Message

From: AirAction [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=FA78B989233840789 95E04A73D258D83-AIRACTION]
Sent: 4/2/2025 12:10:52 PM
To: Rob Sanch [robert.sanch@dteenergy.com]
Subject: CORRECTION: Updated email address for CBI related to the Presidential Exemption

In the previous email, an incorrect email address was provided for the submission of electronic Confidential Business Information (CBI). The email address should be:

OAQPS_CBI@epa.gov

Thank you.

From: AirAction
Sent: Monday, March 31, 2025 11:15 AM
To: Rob Sanch <robert.sanch@dteenergy.com>
Subject: RE: Presidential Exemption: NESHAP for Coke Ovens: Pushing, Quenching and Battery Stacks and Coke Oven Batteries; Residual Risk and Technology Review, and Periodic Technology Review

Thank you for emailing the AirAction mailbox to request a Presidential Exemption under section 112(i)(4) of the Clean Air Act and for engaging with EPA in advancing President Trump's Executive Orders and Powering the Great American Comeback. We have received your email and will be in contact soon. If you have Confidential Business Information (CBI) that you'd like to submit, please submit it in electronic version to the CBI@epa.gov inbox or in hardcopy to:

USEPA, OAQPS
CORE CBI Office
4930 Old Page Road
Durham, NC 27703

From: Rob Sanch <robert.sanch@dteenergy.com>
Sent: Monday, March 31, 2025 11:08 AM
To: AirAction <AirAction@epa.gov>
Cc: wendlinga@michigan.gov; Korniski, Jeffrey (EGLE) <korniskij@michigan.gov>; Koster, Katherine (DEQ) <KOSTERK1@michigan.gov>; tardif.abbie@epa.gov; [redacted]@epa.gov>; [redacted]@epa.gov>; [redacted]@epa.gov>; Fadi K Mourad <fadi.mourad@dteenergy.com>; Kerra Janis <kerra.janis@dteenergy.com>
Subject: Presidential Exemption: NESHAP for Coke Ovens: Pushing, Quenching and Battery Stacks and Coke Oven Batteries; Residual Risk and Technology Review, and Periodic Technology Review

> **Caution:** This email originated from outside EPA, please exercise additional caution when deciding whether to open attachments or click on provided links.

Please see attached request.

Thank you,

Rob Sanch
DTE Vantage | Environmental Supervisor

One Energy Plaza, 400 WCB Detroit, MI 48226
o 313.548.8183 | m 734.834.4117
dtevantage.com

Message

From: AirAction [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=FA78B989233840789 95E04A73D258D83-AIRACTION]
Sent: 4/2/2025 12:19:43 PM
To: Stewart, John [jstewart@abccoke.com]
Subject: CORRECTION: Updated email address for CBI related to the Presidential Exemption

In the previous email, an incorrect email address was provided for the submission of electronic Confidential Business Information (CBI). The email address should be:

OAQPS_CBI@epa.gov

Thank you.

From: AirAction
Sent: Monday, March 31, 2025 3:29 PM
To: Stewart, John <jstewart@abccoke.com>
Subject: RE: ABC Coke Request for Presidential Exception

Thank you for emailing the AirAction mailbox to request a Presidential Exemption under section 112(i)(4) of the Clean Air Act and for engaging with EPA in advancing President Trump's Executive Orders and Powering the Great American Comeback. We have received your email and will be in contact soon. If you have Confidential Business Information (CBI) that you'd like to submit, please submit it in electronic version to the CBI@epa.gov inbox or in hardcopy to:

USEPA, OAQPS
CORE CBI Office
4930 Old Page Road
Durham, NC 27703

From: Stewart, John <jstewart@abccoke.com>
Sent: Monday, March 31, 2025 3:04 PM
To: AirAction <AirAction@epa.gov>
Cc: jason.howanitz@jcdh.org; Tardif, Abigale (Abbie) <Tardif.Abigale@epa.gov>; [redacted]@epa.gov>; [redacted]@epa.gov>; [redacted]@epa.gov>
Subject: ABC Coke Request for Presidential Exception

> **Caution:** This email originated from outside EPA, please exercise additional caution when deciding whether to open attachments or click on provided links.

To Whom it May Concern,

Attached find ABC Coke Request for Presidential Exemption and three supporting documents Exhibit A, Exhibit B and Exhibit C.

Regards,

John Stewart
Environmental Department

Manager
Office: 205-849-1348
Cell: 205-480-8591

ABC COKE
A DIVISION OF
DRUMMOND COMPANY, INC.

Message

From: AirAction [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=FA78B989233840789 95E04A73D258D83-AIRACTION]
Sent: 4/2/2025 12:16:51 PM
To: ALBERT, SARAH [SALBERT@SUNCOKE.COM]
CC: BATTEN, KATIE M [KMBATTEN@SUNCOKE.COM]
Subject: CORRECTION: Updated email address for CBI related to the Presidential Exemption

In the previous email, an incorrect email address was provided for the submission of electronic Confidential Business Information (CBI). The email address should be:

OAQPS_CBI@epa.gov

Thank you.

From: AirAction
Sent: Tuesday, April 1, 2025 8:03 AM
To: ALBERT, SARAH <SALBERT@SUNCOKE.COM>
Cc: BATTEN, KATIE M <KMBATTEN@SUNCOKE.COM>
Subject: RE: Letter to President Donald Trump and Administrator Zeldin (Cokemaking NESHAP)

Thank you for emailing the AirAction mailbox to request a Presidential Exemption under section 112(i)(4) of the Clean Air Act and for engaging with EPA in advancing President Trump's Executive Orders and Powering the Great American Comeback. We have received your email and will be in contact soon. If you have Confidential Business Information (CBI) that you'd like to submit, please submit it in electronic version to the CBI@epa.gov inbox or in hardcopy to:

USEPA, OAQPS
CORE CBI Office
4930 Old Page Road
Durham, NC 27703

From: ALBERT, SARAH <SALBERT@SUNCOKE.COM>
Sent: Monday, March 31, 2025 3:28 PM
To: AirAction <AirAction@epa.gov>
Cc: BATTEN, KATIE M <KMBATTEN@SUNCOKE.COM>
Subject: Letter to President Donald Trump and Administrator Zeldin (Cokemaking NESHAP)

Caution: This email originated from outside EPA, please exercise additional caution when deciding whether to open attachments or click on provided links.

Dear Mr. President and Administrator Zeldin:

Please see attached letter regarding a requested exemption for SunCoke Energy, Inc. for the National Emission Standards for Hazardous Air Pollutants for Coke Ovens: Pushing, Quenching, and Battery Stacks, and Coke Oven Batteries; Residual Risk and Technology Review, and Periodic Technology Review," 89 Fed. Reg. 55684 (July 5, 2024).

Please contact me if you have any questions.

Best Regards,

Sarah Albert

SunCoke Energy
Sarah Albert | Vice President, Assistant General Counsel, and Chief Compliance Officer
1011 Warrenville Road, Suite 600 | Lisle, IL 60532
Cell: (443)226-7816
Email: salbert@suncoke.com

The contents of this email are likely privileged and confidential, subject to the attorney-client privilege, and prepared in anticipation of litigation. If you receive this email in error, please promptly notify the sender and delete the email.

This e-mail and any files transmitted with it may contain confidential information and is intended solely for the use of the individual or entity to whom they are addressed. If you are not the intended recipient, you are notified that disclosing, copying, distributing or taking any action in reliance on the contents of this information is strictly prohibited. Please notify the sender immediately by e-mail if you have received this e-mail by mistake and delete this e-mail from your system. Thank you for your cooperation.

Message

From: AirAction [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=FA78B989233840789 95E04A73D258D83-AIRACTION]
Sent: 4/2/2025 12:15:00 PM
To: ALBERT, SARAH [SALBERT@SUNCOKE.COM]
CC: BATTEN, KATIE M [KMBATTEN@SUNCOKE.COM]
Subject: CORRECTION: Updated email address for CBI related to the Presidential Exemption

In the previous email, an incorrect email address was provided for the submission of electronic Confidential Business Information (CBI). The email address should be:

OAQPS_CBI@epa.gov

Thank you.

From: AirAction
Sent: Tuesday, April 1, 2025 8:03 AM
To: ALBERT, SARAH <SALBERT@SUNCOKE.COM>
Cc: BATTEN, KATIE M <KMBATTEN@SUNCOKE.COM>
Subject: RE: Letter to President Donald Trump and Administrator Zeldin (Cokemaking NESHAP)

Thank you for emailing the AirAction mailbox to request a Presidential Exemption under section 112(i)(4) of the Clean Air Act and for engaging with EPA in advancing President Trump's Executive Orders and Powering the Great American Comeback. We have received your email and will be in contact soon. If you have Confidential Business Information (CBI) that you'd like to submit, please submit it in electronic version to the CBI@epa.gov inbox or in hardcopy to:

USEPA, OAQPS
CORE CBI Office
4930 Old Page Road
Durham, NC 27703

From: ALBERT, SARAH <SALBERT@SUNCOKE.COM>
Sent: Monday, March 31, 2025 3:57 PM
To: AirAction <AirAction@epa.gov>
Cc: BATTEN, KATIE M <KMBATTEN@SUNCOKE.COM>
Subject: RE: Letter to President Donald Trump and Administrator Zeldin (Cokemaking NESHAP)

> **Caution:** This email originated from outside EPA, please exercise additional caution when deciding whether to open attachments or click on provided links.

Dear Mr. President and Administrator Zeldin:

I apologize, but I failed to include the attachments to the letter in my original email. Please see attached letter and attachments.

Sarah

From: ALBERT, SARAH
Sent: Monday, March 31, 2025 3:28 PM

To: AIRACTION@EPA.GOV
Cc: BATTEN, KATHERINE M (KMBATTEN@suncoke.com) <KMBATTEN@suncoke.com>
Subject: Letter to President Donald Trump and Administrator Zeldin (Cokemaking NESHAP)

Dear Mr. President and Administrator Zeldin:

Please see attached letter regarding a requested exemption for SunCoke Energy, Inc. for the National Emission Standards for Hazardous Air Pollutants for Coke Ovens: Pushing, Quenching, and Battery Stacks, and Coke Oven Batteries; Residual Risk and Technology Review, and Periodic Technology Review," 89 Fed. Reg. 55684 (July 5, 2024).

Please contact me if you have any questions.

Best Regards,

Sarah Albert

SunCoke Energy
Sarah Albert | Vice President, Assistant General Counsel, and Chief Compliance Officer
1011 Warrenville Road, Suite 600 | Lisle, IL 60532
Cell: (443)226-7816
Email: salbert@suncoke.com

The contents of this email are likely privileged and confidential, subject to the attorney-client privilege, and prepared in anticipation of litigation. If you receive this email in error, please promptly notify the sender and delete the email.

This e-mail and any files transmitted with it may contain confidential information and is intended solely for the use of the individual or entity to whom they are addressed. If you are not the intended recipient, you are notified that disclosing, copying, distributing or taking any action in reliance on the contents of this information is strictly prohibited. Please notify the sender immediately by e-mail if you have received this e-mail by mistake and delete this e-mail from your system. Thank you for your cooperation.

Message

From: AirAction [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=FA78B989233840789 95E04A73D258D83-AIRACTION]
Sent: 4/2/2025 12:03:10 PM
To: DeLibero, Matthew J [MJDeLibero@uss.com]
Subject: CORRECTION: Updated email address for CBI related to the Presidential Exemption

In the previous email, an incorrect email address was provided for the submission of electronic Confidential Business Information (CBI). The email address should be:

OAQPS_CBI@epa.gov

Thank you.

From: AirAction
Sent: Tuesday, April 1, 2025 10:51 AM
To: DeLibero, Matthew J <MJDeLibero@uss.com>
Subject: RE: Presidential Exemption: Coke MACT RTR Rule (2024): U. S. Steel's Clairton, PA Facility

Thank you for emailing the AirAction mailbox to request a Presidential Exemption under section 112(i)(4) of the Clean Air Act and for engaging with EPA in advancing President Trump's Executive Orders and Powering the Great American Comeback. We have received your email and will be in contact soon. If you have Confidential Business Information (CBI) that you'd like to submit, please submit it in electronic version to the CBI@epa.gov inbox or in hardcopy to:

USEPA, OAQPS
CORE CBI Office
4930 Old Page Road
Durham, NC 27703

From: DeLibero, Matthew J <MJDeLibero@uss.com>
Sent: Monday, March 31, 2025 5:00 PM
To: AirAction <AirAction@epa.gov>; Zeldin, Lee <Zeldin.Lee@epa.gov>
Cc: [redacted]@epa.gov>; [redacted]@epa.gov>; [redacted]@epa.gov>; Tardif, Abigale (Abbie) <Tardif.Abigale@epa.gov>; Szabo, Aaron <Szabo.Aaron@epa.gov>; schwab.justin@epa.gov; Dzurinko, Mike G <MDzurinko@uss.com>; Hardin, Christopher W <CWHardin@uss.com>; Jeffrey, Mark A <MJeffrey@uss.com>; Tunno, Brett J <BJTunno@uss.com>; Woodwell, Tishie W <TWoodwell@uss.com>
Subject: Presidential Exemption: Coke MACT RTR Rule (2024): U. S. Steel's Clairton, PA Facility

> **Caution:** This email originated from outside EPA, please exercise additional caution when deciding whether to open attachments or click on provided links.

To Whom It May Concern,

Please see the attached request from U.S. Steel for a Presidential Exemption for the Coke MACT for U.S. Steel's Clairton, PA Facility. Let us know if you have any questions.

Best Regards,

Matthew J. DeLibero

Director Environmental, Reliability, & Operational Excellence
U.S. Steel Mon Valley Works
(o): 412-233-1200
(e): MJDeLibero@uss.com



DISCLAIMER & CONFIDENTIALITY NOTICE: This email neither constitutes an agreement to conduct transactions by electronic means nor creates any legally binding contract or enforceable obligation in the absence of a fully signed written contract. The information contained in this email and any attachments may be confidential, legally privileged and/or exempt from disclosure under applicable law. It has been sent for the sole use of the intended recipient(s). If the reader of this message is not an intended recipient, or the employee or agent responsible for delivering the message to the intended recipient, you are hereby notified that any unauthorized review, use, disclosure, dissemination, distribution, or copying of this communication, or any of its contents, is strictly prohibited. Any inadvertent or accidental disclosure of confidential, legally privileged and/or exempt information contained in this email does not constitute a knowing waiver of any rights regarding such information or materials. If you have received this communication in error, please reply to the sender and destroy all copies of the message (including any attachments).

Message

From: AirAction [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=FA78B989233840789 95E04A73D258D83-AIRACTION]
Sent: 4/2/2025 11:56:02 AM
To: Tamukong, Walter [Walter.Tamukong@clevelandcliffs.com]
CC: Forrester, Traci L [Traci.Forrester@clevelandcliffs.com]
Subject: CORRECTION: Updated email address for CBI related to the Presidential Exemption

In the previous email, an incorrect email address was provided for the submission of electronic Confidential Business Information (CBI). The email address should be:

OAQPS_CBI@epa.gov

Thank you.

From: AirAction
Sent: Tuesday, April 1, 2025 12:12 PM
To: Tamukong, Walter <Walter.Tamukong@clevelandcliffs.com>
Cc: Forrester, Traci L <Traci.Forrester@clevelandcliffs.com>
Subject: RE: Presidential Exemption: National Emission Standards for Hazardous Air Pollutants for Coke Ovens: Pushing, Quenching, and Battery Stacks, and Coke Oven Batteries; Residual Risk and Technology Review, & Periodic Technology Review (89 FR 55684; July 5, 2

Thank you for emailing the AirAction mailbox to request a Presidential Exemption under section 112(i)(4) of the Clean Air Act and for engaging with EPA in advancing President Trump's Executive Orders and Powering the Great American Comeback. We have received your email and will be in contact soon. If you have Confidential Business Information (CBI) that you'd like to submit, please submit it in electronic version to the CBI@epa.gov inbox or in hardcopy to:

USEPA, OAQPS
CORE CBI Office
4930 Old Page Road
Durham, NC 27703

From: Tamukong, Walter <Walter.Tamukong@clevelandcliffs.com>
Sent: Monday, March 31, 2025 5:26 PM
To: AirAction <AirAction@epa.gov>
Cc: [redacted]@epa.gov>; [redacted]@epa.gov>; Forrester, Traci L <Traci.Forrester@clevelandcliffs.com>
Subject: Presidential Exemption: National Emission Standards for Hazardous Air Pollutants for Coke Ovens: Pushing, Quenching, and Battery Stacks, and Coke Oven Batteries; Residual Risk and Technology Review, & Periodic Technology Review (89 FR 55684; July 5, 2024)

> **Caution:** This email originated from outside EPA, please exercise additional caution when deciding whether to open attachments or click on provided links.

Dear Administrator, Hon. Lee M. Zeldin:

On behalf of Cleveland-Cliffs Inc., Please see attached request for **Presidential Exemption: National Emission Standards for Hazardous Air Pollutants for Coke Ovens: Pushing, Quenching, and Battery Stacks, and Coke Oven Batteries; Residual Risk and Technology Review, and Periodic Technology Review (89 FR 55684; July 5, 2024) (Coke Ovens Rule)**

Cleveland-Cliffs Inc. hereby requests a two-year Presidential exemption in accordance with CAA § 112(i)(4) for Cleveland-Cliffs Burns Harbor LLC; Cleveland-Cliffs Cleveland Works LLC, Warren Location; and Cleveland-Cliffs Monessen Coke LLC from compliance with the standards and limitations in the National Emission Standards for Hazardous Air Pollutants for Coke Ovens: Pushing, Quenching, and Battery Stacks, and Coke Oven Batteries; Residual Risk and Technology Review, and Periodic Technology Review, 89 Fed. Reg. 55684 (July 5, 2024) (collectively, the "Coke Ovens Rule").

Granting the extension will not result in any unacceptable risks to the public or the environment because EPA has determined that the source category presents an acceptable risk to human health with an ample margin of safety with the present controls, requirements, and limits already in effect.

Also attached are three referenced documents (**Congressional letters**) to support the request for **Presidential exemption of steel manufacturers and related supply chains from:**

- National Emission Standards for Hazardous Air Pollutants: Integrated Iron and Steel Manufacturing Facilities Technology Review (89 FR 23294; April 3, 2024)
- National Emission Standards for Hazardous Air Pollutants: Lime Manufacturing Plants Technology Review, EPA Docket No. OAR-2017-0015, RIN 2060-AV59, 89 Fed. Reg. 57,738
- National Emission Standards for Hazardous Air Pollutants for Coke Ovens: Pushing, Quenching, and Battery Stacks, and Coke Oven Batteries; Residual Risk and Technology Review, and Periodic Technology Review (89 FR 55684; July 5, 2024) (Coke Ovens Rule)
- National Emission Standards for Hazardous Air Pollutants: Taconite Iron Ore Processing, EPA Docket No. OAR-, RIN, 89 Fed. Reg. 16408 (March 6, 2024)

If you have questions or need additional information, please contact Walter Tamukong at 216-694-4862 or at walter.tamukong@clevelandcliffs.com

Sincerely

Walter Tamukong

CLIFFS

walter.tamukong@clevelandcliffs.com

CLEVELAND-CLIFFS INC.

200 Public Square, 3300

Cleveland, OH 44114

P: (216) 694-5700 www.clevelandcliffs.com

This electronic message and any attachments included with this message are for the exclusive use of the individual or entity to which it is intended to be addressed. This message may contain information that is privileged or confidential and thereby exempt and protected from unauthorized disclosure under applicable law. If the reader of this message is not the intended recipient, or an employee or agent responsible for delivering the message to the intended recipient, be aware that any disclosure, dissemination, distribution or copying of this communication, or the use of its contents, is not authorized and is strictly prohibited. If you have received this communication and are not the intended recipient, please notify the sender immediately and permanently delete the original message from your e-mail system.

ORAL ARGUMENT NOT YET SCHEDULED
No. 24-1135 (consolidated with Nos. 24-1228, 24-1246, 24-1249, 24-1250, 24-1251, 24-1252)

IN THE

United States Court of Appeals for the District of Columbia Circuit

DENKA PERFORMANCE ELASTOMER, LLC, *et al.*,

Petitioners,

v.

ENVIRONMENTAL PROTECTION AGENCY, *et al.*,

Respondents,

and

AIR ALLIANCE HOUSTON, *et al.*,

Intervenors for Respondent.

