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DEPARTMENT FOR ENVIRONMENTAL PROTECTION**

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September 24, 2019

The Honorable Andrew Wheeler, Administrator
U.S. Environmental Protection Agency
William Jefferson Clinton Building
1200 Pennsylvania Avenue, N.W.
Washington, DC 20460

Re: Comments relating to *Reclassification of Major Sources as Area Sources Under Section 112 of the Clean Air Act*;¹ Docket ID: EPA-HQ-OAR-2019-0282

Dear Administrator Wheeler,

On behalf of the Commonwealth of Kentucky, the Energy and Environment Cabinet, Division for Air Quality (Division) respectfully submits the following comments relating to the United States Environmental Protection Agency's (EPA) proposed *Reclassification of Major Sources as Area Sources Under Section 112 of the Clean Air Act* rule.

The Division supports the proposal regarding reclassification of major sources as area sources under Section 112 of the Clean Air Act as it provides regulatory certainty and allows for consistency among permitting programs across the states. The "Once In, Always In" (OIAI) Policy, as set forth in the 1995 Seitz Memorandum,² limited the incentive for sources to pursue technologically innovative controls to reduce total hazardous air pollutants (HAP) emissions. The policy essentially prohibited sources from requesting enforceable emission limits below the applicable thresholds after the first compliance date. The proposed rule will allow a source to become an area source by limiting its emissions and potential to emit (PTE) below applicable HAP emissions thresholds of a major source. The appropriate level of control will be consistent among sources with similar PTE and will allow the source to operate in a competitive market.

The Division supports the EPA's proposal that "reclassification from major source to area source does not affect a source's liability or any enforcement investigations or enforcement

¹ 84 Fed. Reg. 36,304 (July 26, 2019).

² "Potential to Emit for MACT Standards – Guidance on Timing Issues." John Seitz, Director, Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency (May 16, 1995).



actions for a source's past violations that occurred prior to the source's reclassification."³ In addition, the Division supports the EPA's proposal that "a permitted source must comply with the terms of its Title V permit until the source follows the permitting authority's procedures for facility changes and permit revisions to its Title V permit."⁴ The permit itself must contain all applicable requirements and sufficient monitoring requirements to ensure the public, source, and regulatory agency are all aware of what is required to demonstrate compliance.

The Division recommends that EPA not revise the definition of "potential to emit" in 40 C.F.R. Section 63.2.⁵ Removal of the term "federally enforceable" from the definition of potential to emit will create an unnecessary burden for permitting authorities by eliminating the federally-enforceable state operating permit (FESOP) program for sources that limit HAP emission below applicable thresholds. Additionally, this proposed change causes regulatory inconsistency between the PTE definition in 40 C.F.R. Section 63.2 and the PTE definition under 40 C.F.R. Section 70.2 for regulated air pollutants other than HAPs.

The Division appreciates EPA's consideration of the above comments. If you have questions or comments, please contact me at, Melissa.Duff@ky.gov, at your convenience.

Sincerely,



Melissa K. Duff, Director
Division for Air Quality

³ 84 Fed. Reg. at 36,306.

⁴ 84 Fed. Reg. at 36,322.

⁵ 84 Fed. Reg. at 36,306.