

the final rule requirements upon initial startup.

K. How Does the "once in, always in" Policy Apply?

We explained at proposal why site remediation is a unique source category (see 67 FR 49400–49401). Because of its uniqueness, we specifically evaluated how the final Site Remediation NESHAP could be implemented within the framework of our existing policies for implementing the MACT standards promulgated under CAA section 112. Our "once in, always in" policy is that once a facility or source is subject to a MACT standard, it remains subject to that standard as long as the affected source definition or criteria are met. In the preamble to the proposed rule, we discussed our decision that the once in, always in policy should not apply to the site remediation source category for those facilities that are area sources prior to and after, but not during, the cleanup activity. We received many public comments supporting this decision. We are reiterating here how we will apply the once in, always in policy to facilities that conduct site remediations in situations where a facility is an area source prior to the remediation activity, but where addition of the potential HAP emissions from the remediation activities increases the facility's potential to emit (PTE) to levels such that the facility exceeds the 10 or 25 ton HAP thresholds for a major source.

Because the facility is then a major source of HAP, another operation at the facility, such as a manufacturing process, would be subject to NESHAP for other source categories located at their facility. Furthermore, after the remediation is completed, the facility would, in terms of potential emissions, essentially be back to where it was as an area source (assuming no change in the facility plant operations). Under the once in, always in policy, the facility would remain subject to the NESHAP that was triggered by the limited duration change of source status from area to major brought about by the increase in PTE from the site remediation activity.

In the situation described above, the once in, always in policy would create an obvious disincentive for owners or operators to engage in site remediations, particularly since voluntary remediation would be affected by the final rule. Our intent is to not adopt requirements that create incentives to avoid a cleanup or result in the selection of less desirable or less protective remediation approaches. Therefore, we have determined that the once in, always in

policy does not apply where a facility's status changes from area source to major source, solely as a result of remediation activities regulated by the Site Remediation NESHAP, where the facility returns to area source status after the cleanup activity.

III. Responses to Major Comments on Proposed Rule

Our responses to all of the substantive public comments on the proposal are presented in the BID which is available in Docket No. OAR–2002–0021.

A. Why Are We Promulgating NESHAP To Regulate HAP Emissions From Site Remediation Activities?

Comment: Several commenters disagreed with our decision to establish a NESHAP regulating HAP emissions from site remediation activities. The commenters argued that such a NESHAP is not needed for several reasons: the level of HAP emissions from the sources that would be subject to the final rule is too low to warrant regulation by a NESHAP, adequate air emissions controls already are imposed at sites subject to risk assessment, and a NESHAP discourages site owners and operators from initiating and conducting voluntary cleanups.

Response: Section 112 of the CAA requires that we establish MACT standards for the control of HAP from both new and existing major sources of HAP. Section 112(a)(1) defines a "major source" as " * * * any stationary source or group of stationary sources located within a contiguous area and under common control that emits or has the potential to emit considering controls, in the aggregate, 10 tons per year or more of any hazardous air pollutant or 25 tons per year or more of any combination of hazardous air pollutants. * * * " We have codified essentially this same definition into § 63.2 of the General Provisions to part 63. We have long interpreted this definition as requiring that all sources of HAP within a plant site must be aggregated, so long as the sources are geographically adjacent and under common control (see *e.g.*, 59 FR 12412, March 16, 1994). This interpretation was sustained by the court in *National Mining Ass'n v. EPA*, 59 F. 3d 1351, 1355–1359 (D.C. Cir. 1995). A consequence, then, is that sources of HAP which are part of a major source, but which would not themselves (viewed separately) be major sources, are still classified as major sources and are subject to the requirements of CAA section 112(c) and (d), which command us to list all categories of major sources and establish technology-based

standards for those sources. The result, for purposes of site remediation activities, is that all such remediations conducted at locations which, taken as a whole are major sources, are themselves required to be controlled by MACT standards in the final rule.

We determined that there are major sources of HAP where site remediations are now being conducted or may be conducted in the future to clean up contaminated environmental media or certain stored or disposed materials that pose a reasonable potential threat to contaminate environmental media. The levels of HAP emissions from remediation activities at a given cleanup site depend on a combination of site-specific factors including the type of remediation processes used and activities conducted; the quantity, HAP composition, and other characteristics of the remediation material; and the time required to complete the cleanup. We recognize that at some cleanup sites the levels of HAP emissions from the remediation activities will be low. However, at other cleanup sites the potential level of HAP emissions from the remediation activities can be substantial and appropriate air pollution controls are needed to protect public health and the environment.

We already have established requirements under our RCRA hazardous waste corrective action and CERCLA Superfund programs which address the air emissions from certain remediation activities based largely on site-specific risk assessments. However, these requirements do not apply universally to all site remediations with the potential to emit HAP. There are site remediations not subject to these federally-enforceable requirements. To meet our congressional directive under CAA section 112, we are promulgating the final Site Remediation NESHAP applicable to those site remediations not subject to federally-enforceable requirements that will effectively control HAP emissions.

Finally, the fundamental objective of a site remediation is to mitigate a detected risk to public health or the environment by successfully completing the cleanup of media or other materials at the site that is contaminated by a hazardous substance. It is commendable when a site owner or operator voluntarily initiates and conducts a cleanup. However, the fact that a cleanup is being conducted voluntarily as opposed to being conducted to comply with a Federal or State regulatory requirement or fulfill a court directive does not obviate or excuse the use of appropriate air pollution controls to those site remediation activities with