On Petition for Review of a Final Agency Action of the Environmental Protection Agency

OPENING BRIEF OF PETITIONERS

David M. Friedland
Laura K. McAfee
BEVERIDGE & DIAMOND, P.C.
1350 I Street, N.W., Suite 700
Washington, D.C. 20005
(202) 789-6000
dfriedland@bdlaw.com

Catherine E. Stetson
Adam M. Kushner
Katherine Vanderhook-Gomez
Danielle Desaulniers Stempel
Sam H. Zwingli
Ezra P. Louvis
HOGAN LOVELLS US LLP
555 13th Street, N.W.
Washington, D.C. 20004
(202) 637-5491
cate.stetson@hoganlovells.com

January 17, 2025

Counsel for American Chemistry Council, American Fuel & Petrochemical Manufacturers, and Louisiana Chemical Association

Additional counsel listed on inside cover

Of Counsel:
Elliott Zenick
AMERICAN CHEMISTRY COUNCIL
700 Second Street NE
Washington, D.C. 20002
(202) 249-6744
elliott_zenick@americanchemistry.com

James C. Percy
JONES WALKER LLP
445 N. Boulevard, Suite 800
Baton Rouge, LA 70802
(225) 248-2130
jpercy@joneswalker.com

Robert E. Holden
Brett S. Venn
JONES WALKER LLP
201 St. Charles Ave
New Orleans, LA 70170
(504) 582-8000
bholden@joneswalker.com
bvenn@joneswalker.com

Counsel for Denka Performance Elastomer, LLC

Jeffrey R. Holmstead
David A. Super
Jason B. Hutt
Kevin M. Voelkel
Stephen C. Wald
BRACEWELL LLP
2001 M Street NW, Suite 900
Washington, DC 20036
(202) 828-5800
jeff.holmstead@bracewell.com
david.super@bracewell.com
jason.hutt@bracewell.com
kevin.voelkel@bracewell.com
stephen.wald@bracewell.com

Counsel for Huntsman Petrochemical LLC

Allen A. Kacenjar, Jr.
John David Lazzaretti
SQUIRE PATTON BOGGS (US) LLP
127 Public Square
1000 Key Tower
Cleveland, OH 44114
(216) 479-8500
allen.kacenjar@squirepb.com
john.lazzaretti@squirepb.com

Counsel for Vinyl Institute, Inc.

Eric P. Gotting
Gregory A. Clark
KELLER AND HECKMAN LLP
1001 G Street, N.W.
Suite 500 West
Washington, D.C. 20001
(202) 434-4100
gotting@khlaw.com
clarkg@khlaw.com

Ken Paxton
Attorney General of Texas
Brent Webster
First Assistant Attorney General
Ralph Molina
Deputy First Assistant Attorney General
James Lloyd
Deputy Attorney General for Civil Litigation
Kellie E. Billings-Ray
Chief, Environmental Protection Division
Wesley S. Williams
Assistant Attorney General
Roel Torres
Assistant Attorney General
OFFICE OF THE ATTORNEY GENERAL
ENVIRONMENTAL PROTECTION DIVISION
P.O. Box 12548, MC-066
Austin, TX 78711
(512) 473-2012
wesley.williams@oag.texas.gov
roel.torres@oag.texas.gov

Counsel for the State of Texas

CERTIFICATE AS TO PARTIES, RULINGS, AND RELATED CASES

A. Parties

The following are parties in this Court:

a. Petitioners: American Chemistry Council; American Fuel & Petrochemical Manufacturers; Denka Performance Elastomer, LLC; Huntsman Petrochemical LLC; State of Louisiana; Louisiana Chemical Association; Louisiana Department of Environmental Quality; State of Texas; and Vinyl Institute, Inc.

b. Respondents: Environmental Protection Agency and Michael Regan, in his official capacity as Administrator of the Environmental Protection Agency

c. Intervenors for Respondents: Air Alliance Houston; California Communities Against Toxics; Concerned Citizens of St. John; Environmental Defense Fund; Environmental Integrity Project; Louisiana Environmental Action Network; Rise St. James Louisiana; Sierra Club; and Texas Environmental Justice Advocacy Services.

B. Rulings Under Review

Petitioners seek review of EPA's *New Source Performance Standards for the Synthetic Organic Chemical Manufacturing Industry and National Emission Standards for Hazardous Air Pollutants for the Synthetic Organic Chemical*

Manufacturing Industry and Group I & II Polymers and Resins Industry, published in the Federal Register at 89 Fed. Reg. 42,932 (May 16, 2024), JA___-___.

C. Related Cases

Counsel is aware of the following cases that raise similar challenges to EPA's regulatory authority:

The Ethylene Oxide Sterilizer Ass'n, Inc. v. EPA, No. 24-1180 (D.C. Cir.)

Huntsman Petrochemical LLC v. EPA, No. 20-1414 (D.C. Cir.)

American Chemistry Council v. EPA, Case No. 20-1418 (D.C. Cir.)

American Chemistry Council v. EPA, No. 24-1174 (D.C. Cir.)

D. Corporate Disclosure Statement

Pursuant to Rule 26.1 of the Federal Rules of Appellate Procedure and Circuit Rule 26.1, Petitioners provide the following statements:

The American Chemistry Counsel (ACC) represents the leading companies engaged in the business of chemistry. ACC members apply the science of chemistry to make innovative products and services that make people's lives better, healthier, and safer. ACC is committed to improved environmental, health and safety performance through Responsible Care®; common sense advocacy designed to address major public policy issues; and health and environmental research and product testing. The business of chemistry is a $639 billion enterprise and a key

element of the nation's economy. It is among the largest exporters in the nation, accounting for fourteen percent of all U.S. goods exported. ACC states that it is a "trade association" for purposes of Circuit Rule 26.1(b). ACC has no parent corporation, and no publicly held company has ten percent or greater ownership in ACC.

American Fuel & Petrochemical Manufacturers (AFPM) is a national trade association including most U.S. refiners and petrochemical manufacturers. AFPM has no parent companies, and no publicly held company has a ten percent interest or greater ownership interest in AFPM. AFPM is a "trade association" within the meaning of Circuit Rule 26.1(b). AFPM is a continuing association operating for the purpose of promoting the general commercial, professional, legislative, or other interests of its membership.

Denka Performance Elastomer, LLC (DPE) is a privately owned limited liability company formed under the laws of the State of Delaware, headquartered in LaPlace, Louisiana, and authorized to do business in the State of Louisiana. DPE owns and operates a manufacturing facility in LaPlace, Louisiana that produces Neoprene by utilizing chloroprene, a chemical regulated under the EPA final rule at issue in this appeal. DPE's membership interests are held by Denka USA LLC (whose ultimate parent is Denka Company Limited) and Diana Elastomers, Inc.

(whose ultimate parent is Mitsui & Co., Ltd). Denka Company Limited and Mitsui & Co. Ltd. are each Japanese companies listed on the Tokyo Stock Exchange.

Huntsman Petrochemical LLC is organized under the laws of Delaware and its corporate headquarters are located at 10003 Woodloch Forest Drive, The Woodlands, TX 77380. Huntsman Petrochemical LLC is a manufacturer of differentiated organic chemical products. Huntsman Petrochemical LLC is a wholly owned subsidiary of Huntsman Corporation, a publicly held company. Huntsman Corporation has no parent company, and no publicly held company has a ten percent or greater ownership interest in it.

Louisiana Chemical Association is a nonprofit Louisiana corporation, composed of sixty-two members with over one hundred chemical manufacturing plant sites in Louisiana. Louisiana Chemical Association was formed in 1959 to promote a positive business climate for chemical manufacturing that ensures long-term economic growth for its member companies. Louisiana Chemical Association members are committed to excellence in safety, health, security, and environmental performance and to earning our "license to operate." Louisiana Chemical Association participates on behalf of its members in administrative proceedings and in litigation arising from those proceedings. Louisiana Chemical Association has no outstanding shares or debt securities in the hands of the public and has no parent

company. No publicly held company has a ten percent or greater ownership interest in Louisiana Chemical Association.

The Vinyl Institute, Inc. is a trade association within the meaning of Circuit Rule 26.1(b), representing the leading manufacturers of vinyl, vinyl chloride monomer, and vinyl additives and modifiers. It is incorporated under the not-for-profit corporation laws of the District of Columbia. Relevant to this case, Vinyl Institute member companies are subject to the challenged rule. The Vinyl Institute has no parent companies and has not issued any shares or debt securities to the public.

ED_021114A_00003731-00008

TABLE OF CONTENTS

Page

CERTIFICATE AS TO PARTIES, RULINGS, AND RELATED CASES i

TABLE OF AUTHORITIES ix

GLOSSARY xvii

JURISDITIONAL STATEMENT 1

INTRODUCTION 1

ISSUES PRESENTED.....6

STATUTES.....7

STATEMENT OF THE CASE.....7

A. Statutory Background.....7

1. Residual Risk Assessment: Section 112(f)(2) 9

2. Technology Review: Section 112(d)(6) 12

B. Regulatory and Procedural History 13

1. EPA promulgates the SOCMI and Polymer & Resin standards and submits its Residual Risk Report 13

2. EPA declines to revise the SOCMI or Polymer & Resin standards 14

3. EPA's 2024 Rule 15

SUMMARY OF ARGUMENT 18

STANDING 23

STANDARD OF REVIEW 25

ARGUMENT 26

I. EPA EXCEEDED ITS STATUTORY AUTHORITY IN THE 2024 RULE.....26

TABLE OF CONTENTS—Continued

Page

A. Section 112(f)(2) Does Not Authorize Successive Residual Risk Reviews 27

B. Even If EPA Could Conduct A Second Rulemaking Under Section 112(f)(2), It Was Not Appropriate Here 35

II. EPA'S ETHYLENE OXIDE REGULATIONS ARE UNLAWFUL 37

A. EPA Unlawfully Regulated Facilities And Sources That Do Not Impose Unacceptable Risks 38

B. EPA Unlawfully Defined "In Ethylene Oxide Service" To Capture More Equipment Than Necessary To Achieve Acceptable Residual Risk 44

C. EPA Unlawfully Eliminated The Delay-Of-Repair Provision For Ethylene Oxide 47

D. EPA's Ethylene Oxide Risk Assessment Was Contrary To Law And Arbitrary And Capricious 50

1. EPA unlawfully failed to consider all available health studies 50

2. EPA arbitrarily and capriciously refused to consider updated data concerning smoking risks 54

III. EPA'S PRESSURE RELIEF DEVICE REGULATIONS ARE UNLAWFUL 61

A. The 2024 Rule is Arbitrary And Capricious As Applied to Section 111 New Source Performance Standards 63

B. The 2024 Rule is Arbitrary And Capricious As Applied to Section 112 NESHAPs 65

IV. EPA ERRED BY NOT PROMULGATING PROCESS VENT WORK PRACTICES FOR STARTUP AND SHUTDOWN 70

V. EPA IMPROPERLY REMOVED "TOTAL RESOURCE EFFECTIVENESS" AS A COMPLIANCE OPTION 74

TABLE OF CONTENTS—Continued

Page

A. EPA Never Found It "Necessary" To Remove The Total Resource Effectiveness Index, Nor Did It Identify A Viable Development 75

B. EPA's Removal Of The Total Resource Effectiveness Index Was Arbitrary And Capricious 79

VI. EPA'S FENCELINE MONITORING PROGRAM IS UNLAWFUL 79

A. The Fenceline Monitoring Program Regulates Ambient Air Pollutants, Which EPA Has No Authority To Do Under Section 112 80

B. The Fenceline Monitoring Program Impermissibly Requires Regulated Sources To Reduce Emissions From Other Sources 81

C. The Fenceline Monitoring Program Is Not A Permissible "Work Practice Standard" 84

D. The Secondary Action Level For Chloroprene Is Not Necessary To Meet The "Ample Margin of Safety" Standard In Section 112(f)(2) 85

E. EPA Ignored Substantial Compliance Costs And Did Not Weigh Those Costs Against The Emissions Savings 86

VII. SECTION 112(F) IS AN UNCONSTITUTIONAL DELEGATION 90

CONCLUSION 95

CERTIFICATE OF COMPLIANCE

ADDENDUM

CERTIFICATE OF SERVICE

TABLE OF AUTHORITIES

Page

CASES:

Air All. Houston v. EPA,
906 F.3d 1049 (D.C. Cir. 2018) 25

American Fuel & Petrochemical Manufacturers v. EPA,
3 F.4th 373 (D.C. Cir. 2021) 23

American Trucking Ass'ns, Inc. v. Federal Motor Carrier Safety Admin.,
724 F.3d 243 (D.C. Cir. 2013) 23

American Wild Horse Pres. Campaign v. Perdue,
873 F.3d 914 (D.C. Cir. 2017) 58

Association of Battery Recyclers, Inc. v. EPA,
716 F.3d 667 (D.C. Cir. 2013) 12

AT&T Wireless Servs., Inc. v. FCC,
270 F.3d 959 (D.C. Cir. 2001) 58

Bloate v. United States,
559 U.S. 196 (2010).....32, 33

Campos-Chaves v. Garland,
602 U.S. 447 (2024).....33, 34

Caraco Pharm. Laboratories, Ltd. v. Novo Nordisk A/S,
566 U.S. 399 (2012).....27

Consumers' Rsch. v. FCC,
109 F.4th 743 (5th Cir. 2024).....91

Center for Sustainable Economy v. Jewell,
779 F.3d 588 (D.C. Cir. 2015) 23

Encino Motorcars, LLC v. Navarro,
579 U.S. 211 (2016).....53

* Authorities upon which we chiefly rely are marked with asterisks.

TABLE OF AUTHORITIES—Continued

Page

Environmental. Def. Fund v. EPA,
598 F.2d 62 (D.C. Cir. 1978) 92

Envtl. Health Tr. v. FCC,
9 F.4th 893 (D.C. Cir. 2021) 71, 72

Ethylene Oxide Sterilization Ass'n v. EPA,
No. 24-1180 (D.C. Cir. Oct. 18, 2024) 29

FCC v. Fox Television Stations, Inc.,
556 U.S. 502 (2009).....34, 79

FDA v. American Coll. Of Obstetricians & Gynecologists,
141 S. Ct. 578 (2021).....67

Gundy v. United States,
588 U.S. 128 (2019).....91, 92

Hikvision USA, Inc. v. FCC,
97 F.4th 938 (D.C. Cir. 2024) 31, 44

Horsehead Res. Dev. Co. v. Browner,
16 F.3d 1246 (D.C. Cir. 1994) 46

Huntsman Petrochemical LLC v. EPA,
114 F.4th 727 (D.C. Cir. 2024) 47, 56

King v. Burwell,
576 U.S. 473 (2015).....64

Lilliputian Sys., Inc. v. Pipeline & Hazardous Materials Safety Admin.,
741 F.3d 1309 (D.C. Cir. 2014) 36

Loper Bright Enters. v. Raimondo,
603 U.S. 369 (2024).....26, 32

* *Louisiana Envtl. Action Network v. EPA*,
955 F.3d 1088 (D.C. Cir. 2020).....11, 12, 30, 75

Marshall Field & Co. v. Clark,
143 U.S. 649 (1892).....90

TABLE OF AUTHORITIES—Continued

Page

Medical Waste Inst. v. EPA,
645 F.3d 420 (D.C. Cir. 2011).....34,

Michigan v. EPA,
576 U.S. 743 (2015).....35, 40

Mississippi v. EPA,
744 F.3d 1334 (D.C. Cir. 2013).....54

* *Motor Vehicle Mfrs. Ass'n of U.S., Inc. v. State Farm Mut. Auto. Ins. Co.*,
463 U.S. 29 (1983)..... 26, 34, 36, 46, 50, 54, 68

* *Nat'l Ass'n for Surface Finishing v. EPA*,
795 F.3d 1 (D.C. Cir. 2015)..... 29, 30, 31, 75, 86, 87, 88

Nat'l Lime Ass'n v. EPA,
233 F.3d 625 (D.C. Cir. 2000).....8

New Jersey v. EPA,
517 F.3d 574 (D.C. Cir. 2008).....34, 35

NRDC v. EPA,
529 F.3d 1077 (D.C. Cir. 2008)..... 9, 15, 39, 43, 75, 92

NRDC v. EPA,
735 F.3d 873 (9th Cir. 2013).....73

NRDC v. EPA,
749 F.3d 1055 (D.C. Cir. 2014).....33

NRDC v. EPA,
824 F.2d 1146 (D.C. Cir. 1987).....30, 31, 92

NRDC v. Reilly,
976 F.2d 36 (D.C. Cir. 1992).....33

Paul v. United States,
140 S. Ct. 342 (2019).....91

Republic of Sudan v. Harrison,
587 U.S. 1 (2019).....28

TABLE OF AUTHORITIES—Continued

Page

Russello v. United States,
464 U.S. 16 (1983).....37

Ry. Lab. Executives' Ass'n v. Nat'l Mediation Bd.,
29 F.3d 655 (D.C. Cir. 1994).....31

Sierra Club v. EPA,
292 F.3d 895 (D.C. Cir. 2002).....24, 25

Southwest Airlines Co. v. TSA,
650 F.3d 752 (D.C. Cir. 2011).....61

Texas v. Huntsman Petrochemical LLC,
(District Court of Texas, 419th Judicial District, Travis County,
No. D-1-GN-21-003481).....66

United States Sugar Corp. v. EPA,,
113 F.4th 984, 991 (D.C. Cir. 2024).....25

United States Sugar Corp. v. EPA,
830 F.3d 579 (D.C. Cir. 2016).....66

Utility Air Reg. Grp. v. EPA,
573 U.S. 302 (2014).....31

Verizon Tel. Cos. v. FCC,
570 F.3d 294 (D.C. Cir. 2009).....52

Wayman v. Southard,
23 U.S. 1 (1825).....90

Whitman v. American Trucking Ass'ns,
531 U.S. 457 (2001).....34, 90, 92

STATUTES:

42 U.S.C. § 7409(b)(1).....90

42 U.S.C. § 7410.....80

42 U.S.C. § 7411.....7

TABLE OF AUTHORITIES—Continued

Page

42 U.S.C. § 7411(a)(1) 7, 63
42 U.S.C. § 7411(a)(3) 8, 81
42 U.S.C. § 7411(b)(1)(A) 7, 33
42 U.S.C. § 7412 83
42 U.S.C. § 7412(a) 81
42 U.S.C. § 7412(a)(1)-(2) 8
42 U.S.C. § 7412(a)(1) 9
42 U.S.C. § 7412(c)(1) 28, 83
42 U.S.C. § 7412(d)(1) 81
42 U.S.C. § 7412(d)(2) 8, 30, 83
* 42 U.S.C. § 7412(d)(6) 12, 28, 30
42 U.S.C. § 7412(d) 80
42 U.S.C. § 7412(f)(1) 27
42 U.S.C. § 7412(f)(1)-(2) 36
* 42 U.S.C. § 7412(f)(1)(C) 10, 38, 51, 52, 54
42 U.S.C. § 7412(f)(1)(D) 10
42 U.S.C. § 7412(f)(2) 89
* 42 U.S.C. § 7412(f)(2)(A) 5, 10, 11, 22, 27, 39, 40, 41, 43, 47, 85, 86, 90, 92, 94
42 U.S.C. § 7412(f)(2)(A)-(B) 51
42 U.S.C. § 7412(f)(2)(B) 39
* 42 U.S.C. § 7412(h)(1) 8, 71
* 42 U.S.C. § 7412(h)(2) 84, 85

TABLE OF AUTHORITIES—Continued

Page

42 U.S.C. § 7412(m)(5)-(6) 37

42 U.S.C. § 7412(r)(3) 28

42 U.S.C. § 7414 74

42 U.S.C. § 7429 32

42 U.S.C. § 7429(a)(5) 32

42 U.S.C. § 7547 32

42 U.S.C. § 7547(d) 32

42 U.S.C. § 7601(a) 32

42 U.S.C. § 7607(b)(1) 1

42 U.S.C. § 7607(d)(1)(C) 33

42 U.S.C. § 7607(d)(9) 26

Ill. Admin Code tit. 35, § 218.520(c) 79

Pub. L. No. 91-604, 84 Stat. 1676 (1970) 9

REGULATIONS:

