

Ohio EPA  
Division of Air Pollution Control  
Engineering Guide #67

**Question:**

U.S. EPA's "Once In, Always In" (OIAI) Policy states that if a facility is a major source of hazardous air pollutants (HAPs) at the compliance date for an applicable Maximum Achievable Control Technology (MACT) standard, then the facility will always be subject to that standard as a major source. How does the "Once In, Always In" Policy affect the applicability of the MACT standard to a facility and the requirement that the facility must obtain a Title V permit to comply with that MACT standard? This Engineering Guide applies only to the applicability of MACT standards and does not apply to the applicability of other requirements such as the PSD (Prevention of Significant Deterioration) regulations.

**Answer:**

**Background**

The Maximum Achievable Control Technology (MACT) Standards are standards required by Section 112(d) of the Clean Air Act designed to reduce emissions of HAPs. The 188 HAPs listed by Congress in the Clean Air Act were to be controlled by developing standards that represented the MACT level of control for each source category or set of source categories that emitted significant amounts of these HAPs. Each MACT standard is established through the review of existing controls in that source category.

MACT standards can apply to both area sources and major sources. The General Provisions of Part 63 (40 CFR Part 63, Subpart A) define a **major** source of HAPs as one that has a potential to emit (PTE), considering controls, that is greater than or equal to 10 tons per year (TPY) for a single HAP or greater than equal to 25 TPY of aggregated HAPs. An **area** source is defined as one that has a PTE, considering controls, that is less than 10 TPY for a single HAP or less than 25 TPY of aggregated HAPs. The applicability section of a specific MACT standard identifies whether or not the MACT standard applies to an area source.

When a MACT standard is promulgated, the facility usually has three (3) years to comply with the standard. Ohio EPA obtained delegation of authority to implement the MACT standards on August 10, 2001. In Ohio, the MACT standards are implemented and enforced through the permit system. This means that some form of the MACT standards have to be inserted into a federally enforceable permit (Title V, Federally Enforceable State Operating Permit - FESOP, or PTI) in order to ensure Ohio EPA's ability to enforce the MACT standards.

## **Specific Questions and Answers**

### How does the applicability to a MACT standard affect a facility's Title V permit status?

In accordance with Section 502 of the Clean Air Act, all facilities that are subject to MACT standard, regardless of whether they are a major source or an area source, are required to obtain a Title V permit, unless the MACT standard specifically states otherwise. U.S. EPA has deferred the requirement to obtain a Title V permit until December 9, 2004 for area sources subject to the following MACT standards: Dry Cleaning, Halogenated Solvent Cleaning, Chrome Electroplating, Secondary Lead Smelters, and Ethylene Oxide Sterilizers. In Ohio, area sources subject to the Secondary Aluminum MACT standard also are deferred from the requirement to obtain a Title V permit until 2004. U.S. EPA has stated its intention to propose to extend this deadline for some of these source categories.

### How does a facility calculate the PTE for HAPs?

Potential to emit is defined in the General Provisions as "...the maximum capacity of a stationary source to emit a pollutant under its physical or operational design." The facility can take into account any physical or operational limitation on its capacity to emit a pollutant, e.g., as a result of air pollution equipment or restrictions on hours of operation, ONLY if the limitation or the effect it would have on emissions is federally enforceable.

### What is the "Once In, Always In" Policy?

The "Once In, Always In" Policy was outlined in a U.S. EPA guidance memorandum, "Potential to Emit for MACT Standards - Guidance on Timing Issues," dated May 16, 1995. The guidance states that "facilities may switch to area source status at any time until the first compliance date of the MACT standard." In other words, if the facility wants to become an area source, it can do so by obtaining a federally enforceable permit with synthetic minor limits before the first compliance date of the MACT standard. By that date, in order to avoid being in violation, a major source must either comply with the standard, or obtain and comply with federally enforceable limits ensuring that the actual and potential emissions are below major source thresholds.

### What is the first compliance date?

The "first compliance date" is defined as the first date that a source must comply with an emission limitation or other substantive regulatory requirement (i.e., leak detection and repair program, work practice measures, housekeeping measures, etc., but not a notice requirement) in the applicable MACT standard.

