

VIA ELECTRONIC FILING

Anne Idsal, Acting Assistant Administrator
Office of Air and Radiation
U.S. Environmental Protection Agency
1301 Constitution Ave NW
Washington, DC 20460

Sept. 24, 2019

RE: Docket ID No. EPA-HQ-OAR-2019-0282 Reclassification of Major Sources as Area Sources Under Section 112 of the Clean Air Act

Dear Acting Administrator Idsal,

On behalf of the Pennsylvania Chamber of Business and Industry (PA Chamber), the largest, broad-based business advocacy organization in the Commonwealth, representing nearly 10,000 member companies of all sizes and commercial and industrial categories, thank you for the opportunity to comment on the Environmental Protection Agency's (EPA) Reclassification of Major Sources as Area Sources Under Section 112 of the Clean Air Act Proposed Rule (84 Fed. Reg. 36,304 July 29, 2019).

The PA Chamber's interest in this matter is to represent the perspective of its members who operate and manage, or who advise on matters of environmental compliance the owners and management of, manufacturing and industrial facilities operating in the state of Pennsylvania who are obligated to comply with the Clean Air Act's requirements. As a matter of broad policy, the PA Chamber believes that environmental excellence and economic growth are mutually-compatible objectives, and that environmental and natural resources laws and programs should be framed and implemented to concurrently meet these twin objectives. The PA Chamber advocates for environmental laws, regulations and policies that:

- are based on sound science and a careful assessment of environmental objectives, risks, alternatives, costs, and economic and other impacts;
- set environmental protection goals, while allowing and encouraging flexibility and creativity in their achievement;
- allow market-based approaches to seek attainment of environmental goals in the most cost-effective manner;
- measure success based on environmental health and quality metrics rather than fines and penalties;
- do not impose costs which are unjustified compared to actual benefits achieved;
- do not exceed federal requirements unless there is a clear, broadly accepted, scientifically-based need considering conditions particular to Pennsylvania; and
- develop a private-public relationship which promotes working together to meet proper compliance.

As part of a sustainable economic and environmental policy, the PA Chamber supports natural resources management laws and programs that encourage the scientifically-sound conservation, stewardship and development of Pennsylvania's natural resources (including water, timber, minerals, oil and gas) for the benefit of all Pennsylvanians. Additionally, the PA Chamber supports the voluntary pollution prevention and sustainability measures, and environmental management systems utilized by companies to efficiently

and effectively meet environmental regulatory requirements and utilize resources to meet their financial and business objectives.

The PA Chamber advocates for cost effective air laws, regulations and policies based on sound principles that are reasonable and technologically and economically feasible to protect and enhance public health and the environment without placing in-state businesses at a competitive disadvantage. With regard to greenhouse gas emissions, the PA Chamber supports efforts in Pennsylvania which balance societal environmental, energy, and economic objectives, fit rationally within any finally adopted and applicable national or international strategy, and capitalize on the availability of Pennsylvania's diverse natural resources to facilitate economic development in the Commonwealth.

With specific regard to this rulemaking, which in effect repeals the long-standing "Once In, Always In" approach for major sources' hazardous air pollutants and replaces it with a sensible regulatory approach that conforms to the statutory language of the Clean Air Act, the PA Chamber supports this change and has commented in the past in several forums that such a change is reasonable and warranted. The PA Chamber has noted this issue in testimony before the House of Representatives Committee on Energy and Commerce Subcommittee on Environment on Feb. 16, 2017¹ and in response to the EPA's 2017 solicitation for comment from stakeholders and the public regarding modernizations of the agency's regulatory framework.²

More than two decades ago, EPA issued a policy directive that effectively established that any facility categorized as a major source for hazardous air pollutants – that is, a facility that had a potential to emit of more than 10 tons per year of any single HAP or 25 tons per year of any combination of HAPS at the time of applicability of that Maximum Available Control Technology (MACT) requirement – the individual air emission units that became subject to the MACT requirement, while the facility was classified as major MACT source must remain subject to the more stringent major source requirements. The Once In, Always In policy created a time cutoff that doesn't exist in statute and was imposed on sources even if the source has subsequently reduced HAP emissions below major source thresholds. While the facility may be reclassified as an Area Source, the individual air emission units remain subject to the major HAP source requirements.