40 C.F.R. § 51.491 8

40 C.F.R. § 58 80

40 C.F.R. § 60.482-9 48

40 C.F.R. § 63.113(k) 73, 74

40 C.F.R. § 63.165(e)(3)(v)(D) 63, 66

40 C.F.R. § 63.6(e) 70

42 C.F.R. § 63.171(c) 50

53 Fed. Reg. 28,496 (July 28, 1988) 52

TABLE OF AUTHORITIES—Continued

Page

* 54 Fed. Reg. 38,044 (Sept. 14, 1989) 10, 11, 39, 68, 89

* 59 Fed. Reg. 19,402 (April 22, 1994) 8, 13, 48, 70, 76

60 Fed. Reg. 12,670 (March 8, 1995) 13

61 Fed. Reg. 46,906 (Sept. 5, 1996) 13

71 Fed. Reg. 17,712 (April 7, 2006) 32

71 Fed. Reg. 76,603 (Dec. 21, 2006) 11, 14, 27

72 Fed. Reg. 5,510 (Feb. 6, 2007) 32

73 Fed. Reg. 76,220 (Dec. 16, 2008) 13, 15, 27

75 Fed. Reg. 65,068 (Oct. 21, 2010) 12

77 Fed. Reg. 55,698 (Sept. 11, 2012) 11, 28

81 Fed. Reg. 97,046 (Dec. 30, 2016) 29

84 Fed. Reg. 69,182 (Dec. 17, 2019) 42, 43

85 Fed. Reg. 40,386 (July 6, 2020) 62

87 Fed. Reg. 7,634 (Feb. 9, 2022) 29

87 Fed. Reg. 77,985 (Dec. 21, 2022) 51, 56

88 Fed. Reg. 13,964 (Mar. 6, 2023) 29

* 88 Fed. Reg. 25,080 (Apr. 25, 2023) 15, 51, 62, 65, 68, 69, 71, 76, 86-89

89 Fed. Reg. 24,090 (Apr. 5, 2024) 43

* 89 Fed. Reg. 42,932 (May 16, 2024) 1, 10, 17, 18, 31, 32, 35, 37, 39-51, 53, 62-64, 66-69, 71, 74-76, 78-90

90 Fed. Reg. 1,375 (Jan. 8, 2025) 64

TABLE OF AUTHORITIES—Continued

Page

LEGISLATIVE MATERIAL:

H.R. Rep. No. 101-490(I) (1990).....9

OTHER AUTHORITIES:

EPA, *Residual Risk Report to Congress* (March 1999).....14

Kyle Steenland et al., *Mortality Among Workers Exposed to Ethylene Oxide*, 324 THE NEW ENGLAND J. MED. 1402 (1991).....61

Michael F. Bryan, *On the Origin and Evolution of the Word Inflation*, Fed. Reserve Bank of Cleveland (Oct. 15, 1997).....77

Necessary, Oxford English Dictionary (2d ed. 1989).....47

Ram B. Jain, *Associations between observed concentrations of ethylene oxide in whole blood and smoking, exposure to environmental tobacco smoke, and cancers including breast cancer: data for US children, adolescents, and adults*, 27 SPRINGER NATURE, 20912 (April 5, 2020).....57

Require, Oxford English Dictionary (2d ed. 1989).....39, 47

GLOSSARY

1989 Benzene Rule	*National Emission Standards for Hazardous Air Pollutants: Benzene Emissions from Maleic Anhydride Plants, Ethylbenzene/Styrene Plants, Benzene Storage Vessels, Benzene Equipment Leaks, and Coke By-Product Recovery Plants*, 54 Fed. Reg. 38,044 (Sept. 14, 1989)
1994 HON	*National Emission Standards for Hazardous Air Pollutants for Source Categories; Organic Hazardous Air Pollutants from the Synthetic Organic Chemical Manufacturing Industry and Other Processes Subject to the Negotiated Regulation for Equipment Leaks*, 59 Fed. Reg. 19,402 (April 22, 1994)
2024 Rule	*New Source Performance Standards for the Synthetic Organic Chemical Manufacturing Industry and National Emission Standards for Hazardous Air Pollutants for the Synthetic Organic Chemical Manufacturing Industry and Group I & II Polymers and Resins Industry*, 89 Fed. Reg. 42,932 (May 16, 2024)
ACC	American Chemistry Council
AFPM	American Fuel & Petrochemical Manufacturers
DPE	Denka Performance Elastomer, LLC
EPA	Environmental Protection Agency
IRIS	Integrated Risk Information System
MACT	Maximum achievable control technology
MON	Miscellaneous Organic Chemicals NESHAP
NESHAP	National Emissions Standards for Hazardous Air Pollutants

Proposed Rule	*New Source Performance Standards for the Synthetic Organic Chemical Manufacturing Industry and National Emission Standards for Hazardous Air Pollutants for the Synthetic Organic Chemical Manufacturing Industry and Group I & II Polymers and Resins Industry*, 88 Fed. Reg. 25,080 (Apr. 25, 2023)
RTC	EPA, *Summary of Public Comments and Responses for New Source Performance Standards for the Synthetic Organic Chemical Manufacturing Industry and National Emission Standards for Hazardous Air Pollutants for the Synthetic Organic Chemical Manufacturing Industry and Group I & II Polymers and Resins Industry* (March 2024)
SOCMI	Synthetic organic chemical manufacturing industry

JURISDICTIONAL STATEMENT

EPA issued the challenged agency action, *New Source Performance Standards for the Synthetic Organic Chemical Manufacturing Industry and National Emission Standards for Hazardous Air Pollutants for the Synthetic Organic Chemical Manufacturing Industry and Group I & II Polymers and Resins Industry*, 89 Fed. Reg. 42,932 (2024 Rule) on May 16, 2024. Industry Petitioners timely petitioned for review between May 16 and July 15, 2024. This Court has jurisdiction under 42 U.S.C. § 7607(b)(1).

INTRODUCTION

In 2024, the Environmental Protection Agency (EPA) issued a new rule imposing stringent obligations on numerous hazardous air pollutants necessary for chemical manufacturing, including ethylene oxide, a gas used commonly in sterilization and production processes, and chloroprene, a chemical used in synthetic rubber production. EPA styled the 2024 Rule as one rule; in reality, it is an unprecedented series of *five* rules in one. This mega-rule imposes a raft of unduly burdensome and costly compliance requirements on synthetic organic chemical, polymer, and resin manufacturers generally—and specifically on facilities whose manufacturing processes emit ethylene oxide or chloroprene.

The 2024 Rule's breadth is matched only by its flaws. The Rule exceeds EPA's statutory authority in several respects and is arbitrary and capricious in many others.

EPA exceeded its statutory authority by mandating a series of onerous, cost-blind requirements under Section 112(f)'s one-time "residual risk" authority which EPA already exercised years ago. EPA completed its Section 112(f) residual risk assessment for the synthetic organic compounds and polymer and resins industries in 2006 and 2008 and concluded that emissions from these source categories were acceptable and left an ample margin of safety to protect the public health. Any further regulation should have proceeded under a different subsection of the Clean Air Act, Section 112(d)(6), which authorizes periodic review and revision of EPA regulations.

But that posed a problem for EPA: When regulating under Section 112(d)(6), EPA must take costs into account. And the costs of EPA's sweeping regulations far exceed any potential benefits to the tune of tens of millions per cancer case avoided, plus additional safety and environmental costs. So, EPA leapfrogged that colossal cost-benefit disparity by invoking Section 112(f) instead. The Clean Air Act does not permit EPA to reanimate its Section 112(f) one-and-done authority as an end-run around Section 112(d)(6)'s additional strictures.

The 2024 Rule is fatally flawed in numerous other respects. Consistent with EPA's blunderbuss approach, the Rule's centerpiece is a suite of cost-blind requirements. But even assuming EPA could issue a second round of regulations under Section 112(f), EPA may only impose cost-blind requirements where necessary to achieve an acceptable level of risk; if EPA wishes to regulate above that level, it must take cost into account. EPA's own risk assessment found that only *eight* facilities' ethylene oxide emissions posed an unacceptable risk. Yet the agency imposed sweeping requirements on every facility emitting ethylene oxide above a de minimis threshold, even if they presented no such risk—and threatened the entire source category with costly controls if their emissions ever reach that level—all without meaningful explanation or justification. EPA then set the standard for equipment in ethylene oxide service far lower than the record supported.

The upshot of all this is that more facilities must ensure that more of their equipment complies with EPA's ethylene oxide controls. To top it off, EPA also ratcheted up the controls themselves, including by removing delay-of-repair provisions, which allow facilities to postpone certain repairs for safety and feasibility purposes if doing so would reduce emissions but only for equipment in ethylene oxide service. EPA's ethylene oxide risk assessment underscores and compounds these errors. Under Section 112(f), EPA was required to conduct a holistic residual risk assessment based on all available data. Instead, EPA homed in on a single data

point, which artificially inflated its risk assessment, while ignoring other studies that ran contrary to EPA's findings.

EPA's control requirements were also arbitrary and capricious in other respects. EPA refused to extend common-sense work practices that *would reduce* ethylene oxide and chloroprene emissions. EPA singled out pressure relief devices safety devices that automatically open to avoid equipment malfunctions or explosions—deeming all releases from such devices per se regulatory violations, without regard to the technological feasibility or cost of eliminating those releases.

Moreover, the 2024 Rule abandoned practices that facilities had been using to control emissions since EPA first promulgated regulations for the synthetic organic chemical manufacturing industry in 1994. Startup and shutdown activities had long been exempted from compliance obligations because it is either impossible or unsafe to route emissions to certain controls during those times; EPA eliminated that practice based on its *ipse dixit* declaration that it would not, in fact, be impossible or unsafe to route emissions to controls during those times. Similarly, EPA unceremoniously dispensed with the total resource effectiveness index a tool that helps facilities identify where pollution controls will be most effective without regard to whether this was necessary, and brushing aside the fact that industry and State regulators had long relied on this tool.

The 2024 Rule also requires regulated facilities to monitor ambient air concentrations of certain pollutants at their "fenceline" even though ambient emissions are subject to regulation under a different section of the Clean Air Act including emissions from *other* equipment on site not subject to the Rule and over which the regulated source has no control. EPA ignored these statutory shortcomings, along with the fenceline monitoring program's substantial costs. EPA's chloroprene-specific fenceline monitoring requirement suffers from yet more defects, including that—by EPA's own admission—this requirement was not necessary to protect the public health with an ample margin of safety and therefore exceeded EPA's statutory authority under Section 112(f)(2).

Finally, EPA's 2024 Rule is constitutionally infirm. Section 112(f) delegates authority to EPA to "promulgate standards" required to "provide an ample margin of safety to protect public health" *if* it first notifies Congress of a problem and Congress declines to fix it. 42 U.S.C. § 7412(f)(2)(A). Congress thus impermissibly turned over the legislative reins to EPA. It also did not provide sufficiently clear limits on how to define these terms in the first instance. That direct abdication of Congress's legislative power is a classic example of an unconstitutional delegation.

This Court should vacate the 2024 Rule.

ISSUES PRESENTED

I. Whether EPA exceeded its authority in promulgating a second set of standards under Section 112(f)(2).

II. Whether EPA's Section 112(f)(2) ethylene oxide and chloroprene controls should be set aside as arbitrary and capricious and contrary to law on multiple grounds, including that: (1) EPA unlawfully imposed standards under Section 112(f)(2) on facilities that do not present an unreasonable risk to public health; (2) EPA unlawfully defined equipment "in ethylene oxide service" more broadly than allowed by the statute; (3) EPA unlawfully eliminated delay-of-repair provisions for equipment in ethylene oxide service; and (4) EPA unlawfully performed its ethylene oxide risk assessment.

III. Whether EPA unlawfully deemed pressure releases of ethylene oxide and chloroprene in violation of the regulations.

IV. Whether EPA unlawfully refused to promulgate process vent work practices for startup and shutdown.

V. Whether EPA unlawfully eliminated the total resource effectiveness tool as a compliance option.

VI. Whether EPA unlawfully imposed a costly and burdensome fenceline monitoring program under Section 112.

VII. Whether Section 112(f) unconstitutionally delegates power from Congress to EPA.

STATUTES

Pertinent statutes are reprinted in the Addendum.

STATEMENT OF THE CASE

A. Statutory Background

The Clean Air Act tasks EPA with establishing, among other things, national emission standards for hazardous air pollutants (NESHAPs), 42 U.S.C. § 7412, and new source performance standards for other pollutants, *id.* § 7411.

Clean Air Act Section 111 governs new stationary sources that contribute to air pollution and "may reasonably be anticipated to endanger public health or welfare." *Id.* § 7411(b)(1)(A). EPA sets new source performance standards in these categories based on "the degree of emission limitation achievable through the application of the best system of emission reduction," accounting for costs "and any nonair quality health and environmental impact and energy requirements." *Id.* § 7411(a)(1).

Section 112, meanwhile, governs "hazardous" air pollutant emissions, often from the same sources. *See id.* § 7412(b)(1). Section 112 directs EPA to promulgate,

for each "source category,"[1] NESHAPs that achieve "the maximum degree of reduction in emissions of the hazardous air pollutants" by requiring sources to either meet a numerical emission limit under subsection (d), *id.* § 7412(d)(2), or, if emissions limits are not "feasible," implement a specific "design, equipment, work practice, or operational standard" under subsection (h), *id.* § 7412(h)(1). These standards are known as "maximum achievable control technology" standards (MACTs). *See Nat'l Lime Ass'n v. EPA*, 233 F.3d 625, 629 (D.C. Cir. 2000).

The Clean Air Act provides for EPA to review these NESHAP and new source performance standards and, in certain circumstances, revise its regulations. For NESHAP standards, there are two distinct grants of authority that EPA may invoke

---

[1] "Sources" are structures or installations that emit or may emit air pollutants. 42 U.S.C. § 7411(a)(3); 40 C.F.R. § 51.491. Under Section 112, EPA regulates sources of hazardous air pollutants, 42 U.S.C. § 7412(a)(1)-(2), and divides sources into categories—such as aerospace and hazardous waste combustors—or subcategories, like coke oven byproducts or coke oven "charging, top side and door leaks." *See National Emissions Standards for Hazardous Air Pollutants*, https://www.epa.gov/stationary-sources-air-pollution/national-emission-standards-hazardous-air-pollutants-neshap-8 (last visited Jan. 3, 2025).

The source category here is the synthetic organic chemical manufacturing industry (SOCMI) which includes chemical manufacturing process units that are part of a major source, "produce as a primary product a SOCMI chemical" listed in the regulation, and "use as a reactant or manufacture as a product, by-product, or co-product one or more of the organic [hazardous air pollutants] listed in table 2 of subpart F" of the regulation. 1994 HON, 59 Fed. Reg. 19,402, 19,405 (April 22, 1994).

at defined times within this process: a one-time residual risk review under Section 112(f)(2) and a recurring technology review under Section 112(d)(6).

1. Residual Risk Assessment: Section 112(f)(2)

The Clean Air Act of 1970 originally required EPA to directly regulate hazardous air pollutants likely to adversely affect human health. Pub. L. No. 91-604, 84 Stat. 1676, 1686 (1970). But this approach quickly proved unworkable, not least because EPA was required to list and regulate any pollutant it deemed "hazardous," without regard to costs. H.R. Rep. No. 101-490(I), at 150-151 (1990). In 1990, Congress largely switched to a *source*-based approach: EPA was responsible for identifying and regulating categories of "sources" that emitted hazardous pollutants, rather than regulating the pollutants directly. 42 U.S.C. §§ 7412(a)(1), (d)(1).

But Congress retained one feature of the earlier approach in Section 112(f). That provision grants EPA a one-time opportunity to address any residual risk to human health remaining after its initial MACT standards, based on an "assessment of a given pollutant's health risks . . . rather than the current state of control technology." *NRDC v. EPA*, 529 F.3d 1077, 1080 (D.C. Cir. 2008) (citation omitted). This process is known as EPA's "residual risk review."

This provision was intended as a backstop if Congress failed to take additional action. To invoke its Section 112(f) authority, EPA was required to "investigate and report" to Congress by November 15, 1996, any residual risk to the public health

remaining after EPA promulgated its MACT standards, with "recommendations" on whether further legislation was needed to address that risk. 42 U.S.C. § 7412(f)(1)(D). If Congress did not act on EPA's recommendations, Section 112(f)(2) provided EPA one opportunity to issue, "within 8 years after" EPA promulgated its initial source-category standards, further standards to address the residual risk if "required in order to provide an ample margin of safety to protect public health." *Id.* § 7412(f)(2)(A).

To determine whether residual risk warranted further regulation in the face of congressional inaction, EPA first considers several sources of risk data, including "actual health effects," "any available epidemiological or other health studies," and "any uncertainties in" EPA's risk assessment methodology. *Id.* § 7412(f)(1)(C), (f)(2)(A). A cancer risk is generally "acceptable" if EPA calculates the likelihood of occurrence as below 100-in-1-million, although this is not a rigid line. 54 Fed. Reg. 38,044, 38,045 (Sept. 14, 1989) (1989 Benzene Rule). If risks are "unacceptable," EPA may implement regulations to reduce any risk to an acceptable level without considering costs. 2024 Rule, 89 Fed. Reg. at 42,967.

EPA then evaluates whether additional controls are required "to provide an ample margin of safety to protect public health." 42 U.S.C. § 7412(f)(2)(A); *see also* 136 Cong. Rec. S16895-01, 1990 WL 164490 (Oct. 27, 1990) (explaining this provision authorizes EPA to set standards "if they are necessary to protect public

health"). This two-step approach is based on EPA's approach in the 1989 Benzene Rule, which Congress later codified in the 1990 Clean Air Act Amendments. *See* 54 Fed. Reg. 38,044; 42 U.S.C. § 7412(f)(2)(A).

The "ample margin of safety" analysis considers all the holistic health and risk information from step one, alongside "technical feasibility, cost, economic impact, and other factors." 71 Fed. Reg. 76,603, 76,606 (Dec. 21, 2006). If EPA finds the existing MACT standards do not provide an "ample margin of safety," the agency may promulgate additional regulations. 42 U.S.C. § 7412(f)(2)(A). Thus, EPA may regulate "unacceptable" residual health risks without regard to costs, but EPA must account for cost when regulating any "acceptable" risks to achieve an ample margin of public safety.

As both EPA and this Court have recognized, subsection (f) does not provide for subsequent revisions or iterative rulemaking; it is a "one-time review." *See, e.g.*, 77 Fed. Reg. 55,698, 55,699 (Sept. 11, 2012) (describing Section 112(f)(2)'s residual risk review as "a one-time review that must occur within 8 years of issuance of the MACT standard"); *Louisiana Envtl. Action Network v. EPA*, 955 F.3d 1088, 1093 (D.C. Cir. 2020) ("EPA under section 112(f)(2) must conduct a one-time review within 8 years of promulgating an emission standard.").

2. *Technology Review: Section 112(d)(6)*

In addition to section 112(f)(2)'s one-time residual risk review, EPA has a recurring obligation to conduct what is known as a "technology review"; it must "review, and revise as necessary" any "emission standards promulgated under this section" "no less often than every 8 years" after promulgating the initial NESHAP. 42 U.S.C. § 7412(d)(6); *Louisiana Envtl. Action Network*, 955 F.3d at 1095 ("Section 112(d)(6) is the statutory mechanism for reviewing and updating emission standards applicable to listed sources."). When reviewing its regulations under Section 112(d)(6), EPA must take "into account developments in practices, processes, and control technologies," 42 U.S.C. § 7412(d)(6), as well as the "technical feasibility of requiring the implementation of these developments, along with any impacts (costs, emission reductions, risk reductions, etc.)," 75 Fed. Reg. 65,068, 65,083 (Oct. 21, 2010). The Section 112(d)(6) technology review thus specifically requires EPA to consider costs. *Association of Battery Recyclers, Inc. v. EPA*, 716 F.3d 667, 673-674 (D.C. Cir. 2013).

Because EPA's first subsection (d)(6) review and one-time subsection (f)(2) assessment must both occur within eight years of setting the initial MACT standards, EPA typically performs the two contemporaneously in what is known as a "Risk and Technology Review."

B. Regulatory and Procedural History

1. EPA promulgates the SOCMI and Polymer & Resin standards and submits its Residual Risk Report.

In 1994, EPA issued its first NESHAP for the synthetic organic chemical manufacturing industry (SOCMI) source category, known as the Hazardous Organic NESHAP (HON). 59 Fed. Reg. 19,402 (April 22, 1994) (1994 HON). The HON promulgated MACT standards based on specific control technologies for storage vessels, process vents, transfer racks or operations, wastewater and treatment residuals, and equipment leaks. *Id.* at 19,471. The 1994 regulation also generally permitted "delay of repair," allowing owners or operators to delay repair of leaking equipment in certain circumstances. *Id.* at 19,410.

Shortly thereafter, EPA promulgated NESHAPs for the Group I and II Polymer & Resin source categories. *See* 60 Fed. Reg. 12,670 (March 8, 1995) (Group II); 61 Fed. Reg. 46,906 (Sept. 5, 1996) (Group I). The Polymer & Resin Group I NESHAP regulated source categories that produce elastomer products, including the Neoprene Production category. 61 Fed. Reg. at 46,910; 73 Fed. Reg. 76,220, 76,224 (Dec. 16, 2008). Like the HON, the Polymer & Resin Group I and II NESHAPs established MACT standards and required sources to limit pollutant emissions from specified emissions points and to control equipment leak emissions. 60 Fed. Reg. at 12,671; 61 Fed. Reg. at 46,909.

