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U.S. Environmental Protection Agency
EPA Docket Center
Mailcode 2822IT
Attention: Docket ID No. EPA-HQ-OAR-2019-0282
1200 Pennsylvania Avenue, NW
Washington, DC 20460

**Re: Reclassification of Major Sources as Area Sources Under Section 112 of the Clean Air Act,
 EPA-HQ-OAR-2019-0282**

Dear Docket Clerk:

GPA Midstream Association (“GPA Midstream”) appreciates this opportunity to submit comments to the U.S. Environmental Protection Agency (“EPA”) on its proposed rule, Reclassification of Major Sources Under Section 112 of the Clean Air Act, 84 Fed. Reg. 36,304 (July 26, 2019), to formally eliminate the “once in, always in” interpretation of the Section 112.

GPA Midstream has served the U.S. energy industry since 1921. GPA Midstream is composed of nearly 80 corporate members that are engaged in the gathering and processing of natural gas into merchantable pipeline gas, commonly referred to in the industry as “midstream activities.” Such processing includes the removal of impurities from the raw gas stream produced at the wellhead as well as the extraction for sale of natural gas liquid products (“NGLs”) such as ethane, propane, butane, and natural gasoline or in the manufacture, transportation, or further processing of liquid products from natural gas. GPA Midstream membership accounts for more than 90% of the NGLs produced in the United States from natural gas processing.

GPA Midstream has been advocating for the elimination of EPA’s Once-In, Always-In policy due to its unnecessary imposition of compliance costs and burdens even after sources implement emissions reductions. *See* GPA Midstream Comments on Executive Order 13777: Enforcing the Regulatory Reform Agenda, Docket ID No. EPA-HQ-OA-2017-0190-56067 (May 15, 2017) at 4. As explained in those comments, which are incorporated here by reference, the midstream sector frequently changes out equipment at gas gathering sites. Often, these engines may be smaller or more efficient than the original engines, resulting in reduced hazardous air pollutant emissions. *Id.* at 4. Yet, under the Once-In, Always-In policy, when lower polluting engines lower emissions at a gas gathering site below the major source threshold, the operator would still be burdened with significant compliance costs for the remainder of the source’s operating life. *Id.* at 4. Therefore, GPA Midstream is pleased that EPA has listened to stakeholders and is proposing to eliminate a policy that hinders emission reductions and fails to recognize the benefits of projects that reduce hazardous air pollutants.

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Moreover, as explained in more detail below, the proposed rule is fully consistent with the governing statutory direction in Section 112 of the Clean Air Act. Further, contrary to speculative claims, the proposed rule will not result in increased hazardous air pollutant emissions. On the contrary, the proposed rule will create incentives and a framework to further reduce emissions.

Comments

I. The Proposed Rule is Consistent with Section 112 of the Clean Air Act

GPA Midstream agrees that allowing major sources to convert to area sources is consistent with the plain language of Section 112. This language is not complicated. A “major source” is one that “emits or has the potential to emit 10 tons per year or more of any hazardous air pollutant or 25 tons per year or more of any combination of hazardous air pollutants.” 42 U.S.C. § 7412(a)(1). An “area source” is “any stationary source of hazardous air pollutants that is not a major source.” *Id.* § 7412(a)(2). Section 112 contains no language locking a source into either major source or area source status for the duration of its operating lifetime. Maintaining the Once-In, Always-In policy would require an act of Congress amending the definitions of “major source” and “area source” under Section 112. Thus, the proposed rule wisely eliminates a policy that exceeded EPA’s statutory authority and contradicted Section 112 by classifying sources with a potential to emit less than the major source statutory threshold as major sources.

EPA implemented the Once-In, Always-In policy through a 1995 guidance document, “Potential to Emit for MACT Standards – Guidance on Timing Issues,” John Seitz, Director, Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency (May 16, 1995) (“Seitz Memo”). This policy dictated that, once the applicable MACT standard’s first compliance date passed, any major source must remain classified as a major source regardless of its actual emissions or potential to emit. Seitz Memo at 5. The Seitz Memo did not explain how this policy was consistent with the language or structure of Section 112 or identify any ambiguity in the statute requiring agency interpretation. *Id.* Instead, it imposed this policy so that sources would “not be allowed to avoid compliance with a standard after the compliance date, even through a reduction in potential to emit.” *Id.* But this reasoning is entirely circular; in determining which standard should apply to a major source that reduces its potential to emit, the Seitz Memo begins with the premise that the major source standard must always apply and that changing the applicable standard in accordance with a reduced potential to emit must mean non-compliance with the major source standard. As a result, the Seitz Memo contradicts the statutory definitions of both a “major source” and an “area source” under 42 U.S.C. §§ 7412(a)(1), (2) by impermissibly broadening the former and narrowing the latter.

II. Predictions of Emissions Increases are Speculative, Ignoring Operating Practices and Incentives

Critics of EPA’s new policy have frequently claimed that interpreting Section 112 in a manner consistent with its plain language will lead to dramatic emission increases. None of these claims are supported by any evidence. For instance, the Union of Concerned Scientist purported to demonstrate that, because of EPA’s elimination of the Once-In, Always-In interpretation, “many states will see large increases in toxic emissions.” Union of Concerned Scientists, EPA Decision Increases Hazardous Air Pollution Risk, *available at*, <https://www.ucsusa.org/science-and->

[democracy/epa-decision-increases-hazardous-air-pollution-risk](#). But this supposed analysis never identifies how or why emissions would increase and appears to assume that sources will violate area source emission standards due to decreased monitoring frequencies. This analysis, in a nutshell, claims to prove that emissions will increase by beginning with an unexplained assumption that emissions will increase.

