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Proposed Rule to Change the “Once In-Always In” Policy for Major Sources

72 Fed. Reg. 69 (Jan. 2, 2007)

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What is the “Once In-Always In”
policy?

What Action is EPA Taking in the Proposed Rule?

- » Rulemaking, Not Guidance
- » Title III major sources can switch to area sources if they can get below the Major Source thresholds
- » HAP emissions must be in federally-enforceable permit
 - Title V or FESOP

Limitations of the Rule

- » If the major source requires a “physical change” to comply with area source standard, must petition EPA for time to do so
- » If a facility switches from major source to area source and back again, facility will be expected to comply with MACT immediately upon reversion
- » Major source currently under enforcement action or investigation does not obtain relief from major source violation by switching to area source
 - Not retroactive

Potential Impact of the Proposed Rule on Shipbuilding/Repair Facilities

- » If the facility is a major source for purposes of Title III but not Title I:
 - If facility can get below Title III thresholds (10 tpy/25 tpy) and put emissions limitations in federally-enforceable permit, then . . .
 - Would no longer be subject to Title V
 - Would no longer be subject to Subpart II NESHAP for Shipbuilding and Repair (Coating Operations)
 - Would not be subject to Residual Risk rulemaking
- » If the facility is a major source for purposes of Title III and Title I:
 - If facility can get below Title III thresholds (10 tpy/25 tpy) and put emissions limitations in federally-enforceable permit, then . . .
 - Would no longer be subject to Subpart II NESHAP for Shipbuilding and Repair (Coating Operations)
 - Would not be subject to Residual Risk rulemaking

Rulemaking Process

- » Kelley Drye Collier Shannon has proposed to prepare comments in support of the proposed rule for the National Shipbuilding Research Program
- » Comments are due by March 5, 2007

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Questions?

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