EPA belatedly submitted its Residual Risk Report to Congress in 1999. The report detailed EPA's methodology for future residual risk assessments, including how it would determine the "ample margin of safety to protect public health." *See* EPA, *Residual Risk Report to Congress* (March 1999), at ES-8 to ES-11. EPA did not recommend any legislative action; on the contrary, it found the 1990 amendments provided the agency with "adequate authority to address residual risks." *Id.* at 101-103.

2. EPA declines to revise the SOCMI or Polymer & Resin standards.

EPA was required to conduct its first periodic Section 112(d)(6) technology review for the SOCMI source category within eight years of promulgating the 1994 HON and, after Congress failed to respond to the 1999 Residual Risk Report, was authorized to conduct its one-time Section 112(f)(2) residual risk review in 2000. EPA conducted the reviews together in 2006.

EPA declined to revise the 1994 HON under either authority. In its Section 112(f)(2) assessment, EPA concluded that existing standards were sufficient to protect public health with an ample margin of safety. Under its subsection (d)(6) authority, EPA found there were no "significant developments in practices, processes, or control technologies since promulgation of the original standards in 1994." 71 Fed. Reg. at 76,605. "[B]ecause of the lack of any significant developments in" technology, as well as the "limited effect in reducing public health

risk," EPA concluded that "additional controls [were] not warranted under [Clean Air Act] section 112(d)(6)." *Id.* at 76,606. This Court upheld those determinations. *NRDC*, 529 F.3d 1077.

EPA belatedly completed its Risk and Technology Review for the Polymer & Resin Group I and II source categories in 2008. 73 Fed. Reg. 76,220. The agency concluded that existing requirements satisfied the "ample margin of safety" standard under Section 112(f)(2) and that there had been no developments warranting additional controls under either Section 112(d)(6) or Section 112(f)(2). *Id.* at 76,225-26.

3. EPA's 2024 Rule

In April 2023, EPA belatedly completed its second periodic technology review for the SOCMI and Polymer & Resin Group I and II source categories, as required by subsection (d)(6). *See* 88 Fed. Reg. 25,080 (Apr. 25, 2023) (Proposed Rule). EPA proposed several substantial revisions to the existing MACT standards as part of that technology review. It proposed eliminating existing provisions allowing facilities to rely on the "total resource effectiveness [] concept" as a compliance option and required rigorous "fenceline monitoring" requirements monitoring along the facility's property line—for certain pollutants. *Id.* at 25,084, 25,123.

Petitioners explained that these proposed changes suffered from serious flaws: They were poorly reasoned, poorly supported, and in many respects caused more safety and emissions problems than they purported to solve.

But EPA did not stop there. The agency also claimed that it was entitled to conduct a *second residual risk assessment* under subsection (f)(2), citing data from a 2016 Integrated Risk Information System (IRIS) value for ethylene oxide and a 2010 IRIS value for chloroprene. *See id.* at 25,106, 25,083-84. Using these values, EPA proposed deeming the existing residual risks for ethylene oxide and chloroprene emissions "unacceptable" and implementing new, more stringent requirements, such as eliminating existing provisions allowing facilities to delay repairs until the next scheduled shutdown; treating releases from pressure relief devices as violations, rather than promulgating separate "work practice" standards for those periods; and adopting a *second*, even more stringent set of fenceline monitoring requirements for chloroprene. *Id.* at 25,083-84, 25,111, 25,123.

Petitioners protested that EPA's second-time invocation of its one-time subsection (f)(2) authority violated the Clean Air Act. JA [ACC, AFPM, and Vinyl Institute Comments 8 (ACC Comments)]. Petitioners also explained that even if EPA could theoretically engage in a second round of subsection (f)(2) review-and-regulation, EPA needed to comply with the requisite statutory process and to consider costs in evaluating whether to exercise that authority. JA___-___, ___

[ACC Comments 8-9, 13]. Commenters identified serious flaws with the 2016 IRIS value for ethylene oxide and provided evidence that EPA's cancer risk estimates were inflated. JA - [Texas Commission on Environmental Quality Comments 1-3]. And commenters explained that EPA was imposing sweeping regulatory burdens on the entire SOCMI source category that went well beyond addressing the risk EPA claimed was unacceptable, including broad uniform requirements on process vents, storage vessels, equipment leaks, heat exchange systems, and wastewater for all facilities with equipment in ethylene oxide service. 2024 Rule, 89 Fed. Reg. at 42,947.

EPA adopted its proposed regulations almost verbatim, for the entire SOCMI source category. *Id.* at 42,960, 42,991. As for its newfound subsection (f)(2) authority, EPA admitted that its "risk review obligations [were] one time only," but claimed it was not "*prohibit[ed]*" "from revisiting standards promulgated under" subsection (f)(2) in response to new information. JA , [EPA, *Summary of Public Comments and Responses for New Source Performance Standards for the Synthetic Organic Chemical Manufacturing Industry and National Emission Standards for Hazardous Air Pollutants for the Synthetic Organic Chemical Manufacturing Industry and Group I & II Polymers and Resins Industry* (March 2024) 129, 131 (RTC)] (emphasis in original). And EPA rejected, minimized, or ignored altogether commenters' serious challenges to the changes it proposed

pursuant to its Section 112(d)(6) authority, including that it had exceeded its statutory authority by imposing requirements unnecessary to address unacceptable risk. As EPA saw it, the agency had chosen to impose "national standards that apply to specific types of sources rather than specific facilities" without explaining why this was proper over targeting "additional controls on only facilities that pose unacceptable risk." 2024 Rule, 89 Fed. Reg. at 42,983.

* * *

The 2024 Rule went into effect on July 15, 2024. Petitioners' suit followed.

SUMMARY OF ARGUMENT

I. A. Section 112(f)(2) provides EPA with one-time authority to promulgate standards EPA deems necessary to guard against residual health risks—contingent on EPA first reporting to Congress. The statutory structure and history, EPA's past practice, and this Court's prior decisions confirm this is a single-shot authority. In the 2024 Rule, however, EPA claimed the right to issue a second round of regulations under Section 112(f)(2). That it cannot do.

B. Even if EPA could issue a second round of residual risk regulations *and* forgo first reporting to Congress, EPA failed to consider costs in deciding to conduct a second round of rulemaking.

C. Even if EPA could issue a second round of residual risk regulations, EPA failed to follow the statutorily required process and first report to Congress.

II. A. Under Section 112(f)(2), EPA may regulate *unreasonable* residual health risks, without regard to costs; EPA may then regulate "acceptable" risks as needed to achieve an ample margin of safety, accounting for costs. In the 2024 Rule, however, EPA imposed costly requirements across many facilities and units that, according to EPA's own data, *did not* pose an unreasonable risk. That over-control far exceeded the agency's statutory charge. It was also arbitrary and capricious; EPA did not explain its decision to regulate far beyond what its own risk assessment justified.

B. EPA determined that in order to achieve an "acceptable" level of residual risk, EPA would impose onerous controls on all storage tanks and equipment that contain 0.1% or more of ethylene oxide. No record evidence supports that exceedingly low threshold. EPA's decision to regulate far more than necessary to achieve acceptable risks violated its statutory authority and was arbitrary and capricious.

C. EPA's removal of the delay-of-repair provision under Section 112(f)(2) for equipment in ethylene oxide service is arbitrary and capricious. That 30-year-old provision allowed facilities to delay repair until the next scheduled shutdown, avoiding unnecessary emissions and promoting worker safety. EPA failed to explain why it rescinded that commonsense provision exclusively for equipment in ethylene oxide service.

D. EPA's Section 112(f)(2) ethylene oxide regulations relied on its IRIS value risk assessment. But although the statute mandates that EPA holistically consider the available evidence and any associated uncertainties, EPA's IRIS value relied exclusively on a single, flawed analysis.[2] Petitioners pointed out the shortcomings in that analysis, but EPA arbitrarily and capriciously ignored those flaws.

III. EPA refused to extend common-sense work practice standards to pressure relief devices in ethylene oxide or chloroprene service, and instead deemed releases from those safety devices per se regulatory violations under Section 112(f)(2) despite concerns that eliminating such releases was both technologically and economically infeasible. Nor did the agency provide a reasoned basis for treating pressure relief devices in ethylene oxide or chloroprene service differently; instead, EPA relied on cherry-picked data from a single facility that does not support its conclusions.

IV. EPA imposed onerous emissions requirements on facilities' startup and shutdown processes, rather than adopting common-sense work practice standards under Section 112(h), as it has elsewhere. EPA's only rationale for treating these processes the same as steady-state operations was that some sources could meet

[2] EPA took a similarly unlawful approach with chloroprene, as explained in the separate brief from DPE and the State of Louisiana.

MACT standards during those times. That cursory statement wholly ignored industry's concerns about the safety and effectiveness of imposing those requirements during startup and shutdown.

V. A. The total resource effectiveness index, on which industry has long relied, allows sources to comply with emissions standards by targeting controls where they are needed most. EPA claimed the authority to eliminate it under Section 112(d)(6), but that provision only authorizes EPA to implement changes that are "necessary" based on underlying "developments." EPA satisfied neither of those requirements here.

B. EPA's elimination of the total resource effectiveness tool without accounting for State regulators' and industry's longstanding reliance interests was arbitrary and capricious.

VI. A. EPA exceeded its statutory authority by promulgating the fenceline monitoring program, which requires owners and operators to monitor for six hazardous air pollutants, and, if ambient pollutant concentrations exceed a "primary" or "secondary" action level, take any steps needed to meet the action levels. The fenceline monitoring action levels are ambient air quality standards, which EPA has no authority to issue under Sections 111 or 112.

B. Because it mandates that facilities monitor and potentially reduce *all* emissions of the six pollutants at their fenceline, regardless of the source, the

fenceline monitoring program impermissibly regulates sources outside of the SOCMI and Polymer & Resin Group I and II source categories.

C. Fenceline monitoring is not a permissible "work practice standard" under Section 112(h). Work practice standards are only authorized where emissions cannot be controlled or measured through traditional means. By definition, EPA's fenceline monitoring standards inappropriately apply to facilities for which EPA has already determined numeric emission standards are appropriate.

D. EPA adopted a secondary action level for chloroprene under Section 112(f)(2), but it is *well below* what is necessary to achieve an ample margin of public safety, contrary to Section 112(f)(2).

E. The fenceline monitoring program also imposes significant costs without justifiable reductions in emissions or health risks. EPA established the primary action levels under Section 112(b)(6), but it refused to fully account for the costs associated with meeting those levels, and it made no attempt to balance those significant costs against nonexistent "emissions savings." EPA also failed to consider the significant costs associated with meeting the chloroprene-specific secondary action level or even whether this is feasible.

VII. Section 112(f)(2) provides EPA with sweeping discretion to promulgate standards it deems necessary "to provide an ample margin of safety to protect public health." 42 U.S.C. § 7412(f)(2)(A). This statute fails both of the two

potential tests for an unconstitutional delegation: (1) it lacks an intelligible principle and (2) Congress has not made the key policy decision, prescribed the governing rule, or assigned non-legislative responsibilities.

STANDING

Industry Petitioners include individual companies and trade associations with members that have "self-evident" standing because they are all "directly regulated by the challenged rule." *American Fuel & Petrochemical Mfrs. v. EPA*, 3 F.4th 373, 379 (D.C. Cir. 2021).

ACC, AFPM, the Louisiana Chemical Association, and the Vinyl Institute likewise have associational standing. They all have "an obvious interest" germane to their purpose in challenging rulemaking that impacts their members, and neither the claims asserted nor the relief requested requires member participation. *American Trucking Ass'ns, Inc. v. Federal Motor Carrier Safety Admin.*, 724 F.3d 243, 247 (D.C. Cir. 2013); *see Center for Sustainable Economy v. Jewell*, 779 F.3d 588, 597-598 (D.C. Cir. 2015) (petition that "turns entirely on whether [the agency] complied with its statutory obligations" and seeks the "invalidation of agency action" does not require member participation).

Indeed, Industry Petitioners submitted extensive comments on EPA's proposed rule, explaining how and why EPA's regulations would "directly—and negatively"—affect them and their members. *American Trucking*, 724 F.3d at 247;

see JA - , - , - , - , - [ACC Comments; DPE Comments; Huntsman Petrochemical LLC Comments; Louisiana Chemical Association Comments; Vinyl Institute Comments]. For example, DPE, the only facility subject to the Rule's chloroprene requirements and a member of Louisiana Chemical Association, explained in detail why it would be enormously costly to meet those requirements. *See* JA___ [DPE Comments 99]. Huntsman Petrochemical LLC, which is also a member of ACC,[3] provided extensive comments explaining that EPA's ethylene oxide regulations were "fundamentally flawed" and would require Huntsman Petrochemical LLC to adhere to "infeasible" and "unwarranted" requirements. JA___, ___, ___ [Huntsman Petrochemical LLC Comments 2, 28, 31]. ACC, AFPM, and the Vinyl Institute—trade associations that represent "the leading companies" in their fields, many of whom are members of the regulated source-categories likewise explained in detail why each of the regulatory decisions challenged here would negatively affect their members. JA - [ACC Comments 1-148]. This is enough to demonstrate Article III standing in this context. *See Sierra Club v. EPA*, 292 F.3d 895, 900 (D.C. Cir. 2002) ("[I]f the complainant is an object of the action (or forgone action) at issue as is the case usually in review of a rulemaking," there is "little question that the action or inaction has caused him

[3] ACC, *Manufacturer Members*, https://www.americanchemistry.com/about-acc/membership/manufacturer-members (last visited Jan. 17, 2025).

injury, and that a judgment preventing or requiring the action will redress it.") (quotation marks omitted).

The State of Texas has standing because it will be directly impacted by the 2024 Rule. The Texas Commission on Environmental Quality "is responsible for ensuring that Texas' air meets public health and welfare standards established under the federal Clean Air Act." JA___, ___ [Decl. of R. Chism ¶ 3 (Chism Decl.); Decl. of K. Mills-Jurach ¶ 3 (Mills-Jurach Decl.)]. The 2024 Rule will require the Texas Commission on Environmental Quality to expend thousands of hours to review the new regulations, prepare and conduct internal training, and process permit revisions that will be required by EPA's actions. JA___-___, ___-___ [Chism Decl. at ¶¶ 14-22; Mills-Jurach Decl. at ¶¶ 14-21]. By forcing Texas to expend additional resources, the 2024 Rule creates a " 'pocketbook injury' that is incurred by the state itself." *Air All. Houston v. EPA*, 906 F.3d 1049, 1059-60 (D.C. Cir. 2018) (per curiam).[4]

STANDARD OF REVIEW

EPA's interpretation of the Clean Air Act is reviewed de novo. *United States Sugar Corp. v. EPA*, 113 F.4th 984, 991 (D.C. Cir. 2024). If the Court concludes that the relevant provisions of the Clean Air Act are ambiguous, it must "use every

[4] Texas does not sign on to the following sections: Section II(C) [delay of repair], Section IV [startup/shutdown], Section VI [FLM], and Section VII [non-delegation].

tool" at its disposal to "independently" "determine the best reading of the statute." *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 400 (2024).

EPA's hazardous air pollutant regulations may be overturned if they are found to be unconstitutional; in excess of the agency's statutory authority; "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law"; or in violation of EPA's procedural obligations. 42 U.S.C. § 7607(d)(9). Agency action is arbitrary and capricious if the agency has "entirely failed to consider an important aspect of the problem, offered an explanation for its decision that runs counter to the evidence before the agency," or is not in accordance with the law. *Motor Vehicle Mfrs. Ass'n of U.S., Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43, 52 (1983).

ARGUMENT

I. EPA EXCEEDED ITS STATUTORY AUTHORITY IN THE 2024 RULE.

The text, structure, context, and history of Section 112, along with EPA's past practice and this Court's prior decisions, demonstrate that Section 112(f) permits only one residual risk review — which EPA did in 2006 and 2008 for SOCMI and Polymer & Resin Group I, respectively. EPA thus had no statutory authority to conduct a second residual risk review. But even if the Court were to infer that Section 112(f) authorizes successive residual risk reviews in some circumstances, EPA failed to follow the process required under the Clean Air Act for doing so.

A. Section 112(f)(2) Does Not Authorize Successive Residual Risk Reviews.

1. Statutory interpretation begins "with the language of the statute." *Caraco Pharm. Laboratories, Ltd. v. Novo Nordisk A/S*, 566 U.S. 399, 412 (2012) (quotation marks omitted). Section 112(f) sets forth a two-step process for residual risk analyses. First, EPA was required to "investigate and report" to Congress on any remaining residual risk after implementing technology-based standards—including an assessment of the significance of that risk, available controls, and their costs—and "recommendations" to address those risks. 42 U.S.C. § 7412(f)(1). Second, "[i]f"—but only if—"Congress does not act on any recommendation" within two years of the report, EPA could promulgate risk-based standards consistent with its recommendation. *Id.* § 7412(f)(2)(A).

The process Congress created is a one-time shot: the Act authorizes a single report to Congress, followed by a single round of residual risk rulemaking. And EPA took that shot decades ago: it issued its first set of standards for the SOCMI source category in 1994; submitted its residual risk report to Congress in 1999; and following Congress's silence, conducted residual risk reviews in 2006 and 2008, which concluded that additional standards were unnecessary. 71 Fed. Reg. at 76,605; 73 Fed. Reg. at 76,224-26. That was the end of the line for Section 112(f) review.

Nothing in the text of Section 112(f) suggests that Congress intended to vest EPA with continuing revisionary authority. Congress knows how to authorize

repeated reviews when it wants to indeed, it did so elsewhere throughout Section 112. Subsection (c)(1) provides that EPA "shall from time to time . . . no less often than every 8 years, revise, if appropriate" the list of source categories and subcategories. 42 U.S.C. § 7412(c)(1). Subsection (d)(6) specifically requires EPA to conduct recurring technology reviews of emission standards "no less often than every 8 years." *Id.* § 7412(d)(6). Subsection (i)(8)(c) grants EPA the authority to "review the emission limitations promulgated under subparagraph (B) and revise, as necessary, such emission limitations." *Id.* § 7412(i)(8)(C). And subsection (r)(3) authorizes EPA to "revise[ ] from time to time" and "at least every 5 years" the list of substances posing risk of death, injury, or adverse effects if accidentally released. *Id.* § 7412(r)(3).

Subsection (f)(2) contains no such charge. It is a "well-settled principle[] of statutory interpretation" that "Congress generally acts intentionally when it uses particular language in one section of a statute but omits it in another." *Republic of Sudan v. Harrison*, 587 U.S. 1, 12 (2019) (quotation marks omitted).

Consistent with the statutory text, EPA itself has historically described its Section 112(f)(2) authority as a "one-time" process. When EPA promulgated its 2012 NESHAP for the pulp-and-paper source category, the agency explained that Section 112(f)(2)'s residual risk review "is a one-time review that must occur within 8 years of issuance of the MACT standard." 77 Fed. Reg. at 55,699. EPA reiterated

this position in 2016, 2022, and 2023.[5] And just nine days before issuing the 2024 Rule, EPA recognized a "distinct[ion]" between its Section 112(d)(6) technology review and its "one-time" Section 112(f)(2) residual risk review. 2024 Rule, 89 Fed. Reg. at 38,514. Indeed, from Section 112(f)'s enactment in 1990 until April 2024, EPA did not rely on that provision to amend residual risk standards. *See* JA [RTC 130 n.139]. Between April and May 2024, EPA changed course to utilize Section 112(f)(2) twice: first in the Sterilization NESHAP, issued in April 2024 and currently pending before this Court; and in the 2024 Rule at issue here. *See* Pet. Br. 18-24, *Ethylene Oxide Sterilization Ass'n v. EPA*, No. 24-1180 (D.C. Cir. Oct. 18, 2024).

This Court has likewise described EPA's authority to conduct a residual risk review under subsection (f)(2) as a one-time shot. Consistent with EPA's characterization in its briefing, this Court in *National Association for Surface Finishing* explained that Section 112 "entails two distinct, parallel analyses: a recurring 'technology review' under section 112(d)(6) and a one-time 'risk review' under section 112(f)(2)." *Nat'l Ass'n for Surface Finishing v. EPA*, 795 F.3d

[5] 81 Fed. Reg. 97,046, 97,048 (Dec. 30, 2016) (describing Section 112(f)(2)'s residual risk review as a "one-time review"); 87 Fed. Reg. 7634, 7632 n.18 (Feb. 9, 2022) (same); Proposed Rule, 88 Fed. Reg. 13,964, 13,962 n.22 (Mar. 6, 2023) (same).

