

# U.S. Environmental Protection Agency "Once In, Always In" Policy Change: Environmental Organizations File Judicial Challenge



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A number of environmental organizations filed a March 26th 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 organizations challenging the *Memorandum* include:

- California Communities Against Toxics
- Environmental Defense Fund
- Environmental Integrity Project
- Louisiana Bucket Brigade
- Natural Resources Defense Council
- Ohio Citizen Action
- Sierra Club

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

The 1995 guidance provided that facilities that are the major sources of hazardous 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 would be required to comply with such emission standards even if it subsequently reduces emissions below the major source threshold that originally triggered the standards.

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 the 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.

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