb.Marguerite@epa.gov>
Subject: RE: OIAI: memo replacing policy interpretation

Ex. 5 - Deliberative Process

Elineth Torres

OAQPS

919-541-4347

From: McLamb, Marguerite
Sent: Tuesday, November 07, 2017 12:27 PM
To: Torres, Elineth <Torres.Elineth@epa.gov>
Subject: RE: OIAI: memo replacing policy interpretation

Ex. 5 - Deliberative Process

From: Torres, Elineth
Sent: Tuesday, November 07, 2017 12:17 PM
To: McLamb, Marguerite <McLamb.Marguerite@epa.gov>
Cc: Dalcher, Debra <dalcher.debra@epa.gov>; Lamason, Bill <Lamason.Bill@epa.gov>
Subject: OIAI: memo replacing policy interpretation

Marguerite,

Ex. 5 - Deliberative Process

Ex. 5 - Deliberative Process

Ex. 5 - Deliberative Process

Thank you!

Elineth Torres

OAQPS

919-541-4347

To: Torres, Elineth[Torres.Elineth@epa.gov]
From: McLamb, Marguerite
Sent: Tue 11/7/2017 5:26:59 PM
Subject: RE: OIAI: memo replacing policy interpretation

Ex. 5 - Deliberative Process

From: Torres, Elineth
Sent: Tuesday, November 07, 2017 12:17 PM
To: McLamb, Marguerite <McLamb.Marguerite@epa.gov>
Cc: Dalcher, Debra <dalcher.debra@epa.gov>; Lamason, Bill <Lamason.Bill@epa.gov>
Subject: OIAI: memo replacing policy interpretation

Marguerite,

Ex. 5 - Deliberative Process

Thank you!

Elineth Torres

OAQPS

919-541-4347

To: Torres, Elineth[Torres.Elineth@epa.gov]
From: McLamb, Marguerite
Sent: Tue 11/7/2017 2:21:00 PM
Subject: Re: quick check-in

Hi, Elineth,

I will be in the office today. I will check in with you after my first meeting.

See you soon!

On Nov 7, 2017, at 8:28 AM, Torres, Elineth <Torres.Elineth@epa.gov> wrote:

Marguerite,

Are you in the office today? I need to have a quick conversation with you on OIAI and the new memo we are to work on. Peter and Bill have some concerns and we want to check with you before touching basis with OGC.

If you are working from home, can you give me a call this morning?

Elineth Torres

OAQPS

919-541-4347

From: McLamb, Marguerite
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

From: McLamb, Marguerite
Location: RTP-D201-Max40/RTP-Bldg-D; RTP-OAQPS-919-541-4486-SPPD/Phone-Line/RTP-OAQPS-BLDG-C
Importance: Normal
Subject: Accepted: OIAI Discussion: Principle-based policy
Start Date/Time: Wed 9/20/2017 7:00:00 PM
End Date/Time: Wed 9/20/2017 7:30:00 PM

To: Torres, Elineth[Torres.Elineth@epa.gov]
From: McLamb, Marguerite
Sent: Tue 9/19/2017 3:27:32 PM
Subject: RE: OIAI Discussion: Principle-based policy

Elineth,

Ex. 6 - Personal Privacy. Could you send a call-in number, please?

Thanks!

-----Original Appointment-----
From: Torres, Elineth
Sent: Tuesday, September 05, 2017 12:19 PM
To: Torres, Elineth; Barnett, Keith; Caparoso, Jennifer; Cozzie, David; Dunkins, Robin; Fruh, Steve; Lamason, Bill; Lassiter, Penny; Schell, Bob; McLamb, Marguerite; French, Chuck; Dalcher, Debra; Boyd, Rochelle
Subject: OIAI Discussion: Principle-based policy
When: Wednesday, September 20, 2017 2:30 PM-3:30 PM (UTC-05:00) Eastern Time (US & Canada).
Where: RTP-D201-Max40/RTP-Bldg-D

All,

Ex. 5 - Deliberative Process

Ex. 5 - Deliberative Process

Thanks,

Elineth

To: Torres, Elineth[Torres.Elineth@epa.gov]
From: McLamb, Marguerite
Sent: Tue 9/5/2017 5:12:29 PM
Subject: RE: OIAI new draft document

Looks good!

From: Torres, Elineth
Sent: Tuesday, September 05, 2017 1:11 PM
To: McLamb, Marguerite <McLamb.Marguerite@epa.gov>
Subject: RE: OIAI new draft document

See clean document with an additional edit to reflect previous edits from Sonja.

Will send this version to Bill and then to OGC for review.

Again, thanks!