1, 5 (D.C. Cir. 2015).[6] *Louisiana Envtl. Action Network* affirmed this approach, again consistent with the agency's briefing, explaining that "EPA under section 112(f)(2) must conduct a one-time review within 8 years of promulgating an emission standard." 955 F.3d at 1093.[7]

Congress well understood that, as science progresses, new information may appear; indeed, as noted above, many parts of Section 112 include express directions to conduct periodic reviews and revisions. *See, e.g.*, 42 U.S.C. § 7412(d)(6) (instructing EPA to "review" standards for potential technology updates "no less often than every 8 years"). It did not do so in Section 112(f)(2). Instead, this Court has previously noted that Section 112(d)(6) is "the statutory mechanism for reviewing and updating emission standards applicable to listed sources." *Louisiana Envtl. Action Network*, 955 F.3d at 1095.

But subsection (d)(6) authority comes with significant constraints, including that EPA must consider costs. 42 U.S.C. § 7412(d)(2); *see Nat'l Ass'n for Surface Finishing*, 795 F.3d at 5; *compare NRDC v. EPA*, 824 F.2d 1146, 1165 (D.C. Cir.

---

[6] *See* Final Br. for Respondents 6-8, *Nat'l Ass'n for Surface Finishing*, No. 12-1459 (Sept. 29, 2014) (Section 7412(f) "provides for a one-time lookback at the promulgated standards to review any residual health risks that had not been eliminated by the initial technology-based standards.") (quotation marks omitted).

[7] *See* Final Br. for Respondents 7 & n.3, *Louisiana Envtl. Action Network*, No. 17-1257 (D.C. Cir. Sept. 4, 2019) ("[I]n contrast to the technology review under Section 7412(d)(6), the residual risk review mandated by Section 7412(f)(2) is a one-time obligation that is not repeated every eight years.").

1987) (explaining that, under subsection (f)(2), EPA "cannot under any circumstances consider cost"). EPA cannot make an end-run around that statutory requirement by purporting to discover newfound authority in a long-extant statute. *See Utility Air Reg. Grp. v. EPA*, 573 U.S. 302, 324 (2014) ("When an agency claims to discover in a long-extant statute an unheralded power . . . we typically greet its announcement with a measure of skepticism."). Congress deliberately established two distinct regulatory pathways—one a single shot, without regard to costs; the other available "as necessary," taking costs into account. EPA must abide by that decision.

2. EPA's contrary arguments are meritless. EPA maintains that although it is not *required* "to undertake another risk review," subsection (f)(2) "does not *prohibit* the EPA from" using its authority to "revis[e] standards." JA - [RTC 129-131]; *see* 2024 Rule, 89 Fed. Reg. at 42,940-41. Agency action, however, requires explicit statutory authorization. *See, e.g.*, *Hikvision USA, Inc. v. FCC*, 97 F.4th 938, 944 (D.C. Cir. 2024). And although Section 112 is chock-full of provisions vesting EPA with authority to revise its regulations, *see supra* pp. 27-28, Section 112(f)(2) is not one of them. "Were courts to *presume* a delegation of power absent an express *withholding* of such power, agencies would enjoy virtually limitless hegemony." *Ry. Lab. Executives' Ass'n v. Nat'l Mediation Bd.*, 29 F.3d 655, 671 (D.C. Cir. 1994).

EPA contends that it has previously revised Clean Air Act standards where the statute did not explicitly authorize revisions. JA [RTC 131]. EPA's two examples regulations adopted under Section 129, governing "solid waste combustion," and Section 213, governing "nonroad engines and vehicles" show otherwise. *See* 42 U.S.C. §§ 7429, 7547. But although those sections do not mandate revisions, they do expressly authorize them. *See id.* § 7429(a)(5) (authorizing EPA to "review, and . . . revise such standards and requirements"); *id.* § 7547(d) (authorizing EPA to "revise or promulgate regulations as may be necessary"). That language parallels Section 112(d), as EPA elsewhere has recognized. *See* 72 Fed. Reg. 5510, 5532-33 (February 6, 2007). Section 112(f) contains no such authorization.

EPA also points its own comment in its 2006 risk and technology review for the sterilization industry, in which the agency asserted the authority "to revisit (and revise, if necessary)" its decision not to regulate, citing Clean Air Act Section 301. 2024 Rule, 89 Fed. Reg. at 42,941 (quoting 71 Fed. Reg. at 17,715). *Asserting* authority does not mean that EPA actually *has* that authority; courts, not agencies, interpret statutes. *Loper Bright*, 603 U.S. at 395. And Section 301's general grant of authority to "prescribe such regulations as are necessary to carry out [EPA's] functions under" the Clean Air Act cannot override more specific provisions elsewhere. *See* 42 U.S.C. § 7601(a); *see, e.g.*, *Bloate v. United States*, 559 U.S. 196,

207 (2010). Indeed, this Court has "consistently held" that EPA's authority to issue ancillary regulations under Section 301 "is not open-ended, particularly when there is statutory language on point." *NRDC v. EPA*, 749 F.3d 1055, 1063 (D.C. Cir. 2014). Because Section 112(f) provides "on point" guidance on this issue, "the general grant of rulemaking power embodied in section 301" cannot be read to "trump the specific provisions of the Act." *NRDC v. Reilly*, 976 F.2d 36, 41 (D.C. Cir. 1992).

EPA also invoked Clean Air Act Section 307 in its 2024 rulemaking response, which allows judicial review of:

> The promulgation or revision of any standard of performance under section 7411 of this title, or emission standard or limitation under section 7412(d) of this title, any standard under section 7412(f) of this title, or any regulation under section 7412(g)(1)(D) and (F) of this title, or any regulation under section 7412(m) or (n) of this title.

42 U.S.C. § 7607(d)(1)(C). On EPA's telling, Section 307's use of "revision" proves that Congress "explicitly assume[d] that the EPA might revisit and revise" risk-based standards set under Section 112(f). JA___ [RTC 131]. But Section 307 is not a source of agency authority; it is a broad grant of judicial jurisdiction that encompasses a host of potential challenges. Moreover, several of the other enumerated provisions *do* expressly confer authority on EPA to revise or modify its decisions, *see, e.g.*, 42 U.S.C. § 7411(b)(1)(A) hence the use of the disjunctive "or," *Campos-Chaves v. Garland*, 602 U.S. 447, 457 (2024) ("The word 'or' is

almost always disjunctive.") (quotation marks omitted). Congress does not "hide elephants in mouseholes," using catch-all jurisdictional provisions to "alter the fundamental details" of its regulatory scheme. *Whitman v. American Trucking Ass'ns*, 531 U.S. 457, 468 (2001). EPA itself knows better; that is why, before this year, it has never found this particular elephant in that particular mousehole.

None of the cases EPA cited in its rulemaking response moves the needle. See JA___ [RTC 131]. *Medical Waste Inst. v. EPA*, involved Section 129, which expressly authorizes updates—and the particular revision was in response to this Court's remand order. 645 F.3d 420, 426 (D.C. Cir. 2011). EPA also cited cases like *FCC v. Fox Television Stations, Inc.*, 556 U.S. 502, 515 (2009), and *State Farm*, 463 U.S. at 42, which the agency reads as showing that "[a]gencies have inherent authority to reconsider past decisions and to revise, replace, or repeal a decision to the extent permitted by law and supported by a reasoned explanation." JA [RTC 132]. But those cases instruct that such changes are limited "to the extent permitted by law," *id.*, meaning they are bounded by "the scope of the authority delegated to the agency by the statute," *State Farm*, 463 U.S. at 42; *see also Fox*, 556 U.S. at 536 (Kennedy, J., concurring) ("[O]f course, the agency action must not be 'in excess of statutory jurisdiction [or] authority.' "). Section 112(f) authorizes only a single action; subsequent reviews are not "permitted by law." *See New Jersey v. EPA*, 517 F.3d 574, 583 (D.C. Cir. 2008) (where Congress limits EPA's discretion to revise

prior decisions, "EPA may not construe [the] statute in a way that completely nullifies" that limit) (quotation marks omitted).

B. Even If EPA Could Conduct A Second Rulemaking Under Section 112(f)(2), It Was Not Appropriate Here.

Even if EPA theoretically has some inherent authority to engage in a second round of residual risk rulemaking, it must first consider the costs in deciding to regulate and it must then report to Congress before acting. EPA did neither.

First, even if EPA has some inherent authority to conduct a second residual risk review, because conducting a second risk review is a "discretionary action," EPA's decision to do so must still be "reasonable." JA___ [ACC Comments 13]. As commenters explained, that necessarily requires taking cost-based considerations into account as part of "the initial decision to regulate." *See Michigan v. EPA*, 576 U.S. 743, 754 (2015); JA , - [ACC Comments 13; DPE Comments 55-60]. These comments went to the core of EPA's authority whether EPA can and should regulate under Section 112(f) *at all*. Yet EPA did not address them.

Instead, EPA focused its rebuttals on whether and how it was required to consider costs once it had already decided to regulate. *See* 2024 Rule, 89 Fed. Reg. at 42,969-70. That is the exact argument the dissenters pushed in *Michigan*, which the majority rejected. *See Michigan*, 576 U.S. at 758 (rejecting dissent's argument that "EPA need not explicitly analyze costs before deeming regulation appropriate, because other features of the regulatory program" will ensure "cost-effectiveness")

(quotation marks omitted). In fact, EPA here has not claimed that any "other features" will ensure "cost-effectiveness," and instead disclaimed any requirement to do so. *See infra* pp. 62-71.

It also misses the point. Petitioners argued that *even assuming* EPA could regulate under subsection (f)(2), it was not prudent to do so, given the associated costs and the fact that EPA had a congressionally authorized alternative regulatory path available under subsection (d)(6). JA___ [ACC Comments 13]. EPA's procedural failure to respond to this "relevant and significant" comment, *Lilliputian Sys., Inc. v. Pipeline & Hazardous Materials Safety Admin.*, 741 F.3d 1309, 1312 (D.C. Cir. 2014) (quotation marks omitted), and its substantive failure to consider this "important" question, was arbitrary and capricious twice over. *State Farm*, 463 U.S. at 43.

Second, even if EPA *could* theoretically conduct a second residual risk review, and had reasonably concluded it was appropriate to do so, EPA has no authority to regulate under Section 112(f) unless and until Congress is made aware of the risk and chooses not to act. 42 U.S.C. § 7412(f)(1)-(2); *see* JA - [ACC Comments 8-9]. Setting aside for the moment the serious constitutional issues inherent in that approach, *see infra* pp. 90-95, EPA's action exceeded those limits here. EPA's 1999 risk report certainly did not promise a sequel, and EPA never submitted a second residual risk report to Congress beyond that 1999 report. EPA therefore never

triggered any supposed authority to issue new standards consistent with its unacted-upon recommendations. Congress knew how to give EPA more regulatory latitude when it saw fit. *See* 42 U.S.C. § 7412(m)(5)-(6) (instructing EPA to report to Congress on an ongoing basis and to issue additional "standards or control measures as may be necessary and appropriate" without tying that delegation of authority to congressional inaction). But "Congress did not write [Section 112(f)] that way." *Russello v. United States*, 464 U.S. 16, 23 (1983) (quotation marks omitted). If the Court interprets Section 112(f) to grant EPA broad repeat-regulatory authority, it should incorporate the constraints Congress imposed on that authority.

II. EPA'S ETHYLENE OXIDE REGULATIONS ARE UNLAWFUL.

Even if EPA could conduct a second residual risk review, EPA's ethylene oxide regulations are fundamentally flawed. EPA determined that approximately eight of the two hundred SOCMI facilities posed an "unacceptable risk," but EPA improperly imposed regulations that go far beyond addressing the risks it found. EPA's broad approach contravenes the Clean Air Act's text, which required EPA to conform its regulations to specific unacceptable risks.

What's more, EPA's regulations bear no rational relationship to achieving an acceptable level of ethylene oxide-related risk. EPA's self-described "conservative approach" to defining equipment "in ethylene oxide service," 2024 Rule, 89 Fed. Reg. at 42,973, 42,975, sweeps in far more equipment than necessary and runs

counter to the available evidence. And EPA failed to explain its refusal to extend common-sense work practice standards to pressure relief devices in ethylene oxide service (as it had done with other pressure relief devices) or to retain delay-of-repair rules for components in ethylene oxide service (as it had done for all other components).

These errors are compounded by EPA's fundamentally flawed risk assessment, which overestimated ethylene oxide risk. EPA's ethylene oxide risk assessment considered a single data source—the 2016 IRIS value—despite Congress's statutory directive to consider all available health studies. 42 U.S.C. § 7412(f)(1)(C). The data EPA relied on to calculate that IRIS value was also deeply flawed, rendering it even more unreliable. Indeed, by the time EPA proposed the 2024 Rule, new data called its findings into question yet EPA cherry-picked the IRIS value anyway.

The Court should vacate EPA's unlawful, arbitrary, capricious, costly, and infeasible ethylene oxide regulations.

A. EPA Unlawfully Regulated Facilities And Sources That Do Not Impose Unacceptable Risks.

EPA's residual risk assessment has two components: A cost-blind determination of "acceptable risk," followed by a cost-based determination of what is needed to achieve an "ample margin of safety." *Supra* pp. 7-11. The 2024 Rule's residual risk requirements were based solely on EPA's cost-blind determination that

the HON source category posed an "unacceptable" risk. *See* 2024 Rule, 89 Fed. Reg. at 42,957. But EPA's own risk assessment concluded that, out of approximately two hundred HON facilities in the United States, *only eight* have emissions that pose such risk. *Id.* at 42,983.

EPA's sweeping requirements which extend well beyond these eight facilities—exceeded EPA's statutory authority. Congress did not authorize EPA to use a chainsaw when a scalpel would suffice. It had to either tailor cost-blind standards to address the "unacceptable" risk it found or explain why more stringent standards were cost-justified. EPA did neither. And its failure to tether the 2024 Rule to the risks it was authorized to address also renders the Rule arbitrary and capricious.

1. EPA may impose residual risk requirements only when "such standards [are] required in order to provide an ample margin of safety to protect public health." 42 U.S.C. § 7412(f)(2)(A). "Require" means "to demand as necessary or essential." *Require*, Oxford English Dictionary (2d ed. 1989). And Congress adopted the analytical framework set out in the 1989 Benzene Rule defining an "ample margin of safety." 1989 Benzene Rule, 54 Fed. Reg. 38,044; 42 U.S.C. § 7412(f)(2)(B); *NRDC*, 529 F.3d at 1083.

This plain-text limit constrains both components of EPA's residual risk assessment framework. EPA first implements cost-blind standards to "bring risk

down to acceptable levels"; it then imposes "any *additional* controls . . . required to achieve an ample margin of safety," taking cost into account. 2024 Rule, 89 Fed. Reg. 42,967 (emphasis added). In other words, the unacceptable risk step is a lesser included part of how EPA exercises its residual risk authority. It would turn Section 112(f) on its head if EPA could do *more* than what is necessary to address unacceptable risk without explaining why those actions are "required" to achieve an ample margin of safety, keeping in mind that "required" necessitates a consideration of cost and other factors. *See* 42 U.S.C. § 7412(f)(2)(A).

The statute's structure and history confirm that plain-text reading. After the 1970s health-based approach proved unworkable, Congress adopted a source category approach that authorized EPA to impose technology-based, consistent standards across each industry category. *Supra* pp. 9-12. Once those controls are in place, subsection (f)(2) provides EPA a one-time opportunity to issue additional regulations if "required" to address residual risks to human health. *Supra* pp. 9-11. Congress thus tailored EPA's authority specifically to the problem at hand authorizing it to take steps that were essential to address unacceptable risks that remain after technology standards are met. Congress did *not* confer on EPA a broad-based power to regulate any appreciable risk, no matter how small. And it certainly did not allow EPA to do so without "attention to cost." *Michigan*, 576 U.S. at 752.

Instead, when EPA wants to do more than regulate unacceptable risk, it must take cost into account. 42 U.S.C. § 7412(f)(2)(A).

EPA flouted those limits here. EPA found that "8 facilities have an estimated maximum cancer risk greater than 100-in-1 million." 2024 Rule, 89 Fed. Reg. at 42,960. Even among those eight, however, the risk drivers varied. *Id.* at 42,983. But EPA did not tailor its standards to address the residual risk from these eight facilities. Instead, it imposed unreasonably low thresholds for having equipment "in ethylene oxide service" which all facilities must meet lest they incur millions of dollars in control costs—all to address emissions that EPA's own analysis shows are unnecessary to reduce risk to an acceptable level.

EPA itself acknowledges that a total of seventeen facilities will have equipment "in ethylene oxide service" including the eight contributing to its "unacceptable risk" finding. *Id.* at 42,983. These other facilities face particularly significant collateral damage from EPA's broad-brush approach: All atmospheric releases from pressure relief devices are now violations; and facilities must install controls for process vents, storage vessels, and heat exchange systems; install additional as-yet unidentified controls on pressure relief devices, as any release is now considered a violation; increase leak-monitoring efforts at tens of thousands of individual locations, *see* JA___ [ACC Comments 51]; and treat wastewater that has

contacted any process stream containing ethylene oxide regardless of cost, technical feasibility, and safety.

Complying with these obligations will be enormously costly, to put it mildly. *See, e.g.*, JA , , [ACC Comments 105, 110, 37] (estimating $5 million to $15 million to control process vents at a single facility; $1.5 million to $9 million to control two storage tanks; and $170 million in capital costs and $58 million in annual operating costs to control additional wastewater). And for the majority of facilities, this suite of controls and the associated costs are, by EPA's own analysis, not required to bring risk to an acceptable level. 2024 Rule, 89 Fed. Reg. at 42,983; JA___ [ACC Comments 17]. Mandating such extensive risk reduction measures at sites not found to pose unacceptable risk is beyond EPA's statutory authority.

The 2024 Rule brushed aside congressional limits on EPA's authority. Indeed, EPA disclaimed any obligation to "target additional controls on only facilities that pose unacceptable risk." 2024 Rule, 89 Fed. Reg. at 42,983. Instead, EPA claimed it was authorized to "impose the same [ethylene oxide] requirements on each owner and operator" regardless of risk because the standards were "national." *Id.*

This is news. EPA has previously tailored residual risk controls to individual facilities. EPA proposed a similar approach for another residual risk rulemaking involving the same industry and pollutants. Misc. Org. Chem. NESHAP (MON), 84 Fed. Reg. 69,182 69,216 (Dec. 17, 2019) (proposed rule) (proposing controls for

the "two facilities" with equipment "in ethylene oxide service" which presented a particular degree of risk). And in the Sterilization Facilities rule issued just one month before the 2024 Rule, EPA imposed different control requirements on different facilities based on the quantity of ethylene oxide used at each facility. 89 Fed. Reg. 24,090, 24,100 (Apr. 5, 2024). EPA made no attempt in the 2024 Rule to tailor its standards to the degree of risk—much less the risk posed by specific facilities.

The Clean Air Act refutes EPA's one-size-fits-all approach. Congress authorized EPA to impose cost-blind regulations only to the extent "required" to address unacceptable risk—no more. 42 U.S.C. § 7412(f)(2)(A); *see also NRDC*, 529 F.3d at 1083. EPA calculated an "unacceptable" risk at only eight regulated facilities; it was therefore not "required" to impose controls on the *other* facilities that did not pose such risk. Either EPA must conform its standards to that required to address unacceptable risk, or it must show that its standards are required to provide an "an ample margin of safety" across all regulated sources *after* accounting for "costs, energy, [and] safety" considerations. 42 U.S.C. § 7412(f)(2)(A). EPA has done neither.

2. EPA's one-size-fits-all imposition of stringent ethylene oxide controls was arbitrary and capricious. Even if EPA could impose broad controls under its "national standards" theory, it must still explain *why* those controls are necessary to

"ensure that risks from the source category are acceptable and that the standards provide an ample margin of safety to protect public health." 2024 Rule, 89 Fed. Reg. at 42,983. But EPA made no effort to explain why it was essential to regulate other facilities beyond the eight actually found to pose an unacceptable risk, or even for them, why uniform standards were necessary when a substantial majority of the risk arose from just one facility. Nor did EPA attempt to justify its regulations under a cost-based "ample margin of safety" analysis. *See id.* at 42,957 ("The ample margin of safety analysis for the SOCMI source category identified no other control options for [ethylene oxide] beyond those proposed to reduce risks to an acceptable level."). EPA's action is thus "overbroad, unexplained, and arbitrary." *Hikvision*, 97 F.4th at 950 (rejecting definition of "critical infrastructure" that arbitrarily regulated all assets "connected" to sixteen sectors). EPA likewise did not explain why it could not further tailor its regulation to source sub-categories, or why tailoring a regulation to "specific types of sources" would accomplish EPA's goals while tailoring it to "specific facilities" would not. This, too, was arbitrary and capricious.

B. EPA Unlawfully Defined "In Ethylene Oxide Service" To Capture More Equipment Than Necessary To Achieve Acceptable Residual Risk.

