

Missouri Air Compliance Seminar



Air Toxics as a Key Enforcement and Compliance Issue

REGFORM – November 8, 2023

Presented by Andrew Brought



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Air Toxics

- National Enforcement and Compliance Initiatives
 - Air Toxics in Overburdened Communities
- Back to “Once In, Always In” for NESHAP Applicability?
- Reconsideration of the Fugitive Emissions Rule

NECI – Air Toxics



NECI – Reducing Air Toxics in Overburdened Communities

- Target, investigate, and address noncompliance with HAP regulations
- Focus on sources of HAPs in communities already highly burdened with pollution impacts
- Leaks, flares, and excess emissions

Air Toxics Enforcement

- May 2023 - Refinery – Whiting, Indiana
- EPA and DOJ Complaint alleged violations
 - Benzene Waste Operations NESHAP (BWON), Part 61, Subpart FF
 - New Source Performance Standards (NSPS) for VOC emissions from Petroleum Refinery Wastewater Systems at 40 C.F.R. Part 60, Subpart QQQ (QQQ)

Air Toxics Enforcement

- Refinery – Whiting, Indiana
 - \$40 million penalty, comprised of a civil penalty and stipulated penalties for violations of an earlier settlement.
 - \$5 million SEP
 - Capital investments with an estimated value of \$197 million

Air Toxics Enforcement

- EPA Press Release
 - “This settlement advances my office’s environmental justice initiative by providing cleaner air and reducing the negative health impacts on the low income and minority residents who live near BPP’s refinery,”
 - “The Whiting Refinery is surrounded by communities with environmental justice concerns. This settlement is part of EPA’s and the Justice Department’s ongoing focus on assisting communities that have been historically marginalized and disproportionately exposed to pollution.”

Air Toxics Enforcement

- Natural Gas Processors
 - April 2023 - EPA and DOJ announced three separate settlements
 - \$9.25 million in civil penalties
 - \$16 million combined on injunctive relief requirements at 26 gas processing plants and 91 compressor stations:



NESHAP Applicability – Once In, Always In?



EPA Proposed Rule - Once In, Always In for Reclassified Sources from Major Source to Area Source

- EPA Proposed Rule – 88 Fed. Reg. 66336 (Sept. 27, 2023)
- Comments Due – November 13, 2023

NESHAP PTE Definition 1994

- In 1994, the EPA promulgated the definition of PTE in the General Provisions of the NESHAP at 40 CFR 63.2, which defined PTE in terms based on the major source definition in section 112(a)(1) of the CAA.
- Synthetic Minor
 - Sources that would otherwise qualify as major sources are able to obtain enforceable permit limitations from the EPA or delegated authority containing physical limits or operational limits to bring their emission below the major source threshold.

1995 Seitz Memorandum

- Shortly after the EPA began promulgating individual NESHAP standards following the 1990 CAA Amendments, the Agency received multiple requests to clarify when a major source of HAP could avoid CAA section 112 requirements applicable to major sources by taking enforceable limits on its PTE below the major source thresholds.
- In response, the EPA issued a 1995 a memorandum that provided guidance on three timing issues related to avoidance of CAA section 112 requirements for major sources

1995 Seitz Memorandum – Once In, Always In

- Once In, Always in for NESHAP Applicability
- Under this interpretation, facilities that are major sources on the first substantive compliance date of an applicable major source NESHAP were required to comply permanently with that major source standard even if the source was subsequently to become an area source by limiting its PTE.

2007 Proposal to Replace Once In, Always In

- In that proposal, the EPA proposed that a major source that is subject to a major source MACT standard would no longer be subject to that standard if the source were to become an area source through an enforceable limitation on its PTE for HAP.
- Under the 2007 proposal, major sources could take such limits on their PTE and obtain “area source” status at any time and would not be required to have done so before the first compliance date

2018 Wehrum Memo Withdraws Once In, Always In

- On January 25, 2018, the EPA issued a memorandum from William L. Wehrum, Assistant Administrator of the Office of Air and Radiation, to the EPA Regional Air Division Directors titled “Reclassification of Major Sources as Area Sources Under Section 112 of the Clean Air Act” (MM2A Memorandum) withdrawing the OIAI policy.
- OIAI policy articulated in the 1995 Seitz Memorandum was contrary to the plain language of the CAA and, therefore, must be withdrawn.

