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U.S. Environmental Protection Agency Withdrawal of "Once In, Always In" Policy: California Attorney General D.C. Circuit Court of Appeals Petition for Review

04/17/2018

The California Attorney General filed an April 10th Petition for Review ("Petition") in the United States Court of Appeals for the District of Columbia Circuit challenging a recently issued United States Environmental Protection Agency ("EPA") memorandum rescinding its Clean Air Act "Once In, Always In" policy.

The memorandum being challenged is titled:

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

The California Attorney General filed the Petition on behalf of the State of California by and through the California Air Resources Board.

The EPA Memorandum rescinds the prior 1995 guidance titled "Potential to Emit for MACT Standards – Guidance on Timing Issues" (May 16, 1995).

The 2018 Memorandum noted as a rationale for the withdrawal of the 1995 guidance 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 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 copy of the Petition can be downloaded here.](#)