EPA's ethylene-oxide controls apply to all equipment containing ethylene oxide above EPA's established threshold. EPA set that level far too low, resulting in sweeping overcontrols far beyond what is necessary to achieve "acceptable" risk.

The 2024 Rule establishes a host of controls for and restrictions on storage vessels, heat exchangers, and other equipment "in [ethylene oxide] service." *See* 2024 Rule, 89 Fed. Reg. at 42,935. For tanks, EPA defined that term to include all tanks that contain 0.1% or more of ethylene oxide. *Id.* at 43,158. But EPA's finding of an "unacceptable risk" was driven entirely by tanks storing 100% ethylene oxide. JA___-___ [ACC Comments 41-42]. *No* data or analysis by EPA supported any risk finding for tanks storing lower concentrations of ethylene oxide. *Id.* Conversely, extensive evidence demonstrated that equipment could contain up to 5% ethylene oxide without presenting an unacceptable risk. JA___-___, ___-___ [ACC Comments 44-45, 19-27]. EPA simply ignored this data and, without citing any competing information, imposed a 0.1% ethylene oxide threshold.

EPA similarly imposed a 0.1% threshold for equipment leaks, arguing that approximately 20% of the source category risk stemmed from ethylene oxide equipment leaks. 2024 Rule, 89 Fed. Reg. at 42,975. Again, commenters presented data demonstrating that any risk came from equipment containing at least 5% ethylene oxide meaning the 0.1% threshold was immensely over-inclusive and that equipment containing less than 5% ethylene oxide "does not significantly contribute to risk." *Id.* at 42,974; *see* JA___ [ACC Comments 44]. Again, EPA simply ignored this data and retained its proposed 0.1% threshold.

EPA also extended its arbitrary 0.1% concentration threshold to heat exchange systems in ethylene oxide service. *See* 2024 Rule, 89 Fed. Reg. at 42,957. Using EPA's maximum assumed model leak rate, commentators provided evidence that heat exchange systems with a process concentration of 0.5% ethylene oxide by weight would result in acceptable risk, highlighting once again that a 0.1% threshold was unnecessarily conservative. JA___ [ACC Comments 56]. EPA disregarded these calculations, summarily concluding that its decision was "reasonable" in light of its "conservative approach" to "protect[ ]" the "public health." 2024 Rule, 89 Fed. Reg. at 42,977.

The agency's 0.1% threshold plainly runs counter to the evidence. *State Farm*, 463 U.S. at 43. Unsurprisingly, then, EPA's explanation for its action was also woefully insufficient. For both tanks and equipment leaks, EPA summarily concluded that its 0.1% threshold was "reasonable." 2024 Rule, 89 Fed. Reg. at 42,973, 42,977. But agencies must base their decisions on the data not speculation, *Horsehead Res. Dev. Co. v. Browner*, 16 F.3d 1246, 1269 (D.C. Cir. 1994) and EPA did not cite any record evidence disputing commenters' analyses.

Rather, EPA manufactured a specific set of circumstances under which lower concentrations of ethylene oxide "*could*" pose an unacceptable risk: "[1] in a densely-populated area with [2] a nearby receptor and [3] under specific conditions, the risks could none-the-less be unacceptable." 2024 Rule, 89 Fed. Reg. at 42,973,

42,975 (emphasis added). Yet the record did not show that this scenario actually exists nor that EPA analyzed what threshold would be necessary to reduce those theoretical risks to an "acceptable" level.

EPA is not authorized to regulate risks that "*could*" be unacceptable. Whatever deference EPA receives on scientific decisions, *see Huntsman Petrochemical LLC v. EPA*, 114 F.4th 727 (D.C. Cir. 2024), it does not extend to far-fetched hypotheticals. Rather, Section 112(f) authorizes agency action only when it is "required" or "necessary." 42 U.S.C. § 7412(f)(2)(A). Only "essential" controls fit that bill. *See Require*, Oxford English Dictionary ("to demand as necessary or essential"); *Necessary*, Oxford English Dictionary ("indispensable, requisite, essential"). EPA's self-proclaimed "conservative approach," 2024 Rule, 89 Fed. Reg. at 42,973, 42,975, does not comport with that statutory limit.

C. EPA Unlawfully Eliminated The Delay-Of-Repair Provision For Ethylene Oxide.

EPA regulations typically require facilities to inspect for and repair leaks on specific timelines (e.g., quarterly). Some leaks, however, cannot be repaired without shutting down the entire process, which can actually *increase* emissions. This is because *planned* shutdowns may avoid excess emissions (*e.g.*, by emptying equipment and/or using temporary controls); *unplanned* shutdowns may not allow these same precautions. Delay-of-repair provisions allow facilities to postpone leak repairs until the next planned shutdown—as long as the emissions from the ongoing

leak would be lower than the emissions from an immediate shutdown. *See*, *e.g.*, 40 C.F.R. § 60.482-9. These provisions are fairly standard in leak detection programs, and the HON is no exception; it has permitted delay of repair since 1994. 1994 HON, 59 Fed. Reg. at 19,410.

EPA retained delay-of-repair provisions in the 2024 Rule *except* for components in ethylene oxide service. *See* 2024 Rule, 89 Fed. Reg. at 42,975. The 2024 Rule thus requires facilities to quickly fix any and every leak above the statutory threshold—including leaks as small as 0.0049 pounds per year of ethylene oxide—no matter the emissions associated with an untimely shutdown.[8]

That was arbitrary and capricious. Eliminating the delay-of-repair program for ethylene oxide will *increase* ethylene oxide emissions, because more frequent facility shutdowns produce more emissions. Commenters explained that a single unplanned shutdown can cause ethylene oxide emissions ranging from 5 to 340 pounds and calculated that a facility would have to delay repairing a leaking valve "for over 10 years before the emissions exceeded those generated by a shutdown." JA , [ACC Comments 43, 48]. One ACC member estimated that unplanned shutdowns would result in 120 additional pounds of ethylene oxide emissions per shutdown, and that the 2024 Rule will require at least four additional shutdowns per

[8] Phrased differently, an equipment leak emitting .0049 pounds per year of ethylene oxide is *less than 0.1%* of the emissions resulting from an unexpected shutdown.

year resulting in at least 480 more pounds of ethylene oxide emissions annually. JA [ACC Comments 43]. Another estimated that its emissions from isolated ethylene oxide leaks were lower than 0.3 pounds per day (or 109.5 pounds per year); one unplanned maintenance shutdown, on the other hand, would produce 340 pounds of ethylene oxide emissions. *Id.*

Shutdowns also threaten worker safety. Shutdowns cause ethylene oxide molecules to stagnate, which renders equipment inoperable and can create a highly flammable, unstable polymer, risking equipment damage or, worse, explosions. JA___ [ACC Comments 84]. Petitioners have procedures in place to evaluate worker safety when considering whether to delay repair of a leaking ethylene oxide equipment component, and shutdowns are carefully planned to allow facilities to safely "purge" equipment. JA , [ACC Comments 30, 48]. The 2024 Rule does not allow for these highly orchestrated safety precautions. Every unnecessary shutdown thus exposes workers to unneeded risks and facilities to catastrophic equipment failure.

EPA failed to meaningfully respond to these concerns or ignored them altogether. As to increased emissions, EPA claimed that "[a]llowing delay of repair would allow increased emissions of [ethylene oxide] and increased risk." 2024 Rule, 89 Fed. Reg. at 42,976. That is not necessarily true. Prior rules authorized delay of repair only when emissions from an immediate shutdown would *exceed* emissions

from delaying repair. 42 C.F.R. § 63.171(c); *see, e.g.*, 2024 Rule, 89 Fed. Reg. at 43,078. There is no situation in which allowing delay of repair under these circumstances leads to *more* emissions than an immediate shutdown. EPA's contrary conclusion "runs counter to the evidence before" it. *State Farm*, 463 U.S. at 43.

EPA addressed concerns regarding increased shutdown emissions by claiming the new controls for ethylene oxide leaks would "ensure risk remains acceptable." 2024 Rule, 89 Fed. Reg. at 42,976. But EPA failed to meaningfully account for the possibility that, even *with* controls, the emissions from an unplanned shutdown may exceed the emissions from a leak. For example, if an unplanned shutdown releases 100 pounds of ethylene oxide, implementing a 99%-effective control device would still result in an extra pound of emissions, which could still exceed emissions from a small leak. JA [ACC Comments 43]. Nowhere does EPA assess the impacts of these emissions increases; it simply assumes they will not exist.

The Court should vacate the portion of 2024 Rule eliminating delay of repair for equipment in ethylene oxide service.

D. EPA's Ethylene Oxide Risk Assessment Was Contrary To Law And Arbitrary And Capricious.

1. EPA unlawfully failed to consider all available health studies.

The Clean Air Act requires EPA to consider residual risk holistically, including "any available epidemiological or other health studies, risks presented by background concentrations of hazardous air pollutants, [and] any uncertainties in

risk assessment methodology or other health assessment technique." 42 U.S.C. § 7412(f)(1)(C). EPA conducted this same analysis when assessing residual risk in the 1989 Benzene Rule which Congress expressly incorporated into Section 112(f). *Id.* § 7412(f)(2)(A)-(B). EPA flouted that statutory obligation twice over in its ethylene oxide risk assessment.

First, EPA failed to conduct a holistic residual risk assessment. Although EPA claims it evaluated "a broad set of health risk measures and information," Proposed Rule, 88 Fed. Reg. at 25,095, its ethylene oxide risk assessment relied on a single data source: the 2016 IRIS value. 2024 Rule, 89 Fed. Reg. at 42,971. The IRIS value represents the upper-bound lifetime cancer risk to an individual from continuous exposure to a small quantity of ethylene oxide, based on evidence EPA had compiled at the time the value was issued more than eight years ago. MON Reconsideration, 87 Fed. Reg. 77,988, 77,988 n.2 (Dec. 21, 2022); Evaluation of the Inhalation Carcinogenicity of Ethylene Oxide (CASRN 75-21-8, Dec. 2016). In relying on that single value, EPA ignored a host of other evidence, including valid alternative risk assessments, epidemiological data, and other studies many of which post-dated issuance of the IRIS value such as those presented by the Texas Commission on Environmental Quality, and subsequent data on smokers. *See infra* pp. 56-58; *see generally* JA___-___, ___-___ [ACC Ethylene Oxide Comments 39-42; Texas Commission on Environmental Quality Comments].

EPA's exclusive reliance on the IRIS value violated Congress's instruction to consider "*any available* epidemiological or other health studies." 42 U.S.C. § 7412(f)(1)(C) (emphasis added). That threshold legal obligation concerns *what* EPA was required to do; not the technical aspects of *how* to do it. In the 1989 Benzene Rule the rule Congress expressly incorporated into Section 112(f), *supra* at pp. 10-11—EPA considered a variety of risk values for benzene, rather than simply defaulting to the IRIS value. *See* 53 Fed. Reg. 28,496, 28,506 (July 28, 1988) (explaining that EPA considered "the geometric mean" of four risk assessments, "based on two model types (additive risk and multiplicative risk) each with two measures of exposure (unweighted and weighted cumulative exposure)"); *see also* DPE Br. 9-10. EPA's refusal to even consider other data violates the plain language of Section 112(f), and its failure to acknowledge and explain its departure from past practice renders its action arbitrary and capricious to boot. *Verizon Tel. Companies v. FCC*, 570 F.3d 294, 301 (D.C. Cir. 2009) (finding arbitrary and capricious an agency's choice to rely "virtually exclusively" on a particular metric, contrary to past practice).

Second, EPA failed to account for numerous "uncertainties" in the current scientific understanding of ethylene oxide's health effects, as the statute mandates. 42 U.S.C. § 7412(f)(1)(c) (directing agency to consider "any uncertainties in risk assessment methodology"). In other words, even if EPA was allowed to rely

exclusively on the IRIS value, it should have at *least* considered uncertainties in that value in light of the other data EPA received.

Four years ago, EPA expressly acknowledged that the 2016 ethylene oxide IRIS value "is more likely to overestimate rather than underestimate the risks," and the agency considered that uncertainty in identifying appropriate controls for another source category. MON, 85 Fed. Reg at 49,094-95. In the 2024 Rule, EPA entirely *ignored* that same uncertainty—even though both rules relied on the same IRIS value for the same chemical, *see* JA___ [RTC 11]; even though EPA repeatedly cross-referenced the MON in justifying the HON rulemaking, *see, e.g.*, JA___-___ [RTC 86-91]; and even though commenters expressly raised these uncertainty-based concerns, *see* JA___, ___-___ [RTC 19; ACC Comments 52-53]. Indeed, the only "uncertainty" EPA accounted for in the 2024 Rule was the purported risk that its model *underestimated* certain emissions, i.e., uncertainties that supported its own decision. 2024 Rule, 89 Fed. Reg. at 43,001; *see also e.g.*, JA , , [RTC 23, 48, 54].

EPA's failure to acknowledge the uncertainty inherent in the IRIS value itself was contrary to Section 112(f), and, separately, its failure to acknowledge or explain its change in position is arbitrary and capricious. *Encino Motorcars, LLC v. Navarro*, 579 U.S. 211, 221 (2016) (agencies must "provide a reasoned explanation" for a change in position).

EPA also impermissibly ignored the uncertainty created by the substantial scientific evidence Petitioners submitted into the administrative record including, studies and evidence that were not available at the time the IRIS value was issued. *See infra* pp. 55-65. Additionally, the Texas Commission on Environmental Quality presented evidence that the 2016 IRIS value was flawed on multiple grounds and instead urged that EPA adopt the Commission's underlying data—or at least factor in the uncertainties raised by that data. JA___ [Texas Commission on Environmental Quality Comments 2]. Even assuming that EPA *could* exclusively rely on the IRIS value, EPA was still obligated to consider the extent to which this body of evidence cast "uncertaint[y]" on that value. 42 U.S.C. § 7412(f)(1)(C). EPA did not even attempt to do so.

2. EPA arbitrarily and capriciously refused to consider updated data concerning smoking risks.

All agency rulemaking must be based on evidence in the record, consider all information presented, and rationally connect the available evidence to the agency's chosen conclusion. *State Farm*, 463 U.S. at 43. Even technical and scientific determinations receive a "searching and careful" investigation. *Mississippi v. EPA*, 744 F.3d 1334, 1342 (D.C. Cir. 2013). EPA's analysis of ethylene oxide data repeatedly failed to abide by these black-letter requirements.

The most egregious failure was EPA's refusal to address new evidence concerning smoker data. Some brief history is in order. The 2016 IRIS report does

not address levels of ethylene oxide in cigarette smoke. *See generally Evaluation of the Inhalation Carcinogenicity of Ethylene Oxide*. But by the time EPA developed the MON, in 2020, new data demonstrated that smokers expose themselves to approximately ten times the amount of ethylene oxide as non-smokers an exposure level that, if the IRIS value were correct, would generate a 1-in-10 risk of developing lymphoid cancer.[9] Yet cigarette smoking has never been causally linked to lymphoid cancer—much less at a 1-in-10 rate.[10]

Industry members, including the ACC, submitted that new data in 2020, in response to the MON notice of proposed rulemaking.[11] In response, EPA agreed that the smoker data's methodology—measuring a particular biomarker in the blood for ethylene oxide exposure—provided a "good general indicator[ ] of exposure" and would be "useful to estimate [ethylene oxide] exposure levels."[12] But EPA did not address the ultimate issue: "[N]ew information . . . demonstrates that the IRIS value overstates potential risk, resulting in unnecessarily stringent standards." JA [Texas Commission on Environmental Quality Comments 2].

---

[9] ACC MON Ethylene Oxide Panel Comments 223, EPA-HQ-OAR-2018-0746-0096 (Feb. 18, 2020).

[10] ACC MON Comments 18, EPA-HQ-OAR-2018-0746-0097 (Mar. 19, 2020).

[11] *Id.* at 14, 221-225.

[12] MON Reconsideration Response to Comments 91-92, EPA-HQ-OAR-2018-0746-0327 (Dec. 21, 2022).

Two years later, in 2022, commenters provided an updated smoker study during the MON reconsideration — an effort the agency launched (in part) to reassess its reliance on the IRIS value. MON Reconsideration, 87 Fed. Reg. 77,988 (Dec. 21, 2022). But EPA again dismissed the smoker study's conclusions, this time concluding that the findings were "primarily of an exploratory and qualitative nature," and that the biomarkers studied did not necessarily "equate[ ] to inhaled [ethylene oxide] 'equivalents' " at low levels of exposure.[13] In other words, the data was interesting, but the methodology had not been validated at the exposure levels EPA was attempting to assess.

Several industry members sued, arguing that EPA arbitrarily and capriciously cast the smoker data aside. *See Huntsman Petrochemical*, 114 F.4th at 735, 741. In response, EPA reiterated its finding that the smoker-study methodology had not yet been sufficiently proven and added a new argument that other chemicals in cigarette smoke may have been the source of the inconsistency it presented. *Id.* at 741. This Court accepted EPA's explanation based on the data in the record when the MON rule was issued. *See id.*

Meanwhile, however, the science had advanced again: In 2023, in response to the HON notice of proposed rulemaking, commenters submitted detailed

[13] *Id.* at 66-67.

explanations showing that scientists by that time *had* validated the smoker-study methodology at the low exposure levels EPA had previously demanded. *See* JA - [ACC Ethylene Oxide Comments 33-42]. Commenters also submitted an extended discussion of the specific "validation" test EPA had previously said was missing from the MON. JA - [ACC Ethylene Oxide Comments 40-41].

Once again, EPA ignored this data. Instead, EPA extensively quoted its own prior responses from the MON rulemaking—which was finalized before the validation test was even conducted. JA___-___ [RTC 78-86]. EPA even asserted, with eyes wide shut, that "[f]urther information to substantiate the validity of the endogenous equivalent air concentration calculations has not been presented." JA___ [RTC 87]; *see also* JA___, ___-___ [RTC 29, 93-94] (repeatedly referring to "unvalidated" assumptions). Indeed, EPA for the first time went so far as to claim that ethylene oxide may not even be *present* in cigarette smoke, JA [RTC 93] a basic fact that has been established within the scientific community for decades.[14]

That was arbitrary and capricious. EPA cannot ignore data presented to it and then sweepingly conclude that commenters had provided no new information to

[14] *See generally* Ram B. Jain, *Associations between observed concentrations of ethylene oxide in whole blood and smoking, exposure to environmental tobacco smoke, and cancers including breast cancer: data for US children, adolescents, and adults*, 27 SPRINGER NATURE, 20912 (April 5, 2020), https://doi.org/10.1007/s11356-020-08564-z.

support their claims. Regardless of the specific character of the contrary evidence, "the agency [is] to examine the relevant data and articulate a satisfactory explanation for its action." *AT&T Wireless Servs., Inc. v. FCC*, 270 F.3d 959, 968 (D.C. Cir. 2001) (quotation marks omitted). Nor can an agency decree that certain data is unreliable because of a particular shortcoming, but then ignore information correcting that shortcoming. Agencies may not "brush[] aside critical facts" that easily. *American Wild Horse Pres. Campaign v. Perdue*, 873 F.3d 914, 932 (D.C. Cir. 2017).

Rather than directly engaging with the smoker data, EPA instead leaned into the argument it presented for the first time during the MON reconsideration: that "cigarette smoke contains many carcinogens," which it claims may undercut the smoker data's findings.[15] EPA took this a step further in the 2024 Rule, claiming that "[c]hemicals in a chemical mixture may have synergistic or antagonistic interactions; treating cigarette smoke as though it were a single chemical goes against toxicological principles and risk assessment guidelines for chemical mixtures." JA [RTC 93]. Based on this "maybe" possibility, EPA again rejected the smoker data. *Id.*

[15] MON Reconsideration Response to Comments 68-69, EPA-HQ-OAR-2018-0746-0327 (Dec. 21, 2022).

EPA's hypothesis is both unsupported and nonsensical. Science requires more than a hypothetical possibility; it requires investigation, study, and hard data. Petitioners submitted that data; EPA brushed it off. If EPA's IRIS value is correct, moreover, then the additional ethylene oxide in cigarette smoke should cause much higher rates of lymphoid cancer in smokers than in nonsmokers rates that simply do not exist. EPA's theory that *other* chemicals in cigarettes explain this result can only be true if those other chemicals somehow *reduced* the cancer risk that ethylene oxide would otherwise cause.

EPA's claim contradicts the very "risk assessment guidelines" it points to. As those guidelines explain—and as common sense confirms—most compounds have the same effect on the human body regardless of whether they are presented alone or as part of a mixture. *See* EPA, *Guidelines for the Health Risk Assessment of Chemical Mixtures* (1986) at 10 (cited at JA [RTC 93 n.106]). The effects of exposure to multiple compounds in a mixture are typically additive: The total risk posed by the mixture is calculated by adding together the risk posed by each of those compounds. *See id.* at 11.