Elineth Torres

OAQPS

919-541-4347

From: McLamb, Marguerite
Sent: Tuesday, September 05, 2017 12:49 PM
To: Torres, Elineth <Torres.Elineth@epa.gov>
Subject: RE: OIAI new draft document

Hi, Elineth,

Attached is the draft with my suggested edits – mostly just streamlining-oriented reordering and

rephrasing. The document is now under 2 pages.

Best,

Marguerite

From: McLamb, Marguerite
Sent: Friday, September 01, 2017 1:42 PM
To: Torres, Elineth <Torres.Elineth@epa.gov>
Subject: Re: OIAI new draft document

Hi, Elineth,

I just wanted to let you know that Sonja is fine with Peter's directions for the revision. I'm looking at the draft and will get comments to you on Tuesday.

Have a great holiday weekend!

Cheers,

Marguerite

From: Torres, Elineth
Sent: Thursday, August 31, 2017 2:12 PM
To: McLamb, Marguerite
Cc: Lamason, Bill; Dalcher, Debra
Subject: OIAI new draft document

Marguerite,

Take a look at the attached version. In this version I tried to incorporate Peter's comments. Your review and edits are appreciated.

I am flexing tomorrow. You can reach me by email or phone at Ex. 6 - Personal Privacy. I won't be available from 9:30am- noon.

Thanks,

Elineth Torres

OAQPS

919-541-4347

From: McLamb, Marguerite
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: Marguerite McLamb[McLamb.Marguerite@epa.gov]
From: McLamb, Marguerite
Sent: Mon 11/27/2017 9:24:26 PM
Subject: OIAI 11.27.2017
OIAI 11.27.2017.docx

To: Rodman, Sonja[Rodman.Sonja@epa.gov]
From: McLamb, Marguerite
Sent: Wed 12/20/2017 3:39:47 PM
Subject: FW: Revised draft of OIAI guidance memorandum
dshRevisedOIAImemorandum.docx

****

Marguerite E. McLamb
Policy Advisor
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Research Triangle Park, NC 27711
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Fax: (919) 541-4991
mclamb.marguerite@epa.gov

From: Dalcher, Debra
Sent: Tuesday, December 19, 2017 12:24 PM
To: Jordan, Scott; Rodman, Sonja; McLamb, Marguerite
Cc: Lamason, Bill; Culligan, Kevin
Subject: Fw: Revised draft of OIAI guidance memorandum

Hi everyone,

Ex. 5 - Deliberative Process

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

Ex. 5 - Deliberative Process

To: Rodman, Sonja[Rodman.Sonja@epa.gov]
From: McLamb, Marguerite
Sent: Tue 11/21/2017 8:28:55 PM
Subject: FW: What has caused us to revisit the policy.docx
What has caused us to revisit the policy.docx

From: Dalcher, Debra
Sent: Tuesday, November 21, 2017 3:27 PM
To: McLamb, Marguerite <McLamb.Marguerite@epa.gov>
Subject: What has caused us to revisit the policy.docx

A few updates to Kevin's doc.

Debra

To: Marguerite McLamb[McLamb.Marguerite@epa.gov]
From: McLamb, Marguerite
Sent: Tue 11/21/2017 7:56:27 PM
Subject: 2007 OIAI proposal
2007 OIAI NPRM.pdf

****

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: McLamb, Marguerite
Importance: Normal
Subject: Accepted: OIAI
Start Date/Time: Tue 11/21/2017 4:30:00 PM
End Date/Time: Tue 11/21/2017 5:00:00 PM

To: Rodman, Sonja[Rodman.Sonja@epa.gov]
From: McLamb, Marguerite
Sent: Tue 11/21/2017 2:13:36 PM
Subject: Re: OIAI

I tried to set up something from my phone last night but couldn't figure out how to check your availability. This time is fine, and I actually have 10:30 open too; for some reason, my calendar wasn't updating removed meetings.

On Nov 21, 2017, at 9:11 AM, Rodman, Sonja <Rodman.Sonja@epa.gov> wrote:

<mime-attachment.ics>

From: Johnson, Tanya
Location: RTP-OAQPS-D210A-SPPD-IO-only/RTP-OAQPS-BLDG-D/Restricted
Importance: Normal
Subject: 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

POC:

Elineth Torres

Sent: Fri 12/8/2017 4:21:49 PM
Subject: Draft once-in-always-in memo

Hi Bill. I've attached a draft of the once-in memo. We've been working on it with OGC. In order to begin working on the draft, we assumed a direction on some issues. Obviously, when we have the briefing with you we intend to cover these issues and present you with options and go from there. Having said that, any input would be appreciated. ☺

From: RTP-OAQPS-D210A-SPPD-IO-only/RTP-OAQPS-BLDG-D/Restricted
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

Your request was accepted.

