

Addition of 1-BP to Section 112 HAP List

Outline

- ▶ Clean Air Act section 112 HAP listing/delisting
- ▶ 1-BP Status
- ▶ 1-BP Next Steps
- ▶ Question and Answer document for 1-BP listing
- ▶ For additional information

Clean Air Act section 112 HAP

- ▶ Section 112 of the Clean Air Act (CAA) provides for regulation of hazardous air pollutants (HAP)
- ▶ HAP regulations or rules are national emission standards for hazardous air pollutants (NESHAP)*
- ▶ Congress initially listed 190 HAP (HAP list) but provided provisions for listing new HAP or delisting existing HAP
- ▶ One such way, allows any person to petition EPA to modify the HAP list by adding or deleting one or more substances

* Also referred to as maximum achievable control technology (MACT) standards

1-BP Status- Actions Taken

- ▶ The Halogenated Solvents Industry Alliance (HSIA) and the New York State Department of Environmental Conservation (NYSDEC) petitioned EPA to add 1-BP to the HAP
 - ▶ January 9, 2017: EPA published a draft notice of the Agency's rationale for granting petitions from HSIA and NYSDEC
 - ▶ June 18, 2020: EPA published a final notice addressing comments received on the proposal and granting final approval of petitions to add 1-BP to the section 112 HAP list
 - ▶ January 5, 2022: EPA published a final rule adding 1-BP to the HAP list
 - ▶ February 4, 2022: Listing is effective

1-BP Status

- ▶ No NESHAP promulgated before February 4, 2022, includes 1-BP
- ▶ EPA will evaluate 1-BP, as necessary, during next NESHAP review and, in addition, may identify need for additional source categories
- ▶ Effective February 4, 2022, facilities must include 1-BP in all estimates of HAP emissions, including potential to emit (PTE) calculations
- ▶ This could result in some area sources now becoming major sources due to the accounting of 1-BP emissions in their PTE calculations

What is a Major Source?

A major source is a facility with total emissions (*i.e.*, all sources within “fenceline”) that has the **potential to emit (PTE)**:

- 10 tons or more of a single HAP
- 25 tons or more of all HAP

1-BP Next Steps

- ▶ EPA published an advanced notice of proposed rulemaking in 2021
 - ▶ 9 public comments- industry, trade associations, environmental organizations
 - ▶ Comments on 1-BP specific uses, concerns about compliance dates, applicability, reporting requirements
- ▶ Comments on this ANPRM will be used to inform the process to develop a regulatory infrastructure for any new HAP additions.
- ▶ Key infrastructure issues include:
 - ▶ Applicability
 - ▶ Compliance time for NESHAP that apply solely from the listing of a new HAP (*i.e.*, facilities going from area source to major source)
- ▶ Proposal expected in 2022; final in 2023

Question and Answer Document

Since 1-BP predates the infrastructure rulemaking, the EPA developed a “Question and Answer” document to specifically address the 1-BP listing

- ▶ January 5, 2022: published online
- ▶ Document provides guidance to EPA regional and state/local/tribal permitting authorities as well as to potentially impacted industries and the general public
- ▶ Describes how EPA intends to exercise its discretion in implementing the statutory and regulatory provisions that concern addition of 1-BP to HAP list under CAA section 112
- ▶ Guidance is designed to implement national policy on these issues

<https://www.epa.gov/haps/addition-1-bp-npb-clean-air-act-list-hazardous-air-pollutants>

Q and A Document: Disclaimer

- ▶ Statutory provisions and EPA regulations described in this document contain the legally binding requirements
- ▶ Document does not substitute for those provisions or regulations, nor is it a regulation itself
 - ▶ It does not impose legally binding requirements on EPA, air permitting authorities, or the regulated community, and may not apply to a particular situation based upon the circumstances
- ▶ EPA and those agencies with delegated authority or approved programs retain the discretion to adopt approaches on a case-by-case basis that differ from this guidance, where appropriate
 - ▶ Any decisions regarding a particular facility will be made based on the statute and regulations
 - ▶ Therefore, interested parties are free to raise questions and objections about the guidance substance and the appropriateness of the application of this guidance to a particular situation
- ▶ Statements in the document are intended solely as guidance; it is not intended, nor can it be relied upon, to create any rights enforceable by any party in litigation with the United States
- ▶ EPA may decide to follow the document guidance, or to act at variance with the guidance based on its analysis of the specific facts presented