EPA's argument, on the other hand, assumes a so-called "antagonistic interaction"—that is, the risk posed by multiple compounds in a mixture is *lower* than the risk posed by adding the risks from each compound individually. *Id.* EPA's guidelines, however, make it clear that antagonistic interactions are the exception,

not the rule. Indeed, EPA's guidelines permit consideration of "antagonistic interaction" *only* when two circumstances are present: (1) scientific data supports the theory that an antagonistic relationship exists; and (2) that data is sufficient to "permit a quantitative estimation of interaction for two chemicals." *Id.*

Here, the record contains studies and data supporting for four basic propositions:

- Cigarette smokers are exposed to substantial quantities of ethylene oxide—on the order of 10 times as much as nonsmokers.
- Cigarette smoking has been linked to a wide variety of cancers.
- Cigarette smoking has *never* been shown to cause lymphoid cancer.
- EPA's IRIS value suggests that one out of every ten smokers should develop lymphoid cancer.

Supra pp. 55-56, 58 & n.14. If EPA's IRIS value were accurate, all these facts could be true *only* if there is a significant antagonistic effect between ethylene oxide and some other chemical within cigarette smoke that *prevents* the human body from developing lymphoid cancers at the rate the IRIS value suggests it should. And yet nowhere in the entire record has EPA identified even a *theoretical* explanation for how and why ethylene oxide interacts antagonistically with some as-yet-unidentified chemical in cigarette smoke—much less studies "that permit a quantitative estimate"

of that interaction, as EPA's own guidelines require. *Guidelines for the Health Risk Assessment of Chemical Mixtures* at 11.

EPA's concern about antagonistic interactions, moreover, applies equally to the study on which the IRIS value is based. And yet the author of that study expressly concluded that exposure to the complex miasma of chemicals in cigarettes would *not* have significantly affected the study's results. JA___ [RTC 93]; Kyle Steenland et al., *Mortality Among Workers Exposed to Ethylene Oxide*, 324 THE NEW ENGLAND J. MED. 1402, 1406 (1991). EPA cannot reasonably conclude that exposure to cigarette smoke does not affect its preferred studies, while finding that same risk entirely disqualifies Petitioners' studies. *Compare* JA___ [RTC 93] (concluding that "[c]hemicals in a mixture may have synergistic or antagonistic interactions," without any supporting data), *with id.* (dismissing substantial, data-supported studies submitted by Petitioners as based on "unvalidated assumptions"). That sort of unreasonable, unexplained double-standard is arbitrary and capricious. *See Southwest Airlines Co. v. TSA*, 650 F.3d 752, 760 (D.C. Cir. 2011) ("[W]e may not allow an agency to shirk its duty to provide a reason for choosing one body of evidence over another.").

III. EPA'S PRESSURE RELIEF DEVICE REGULATIONS ARE UNLAWFUL.

Pressure relief devices (also called relief valves) are safety devices: When pressure inside a vessel exceeds a predetermined threshold, the device opens to

release the material inside and relieve that pressure, forestalling catastrophic equipment failure.

As EPA has determined, many such releases must be released into the atmosphere for safety reasons. JA , - [ACC Comments 132; DPE Comments 96-97]; 2024 Rule, 89 Fed. Reg. at 43,013. Capturing ethylene oxide, for example, would create significant safety concerns, because the temperature fluctuations within control devices can cause explosions. JA___ [BASF Corporation Comments 6]. Some common control devices, such as flares, are also infeasible at many facilities due to physical or chemical limitations. *Id.*; JA___-___ [Vinyl Institute Comments 9-10].

Since the origin of the Clean Air Act over fifty years ago, EPA has acknowledged these safety concerns by focusing on minimizing emissions from pressure relief devices rather than prohibiting them. *See, e.g.*, 85 Fed. Reg. 40,386, 40,408 (July 6, 2020). Consistent with that approach, the 2024 Rule adopted work practice standards for *most* pressure relief devices under its Section 112(d)(6) technology update authority, reflecting EPA's assessment of how the "best performers" minimized pressure releases. *See* Proposed Rule, 88 Fed. Reg. at 25,156.

But EPA refused to apply that common-sense approach to its Section 111 new source performance standards, or to devices in ethylene oxide and chloroprene

service under its Section 112(f)(2) residual risk analysis. Instead, EPA reached the unprecedented conclusion that *all* pressure releases to the atmosphere will be violations of those standards. *See, e.g.*, 40 C.F.R. §§ 63.165(e)(3)(v)(D), 60.612a(b), 60.662a(b), 60.702a(b); *see also* 2024 Rule, 89 Fed. Reg. at 43,013, 43,025. In doing so, EPA violated both statutory sections and acted contrary to its own record and findings.

A. The 2024 Rule is Arbitrary And Capricious As Applied to Section 111 New Source Performance Standards.

Section 111 of the Clean Air Act authorizes EPA to promulgate standards that reflect the "best system of emission reduction." 42 U.S.C. § 7411(a)(1). These standards must: (1) be "adequately demonstrated"; (2) "tak[e] into account the costs of achieving such reduction"; and (3) consider "non-air quality health and environmental impacts and energy requirements." *Id.*; *see also* 2024 Rule, 89 Fed. Reg. at 43,010. EPA's assessment of the first factor was cursory; its assessment of the latter two was nonexistent.

EPA's determination that a zero-release standard has been "adequately demonstrated" rested exclusively on two Texas facilities that purportedly comply with a state law zero-release requirement. 2024 Rule, 89 Fed. Reg. at 43,012. But that Texas law is not analogous. As EPA admits, Texas *allows* atmospheric pressure releases if venting to a control device "will result in a safety concern"—which is precisely what the 2024 Rule *disallows*. *Id.* at 43,013. A rule that expressly

authorizes safety-related releases cannot "adequately demonstrate[]" a standard without such an exemption.

EPA made *no* attempt to evaluate the remaining statutory factors, using circular logic to conclude that "there are no cost, non-air quality health, environmental, or energy requirements as a result of this change." *Id.* EPA noted that releases from pressure relief devices were rare and so concluded "EPA expects that [pressure relief devices] used to prevent catastrophic failure can continue to function without reasonable concern for release." *Id.* In other words, EPA decided there would be no cost or non-air quality impacts because it assumed there would be no releases. This contradicts EPA's own conclusion that pressure relief devices "act as a last line of defense in uncommon process conditions" where pressure relief device "releases are necessary to prevent further catastrophic failure." *Id.* Releases from pressure relief devices are rare, but they do occur. EPA cannot simply assume away the very problem it already acknowledged. *Id.*

EPA also attempted to disclaim any duty to consider costs on the basis that facilities "may choose to route" pressure releases to an air pollution control device to avoid incurring a violation. *Id.* This assertion is "[p]ure applesauce." *King v. Burwell*, 576 U.S. 473, 507 (2015) (Scalia, J., dissenting). Controls are not optional so long as any release, for any reason, subjects the facility to penalties of over $100,000 *per release*. *See* 90 Fed. Reg. 1,375, 1,378 (Jan. 8, 2025). Nor may EPA

abdicate its statutory duties simply by claiming facilities "may choose" to comply with regulations. Deeming releases violations obligated EPA to evaluate the feasibility, cost, and other effects on facilities who must now attempt to prevent those releases wholesale.

The administrative record demonstrates why EPA went to such lengths to avoid considering these statutory factors: the cost could never justify its preferred approach. EPA's own estimate for similar equipment involving other hazardous air pollutants found controls would cost $80 million *per ton* of pollutant reduction, which EPA concluded was "not a cost-effective option," which left work practices as the only viable approach to minimizing emissions from pressure relief devices. Proposed Rule, 88 Fed. Reg. at 25,158; *see also* JA___ [ACC Comments 133]. Rather than try to calculate similar costs for devices controlling ethylene oxide and chloroprene, EPA simply abandoned ship. That decision violates the plain language of Section 111.

B. The 2024 Rule is Arbitrary And Capricious As Applied to Section 112 NESHAPs.

As noted above, EPA has often including in this Rule imposed work practices intended to reduce the emissions from pressure relief devices as part of a NESHAP. Yet EPA claimed that more draconian measures were needed to address residual risk from ethylene oxide and chloroprene, and so characterized *any* release from PRDs with even very low levels of these chemicals as a violation. *See, e.g.*, 40

C.F.R. § 63.165(e)(3)(v)(D). For four reasons, EPA's analysis is arbitrary, capricious, and does not comply with the Clean Air Act.

First, EPA violated the statute by relying upon data the Clean Air Act does not allow it to rely upon. Consequently, EPA's baseline risk evaluation significantly overstated the risks from pressure relief devices. EPA's risk assessment was based on emissions from a single plant in Port Neches, Texas, in 2018. *See* 2024 Rule, 89 Fed. Reg. at 42,966; JA___ [RTC 6]. This data should have been excluded from EPA's analysis, because emissions stemming from regulatory violations are *not* included in risk analyses. 2024 Rule, 89 Fed. Reg. at 42,965 ("Emissions events in violation of the standards, whether or not they are caused by malfunction events, are not considered as part of risk analyses."); *United States Sugar Corp. v. EPA*, 830 F.3d 579, 606-610 (D.C. Cir. 2016) (upholding EPA decision to not consider non-compliant emissions). Here, the Port Neches release violated the law. Indeed, the Texas Commission on Environmental Quality, the agency responsible for enforcing environmental rules in Texas, pursued an enforcement action against Port Neches for this very event (among others). *Texas v. Huntsman Petrochemical LLC* (District Court of Texas, 419th Judicial District, Travis County, No. D-1-GN-21-003481).

Commenters specifically asked EPA to exclude the Port Neches release (and other short-term releases) from its risk assessment for this very reason. JA___-___ [Indorama Ventures Oxides LLC Comments 33-34]. EPA rejected commenters'

requests, 2024 Rule, 89 Fed. Reg. at 42,966, based on its conclusion that Port Neches did not "violate[] the previous standards," i.e., the HON. JA [RTC 7]. A risk analysis, however, must exclude emissions from *any* violation not just violations of the specific standard under review. 2024 Rule, 89 Fed. Reg. at 42,965. Even after commenters pointed out this error, *see* JA [Indorama Ventures Oxides LLC Comments 16], EPA refused to correct its risk analysis, JA___ [RTC 7]. Consequently, EPA imposed stringent prohibitions on pressure relief devices in ethylene oxide service based solely on emissions from a single noncompliant facility—contrary to EPA's own practice. 2024 Rule, 89 Fed. Reg. at 42,983. This is arbitrary and capricious.

Second, and further compounding EPA's error is the fact that it cherry-picked the Port Neches data to ensure that its risk assessment demonstrated maximum risk. EPA's residual risk analysis generally relied on National Emissions Inventory data from 2017 "because it provided the best available data." *Id.* at 42,965. For one facility Port Neches EPA chose to switch out 2018 emission data specifically "to better include pressure relief device . . . releases." JA [RTC 7]. EPA's use of cherry-picked data is alone arbitrary and capricious. *FDA v. American Coll. of Obstetricians & Gynecologists*, 141 S. Ct. 578, 584 (2021) (Roberts, J., concurring) ("[C]herry-picked data is no more informative than reading tea leaves").

Third, the Port Neches data and pressure relief emissions more broadly are incompatible with EPA's residual risk analysis. EPA's residual risk review determines whether emissions standards are "acceptable" by calculating the "maximum individual risk," meaning "the estimated risk of contracting cancer following a lifetime exposure, 24 hours per day for 70 years, at the maximum, modeled long-term ambient concentration of a pollutant." 1989 Benzene Rule, 54 Fed. Reg. at 38,044-45. Short-term violations do *not* accurately reflect "long-term" exposures and so cannot support this determination.

Commenters explained that EPA should not consider pressure releases when calculating risk, because "unplanned" and "nonroutine discharge" will not track long-term exposure models. 2024 Rule, 89 Fed. Reg. at 43,160; JA___-___ [Indorama Ventures Oxides LLC Comments 33-34]. Despite recognizing that this favored regulating pressure releases differently in all other contexts, EPA maintained that non-routine emissions of "compounds such as [ethylene oxide] and chloroprene" were the exception. 2024 Rule, 89 Fed. Reg. at 42,966; Proposed Rule, 88 Fed. Reg. at 25,155. It offered no further explanation or data supporting that conclusion hardly a "satisfactory explanation" for its differential treatment. *State Farm*, 463 U.S. at 43.[16]

[16] Regarding chloroprene, EPA acknowledged that it "is not aware of [pressure relief device] releases occurring from the Neoprene Production source category."

Finally, characterizing atmospheric pressure releases as violations will not reduce risk compared to the work practices required for other types of devices. Pressure releases occur to prevent devastating equipment failure and that is true regardless of the chemical the device regulates. JA - [Indorama Ventures Oxides LLC Comments 33-34]. Labeling only ethylene-oxide or chloroprene releases as *per se* regulatory violations will do nothing to prevent the emergencies that require them, as EPA itself recognizes elsewhere in the Rule. 2024 Rule, 89 Fed. Reg. at 43,013 ("where [pressure relief device] releases are necessary to prevent further catastrophic failure . . . [pressure relief device] releases may be necessary").

What it *will* do is to force facilities to attempt to preemptively suppress pressure releases, even though commenters identified significant safety issues these attempts would create, including the risk of explosion, JA [BASF Corporation Comments 6], or other physical or chemical limitations, *id.*; JA - [Vinyl Institute Comments 9-10]. This is to say nothing of the adverse safety and health impacts that would occur if a facility, threatened with noncompliance, delayed a necessary pressure relief device release too long, leading to a deflagration. And even

---

Proposed Rule, 88 Fed. Reg. at 25,118. And DPE submitted comments showing that they have been trivial, averaging 23 pounds per year. JA___-___ [DPE Comments 96-97]. EPA cannot support its claim that considering all releases as violations is necessary to achieve an "acceptable" risk when it has not even evaluated the risk reductions that would be achieved by less draconian solutions.

if such controls were technologically feasible, they would be cost-prohibitive which is precisely why EPA determined that requiring controls for all other pressure relief devices was "not a cost-effective option." *Supra* pp. 65. Again, EPA did not even attempt to justify these costs.

The 2024 Rule puts facility operators in a Hobson's choice: comply with the 2024 Rule, which could cause serious safety risks, or allow releases to occur and violate the law. If they choose the former, they risk catastrophic events that could *increase* emissions; if they choose the latter, they risk substantial penalties without reducing emissions at all. Neither action meaningfully reduces emissions or risks. This nonsensical result is a direct consequence of EPA's failure to consider both its statutory obligations and evidence in the record.

IV. EPA Erred By Not Promulgating Process Vent Work Practices For Startup And Shutdown.

EPA has long recognized that startups, shutdowns, and malfunctions are distinct from steady-state operations. *See, e.g.*, 40 C.F.R. § 63.6(e). For years, EPA acknowledged this distinction and exempted startups, shutdowns, and malfunctions from certain compliance obligations. *See, e.g.*, 1994 HON, 59 Fed. Reg. at 19,435. EPA removed those exemptions in the 2024 Rule. This creates a serious quandary for the regulated community because it is often either impossible or unsafe to route emissions to controls during these periods.

Congress anticipated this issue, however, and gave EPA an alternative: Where "it is not feasible . . . to prescribe or enforce an emission standard," the agency can instead implement a work practice standard. 42 U.S.C. § 7412(h)(1); *supra* p. 8. In the 2024 Rule, EPA invoked this authority to set work practice standards for maintenance activities. Proposed Rule, 88 Fed. Reg. at 25,159; 2024 Rule, 89 Fed. Reg. at 43,023. Although the maintenance vent provisions proposed by EPA address certain aspects of shutdowns, commenters urged EPA to further address startups and shutdowns because these operational periods present "conditions that are unsafe to control or that cannot be controlled at the efficiency required during all other periods of operation." JA___ [ACC Comments 126].

Yet EPA refused to finalize work practice standards for startups and shutdowns beyond the limited measures for maintenance vents. Its reasoning was pure *ipse dixit*: "SOCMI and [Polymer & Resin Group] II source categories can meet the applicable MACT standards at all times, including periods of startup and shutdown." 2024 Rule, 89 Fed. Reg. at 42,951. But merely stating that some industry members *can* do something is not a reasoned response to specific comments that some *cannot*. JA - [ACC Comments 126-127]. Indeed, the source categories at issue cover numerous different raw materials, different products, and different processes. Some permutations are perfectly safe; others are not. EPA was required to explain itself, not simply assert its conclusion. *Environmental Health Tr. v. FCC*,

9 F.4th 893, 905 (D.C. Cir. 2021) ("[C]onclusory statements cannot substitute for a reasoned explanation.") (quotation marks omitted).

Commenters submitted numerous examples of why it was unsafe, hazardous, or ineffective to operate pollution control equipment during startup and shutdown. Commenters explained, for example, that operating control technologies during startup may cause "concentration spikes of combustible materials" at certain facilities leading to potential combustion hazards. JA___, ___-___ [ACC Comments 127, 166-167]. Another commenter explained that operating emission controls during startup, shutdown, and malfunctions would cause over-pressurization, an unsafe combustion environment, and concentration spikes of hazardous materials. JA___ [RTC 361]. EPA offered no contrary evidence or data suggesting that commenters were wrong on this score; indeed, it acknowledged that commenters had "provided examples of transient vent conditions that are unsafe to control." JA [RTC 362]. Instead, EPA summarily asserted that startup and shutdown would not "interfere with the ability to operate the relevant control devices according to good engineering practice" without explaining what those "good engineering practices" might entail, what data EPA relied on, or why EPA's speculation can override first-hand evidence in the record. *See id.*

Lacking a record basis for its decision, EPA tries to shift its rulemaking burden onto industry, claiming that it could not develop work practices "based solely on the

information provided by the commenters" because commenters had "not provided sufficient information to determine: (1) what an alternative standard for each of these situations should be, and (2) whether each alternative standard reflects the level of control that applies to the best performers." *Id.* But it is not commenters' responsibility to promulgate "alternative standard[s]" or to apply the Clean Air Act's requirements to their "situations." EPA cannot ignore record evidence simply because the commenters did not also conduct their own MACT analysis of all sources to identify the "best performers." *Cf. NRDC v. EPA*, 735 F.3d 873, 880 n.3 (9th Cir. 2013) (comments need only provide "enough clarity" that "the decision maker understands the issue raised").

Regardless, EPA is wrong. Commenters provided specific examples of "alternative standard[s]" already in place. *See* JA [ACC Comments 127] (citing air permit that "allows limited venting during startup or shutdown of the process, so long as each occurrence of venting is recorded and the mass of pollutants during periods of startup/shutdown do not exceed a specified mass limit"); *id.* (referencing permit that allows facility to "route[] one or several process vents to a water scrubber" during startup); *id.* (facility permit "allows start-up activities 12 times per year for 10 hours per occurrence"). Thus, EPA had sufficient information to develop such standards. In fact, EPA had already developed work practices for maintenance vents, a subset of process vents covered by the 2024 Rule. *See* 40 C.F.R. § 63.113(k).

EPA explained that a small subset of process vents may fall under this provision, but the provision is not applicable to all startup and shutdown scenarios. For example, one requirement at 40 C.F.R § 63.113(k) is that prior to venting to the atmosphere, the facility must "remove liquids from the equipment as much as practical and depressurize the equipment," but this does not address starting up equipment where it is unsafe to vent emissions to a control device. JA___ [RTC 363]. And EPA never explained why it could not have applied the same approach for other process vents generally. Finally, even if EPA felt it needed additional information, it had ample authority to acquire that information as part of the rulemaking process. *See* 42 U.S.C. § 7414. It never even tried.

V. EPA IMPROPERLY REMOVED "TOTAL RESOURCE EFFECTIVENESS" AS A COMPLIANCE OPTION.

The "total resource effectiveness" concept helps determine where pollution controls will be most effective by comparing the resources spent on controlling emissions against the benefit gained. *See* JA - [EPA Continuous Process Vent Memorandum, EPA-HQ-OAR-2022-0730-0094]. The total resource effectiveness "index value" was designed to indicate the most effective and least costly sources to control at any given facility. 2024 Rule, 89 Fed. Reg. at 42,992. This allows sources to comply with emissions standards by directing controls to the areas where they are needed most. *See id.*

EPA acknowledged that the total resource effectiveness index "has been an integral part of many technology-based air standards since its initial development" over 40 years ago. *Id.* at 42,994. It nevertheless removed the tool as a compliance option, citing its authority under Section 112(d)(6). That decision exceeded EPA's authority and ignored decades-long reliance interests.

A. EPA Never Found It "Necessary" To Remove The Total Resource Effectiveness Index, Nor Did It Identify A Viable Development.

