

# "Once In, Always In" Policy/Clean Air Act: January 25th U.S. Environmental Protection Agency Memorandum Announcing Withdrawal



**Walter Wright, Jr.**  
wwright@mwlaw.com  
(501) 688.8839

01/29/2018

The United States Environmental Protection Agency ("EPA") Assistant Administrator for Air, William L. Wehrum, issued a January 25th Memorandum rescinding the agency's Clean Air Act "Once In, Always In" policy.

The Memorandum is titled:

*Reclassification of Major Sources as Area Sources Under Section 112 of the Clean Air Act ("2018 Memorandum")*.

The Memorandum rescinds a prior 1995 EPA guidance Memorandum titled:

*Potential to Emit for MACT Standards – Guidance on Timing Issues (May 16, 1995) ("1995 Memorandum")*.

The *1995 Memorandum* was authored by John Seitz, Director, Office of Air Quality Planning and Standards.

The *1995 Memorandum* provided that facilities that are major sources of hazardous air pollutants on the first compliance date of the standard are required to comply permanently with the Maximum Available Control Technology requirements. As a result, a source is required to comply with such emission standards even if it subsequently reduces emissions below the major source thresholds that originally triggered the standards.

The *2018 Memorandum* notes as a rationale for the withdrawal of the *1995 Memorandum* that:

... 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 pollutant (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.

EPA states it will soon publish a Federal Register Notice to take comments on adding regulatory text that will reflect the agency's plain language reading of the statute discussed in the *Memorandum*.

[A copy of the 2018 Memorandum can be downloaded here.](#)

