



November 13, 2023

The Honorable Michael Regan, Administrator
U.S. Environmental Protection Agency
William J. Clinton Building
1200 Pennsylvania Avenue, NW
Washington, DC 20460

Sent via Regulations.gov
Re: Review of Final Rule Reclassification of Major Sources as Area Sources Under
Section 112 of the Clean Air Act
Docket ID No. EPA-HQ-OAR-2023-0330

Dear Administrator Regan:

The undersigned national public health, medical and nursing organizations support EPA taking actions to review the 2020 Reclassification of Major Sources as Area Sources Under Section 112 of the Clean Air Act (MM2A) rule. We urge the agency to strengthen its proposal to ensure that no community is exposed to increases in hazardous air pollutants compared to levels from before the 2020 MM2A rule was finalized.

Health organizations strongly opposed the 2020 rule, citing the health impacts of hazardous air pollutants and sharing grave concerns that the revisions would fail to follow the requirements of the Clean Air Act's intended purpose of protecting human health. We appreciated President Biden's commitment to address the rule on January 20, 2021 in Executive Order 13990. While EPA's current proposal is long delayed, we appreciate the agency taking action.

Below in our comments, we identify important ways that the proposal should be improved. In short, we are concerned that EPA is not taking the opportunity to finalize strong, truly enforceable action by fully repealing the 2020 MM2A rule. Instead, the agency seems to be taking a middle-ground approach that could potentially lead to an inequitable distribution of health benefits (and a perpetuation of health harms in certain states). We therefore ask EPA to:

- Repeal the 2020 MM2A and restore the Once-In Always-In policy

- If EPA chooses not to repeal MM2A, the maximum achievable reduction of 7 pollutants specified under Section 112(c)(6) of the Clean Air Act to 90% of current levels each must be followed.
- EPA should also revisit the interim guidance that removed “federally” from “federally enforceable” in this rulemaking.

Below are more details on our concerns and recommendations.

The Once in Always In policy was successful at improving air quality.

There are 188 toxic air pollutants that are regulated by EPA as required by the Clean Air Act. These pollutants, known as hazardous air pollutants (HAPs), include carcinogens like asbestos, benzene and formaldehyde, acid gases like hydrochloric acid, and neurotoxins like toluene and polychlorinated biphenyls (PCBs). Our organizations have long advocated for protective measures to reduce these emissions because of the many health harms they bring to the patients and populations we serve. Actions taken by EPA, including requirements on polluting sources, have kept millions of tons of this pollution out of the air.

In 1995, a memo issued by then-Office of Air Quality Planning and Standards Director John Seitz required major sources to install and use pollution control measures that would lower emissions, and required sources to continue operating those pollution controls even if the facility’s emissions levels drop to levels aligned with other non-major sources. Essentially, once a source is identified as a major source, it is always identified as a major source because, adhering to the definition of a major source under the Clean Air Act, it has the *potential* to be a major source.

The Clean Air Act is clear in its definition of what a major source is. It defines major source as any stationary source or group of stationary sources that emits or has the *potential* to emit 10 tons per year or more of any of the now 188 hazardous air pollutants or 25 tons per year or more of any combination of hazardous air pollutants. An EPA report to Congress in 2014 found that from 1990 to 2012, this Once-In Always-In policy cut an estimated 1.5 million tons per year of hazardous air pollutants from stationary sources and roughly 3 million tons of criteria pollutants as co-benefits.¹

The reversal of the Once in Always In policy in 2020 was a threat to health.

EPA, in 2020, reversed this policy despite its success at improving air quality. This reversal gave facilities the green light to increase their emissions of hazardous air pollutants, provided they did not cross the line again to be a major source. The proposal was deeply flawed: it did not include an adequate assessment to estimate the health impacts the rule would have. Further, only four hazardous air pollutants were mentioned in the regulatory impact analysis, and more weight was given to economic costs or benefits than to health. The proposal appeared more concerned with how much money

¹ U.S. Environmental Protection Agency. National Air Toxics Program: The Second Integrated Urban Air Toxics Report to Congress. EPA-456/R-14-001. August 21, 2014.

businesses would save than with the health impacts of potential increases in toxic pollutants.

Despite improvements, hazardous air pollution is still threatening health and requires clean-up.

These highly toxic chemicals that threaten human health can include corrosive substances like hydrogen chloride or hydrogen fluoride; carcinogens like formaldehyde, benzene and toluene; organic compounds such as dioxins – the HAP that was of great concern after the East Palestine derailment in early 2023; metals such as arsenic; and neurotoxins like mercury and lead. The health impacts of HAPs range from cancers like leukemia, respiratory and neurological effects, impacts to the central nervous system included depression, tremors, impaired hearing and speech, liver damage and more.

Some HAPs, such as acid gases, mercury, and sulfur dioxide, have immediate impacts on individuals, neighborhoods and towns located near power plants. However, other pollutants, such as dioxins and metals, can travel much farther from the polluting source. When they adhere to fine particles, these pollutants can remain in the air for more than a week and be carried away by winds to distant locations. Toxic air pollutants are dangerous to public and human health both near and far from their source.

Many HAPs are also precursors to ozone and particulate matter. Particulate matter causes heart attacks, worsens asthma, and causes other respiratory challenges like coughing, difficulty breathing and decreases in lung function. EPA has also made the determination that particulate matter is likely to cause cancer.² Ozone, or smog, is a powerful lung irritant. When inhaled, it reacts with the delicate lining of the airways, causing inflammation. Ozone has been linked to asthma onset in children, the development of chronic obstructive pulmonary disease (COPD), increased risk of metabolic disorders, developmental harm and possible cardiovascular effects.