What happens if the facility misses the first compliance date?

If a facility is subject to a MACT standard that applies only to major sources, it needs to be in compliance with the MACT requirements by the first compliance date, or it should have obtained a federally enforceable synthetic minor permit to limit its PTE to below the major source thresholds. If a facility misses the first compliance date without complying with either of these options, it will be in violation for not complying with the MACT requirements. Furthermore, the facility will be considered a major source due to its PTE and will **not** have the option of getting a synthetic minor permit **even if its actual emissions are well below the major source thresholds.**

If a facility has records showing that they have always been an area source, will they be allowed to obtain a synthetic minor permit after the first compliance date?

No.

Are there any exemptions to the “Once in, Always In” Policy?

The exemption from the OIAI Policy could be built into a MACT standard, for example, as in the MACT standard for Printing and Publishing, 40 CFR Part 63 Subpart KK. This MACT standard has a certain amount of flexibility built into the applicability section of the standard. According to § 63.820:

“....The provisions of this subpart apply to: (1) Each new and existing facility that is a major source of hazardous air pollutants (HAP),.... at which publication rotogravure, product and packaging rotogravure, or wide-web flexographic printing presses are operated, and (2) each new and existing facility at which publication rotogravure, ..... are operated for which the owner or operator chooses to commit to, and meets the criteria of paragraphs (a)(2)(i) and (a)(2)(ii) of this section for purposes of establishing the facility to be an area source with respect to this subpart: (i) Use less than 9.1 Mg (10 tons) per each rolling 12-month period of each HAP at the facility, including materials used for source categories or purposes other than printing and publishing, and (ii) Use less than 22.7 Mg (25 tons) per each rolling 12-month period of any combination of HAP at the facility, including materials used for source categories or purposes other than printing and publishing.....”

Unlike the requirements of the OIAI Policy, this MACT standard provides the facility with an option to become an area source by limiting the amount of HAPs in the inks being used at the facility. As mentioned above, the OIAI Policy specifies that facilities can switch to area source status any time before the first compliance date of the MACT standard by obtaining federally enforceable limits.

The Printing and Publishing MACT standard, on the other hand, does not specify a deadline by which facilities need to switch to area source status. Essentially, the standard allows facilities to switch to area source status at any time by complying with the two provisions specified in the standard. The facility will then need to comply with

only the record keeping portion of the MACT standard. Since facilities need only to comply with the record keeping portion of the standard, U.S. EPA offers Ohio EPA the discretion to waive the Title V permitting requirement for Printing and Publishing area source facilities that choose this option of limiting their emissions, if the facilities do not otherwise exceed the major source thresholds for Title V permitting.

What happens when a facility changes its processes to eliminate HAPs from what was considered a MACT major source?

Based on the precedent set in the July 24, 2001 applicability determination by U.S. EPA Region I, the sources would then not be subject to MACT standard. In this determination a 40 CFR Part 63 Subpart source changed the solvent it used to a solvent not containing HAPs. The determination was that the source was no longer subject to the MACT standard.

On July 24, 2001, Michael P. Kenyon, Air Branch Chief, U.S. EPA Region I, in the case of Associated Spring, Bristol Division, ruled that if a facility that is subject to the halogenated MACT standard, permanently stops using HAP solvent and switches to a non-HAP solvent, it does not remain subject to the MACT standard:

“ . . . Because Associated Spring no longer uses one of the listed solvents, and based on your commitment that it will continue in that mode for the foreseeable future, EPA has determined that Associated Spring’s vapor degreasers and Associated Spring’s facility are no longer subject to the halogenated solvent NESHAP. Because Associated Spring is no longer subject to the halogenated solvent NESHAP and provided that nothing else requires the facility to obtain a Title V operating permit, EPA has determined that the facility is not required to obtain a Title V operating permit. . . . In many cases, where a change from HAP to non-HAP cleaning solvents occurs, it is reasonable to assume that the change is permanent, that is, that the facility is not likely to switch back to HAP solvents in the future. . . . In addition, Associated Spring would be required under 40 CFR Part 63 Section 63.9(j) to inform EPA of any change in status within 15 days after the change.”

