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NORTH CAROLINA

Once In Always In - OIAI
2018 Annual SBEAP Training
Alexandria, Virginia May 1-3, 2018

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Department of Environmental Quality

Once In Always In

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What We Will Cover

- **Definition**
- **History**
- **Arguments Against**
- **NC Shot At Removal**
- **Superseding Guidance**
- **Complications**
- **Audience Participation**

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Once In Always In Policy Defined

John Seitz Memo – May 16, 1995

Potential to Emit for MACT Standards -- Guidance on Timing Issues

"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"

https://www.epa.gov/sites/production/files/2015-08/documents/pteguid.pdf

Once In Always In Policy Cont'd

"… sources should not be allowed to avoid compliance with a standard after the compliance date, even through a reduction in potential to emit."

"EPA plans to follow this guidance memorandum with rulemaking actions to address these issues."

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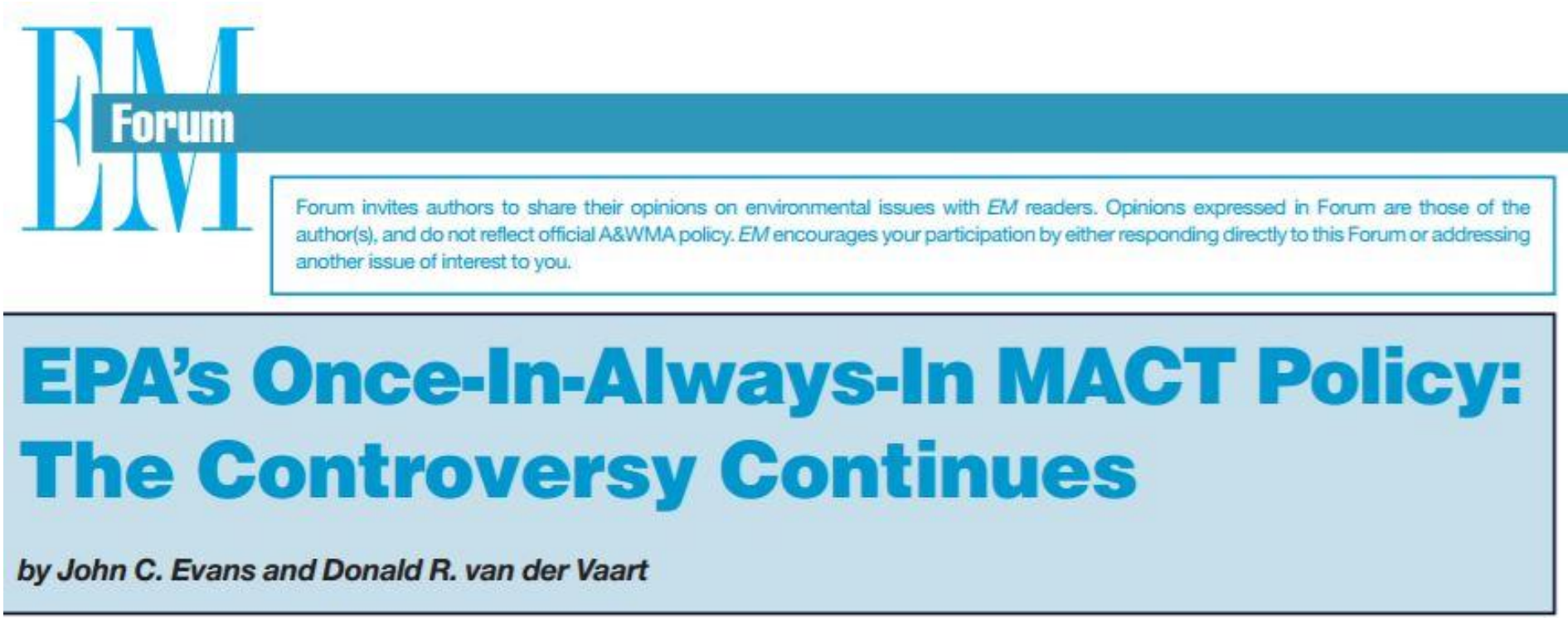
The Preeminent Disputation



EM Forum

Forum invites authors to share their opinions on environmental issues with *EM* readers. Opinions expressed in Forum are those of the author(s), and do not reflect official A&WMA policy. *EM* encourages your participation by either responding directly to this Forum or addressing another issue of interest to you.

