

February 22, 2018

William Wehrum, Assistant Administrator
Environmental Protection Agency
1200 Pennsylvania Avenue Northwest
Washington, DC 20460

Dear Assistant Administrator Wehrum:

I'm writing on behalf of The Minnesota Pollution Control Agency (MPCA) to express thanks and support for the U.S. Environmental Protection Agency's (EPA) January 26, 2018, announcement to withdraw its "once-in always-in" (OIAI) policy for major sources of air pollution under the Clean Air Act. The MPCA supports this change because it gives large emitters of hazardous air pollutants (HAPs) the incentive to pursue pollution prevention efforts, while reducing regulatory burdens. The MPCA suggested EPA review the OIAI policy in our May 2017 comments on EPA's Existing Environmental Regulations (Docket ID No. EPA-HQ-OA-2017-0190). Thank you for acting on this in a timely fashion.

OIAI has been a disincentive to industries in pursuing pollution prevention opportunities, because it did not reward process changes or reformulations that would permanently reduce the use and emissions of HAPs. Under OIAI, even if a facility subject to a maximum achievable control technology (MACT) standard were to drastically and permanently reduce its emissions, it would still be subject to the requirement to obtain a Title V permit, and significant recordkeeping, monitoring, and control requirements, creating a situation where facilities do not have an incentive to invest in pollution-reduction technologies. With this change of policy, a facility that was long ago subject to a MACT standard can now evaluate and implement permanent changes with the confidence that, if successful, they can be relieved of the substantial regulatory requirements of a MACT standard.

I urge EPA to quickly resume its rulemaking started in 2007 to codify this process within federal rules. Withdrawing the OIAI policy without accompanying rulemaking will not lessen but rather significantly increase the permitting burden for both states and industry. Your memo states that EPA is eliminating the OIAI policy and in its place "...the source takes an enforceable limit on its potential to emit (PTE) hazardous air pollutants (HAPs) below the major source thresholds..." Without rulemaking, this policy will both unnecessarily consume industry resources in preparing permit applications, and put unnecessary pressure on states' air permitting systems to reissue permits with new federally enforceable conditions. The policy's current approach simply places additional demands on states and industry to negotiate permits on a case-by-case basis, a very costly and time-consuming process.

Rulemaking would assure a streamlined permitting process for industries as well as states, and provide a consistent playing field for businesses across the country. This is especially important if EPA wants states to work primarily with the regional offices to implement this policy change. The MPCA recommends that EPA conduct rulemaking to establish permanent minimum requirements on how states are to limit PTE for HAPs in permits such that the limits are federally enforceable as a practical matter. Without minimum criteria, companies that operate stationary sources in multiple states continue to be subject to different permitting requirements.

Alternatively, EPA could amend each National Emission Standards for Hazardous Air Pollutant Sources so that each standard has federally enforceable conditions for becoming an area source.

Additionally, for the forthcoming rulemaking I urge you to consider the Environmental Council of States' Resolution 00-12 "Change to United States Environmental Protection Agency's Once In Always In Policy"¹. This resolution was first adopted in 2000, and has remained an important issue that has been subject to much discussion and negotiation already.

The MPCA supports and appreciates the EPA's recent announcement to rescind its "once-in always-in" policy as a first step. OIAI must be replaced expeditiously with rulemaking that will address the confusion and additional permitting burden created with the rescission. We look forward to working with EPA to develop and implement effective rules to protect the health of Minnesotans and our environment in the most efficient and effective manner.

Please contact MPCA Assistant Commissioner J. David Thornton at j.david.thornton@state.mn.us or at 651-757-2018, if you have any questions regarding this letter.

Sincerely,



John Linc Stine
Commissioner

JLS/AJ:vs

cc: Todd Parfitt, ECOS, President
Becky Keogh, ECOS, Vice President
Jim Macy, ECOS, Secretary
Carolyn Hanson, ECOS, Deputy Director

¹<https://www.ecos.org/wp-content/uploads/2016/02/Resolution-00-12-Once-in-2015v.pdf>