Q and A Document: Emissions Calculations

1. When does 1-BP become a listed HAP?

The effective date for the listing is 30 days after the publication of the final rule in the *Federal Register*. [Effective date: February 4, 2022]

2. When does a facility include 1-BP in a facility's potential to emit (PTE)?

A facility must include 1-BP in its PTE beginning on the effective date of the final rule. [February 4, 2022]

3. What happens if including 1-BP in a facility's PTE causes the facility to become a major source of HAP?

The facility will need to follow the title V requirements for major sources (see Title V Permitting below). In addition, as a major source, the facility may need to comply with other National Emission Standards for Hazardous Air Pollutants (NESHAP) (See Part 63 NESHAP Applicability below).

Q and A Document: Title V Permitting

4. When is a title V operating permit application or permit revision required?

A major source of HAP is a “part 70 source” subject to the permitting requirements for major sources and must submit a timely permit application within 12 months after the source becomes subject to the permit program, or on such earlier date as the title V permit authority may establish. 40 C.F.R. 70.5(a)(1)

For example, a facility that was not previously subject to title V permitting because its PTE HAP was below the major source threshold (i.e., less than 10 tons for any single HAP and less than 25 tons per year for all HAP) before the addition of 1-BP to the HAP list may become a major source of HAP emissions once 1-BP is included in its PTE HAP calculations.

5. Can a source that would otherwise become a major source because of 1-BP take action to reduce its PTE to remain an area source?

Yes. A facility that would become a major source because of the inclusion of 1-BP as a HAP can take action to reduce its PTE below major source thresholds.

For example, the facility could eliminate 1-BP use altogether or obtain a permit containing enforceable restrictions to reduce its HAP PTE below the major source threshold. A source should consult the appropriate regulations and confer with its state, local, or tribal permitting authority regarding the procedures applicable to its situation.

Q and A Document: Part 63 NESHAP Applicability

6. Is 1-BP regulated by any current NESHAP?

No. All current NESHAP were promulgated prior to the listing of 1-BP as a HAP. When the Agency promulgated those NESHAP, 1-BP emissions were not considered in the standard-setting process.

7. If a facility's classification has changed from area source to major source, due to the inclusion of 1-BP in the facility's PTE, are there NESHAP rules that could be applicable to the facility?

Yes. If a facility becomes a major source because of the inclusion of 1-BP in the facility's PTE, the facility should review all major source NESHAP standards for potential applicability.

All major sources must comply with all applicable NESHAP for major sources. This could include broad source categories, such as the NESHAP for boilers or reciprocating internal combustion engines.

8. If there is no change in a facility's classification due to the inclusion of 1-BP in the facility's PTE, are there any new requirements that apply to the facility due to the 1-BP listing (i.e., for any area source or for a major source that remains a major source)?

No. If the facility's classification does not change, there are no new requirements under any NESHAP because the EPA has not yet set standards for 1-BP. As discussed elsewhere in this document, there may be other applicable requirements.

Q and A Document: Enforcement

9. Will the EPA take enforcement against sources that fail to comply with the CAA obligations resulting from the listing of 1-BP?

Facilities subject to the CAA requirements because of the addition of 1-BP have an obligation to comply, and failure to comply could result in enforcement.

As described in Question and Answer 3, the EPA believes that the inclusion of 1-BP in a facility's PTE could result in a change to the major source status of the facility. The EPA is aware of the circumstances and equities created by the listing of 1-BP as a HAP and will consider such circumstances and equities on a case-by-case basis when determining the nature and extent of any potential noncompliance with the CAA requirements.

For more information

Topic Area	Contact	Email	Telephone
Listing process	Susan Miller	miller.susan@epa.gov	919-541-2443
Permitting process or specific categories	Please contact your state, local, or tribal regulatory authority		

Additional 1-BP Information

<https://www.epa.gov/haps/addition-1-bp-npb-clean-air-act-list-hazardous-air-pollutants>