Sent by Microsoft Exchange Server 2016

To: Tsirigotis, Peter[Tsirigotis.Peter@epa.gov]
From: Brooks, Phillip
Sent: Fri 12/8/2017 7:24:16 PM
Subject: Re: Memo

Can I share with Apple?

Sent from my iPhone

On Dec 8, 2017, at 2:23 PM, Tsirigotis, Peter <Tsirigotis.Peter@epa.gov> wrote:

My staff and ogc staff. Ed suggested I send it to the two of you to see if you guys had any heartburn. Call me if you want to discuss.

From: Brooks, Phillip
Sent: Friday, December 08, 2017 2:19 PM
To: Tsirigotis, Peter <Tsirigotis.Peter@epa.gov>
Subject: Re: Memo

Who wrote this?

Sent from my iPhone

On Dec 8, 2017, at 1:56 PM, Tsirigotis, Peter <Tsirigotis.Peter@epa.gov> wrote:

Attached is our draft once in always in memo.

Please don't share.

Any comments? By the end of the year?

<OIAI Revision Memo_12.8.17.Wehrum Draft_no signatory.docx>

To: Tsirigotis, Peter[Tsirigotis.Peter@epa.gov]
From: Dunham, Sarah
Sent: Tue 1/30/2018 8:29:30 PM
Subject: Fwd: Pruitt: 'Once in, always in' rule change was policy decision

The article I referred to...
Begin forwarded message:

From: "POLITICO Pro Energy Whiteboard" <politicoemail@politicopro.com>
Date: January 30, 2018 at 11:05:13 AM EST
To: <dunham.sarah@epa.gov>
Subject: Pruitt: 'Once in, always in' rule change was policy decision
Reply-To: "POLITICO subscriptions" <reply-fe9613737762057d73-1158628_HTML-784727323-1376319-0@politicoemail.com>

By Annie Snider

01/30/2018 11:02 AM EDT

EPA Administrator Scott Pruitt said this morning that last week's decision to end Clinton-era "once in, always in" Clean Air Act requirements was not made by the agency's air experts.

"That was a decision that was made outside of the program office of air. It was a policy office decision," Pruitt told the Senate Environment and Public Works Committee.

The comment came in response to a question from Sen. Tom Carper of Delaware, the top Democrat on the committee, about whether the agency conducted an analysis of the potential health effects of the policy change.

"I find it incredible that EPA did this seemingly without knowing or caring about potential health effects of its action," Carper said.

The "once in always in," codified in now revoked 1995 policy guidance, was designed to prevent major emitters like power plants and factories from getting out of tough requirements to limit their toxic air emissions. It required that any emitter that qualified as a "major" source of hazardous air pollutants would permanently be subject to that tougher standard to comply with MACT rules, even if its emissions dropped low enough to be considered an "area" source subject to fewer or no requirements.

To view online:
https://www.politicopro.com/energy/whiteboard/2018/01/pruitt-once-in-always-in-rule-change-was-policy-decision-503744

Was this Pro content helpful? Tell us what you think in one click.

Yes, very	Somewhat	Neutral	Not really	Not at all

You received this POLITICO Pro content because your customized settings include: Energy: all whiteboards. To change your alert settings, please go to https://www.politicopro.com/settings

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This email was sent to dunham.sarah@epa.gov by: POLITICO, LLC 1000 Wilson Blvd. Arlington, VA, 22209, USA

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To: Tsirigotis, Peter[Tsirigotis.Peter@epa.gov]
From: Page, Steve
Sent: Mon 10/2/2017 12:10:25 PM
Subject: Fwd: ECOS is forming a workgroup on Once In, Always In

Begin forwarded message:

From: "Shaw, Betsy" <Shaw.Betsy@epa.gov>
Date: September 29, 2017 at 5:54:30 PM EDT
To: "Dunham, Sarah" <Dunham.Sarah@epa.gov>, "Page, Steve" <Page.Steve@epa.gov>, "Koerber, Mike" <Koerber.Mike@epa.gov>
Cc: "Lewis, Josh" <Lewis.Josh@epa.gov>
Subject: Fwd: ECOS is forming a workgroup on Once In, Always In

Let's discuss next week.