Our organizations support stronger measures to clean up hazardous air pollutants as well as existing measures to prevent emissions levels from worsening. EPA must ensure that its actions with this proposal return the protections that were in place before the 2020 reversal of the Once-In Always-In policy. Requiring major sources to continue to run pollution controls is still necessary to address HAP levels and improve health.

People of color, Indigenous peoples and communities with low wealth are most impacted by air pollution and disproportionately face increased health threats.

Polluting sources tend to be sited in areas where people of color, Indigenous populations and low-income families live. These environmental justice communities have been on the receiving end of a disproportionate level of pollution. Any action by

² U.S. EPA. Supplement to the 2019 Integrated Science Assessment for Particulate Matter (Final Report, 2022). U.S. Environmental Protection Agency, Washington, DC, EPA/635/R-22/028, 2022.

EPA to reduce pollution and improve air quality should place these communities and equity at the forefront.

According to the American Lung Association's 2023 "State of the Air" report, 64 million people of color live in counties that received failing grades for ozone and or particle pollution. Over 13 million people of color live in counties that failed all 3 pollution grades tracked in the report.³ In 2019, National Tribal Air Association (NTAA) estimated that over 200 federally recognized Tribes have reservation lands within a 50-mile radius of a coal or gas power plant.⁴ NTAA was opposed to the 2019 MM2A proposal, citing the failure of EPA to adequately confer with Tribes and to analyze the impacts a reversal of the Once-In Always-In policy would have on Tribal communities.⁵

Communities of color and Tribal communities need a full reversal of the MM2A rule, combined with additional steps to reduce the emissions that have been devastating their neighborhoods for far too long. A full reversal is an opportunity for the Biden administration to demonstrate its stated commitment to righting environmental injustices.

Strengthening the proposal will provide more safeguards and assurances that health won't be threatened by polluters hoping to game the system.

The concern with reclassification from a major to area source is that polluters running pollution controls to achieve a reclassification could stop running those controls as often if they were not required to, thereby increasing emissions levels. As long as those levels stayed just under the threshold between area and major source, the source could remain classified as a lower-emitting area source. This would reduce the air quality and health benefits gained from requiring pollution controls.

We appreciate that the proposal includes defined "safeguards" that would require a source that reclassifies to an area source to not emit beyond what would have been allowed under a major source status. However, we believe there are opportunities to strengthen the proposal to even further safeguard health.

EPA is seeking comment on whether to prevent any source subject to a major source NESHAP from reclassifying to an area source. The undersigned organizations strongly support this option, which would signal a return to the Once-In Always-In policy.

³ American Lung Association. "State of the Air" 2023. Lung.org/sota

⁴ National Tribal Air Association (October 31 2018). Re: Docket ID No. EPA-HQ-OAR-2017-0355, Emission Guidelines for Greenhouse Gas Emissions from Existing Electric Utility Generating Units; Revisions to Emission Guideline Implementing Regulations; Revisions to New Source Review; <https://7vv.611.myftpupload.com/wp-content/uploads/2019/12/NTAA-Comment-letter-on-ACE-Rule-10.31.18.pdf>

⁵ National Tribal Air Association (September 24, 2019). Re: Docket ID No. EPA-HQ-OAR-2019-0282, Reclassification of Major Sources as Area Sources Under Section 112 of the Clean Air Act; <https://www.ntatribalair.org/wp-content/uploads/2019/12/NTAA-Comment-Letter-Once-In-Always-In.pdf>

If EPA decides not to follow our recommendation of repealing the 2020 MM2A in its entirety, EPA should explicitly prevent the sources of 7 specific toxics from avoiding meeting standards by reclassifying to an area source. The Clean Air Act singles out 7 particularly pervasive and dangerous air toxics (including alkylated lead compounds, mercury, polycyclic organic matter), requiring sources to ensure that 90% of the aggregate emissions for each pollutant are reduced to the maximum achievable degree of reduction.

A success of the Clean Air Act is the opportunity it provides for impacted communities to engage in environmental health decision-making that impacts their health and well-being. This engagement can and should include the notice of public comment, the option to seek enforcement and object to weak limits and the ability for citizen suit against polluters that violate standards. Ensuring that this final rule is publicly and federally enforceable will ensure that all HAP avoidance limits are enforceable by EPA, impacted communities and states. In the proposal, EPA notes that consideration of the definition will occur in a later rulemaking, but the undersigned health organizations strongly urge EPA make this definition change as part of the final rule.

The Clean Air Act requires that EPA protect health from the impacts of air pollution. Holding polluting sources accountable for reducing their emissions is necessary to fulfill that mandate. We thank EPA for taking action to reverse previous departure in that responsibility and urge the agency to strengthen this proposal by fully repealing the MM2A. We also strongly urge EPA to finalize this rule as soon as possible.

Sincerely,

Alliance of Nurses for Healthy Environments
Allergy & Asthma Network
American Academy of Pediatrics
American Lung Association
American Public Health Association
American Thoracic Society
Asthma and Allergy Foundation of America
Medical Society Consortium on Climate and Health
National Association of Pediatric Nurse Practitioners
National Environmental Health Association
Physicians for Social Responsibility