Similarly, a “report” by the Environmental Integrity Project assumed that emissions at 12 facilities would quadruple because those facilities would inexplicably shut down emission controls to save some money. Environmental Integrity Project, *Toxic Shell Game* (March 26, 2018), available at, <http://www.environmentalintegrity.org/wp-content/uploads/2017/02/Toxic-Shell-Game.pdf>. Contrary to the Environmental Integrity Project’s assumptions, hazardous air pollutant controls cannot be toggled off and on like a light switch. Emission controls are often used for both hazardous and criteria air pollutants and commonly require hours to shut down and start up, disrupting operations in the process. For smaller facilities, such as those closer to the area source threshold, compliance is often based on using certain types of low-emitting equipment. Environmental Integrity Project never explains why these facilities would needlessly scrap functioning equipment under the proposed rule. Importantly, its “Toxic Shell Game” report contains no actual data or analysis regarding the subject 12 facilities. Instead of examining actual operations, hazardous air pollutant emissions, and emission controls at these facilities, it simply assumes that they will choose to increase emissions up to the area source threshold. This is inconsistent with actual operating practice. Sources rarely operate facilities up to their potential to emit thresholds for a number of business reasons (avoiding strain on equipment, periodic lack of demand, *etc.*) and, for regulatory reasons, to leave an adequate margin to ensure continuous compliance. Believing that any facility will consistently operate right on the borders of the area source threshold belies an inexperience with actual industry practices.

Not only are claims of emission increases based on speculation, they are inconsistent with operator incentives. The Once-In, Always-In interpretation discourages changes in operations that reduce hazardous air pollutant emissions, such as the use of more efficient dehydrators. Investment in lower-emitting equipment cannot be justified solely or largely on environmental compliance grounds when installing that equipment will lead to no reduction in compliance burdens. Thus, determinations as to when equipment should be replaced or whether they should be replaced with lower-emitting equipment do not account for any benefit from reducing a source’s potential to emit below the major source threshold. This is counter-productive to the goal of cost-effectively reducing hazardous air pollutant emissions. The proposed rule allows for a trade-off where major sources would undertake enforceable emission reductions in exchange for reducing burdensome testing, monitoring, recordkeeping, and reporting requirements. These reduced burdens are especially appealing to major sources that are close to the 10 ton/25 ton threshold, where they could realize long-term cost savings by finding ways to reduce hazardous air pollutant emissions by a few tons per year.

III. Experience with Other Minor Source Programs Demonstrate that Fears of Emissions Increases are Unsubstantiated

Eliminating the Once-In, Always-In policy allows Section 112 major sources to opt for the equivalent of a synthetic minor permit under the New Source Review/ Prevention of Significant Deterioration (“NSR/PSD”) program. Under both scenarios, a major source takes legally and

practically enforceable steps to reduce their potential to emit below a major source threshold. *Compare* 84 Fed. Reg. 36,336 (proposed 40 C.F.R. § 63.1(c)(6)) *with* 40 C.F.R. § 52.21(b)(16) (allowing for synthetic minor source permits that consider enforceable limits on operating rate, hours of operation, or both). The benefit to the source in both cases is a significant reduction in administrative burden and source operators routinely reduce emissions to obtain synthetic minor permits. The NSR/PSD synthetic minor source option has not led to emissions increases and, indeed, synthetic minor permits are wholly uncontroversial. Critics of the proposed rule and its preceding guidance memorandum have never explained why eliminating the Once-In, Always-In policy would lead to dramatic emission increases when the synthetic minor option has not.

In fact, many states already have experience with regulating what would otherwise be major sources under Section 112 as area sources through enforceable emission limitations. After issuing the Seitz Memo, EPA routinely approved State Implementation Plans with hazardous air pollutant synthetic permit programs under Section 112(l). *See, e.g.*, 60 Fed. Reg. 32,606 (June 23, 1995) (final interim approval of synthetic minor source program for California's Bay Area Air Quality Management District without adverse comments); 60 Fed. Reg. 36,065 (July 13, 1995) (final interim approval of synthetic minor source program for several counties in California); 61 Fed. Reg. 4,217 (Feb. 5, 1996) (final interim approval of synthetic minor source program for California's Mojave Desert Air Quality Management District without adverse comments).

Using the Bay Area Air Quality Management District regulations as an example, sources are already free to convert their status from a major source of hazardous air pollutants to a synthetic minor source. *See* Bay Area Air Quality Management District Regulation 2, Rule 6 § 2-6-310 ("Any major facility which elects to accept enforceable permit conditions such that the facility becomes a synthetic minor facility, and is not otherwise subject to major facility review, shall apply for a synthetic minor operating permit."); *id.* § 2-6-230 (defining a "synthetic minor facility" as a "facility which, by imposition of enforceable permit conditions, has its potential to emit limited below the threshold levels for a major facility as defined by Section 2-6-212..."); *id.* § 2-6-212 (defining "major facility" for hazardous air pollutants as one with "the potential to emit 10 tons per year or more of a single hazardous air pollutant [or] 25 tons per year or more of a combination of hazardous air pollutants..."). There is no limitation on major sources of hazardous air pollutants in the Bay Area Air Quality Management District from converting to synthetic minor sources and yet GPA Midstream is unaware of dramatic emissions increases within the air district. The proposed rule does nothing more than allow the same type of enforceable conversion to area source status that has been available for decades in the Bay Area Air Quality Management District.

GPA Midstream appreciates the opportunity to submit these comments in response to EPA's proposed rule and is standing by to answer any questions that the agency may have.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Matt Hite". The signature is written in a cursive, flowing style.

Matt Hite

Vice President of Government Affairs
GPA Midstream Association