Is a FESOP the only way to limit a facility’s PTE to opt out of the major source MACT requirements?

No. A facility that is otherwise a Title V facility, can limit its PTE of HAPs through federally enforceable terms and conditions in its Title V permit. These terms and conditions have to be in effect before the first compliance date of the MACT standard in order for the facility to be able to obtain an area source status under the MACT standard.

A facility may also apply for a Permit to Install (PTI) to limit PTE to below major source levels. As with the Title V permit, the PTI limits must be federally enforceable before the first compliance date. (For establishing federally enforceable limits in PTIs please consult the June 13, 1989 guidance labeled *“Limiting Potential to Emit in New Source*

*Permitting,”* by John S. Seitz, Director, U.S. EPA Office of Air Quality Planning and Standards.)

Does the OIAI Policy apply even if a facility shuts down the MACT affected source after the MACT compliance date?

If a facility has completely and permanently shut down the MACT affected source (i.e., removed all the equipment from the site), then the relevant MACT standard will not apply to the facility. The facility is required to send a notification to Ohio EPA stating that the affected source has been permanently shut down and will never be started again. However, this does not apply to facilities where the affected source has been temporarily shut down, but is kept on site. In such cases, the facility will be subject to the MACT standard until such time that Ohio EPA and U.S. EPA can be certain that the facility is permanently shut down.

A facility has a PTE greater than major source thresholds, but its actual emissions are well below the 10 and 25 HAP limit. However, the facility failed to submit a request to the Agency to limit its PTE and failed to obtain a Title V permit revision to include the limit. What course of action does the Agency take?

If the compliance date of the MACT standard has passed, the facility must be considered a major source of HAPs due to its PTE, and as such, will be subject to the MACT requirements as a major source. The facility must comply with the MACT requirements and apply for a Title V permit to incorporate the MACT requirements.

How does the Transition Policy relate to the OIAI Policy?

U.S. EPA's Transition Policy was a provision that extended the deadline for facilities with very low actual emissions to apply for a Title V permit or a FESOP (see Engineering Guide 61). The deadline was December 31, 2000. By that deadline, major source facilities needed to either apply for a Title V permit or apply for a federally enforceable permit to limit their PTE. Since the Transition Policy has expired, it does not affect the way we apply the OIAI Policy to facilities that have failed to apply for a Title V permit or a FESOP by the deadline.

A facility has a PTE greater than major source thresholds, but fails to comply with the currently applicable MACT requirements prior to the first substantive MACT compliance date. Can the facility take any emission reduction credits to lower its PTE by complying with the MACT requirements after the first substantive compliance date?

No. Even though a facility complies with the applicable MACT requirements, it cannot lower its PTE based upon compliance with the applicable requirements after the first

substantive MACT compliance date.

### **Examples**

**Example 1:** A facility has PTE of 100 tons per year and is subject to a specific MACT standard. After compliance with this MACT standard, which requires a 99 percent emission reduction, the facility's total potential emissions would be 1 ton per year. Under the OIAI guidance, that facility could not subsequently operate with emissions exceeding the MACT emission level. The facility could not escape continued applicability of the MACT standard as a major source, unless all HAP emissions were permanently eliminated.

**Example 2:** A facility has degreasing operations which emit 30 tons per year of HAPs. The same facility also has the potential to emit 5 tons per year of HAPs from the coating of miscellaneous metal parts. After complying with the Halogenated Solvent Cleaning MACT standard, prior to the first substantive compliance date for the Halogenated Solvent Cleaning MACT standard, the maximum potential emissions from degreasing operations is 3 tons per year. The total federally enforceable potential emissions from this facility would now be 8 tons per year of combined HAPs which meets the definition for an "area source." Therefore, this facility would not be subject to the major source requirements of the Miscellaneous Metal Parts MACT standard. This would not be true if the reductions did not occur prior to the compliance date of the Halogenated Solvent Cleaning MACT standard.

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