



The Trump administration is lifting key controls on toxic air pollution

The EPA says its reading of the Clean Air Act means polluters can be held to lower standards.

By Umair Irfan | Jan 26, 2018, 4:40pm EST



Coke producers in East Chicago, Indiana, were fined \$5 million by the Environmental Protection Agency this week for air pollution violations. | US Army Corps of Engineers, Chicago District

The Environmental Protection Agency just took a dramatic step toward deregulating some major sources of toxic air pollution, which could have huge implications for public health.

Under **Section 112** of the Clean Air Act, the EPA is required to regulate facilities that emit one or more of **189** hazardous air toxics like benzene, dioxin, and lead that cause health problems such as cancer and birth defects.

A facility like a chemical plant or a factory is classified as “major” by the Clear Air Act if it has the potential to emit more than 10 tons of an individual toxic chemical or 25 tons of a combination of toxics into the air per year. Those that cross this line have to deploy the “maximum achievable control technology” (MACT) to reduce pollution as much as possible with the best hardware that’s available.

Pollution sources that are regulated under this major sources standard are subject to these regulations indefinitely. But the new EPA guidance, detailed in a **memo** published Thursday, ends the “once in, always in” policy based on a “plain language reading” of the Clean Air Act. That means that once a pollution source brought its air emissions below the threshold for a major source, it would be held to the standard for an “area source,” or anything that isn’t a “major source,” instead.

In other words, once a “major source” reduces its pollution below the line, it doesn’t have to keep using the best equipment to continue reducing pollution. Crucially, this rating downgrade means that air pollution from some of these facilities would suddenly be completely unregulated.

The EPA did not respond to a request for comment at the time of filing.

“The possibility seems very likely that some [downgraded] sources could actually increase their emissions as long as they don’t hit the cap,” said Janice Nolen, assistant vice president for national policy at the American Lung Association, who added that changing these rules would remove an important tool for the public to enforce air quality laws.

On Twitter, Sen. Ed Markey (D-MA) called it perhaps “the worst environmental sin yet from the Trump [administration].”

This could be the worst environmental sin yet from the Trump admin.

Allowing industrial facilities to spew more toxic pollutants like arsenic, mercury & lead into the air is like pouring sewage into our neighborhoods & pumping poisons into our bodies.<https://t.co/HCwzRhewjd>

— Ed Markey (@SenMarkey) January 26, 2018

The policy change seems to be a favor to mainly **steel, paper, and chemical companies** that have argued that major sources standard Section 112 is an **expensive** proposition that could put them out of business.

“Withdrawal of this policy means manufacturers, oil and gas operations, and other types of industrial facilities will have greater incentive to reduce emissions,” Sen. John Barrasso (R-WY), chair of the Senate Environment and Public Works Committee, told the **Washington Examiner**. “Now these companies can help protect the environment without wasting time and money on unnecessary red tape.”

And in a **press release**, Bill Wehrum, assistant administrator of EPA's Office of Air and Radiation, said the policy was intended to “reduce regulatory burden for industries and the states.”

But he also claimed it would do this “while continuing to ensure stringent and effective controls on hazardous air pollutants.”

This, according to John Walke, who leads the climate and clean air program at the Natural Resources Defense Council, is “word goulash. It’s just nonsense.”

Moving to a much lower standard would certainly “reduce regulatory burden,” but it would also make the controls weaker or put the regulations in the hands of states, many of which don’t allow citizens to sue for air quality permit violations. And overall, the directive would lead to a massive surge in toxic air pollution from hundreds of industries, Walke said.

The EPA release goes on to say that the old policy was “a longstanding disincentive for sources to implement voluntary pollution abatement.”

This too is very dubious. If you imagine a scenario where a chemical plant brought its emissions of chlorine gas down from 50 tons per year to 15 tons with the best technology on the market, the old “once in, always in” policy made it so there was no incentive to reduce these emissions further, since the plant was already complying with the rules.

But with the possibility of getting out from under these regulations by bringing chlorine emissions below 10 tons per year, the company would invest in even better technology to reduce pollution further, according to the EPA.

However, for companies that are already below the 10-ton limit for an individual pollutant or the 25-ton limit for a group of pollutants, adhering to rules that are less strict would allow them to backslide, Walke warned.

In fact, the EPA reached a similar conclusion back in 1995. “Although maximum achievable control technology (MACT) is required for all major sources of hazardous air pollutants, *lesser controls or no controls* may be required of area sources in a particular industry,” read an **agency memo** (emphasis added).

Ann Carlson, a professor at the UCLA School of Law, added that the major source standard is designed to evolve over time, since polluters are required to meet the emissions levels achieved by the top 12 percent of all existing sources of air pollution.

“[I]f the top 12 percent improve the standards, the standards ratchet more tightly,” Carlson wrote in an email. “That means that emissions can continue to fall even further.”

But if a factory or plant is held to the area standard, the rate of decline in pollution could level off, or reverse, since these facilities don’t have to use the best scrubbers and monitoring equipment to control their emissions.

Changing the “once in, always in” rule has been a long-running project for the EPA's Wehrum.

He previously spent six years in the EPA's air office under President George W. Bush. In between his previous and current government posts, Wehrum represented clients including the American Petroleum Institute, the American Fuel and Petrochemical Manufacturers, the American Chemistry Council, and the Utility Air Regulatory Group, many of which wanted

to end the “once in, always in” rule.

In **2007**, Wehrum tried to undo this policy until he was **blocked by Congress**. An **internal EPA memo** from the agency’s regional directors at the time reported that changing the rule “would be detrimental to the environment and undermine the intent of the MACT program.”

Earlier this month, Senate Republicans sent a **letter** to EPA Administrator Scott Pruitt asking repeal the air pollution policy, and Wehrum, who **rejoined** the EPA in November, obliged.

At this point, the memo is just a **guidance document**, meaning it doesn’t carry the weight of law but explains how the agency is interpreting existing rules. However, the memo doesn’t use the EPA’s usual careful, hedging language, so it’s likely intended to be the new de facto policy, circumventing the torturous rulemaking process.

The EPA plans to publish a request for comment in the federal register on the agency’s interpretation of the Clean Air Act.