

**Comments of Environmental Defense Fund at EPA Public Hearing on Proposed Rule Entitled “Reclassification of Major Sources as Area Sources Under Section 112 of the Clean Air Act,” 84 Fed. Reg. 36,304 (July 26, 2019)**

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Good morning. My name is Lance Bowman, and I am a legal fellow in the U.S. Clean Air Program at Environmental Defense Fund (EDF). I am here on behalf of our over 2.5 million members and supporters, many of whom work, live, and breathe near facilities that could increase harmful air pollution under this Proposal.

EPA’s proposal is contrary to the Clean Air Act, and poses unacceptable risks of exposing families and communities to higher levels of dangerous pollutants such as benzene and mercury. Worse still, EPA has already begun implementing the harmful policy described in this proposal under a January 2018 memorandum from former Assistant Administrator Bill Wehrum, issued without any opportunity for public comment or any prior analysis of air pollution and health impacts. We urge EPA to immediately cease implementation of the January 2018 Wehrum memorandum, which has already allowed at least 34 facilities to escape clean air protections for large sources, and we urge EPA to withdraw this reckless and unlawful proposal.

Today’s proposal would undermine section 112 of the Clean Air Act, a pillar of our nation’s clean air laws. Section 112 requires EPA to protect the public against 187 of the most dangerous pollutants known to science—including carcinogenic and toxic pollutants that harm human health even at low levels of exposure. Section 112 directs EPA to issue rigorous clean air standards, based on “maximum achievable control technology” (or “MACT”), for “major” industrial sources that exceed pollution thresholds described in the Act. Congress explicitly required these standards to minimize—and, where feasible, eliminate—hazardous air pollution.

Since 1995, EPA has interpreted section 112 to require that any major source comply with MACT standards for as long as it operates, even if compliance with the MACT standard reduces its emissions to below the thresholds. This “once in, always in” policy is essential to ensure that Congress’ direction to minimize or eliminate hazardous air pollution is satisfied. Without this policy, major sources whose emissions drop below the major source threshold could then claim to be smaller “area” sources, subject to less stringent standards or even no standards at all. EPA’s proposal to withdraw the “once in” policy would open the door to precisely this sort of gaming. Moreover, it would undermine the ability of communities to access information about air pollution from nearby facilities—and to hold those sources accountable—by allowing major sources to opt out of the monitoring, recordkeeping, and reporting requirements that are associated with MACT standards.

EPA’s own analysis of the Proposal indicates that it could have far-reaching, adverse impacts. According to the Proposal, over 3,900 major sources across the country could be eligible to reclassify as area sources. Across just three industrial source categories EPA examined, EPA found the potential for an additional 2.4 million pounds per year of hazardous air pollutant emissions resulting from this policy.<sup>1</sup>

Last year, EDF also analyzed the potential impacts of this new policy in the Houston-Galveston region. EDF identified as many as 26 major industrial facilities that could escape MACT standards under the new policy, potentially resulting in 784,000 pounds of additional hazardous air pollution from these facilities. These impacts would fall especially hard on vulnerable communities, as half of these facilities are located in areas where more than one in five residents live in poverty, and where people of color make up at least 30 percent of the population.<sup>2</sup>

When EPA issued a similar proposal over a decade ago, state environmental agencies, pollution control experts, and EPA’s own regional staff warned that reversing the “once in, always in” policy would have detrimental impacts on air pollution and health. EPA’s regional offices, for example, commented that the proposal “would be detrimental to the environment and undermine the intent of the MACT program,” and that the “cost of the increased [hazardous air pollutant] emissions would be borne by the communities surrounding the sources.”<sup>3</sup>

For these reasons, EPA must withdraw this harmful and misguided Proposal—and immediately cease implementing the January 2018 memorandum that has already allowed dozens of industrial sources to opt out of rigorous MACT standards. In addition, we urge EPA to hold additional public hearings in communities that could be directly affected by this Proposal. Given that the Proposal undermines protections that have been in place for almost a quarter-century and could lead to increased hazardous air pollution at thousands of major industrial facilities, it is vital that the public have ample opportunity to weigh in.

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<sup>1</sup> See 84 Fed. Reg. at 36,332, Table 3 (showing range of potential hazardous air pollutant increases in tons per year).

<sup>2</sup> See Tomás Carbonell, Rama Zakaria, & Surbhi Sarang, *Pruitt’s New Air Toxics Loophole*, Environmental Defense Fund at 2, 9-10 (Apr. 10, 2018), <https://www.edf.org/sites/default/files/documents/OIAI-Houston%20case%20study%20FINAL.pdf>.

<sup>3</sup> Memorandum from Michael S. Bandrowski, Chief, Air Toxics, Radiation and Indoor Office for Region IX, to David Cozzie, Group Leader, Office of Air Quality Planning and Standards 3-4 (Dec. 13, 2005).