Sent from my iPhone

Begin forwarded message:

From: "Barbery, Andrea" <Barbery.Andrea@epa.gov>
Date: September 29, 2017 at 1:32:54 PM PDT
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

To: Tsirigotis, Peter[Tsirigotis.Peter@epa.gov]
From: Gunasekara, Mandy
Sent: Sat 10/28/2017 2:58:18 AM
Subject: Re: Touch base

Thanks Peter! I hope you enjoy the parties. I'll shoot you a note if I have some time this weekend. If not, then Monday.
Best,
Mandy

Sent from my iPhone

On Oct 27, 2017, at 7:24 PM, Tsirigotis, Peter <Tsirigotis.Peter@epa.gov> wrote:

Hey Mandy, if you still want to talk and sometime this weekend works better for you, let me know and I'm sure we can find some time. Otherwise have a great weekend. Ex. 6 - Personal Privacy

Ex. 6 - Personal Privacy

On Oct 27, 2017, at 8:57 AM, Gunasekara, Mandy <Gunasekara.Mandy@epa.gov> wrote:

Hey Peter,

I'm writing you a note so I don't forget, but I'd like to talk to you about a few items:

- NSPS for the Sunflower plant;
- Brick MACT; and
- Once in Always In

I'll try to touch base before the SSM discussion.

Best (and Happy Friday!),

Mandy

Mandy M. Gunasekara

Senior Policy Advisor for Office of Air and Radiation

Office of the Administrator

US Environmental Protection Agency

To: Tsirigotis, Peter[Tsirigotis.Peter@epa.gov]
From: South, Peter
Sent: Thur 1/25/2018 9:18:35 PM
Subject: FRN OIAI ready for your review and electronic signature
FRN Notice of Memo Avail OIAI 01_25_18.docx

Pete South

OAR/OAQPS/IO

U.S. EPA

office: 919 541-5359

cell: 919 599-7213

To: Tsirigotis, Peter[Tsirigotis.Peter@epa.gov]
From: Lamason, Bill
Sent: Thur 1/25/2018 1:37:54 PM
Subject: FW: Paragraph_01_25_2018.docx
Paragraph_01_25_2018.docx

FYI. B

From: Lamason, Bill
Sent: Thursday, January 25, 2018 8:36 AM
To: Harlow, David <harlow.david@epa.gov>
Subject: Paragraph_01_25_2018.docx

David, Some edits to consider. Thanks! Bill

To: Tsirigotis, Peter[Tsirigotis.Peter@epa.gov]
From: Wehrum, Bill
Sent: Fri 12/8/2017 12:28:27 PM
Subject: Re: OIAI

That would be good. Can you send me a draft of whatever you are working on, if such a thing currently exists?

_____
Bill Wehrum
Assistant Administrator
Office of Air and Radiation
U.S. Environmental Protection Agency
(202) 564-7404

On Dec 8, 2017, at 7:26 AM, Tsirigotis, Peter <Tsirigotis.Peter@epa.gov> wrote:

> We are ready. We have a meeting request in. I'll check on the timing. Sounds like we should try to do it next week.
>
> On Dec 8, 2017, at 7:22 AM, Wehrum, Bill <Wehrum.Bill@epa.gov> wrote:
>
> > Peter - Can we talk about once in, always in sometime soon? Seems to be pretty low hanging fruit?
> >
> > _____
> > Bill Wehrum
> > Assistant Administrator
> > Office of Air and Radiation
> > U.S. Environmental Protection Agency
> > (202) 564-7404

From: RTP-OAQPS-D210A-SPPD-IO-only/RTP-OAQPS-BLDG-D/Restricted
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

Your request was accepted.

Sent by Microsoft Exchange Server 2016

From: RTP-OAQPS-D210A-SPPD-IO-only/RTP-OAQPS-BLDG-D/Restricted
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

Your request was accepted.

Sent by Microsoft Exchange Server 2016

From: Vetter, Rick
Location: RTP-OAQPS-D210A-SPPD-IO-only/RTP-OAQPS-BLDG-D/Restricted
Importance: Normal
Subject: Declined: 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

I have a conflict that I cannot change.

From: Jordan, Scott
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

To: Brooks, Phillip[Brooks.Phillip@epa.gov]
From: Tsirigotis, Peter
Sent: Fri 12/8/2017 7:23:17 PM
Subject: RE: Memo

My staff and ogc staff. Ed suggested I send it to the two of you to see if you guys had any heartburn. Call me if you want to discuss.

From: Brooks, Phillip
Sent: Friday, December 08, 2017 2:19 PM
To: Tsirigotis, Peter <Tsirigotis.Peter@epa.gov>
Subject: Re: Memo

Who wrote this?

Sent from my iPhone

On Dec 8, 2017, at 1:56 PM, Tsirigotis, Peter <Tsirigotis.Peter@epa.gov> wrote:

Attached is our draft once in always in memo.

Please don't share.

Any comments? By the end of the year?