The lower emissions rates for these units would likely also be maintained through various other applicable federal and state air quality program requirements. Major sources of air emissions often have other enforceable emission limits such as those from the New Source Review program or from state air permits. EPA found, for example, that 34 sources had taken the same permit limits with their permitting authorities after having applied to reclassify from major sources to area sources following the issuance of the 2018 Wehrum memo.^{3,4}

¹ Testimony submitted on behalf of the Pennsylvania Chamber of Business and Industry Before the United States House of Representatives Committee on Energy and Commerce Subcommittee on Environment, Feb. 16, 2017. https://www.pachamber.org/advocacy/legislative_agenda/communications/House_EC_Sub_Enviro_Modernizing_Environmental_Laws.pdf

² Pennsylvania Chamber of Business and Industry Letter to EPA re: Evaluation of Existing Regulations, May 11, 2017. https://www.pachamber.org/advocacy/legislative_agenda/communications/EPA_Reg_Review_Letter_051017.pdf

³ Memorandum: Reclassification of Major Sources as Area Sources under Section 112 of the Clean Air Act (January 25, 2018) https://www.epa.gov/sites/production/files/2018-01/documents/reclassification_of_major_sources_as_area_sources_under_section_112_of_the_clean_air_act.pdf

⁴ Documentation of the emission impacts analysis for the proposed rulemaking "Reclassification of Major Sources as Area Sources under Section 112 of the Clean Air Act. <https://www.regulations.gov/document?D=EPA-HQ-OAR-2019-0282-0143>

In Section 112 of the Clean Air Act, the definitions for ‘area’ source and ‘major’ source do not include any time cutoff that would freeze the source indefinitely in one category or the other. Other parts of Section 112 such as the definition for ‘new’ and ‘existing’ source include specific temporal criteria, which supports the proposed rule interpretation that Congress deliberately excluded any temporal language in the definitions of area and major sources.

The proposed rule provides a reading of the statute that is more consistent with the statute’s purpose. In Clean Air Act Section 101 is makes the declaration that the statute is designed to “to protect and enhance the quality of the Nation's air resources so as to promote the public health and welfare and the productive capacity of its population.” The proposed rule is consistent with the purpose of the Act and the NESHAP program as it would incentivize major sources to reduce their emissions below the 10 tpy/25 tpy threshold so that they could be reclassified as area sources. Under the prior Once In, Always In policy, a source would not be compelled to reduce its emissions any further than what was required by the MACT standard. The proposed rule policy would provide some recordkeeping and reporting requirement cost reductions if a source is able to reduce their emissions and reclassify as an area source.

This is a change which has national and bipartisan support. The Environmental Council of the States, a national non-profit association of state environmental officials, repeatedly affirmed since 2000 a resolution for EPA to change this policy by providing for exceptions to the “Once In, Always In” Policy for sources that have continuously demonstrated actual emissions below major source thresholds. Under such an exception, and as EPA is proposing with this rule, those sources would not be required to install or operate MACT controls for HAPS, instead accepting a federally enforceable limit similar to a synthetic minor limit. ECOS stated in its resolution that such a change will continue to ensure emissions reductions as envisioned under Section 112 while significantly reducing administrative and reporting burdens.⁵ Such a change is long overdue, would be strongly welcomed by industry, and would not jeopardize public health or any region of the country’s ability to secure attainment of National Ambient Air Quality Standards.

In closing, thank you for the opportunity to comment on this matter and for your consideration of our perspective.

Sincerely,



Kevin Sunday
Director, Government Affairs

⁵ Per discussions with ECOS executive staff, this resolution expired in 2018 as members did not renew it out of a stated understanding that the current EPA administration was moving forward to resolve the issue through the revoking of the 1995 Seitz memo and a subsequent rulemaking.