

Guidance for Rescission of the Environmental Protection Agency’s “Once In, Always In (OIAI)” Policy for Maximum Achievable Control Technology (MACT) Standards

On January 25, 2018, the Environmental Protection Agency (EPA) issued a memo rescinding their 1995 “Once In, Always In” policy for major sources subject to 40 CFR Part 63 MACT standards. In the 2018 memo, EPA states that a MACT source previously classified as major which reduces its potential to emit (PTE) to below MACT major source thresholds will no longer be subject to the applicable major source MACT (effectively becoming an area source). The MACT major source thresholds are 10 tons per year (tpy) of any single hazardous air pollutant (HAP) or 25 tpy of any combination of HAPs. An area source is any source that is not a major source.

The EPA has not provided detailed guidance to clarify the process to transition a previously-major-source MACT facility to a non-MACT facility or to an area source MACT facility. Until the EPA provides additional guidance, the Texas Commission on Environmental Quality (TCEQ) will apply the following basic criteria for situations where an affected major source is seeking to become a minor or area source.

Permitting and Documentation Requirements for MACT Major-to-Minor Transition

Current MACT major sources which seek to transition to non-major status for purposes of MACT applicability **must continue to comply with all applicable requirements** of the relevant major source MACT, and applicable permits, until conditions 1-4 below have been satisfied:

- 1) Any necessary new source review (NSR) permit revisions, authorizations, or certifications have been obtained, as needed to establish a federally enforceable PTE below the MACT major source thresholds and remove any permit conditions which require compliance with the relevant major source MACT standardⁱ;
- 2) Any necessary Federal Operating Permit (FOP) revisionsⁱⁱ have been obtained, as needed to remove any permit terms or citations which require compliance with the relevant major source MACT standardⁱ;
- 3) Any necessary physical or operational changes to reduce PTE have been completed as represented in the relevant permit actions above; and
- 4) The owner or operator is maintaining records at the site which demonstrate that the updated, federally-enforceable PTE is below the MACT major source thresholds. These records should be available upon request.

After becoming a non-major source, the source must also maintain any records required by the previously-applicable MACT for at least the period specified in the MACT standard which previously applied, or the period specified in the Federal Operating Permit, whichever is longer.

ⁱ If the reduction in PTE results in applicability of an area source MACT, the NSR and title V permits (if applicable) should be revised to include appropriate conditions and citations. For example, if a boiler subject to 40 CFR Part 63, Subpart DDDDD reduces its PTE to below major source thresholds it would no longer be subject to MACT DDDDD. However, it now could be applicable to 40 CFR Part 63, Subpart JJJJJ for Industrial, Commercial and Institutional Boilers at Area Sources.

ⁱⁱ Some sites which reduce their PTE and become area sources may no longer be subject to Title V requirements and therefore may apply to terminate their Federal Operating Permit. However, there are several area source categories that are subject to Title V regardless of major source status. Refer to the following website: www.tceq.texas.gov/assets/public/permitting/air/Guidance/Title_V/non_major.pdf