<OIAI Revision Memo_12.8.17.Wehrum Draft_no signatory.docx>

To: Edward Messina (Messina.Edward@epa.gov)[Messina.Edward@epa.gov]; Phillip Brooks (Brooks.Phillip@epa.gov)[Brooks.Phillip@epa.gov]
From: Tsirigotis, Peter
Sent: Fri 12/8/2017 6:56:38 PM
Subject: Memo
OIAI Revision Memo_12.8.17.Wehrum Draft_no signatory.docx

Attached is our draft once in always in memo.

Please don't share.

Any comments? By the end of the year?

To: Wehrum, Bill[Wehrum.Bill@epa.gov]
From: Tsirigotis, Peter
Sent: Fri 12/8/2017 5:35:30 PM
Subject: Once-in-always-in draft memo
OIAI Revision Memo_12.8.17.Wehrum Draft_no signatory.docx
ATT00001.txt

Hi Bill attached is our latest draft. We thought we would get started even though decisions haven't been made (we now have a briefing on your calendar).

PS. It would be great to chat CPP and Uinta at some point.

To: South, Peter[South.Peter@epa.gov]
From: Tsirigotis, Peter
Sent: Wed 1/24/2018 10:31:23 PM
Subject: RE: Left couple min early. Ex. 6 - Personal Privacy

Janet left once in always in memo on your chair. Talk to mike tomorrow.

Ex. 6 - Personal Privacy

-----Original Message-----
From: South, Peter
Sent: Wednesday, January 24, 2018 4:49 PM
To: Tsirigotis, Peter <Tsirigotis.Peter@epa.gov>
Subject: Left couple min early. Ex. 6 - Personal Privacy

Pete South
OAR/OAQPS/IO
US EPA
o: 919 541-5359

From: Tsirigotis, Peter
Location: WJC-N 5400 + RTP Video
Importance: Normal
Subject: Accepted: Once In, Always In Comms Discussion
Start Date/Time: Wed 1/24/2018 9:45:00 PM
End Date/Time: Wed 1/24/2018 10:15:00 PM

To: Brooks, Phillip[Brooks.Phillip@epa.gov]
From: Tsirigotis, Peter
Sent: Fri 12/8/2017 7:26:32 PM
Subject: RE: Memo

Yes.

From: Brooks, Phillip
Sent: Friday, December 08, 2017 2:24 PM
To: Tsirigotis, Peter <Tsirigotis.Peter@epa.gov>
Subject: Re: Memo

Can I share with Apple?

Sent from my iPhone

On Dec 8, 2017, at 2:23 PM, Tsirigotis, Peter <Tsirigotis.Peter@epa.gov> wrote:

My staff and ogc staff. Ed suggested I send it to the two of you to see if you guys had any heartburn. Call me if you want to discuss.

From: Brooks, Phillip
Sent: Friday, December 08, 2017 2:19 PM
To: Tsirigotis, Peter <Tsirigotis.Peter@epa.gov>
Subject: Re: Memo

Who wrote this?

Sent from my iPhone

On Dec 8, 2017, at 1:56 PM, Tsirigotis, Peter <Tsirigotis.Peter@epa.gov> wrote:

Attached is our draft once in always in memo.

Please don't share.

Any comments? By the end of the year?

<OIAI Revision Memo_12.8.17.Wehrum Draft_no signatory.docx>

To: Wehrum, Bill[Wehrum.Bill@epa.gov]
From: Tsirigotis, Peter
Sent: Fri 12/8/2017 12:53:48 PM
Subject: Re: OIAI

I will send you the latest version today before noon.

On Dec 8, 2017, at 7:28 AM, Wehrum, Bill <Wehrum.Bill@epa.gov> wrote:

> That would be good. Can you send me a draft of whatever you are working on, if such a thing currently exists?
>
> _____
> Bill Wehrum
> Assistant Administrator
> Office of Air and Radiation
> U.S. Environmental Protection Agency
> (202) 564-7404
>
> On Dec 8, 2017, at 7:26 AM, Tsirigotis, Peter <Tsirigotis.Peter@epa.gov> wrote:
>
> > We are ready. We have a meeting request in. I'll check on the timing. Sounds like we should try to do it next week.
> >
> > On Dec 8, 2017, at 7:22 AM, Wehrum, Bill <Wehrum.Bill@epa.gov> wrote:
> >
> > **Ex. 5 - Deliberative Process**
> >
> > _____
> > Bill Wehrum
> > Assistant Administrator
> > Office of Air and Radiation
> > U.S. Environmental Protection Agency
> > (202) 564-7404

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: Letendre, Daisy[letendre.daisy@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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