2020 Final Rule Withdraws Once In, Always In

- The EPA published the 2020 MM2A final rule (85 FR 73854) on November 19, 2020, which formalized the withdraw of the OIAI policy first introduced in the 2018 MM2A Memorandum.

New Administration – E.O. 13990

- On January 20, 2021, President Biden issued Executive Order 13990 Protecting Public Health and the Environment and Restoring Science to Tackle the Climate Crisis.

Controls required, EPA calls “Safeguards”

Controls required to maintain historical emission reductions:

- Facility seeking to reclassify from Major source to Area source must include controls
 - (1) Continue to employ the emission control methods (e.g., control device and/or emission reduction practices) required under the major source NESHAP,
 - (2) Control methods prescribed for reclassification under a specific NESHAP; or
 - (3) Emission controls that the permitting authority has reviewed and approved

Federally Enforceable

- Sources that reclassify from major to area source status, would need to take federally enforceable limitations on PTE as a condition of reclassification.
- All other NESHAP sources would continue to be governed by the general PTE definition under 40 CFR 63.2, which does not require federal enforceability.

Effective Date???

- Sources that have reclassified since January 25, 2018, Wehrum Memo
 - Before Final Rule – effective date within three years of publication of Final Rule to include safeguards and federally enforceable permit conditions
 - After Final Rule – effective upon reclassification

What the Proposal Does Not Address

- PTE limits taken by synthetic minor sources that are not reclassified
- PTE limits for NSR/PSD applicability
- PTE limits for Title V applicability
- EPA plans to address definition of PTE in NESHAP, NSR, and Title V programs in separate rulemaking or guidance

Reconsideration of the Fugitive Emissions Rule



Repeal of Fugitive Emissions Rule?

- EPA proposal to repeal the Fugitive Emissions Rule
- 87 Fed. Reg. 62322 (Oct. 14, 2022)
- Comments were due by Feb. 14, 2023

2008 Fugitive Emissions Rule

- Modifications of Existing Major Sources
- Fugitive emissions from sources not in a listed category are not included in determining whether a physical or operational change results in a major modification

- Coal cleaning plants (with thermal dryers);
- Kraft pulp mills;
- Portland cement plants;
- Primary zinc smelters;
- Iron and steel mills;
- Primary aluminum ore reduction plants;
- Primary copper smelters;
- Municipal incinerators capable of charging more than 50 tons of refuse per day;
- Hydrofluoric, sulfuric, or nitric acid plants;
- Petroleum refineries;
- Lime plants;
- Phosphate rock processing plants;
- Coke oven batteries;
- Sulfur recovery plants;
- Carbon black plants (furnace process);
- Primary lead smelters;
- Fuel conversion plants;
- Sintering plants;
- Secondary metal production plants;
- Chemical process plants— excluding ethanol
- Fossil-fuel boilers
- Petroleum storage and transfer units
- Taconite ore processing plants;
- Glass fiber processing plants;
- Charcoal production plants;
- Fossil fuel-fired steam electric plants;
- Any other stationary source category being regulated under section 111 or 112 of the Act

Questions?



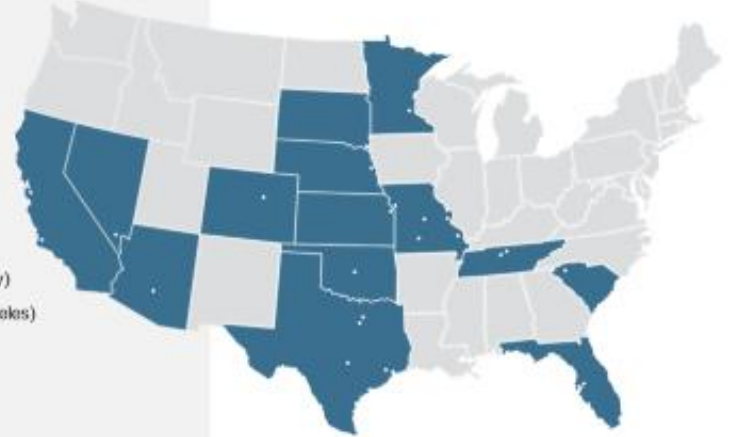
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