EPA's Once-In-Always-In MACT Policy: The Controversy Continues

by John C. Evans and Donald R. van der Vaart

http://pubs.awma.org/gsearch/em/2003/2/evans.pdf

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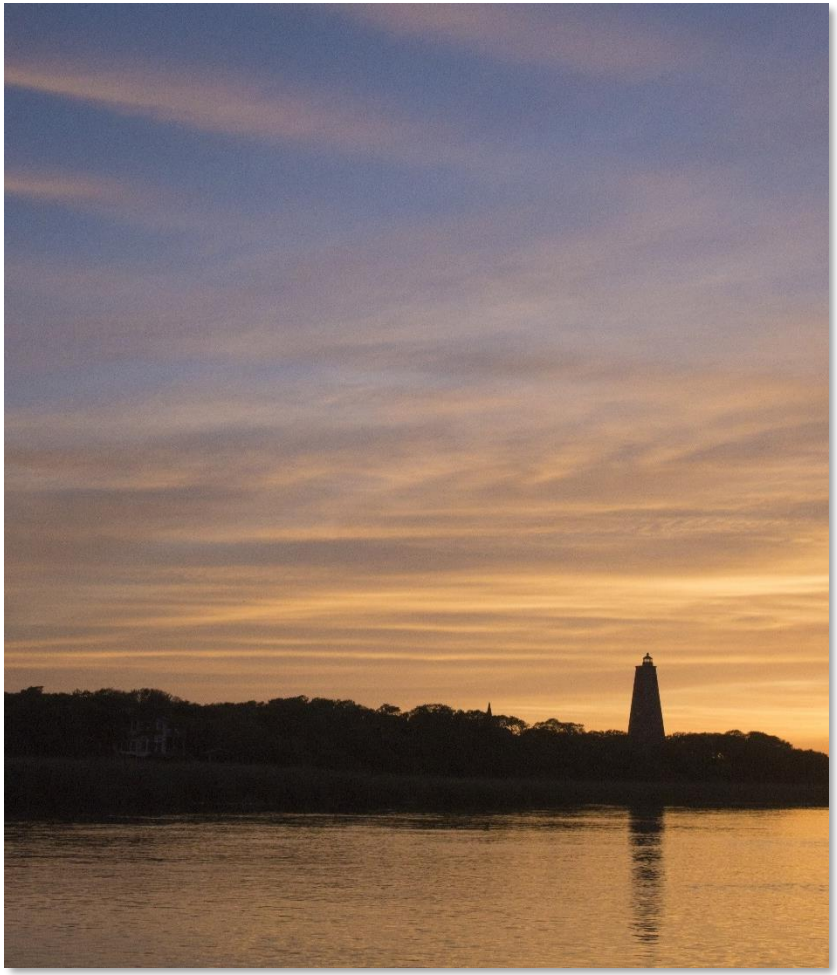
Arguments Against OIAI



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- No regulatory basis
- Contradicts “major source” definition
  - No temporal component
- No rulemaking pursued
- 112(j) MACT Hammer proposal changed to allow backsliding
- Discourages emission reductions
- Problems with Proposed Pollution Prevention

OIAI P2 Option Proposed Rules

- EPA Proposed rulemaking on two occasions to modify a policy
- 68 FR 26249; May 15, 2003
  - Eliminate ALL HAPs
  - P2 Alternative Compliance Requirements
- and 72 FR 69; January 3, 2007
  - Admits to many past mistakes
  - Restores EPA's faith in States and facilities

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NC Boat Builder OIAI Case

Heard from an old client that I was a “Doer” & wondered if I could find him some relief
Title V → Synthetic Minor w/ MACT → Synthetic Minor w/out MACT like a greenfield

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OIAI funeral dirge could be heard last year

TRUMP EFFECT

- Different Applicability Determinations
- Complete removal now allowed
- NC pulled a brick out of the wall
- Future EPA Officials had OIAI in their sights (You'll meet him Thursday)

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Our Comments on OIAI

Many facilities (autobody shops, printers, small spray coaters, etc.) have the potential-to-emit (PTE) hazardous air pollutants (HAPs) above major source thresholds, but have small actual emissions. Under EPA's OIAI policy, a facility covered by a MACT standard under 112(d) of the Clean Air Act that does not obtain a federally enforceable state operating permit limiting its operations below the major source level, must obtain a complex, costly, and stringent Title V permit. Furthermore, this option is only available during a very short window of time following the beginning of the rulemaking and before the first substantive compliance date. The OIAI policy creates a competitive disadvantage for these facilities when compared to an exact duplicate greenfield (new) facility. This results in a lifetime punitive sentence on the affected business that never actually exceeded emission limitations contained in the regulations. Many small businesses were erroneously permitted as affected sources under a MACT. Many more reduced their HAP emissions below MACT thresholds, or even completely eliminated the equipment or materials containing HAPs. But all of these businesses must, under the OIAI policy, continue to demonstrate compliance with the regulations. This usually entails very complex recordkeeping and annual certification, at a minimum. In addition, current policy does not provide an incentive for reducing air emissions once the threshold that triggers applicability is reached. Changing this policy — to allow for businesses that makes process changes that permanently reduce their emissions — to fall to a lower regulatory tier would — 1. provide incentive for businesses to make capital investment to pursue those changes; 2. reduce the regulatory impact, particularly in the form of recordkeeping and reporting; 3. spur innovation in seeking out new and different processes that ultimately result in lower emissions from the business; and 4. make measurable improvements in air quality.

"Once In, Always In" Policy for Major Source Maximum Available Control Technology Standards (Seitz Memorandum)[13]

> "The EPA 'Once In, Always In' policy is unfair to the regulated community and unrealistic in implementation, and it should be rescinded. This policy is a barrier to achieving greater environmental protection… In the alternative to rescission, the EPA is encouraged to provide clarity, environmental incentives, and national consistency through rulemaking."
>
> - **Maine Department of Environmental Protection**

Illustrative state environmental agency comments:

- Arizona Department of Environmental Quality, Attachment (pg. 1)
- Connecticut Department of Energy and Environmental Protection, pg. 2
- Georgia Environmental Protection Division, pg. 1
- Maine Department of Environmental Protection, pg. 1, 3 – 5
- Minnesota Pollution Control Agency, pg. 6
- North Carolina Division of Air Quality, pg. 36
- Ohio Environmental Protection Agency, pg. 6 – 7
- South Dakota Department of Environment and Natural Resources, pg. 4

Other relevant comments: Environmental Council of the States, pg. 2; Northeast States for Coordinated Air Use Management, pg. 2; National Steering Committee, Small Business Environmental Assistance Program, pg. 4 – 5; Association of Air Pollution Control Agencies, pg. 4

[13] Memorandum can be found here.

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.

Anybody Suing?... SURE

- **Petition For Review**

EDF ENVIRONMENTAL DEFENSE FUND

Finding the ways that work

NRDC

SIERRA CLUB

et al.

Emissions Will Go (Down or Up)

Complications

- Fees
- Timing
- Unintended Consequences
-
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-

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