EPA may only revise technology standards as "necessary" to ensure compliance with the Clean Air Act in light of technological "developments." *Nat'l Ass'n for Surface Finishing*, 795 F.3d at 5. EPA violated that provision twice over.

1. EPA did not explain why removing the total resource effectiveness index was "necessary." In fact, EPA acknowledged that "removal of the [total resource effectiveness] concept may lead to emissions *increases*." 2024 Rule, 89 Fed. Reg. at 42,994 (emphasis added). It is difficult to understand how EPA might deem it "necessary" to *increase* emissions. And EPA is not authorized to impose *unnecessary* regulatory changes.

2. EPA also did not identify any underlying "development" in "practices, processes, and control technologies," the "core requirement" of subsection (d)(6). *NRDC*, 529 F.3d at 1084. EPA certainly should fix problems caused by outdated technology. *Louisiana Envtl. Action Network*, 955 F.3d at 1093, 1095-97 (technology review ensures standards are "on pace with emerging developments").

But where no such problems exist — such as when sources have continuously and successfully used a practice for decades — EPA cannot just remove them on a whim.

EPA recognized in the proposed rule that Section 112(d)(6) requires some "development" before amending a standard and identified several categories it considers "developments," including changes in control technologies, work practices, processes, and costs. Proposed Rule, 88 Fed. Reg. at 25,105. In the 2024 Rule, however, EPA failed to identify *any* triggering "development" prompting removal of the total resource effectiveness tool, let alone one that makes removal "necessary." *See* 2024 Rule, 89 Fed. Reg. at 42,993.

Instead, EPA relies on a handful of red herrings. *First*, EPA asserts that some facilities opted to install controls instead of using the total resource effectiveness index. *Id.* But nothing about those facilities' decisions *superseded* the total resource effectiveness index. In fact, EPA recognized in the original HON that sources could *either* use the total resource effectiveness index *or* "comply directly with the control requirements without calculating the [total resource effectiveness] index." 1994 HON, 59 Fed. Reg. at 19,406. The idea that facilities would install controls therefore *was* "identified or considered during development of the original MACT standards." *Contra* 2024 Rule, 89 Fed. Reg. 42,993. That a few sources exercised this pre-existing option simply reflects the status quo.

Second, EPA asserts that removing the total resource effectiveness index simplifies an "arduous" and "theoretical" process that is "difficult to verify." *Id.* at 42,994. This is no "development." The total resource effectiveness index is no more "arduous," "theoretical" or "difficult to verify" now than when it was adopted decades ago. The opposite, in fact; it has become "an integral part of many technology-based air standards since its initial development." *Id.* EPA claims to have found "one facility" that struggled with modeling its emissions to verify total resource effectiveness index values. *Id.* at 42,993. The fact that EPA could only identify "one facility" is telling. Indeed, *many* facilities use modeling, emissions testing, and other, "less theoretical methods" to develop the information needed to calculate total resource effectiveness. *See id.* at 42,993-94. And whatever burden this tool might entail, it is justified by the value it adds in ensuring "the most significant emission sources are targeted for control." *See id.* at 42,994.

Third, EPA cites inflation as a "development" that rendered the total resource effectiveness concept unreliable. *Id.* But inflation is neither a "technological" change nor a new development; it is an economic concept in use since the Civil War,[17] and the agency developed the total resource effectiveness concept to be "independent of inflation": The concept made "fixed" assumptions about the "relative costs of

[17] Michael F. Bryan, *On the Origin and Evolution of the Word Inflation*, Fed. Reserve Bank of Cleveland, at 2 (Oct. 15, 1997).

various resources," which should hold true regardless of inflation. 2024 Rule, 89 Fed. Reg. at 42,994. Even if total resource effectiveness values have been skewed by inflation, moreover, that is just a reason to adjust for inflation not a reason to reject the concept entirely.

Fourth, EPA claims as another "development" that multiple process vents can now be routed to a single air pollution control device. *Id.* But EPA acknowledged that fact over thirty years ago. *See, e.g.*, JA___-___ [EPA, *Guideline Series: Control of Volatile Organic Compound Emissions from Reactor Processes and Distillation Operations Processes in the Synthetic Organic Chemical Manufacturing Industry*, EPA-450/4-91-031 (August 1993) at 3-1 to 3-20]. Old information is not a new "development."

Finally, EPA references one rule it promulgated after the HON which did not use the total resource effectiveness index for a different source category (there, ethylene production). *See* 2024 Rule, 89 Fed. Reg. 42,993. This is not a technological development, either. In fact, EPA *preserved* the total resource effectiveness index in other rules for other sources even after this so-called "development." *See id.* (noting that "[m]any facilities will still be required to comply with" total resource effectiveness-based "determinations"). EPA cannot retroactively characterize its own regulatory decisions as technological "developments" to justify revising standards under Section 112(d)(6).

B. EPA's Removal Of The Total Resource Effectiveness Index Was Arbitrary And Capricious.

Industry and State regulators have long relied on the total resource effectiveness index. As EPA itself acknowledges, the tool "has been an integral part of many technology-based air standards since its initial development." 2024 Rule, 89 Fed. Reg. at 42,994; *see also, e.g.*, Ill. Admin Code tit. 35, § 218.520(c). By EPA's own estimate, more than 50 facilities operate more than 300 process vents that rely on or may need to rely on this tool. 2024 Rule, 89 Fed. Reg. at 42,995. The total resource effectiveness index thus promotes consistent application of process vent requirements across state and federal regulatory regimes and allows industry to meet emissions caps and maintain their regulatory status.

EPA wholly failed to account for these established reliance interests in removing the tool. *Id.* at 42,992-95. It was "arbitrary or capricious to ignore such matters." *Fox*, 556 U.S. at 515.

VI. EPA'S FENCELINE MONITORING PROGRAM IS UNLAWFUL.

"Fenceline monitoring" refers to the practice of placing monitors along a facility's perimeter to measure pollutant concentrations. 2024 Rule, 89 Fed. Reg. at 42,936. The 2024 Rule requires regulated sources to monitor for six pollutants, including ethylene oxide and chloroprene. If ambient concentrations exceed either the "primary" action level for any of the six pollutants, or the "secondary" action level for chloroprene, facilities must conduct a root-cause analysis and take all steps

necessary to meet those levels, regardless of the cost. *Id.* at 42,949, 42,999. EPA invoked Sections 112(d)(6) and 112(h)(2) as the authority for the primary action level and Section 112(f)(2) to set the secondary action level for chloroprene. 2024 Rule, 89 Fed. Reg. at 42,936-37, 42,947-49, 42,999.

EPA's fenceline monitoring program is costly, unnecessary, and goes well beyond EPA's authority under Section 112 in multiple respects.

A. The Fenceline Monitoring Program Regulates Ambient Air Pollutants, Which EPA Has No Authority To Do Under Section 112.

Sections 108 and 109 of the Clean Air Act require EPA to set "national ambient air quality standards" for "criteria pollutants," which specify the maximum allowable concentration of a pollutant in the ambient air. 42 U.S.C. §§ 7409, 7410. Those programs rely on monitors that measure the concentration of these pollutants in the ambient air. *See* 40 C.F.R. § 58 – Ambient Air Quality Surveillance.

Section 112 is different. It regulates different pollutants and requires EPA to set "emissions standards" (or in some cases, work practice standards) for pollutants emitted from particular emission sources in a source category. 42 U.S.C. § 7412(d).

The 2024 Rule's action levels are ambient air quality standards masquerading as source-category standards. Just like national ambient air quality standards, the action levels establish maximum allowable concentration of certain pollutants in the ambient air (not at a particular source) and require facilities to monitor these

concentrations. 2024 Rule, 89 Fed. Reg. at 42,936. Fenceline monitoring devices cannot determine whether a source is complying with the 2024 Rule's emission or work practice standards – only whether the air near a facility meets the applicable action levels. The fenceline monitoring program therefore amounts to an air quality standard that EPA lacked authority to establish under Section 112.

B. The Fenceline Monitoring Program Impermissibly Requires Regulated Sources To Reduce Emissions From Other Sources.

The 2024 Rule's fenceline monitoring requirements also hold sources that are part of the SOCMI or PR&I source category responsible for reducing emissions from other sources not covered by the 2024 Rule. That exceeds EPA's statutory authority and is arbitrary and capricious.

Section 112(d) requires EPA to set "emission standards for each category or subcategory of major sources." 42 U.S.C. § 7412(d)(1). A "source" includes any "facility, or installation which emits or may emit any [hazardous] air pollutant." *Id.* §§ 7411(a)(3), 7412(a). Chemical plants may contain multiple "sources" that are part of different source categories – and which may even be owned by different affiliates – but EPA's regulations are source-category specific.

The 2024 Rule applies to sources in the SOCMI and Polymer & Resin Group I and II categories. But the fenceline monitoring program improperly extends to other sources in different categories. As explained, monitoring devices are placed

along the property line to measure pollutant concentrations in the ambient air not just emissions from sources in a particular source category.

To use an example provided by commenters, consider Facility A. *See* JA - [West Virginia Department of Environmental Protection Comments 3-4]. Facility A is subject to the HON and owns and operates an Industrial Site that supplies services to other tenants, including wastewater treatment. Facility A does not use or produce ethylene oxide, but two tenants—Facility B and Facility C—are located inside the same Site, and both emit ethylene oxide. Facilities B and C are not subject to 2024 Rule. Facilities B and C send wastewater containing very small amounts of ethylene oxide to the Facility A for wastewater treatment and disposal. Even though Facility A does not use or produce ethylene oxide, it must conduct fenceline monitoring because it treats wastewater from Facilities B and C which have the potential to store and emit ethylene oxide. If the monitoring shows concentrations above the action level, then Facility A is responsible for reducing "facility-wide emissions" enough to meet the action level, even if virtually all those emissions come from sources not regulated by the HON.

EPA candidly acknowledged that the 2024 Rule extended beyond the entities it had authority to regulate under the 2024 Rule. *See* 2024 Rule, 89 Fed. Reg. at 43,004 (agreeing Facility A would be required to monitor and "correct" readings from Facilities B and C). EPA admitted that, based on its post-control modeling,

facilities will "likely" need to control "additional emission sources . . . that *might not be considered part of the source category*" to meet the secondary action level. *Id.* at 43,002 (emphasis added). According to EPA, "[c]ontrolling these sources reduces emissions from the entire facility, *not just the source category*, and makes it possible for operators to achieve the lower action level." *Id.* (emphasis added).

EPA cited no statutory authority that allows it to require a source to control emissions from sources outside of the regulated category. That is because there is none. Congress understood when it adopted Section 112 that there is often more than one source category at an industrial facility. *See* 42 U.S.C. § 7412(c)(1). Yet Congress was clear that EPA may only regulate "sources in the category or subcategory" under Section 112—not whole facilities. *Id.* § 7412(d)(2); *see generally id.* § 7412 (repeating the phrase sources in the "category or subcategory" 29 times). The agency thumbed its nose at Congress by doing just that.

Instead, EPA concluded it could regulate sources beyond the SOCMI and Polymer & Resin source categories because "they were included in emissions sources modeled to develop the action levels." 2024 Rule, 89 Fed. Reg. at 43,003-04. This may explain how EPA *developed* the action levels. But it does not explain why EPA has the legal authority to hold a regulated source responsible for reducing emissions from a source that is not subject to the 2024 Rule.

C. The Fenceline Monitoring Program Is Not A Permissible "Work Practice Standard."

EPA characterized its fenceline monitoring program as a "work practice standard" under Section 112(h)(2). 2024 Rule, 89 Fed. Reg. at 42,936-37, 42,999. EPA may establish work practice standards in lieu of emission standards only "if it is not feasible . . . to prescribe or enforce an emission standard," meaning that emissions "cannot be emitted through a conveyance designed and constructed to emit or capture such pollutant" or "the application of measurement methodology to a particular class of sources is not practicable due to technological and economic limitations." 42 U.S.C. § 7412(h)(2).

Neither condition is met here. In fact, most emissions regulated under the fenceline monitoring program are already regulated under separate emissions standards. *See, e.g.*, 2024 Rule, 89 Fed. Reg. at 42,935. The rest are "fugitive emissions" from equipment leaks that are already covered by a separate work practice standard. *See* JA [RTC 285] (EPA acknowledging fugitive emissions are already regulated in the leak detection and repair provisions).

Nor did EPA explain its inexplicable decision to impose the fenceline monitoring requirement under Section 112(h)(2). The most it said was that fenceline monitoring "would be a further improvement in the way fugitive emissions are managed." 2024 Rule, 89 Fed. Reg. at 42,999; *see, e.g.*, *id.* at 42,936. But EPA does not have authority under Section 112(h)(2) to impose requirements simply to provide

"a further improvement" without considering the costs or the fact that EPA has already imposed stringent standards for controlling fugitive emissions. *See* 42 U.S.C. § 7412(h)(2).

D. The Secondary Action Level For Chloroprene Is Not Necessary To Meet The "Ample Margin of Safety" Standard In Section 112(f)(2).

EPA exceeded its statutory authority by promulgating a secondary action level for chloroprene. Recall that Section 112(f)(2) authorized EPA to promulgate additional regulations as "required" to "provide an ample margin of safety." 42 U.S.C. § 7412(f)(2)(A). Putting aside that EPA already used this one-time authority in 2008, *supra* pp. 2, 15, EPA's second residual review for chloroprene concluded that the control requirements for chloroprene would meet the primary action levels and "reduce risk to an acceptable level and provide an ample margin of safety to protect public health." 2024 Rule, 89 Fed. Reg. at 42,947-49, 42,999, 43,002.

Yet EPA went further and set a "secondary action level" designed to "further reduce chloroprene emissions and therefore risks below these levels." *Id.* at 42,963. EPA candidly explained its purpose: The secondary action level will "increase the margin of safety and advance[] the objectives of [Clean Air Act] section 112(f)(2)," and provide "an *extra measure of protection* for surrounding communities." *Id.* at 43,000, 42,999 (emphasis added). EPA could not have been clearer: the secondary action level *goes beyond* what is necessary to protect public health with an ample margin of safety under Section 112(f)(2).

Ultimately, EPA may regulate under subsection (f)(2) only "if promulgation of such standards is *required* in order to provide an ample margin of safety to protect public health." 42 U.S.C. § 7412(f)(2)(A) (emphasis added). Because EPA admitted that its separate control requirements were sufficient to meet this standard, the agency could not go further. EPA's decision to do so exceeded its authority under Section 112(f)(2).

E. EPA Ignored Substantial Compliance Costs And Did Not Weigh Those Costs Against The Emissions Savings.

Whether regulating under Section 112(d)(6) or to meet the ample margin of safety standard under Section 112(f)(2), EPA must account for the costs of its policies. EPA estimated its fenceline monitoring program would cost $9,881,000 for total capital investment and *$33,310,000 per year* for total annualized cost. Proposed Rule, 88 Fed. Reg. at 25,146. But as commenters pointed out, that already high number represents only a small portion of the actual costs regulated entities must bear. *See, e.g.*, JA , , [DPE Comments 100; ACC Comments 59, 65]. EPA's failure to consider the full cost of the fenceline monitoring program renders the program both unlawful and arbitrary and capricious.

1. EPA invoked Section 112(d)(6) as its authority for setting the primary action levels. 2024 Rule, 89 Fed. Reg. at 42,936-37. As EPA has long acknowledged, it must consider costs when regulating under Section 112(d)(6)—including "the cost and feasibility of developments and corresponding emissions savings." *Nat'l Ass'n*

for Surface Finishing, 795 F.3d at 5; *see, e.g.*, Proposed Rule, 88 Fed. Reg. at 25,105 (acknowledging this requirement). EPA failed to abide by this statutory mandate in two respects when developing the fenceline monitoring requirements.

First, EPA failed to consider the full cost of the program. This analysis should have included costs associated with installing and operating the monitors, investigating the cause of any action level exceedance, and most critically, actually meeting the action levels, i.e., reducing emissions to the requisite level. EPA investigated the first category, estimating that the cost of installing and operating the monitors would be "*$33,310,000 per year*." Proposed Rule, 88 Fed. Reg. at 25,146 (emphasis added). But EPA did not attribute *any* cost to actually meeting the action levels, *see* JA___ [RTC 285], on the theory that facilities will automatically meet those levels once they comply with the 2024 Rule. *See* 2024 Rule, 89 Fed. Reg. at 43,001-02; JA [RTC 285].

As commenters explained, many facilities will incur substantial costs to meet the action levels. JA , , , [ACC Comments 59, 65; DPE Comments 52, 100]. EPA's only response that there will be no cost to meeting the action levels is no answer at all. *See* JA [RTC 285] ("The cost of root cause analysis and corrective action were not accounted for in the overall cost of the fenceline monitoring provisions.").

Second, and for the same reason, the exorbitant compliance costs are not justified by any potential "emissions savings." Even setting aside EPA's refusal to account for the full costs of meeting the action levels, EPA admitted the program's cost will exceed $33 million per year. Proposed Rule, 88 Fed. Reg. at 25,146. But if EPA is correct in saying that the action levels simply "reflect levels subject sources are already achieving," JA___ [RTC 285], then the fenceline monitoring program would not result in *any* emissions savings.

Rather than point to emissions savings, EPA attempted to justify the fenceline monitoring program on the theory that it will "address the uncertainty associated with emission estimates from fugitive sources," 2024 Rule, 89 Fed. Reg. at 43,001, and improve "the way fugitive emissions are managed," *id.* at 42,999. But Congress did not authorize EPA to impose costly programs under Section 112(d)(6) that will "address uncertainty" or improve emissions-management; it authorized EPA to impose programs only where "emissions savings" justified the cost. *Nat'l Ass'n for Surface Fishing*, 795 F.3d at 5. And even if these supposed benefits did matter, EPA made no attempt to quantify them and thus no attempt to determine whether they would justify the program's substantial costs. *See, e.g.*, JA [RTC 236] (concluding that, "[i]f all facilities" met the action level "or lower, we predict significant reductions of actual risk would occur, even beyond reductions

attributable to applying our [ethylene oxide]-specific standards," but making no effort to quantify those reductions).

2. EPA also failed to consider costs in setting the secondary action level for chloroprene. Even assuming EPA could issue a second set of regulations under Section 112(f)(2), *supra* pp. 26-37, EPA must consider the "costs and economic impacts" of its regulations in determining what constitutes an ample margin of public safety. 1989 Benzene Rule, 54 Fed. Reg. at 38,045; *see* 42 U.S.C. § 7412(f)(2). EPA failed to do so here.

Achieving that secondary action level will be enormously costly. The chloroprene action levels apply only to DPE's Neoprene production plant, and EPA concedes that, even if DPE fully complied with the 2024 Rule's emission standards, DPE would still need to reduce emissions by an *additional 62%* to meet the secondary action level. *See* JA [DPE Comments 99]; *see* 2024 Rule, 89 Fed. Reg. at 43,002 (setting primary action level at 0.8 ug/m and secondary action level at 0.3 ug/m). The cost of meeting this secondary action level is in addition to the cost of complying with the 2024 Rule's other requirements estimated to cost between $10.1 million and $26 million per year. *See* Proposed Rule, 88 Fed. Reg. at 25,122 (Table 9); JA___ [DPE Comments 52].

EPA made no effort to estimate the cost of meeting the secondary action level. Instead, it asserted—without any analysis or explanation—that DPE can simply

"employ additional facility-wide measures" to meet it. 2024 Rule, 89 Fed. Reg. at 43,000. EPA made no effort to identify what these measures might be.

VII. SECTION 112(F) IS AN UNCONSTITUTIONAL DELEGATION.

As discussed, before EPA can issue a residual risk standard, it must provide Congress recommendations for legislation to address any remaining residual risks. *Supra* pp. 36-37. If Congress declines to act, Section 112(f) authorizes EPA to "promulgate standards" it determines are "required in order to provide an ample margin of safety to protect public health." 42 U.S.C. § 7412(f)(2)(A). But the Act provides no definition of or principled limit on what is "required" or "ample." This wholesale delegation of Congress's legislative power to act when Congress fails to is unconstitutional.

Article I vests "All legislative Powers" in the "Congress of the United States." U.S. Const. Art. I, § 1. The Supreme Court has long recognized that Congress cannot "delegate" away those "powers which are strictly and exclusively legislative." *Wayman v. Southard*, 23 U.S. 1, 42-43 (1825). This rule is "vital to the integrity and maintenance of [our]system of government." *Marshall Field & Co. v. Clark*, 143 U.S. 649, 692 (1892). In *Whitman*, the Supreme Court upheld a different provision of the Clean Air Act delegating to EPA the authority to establish "ambient air quality standards requisite to protect the public health" with an "adequate margin of safety." 42 U.S.C. § 7409(b)(1); *see Whitman*, 531 U.S. at 472-476. That delegation was

narrower than the one in Section 112(f). Moreover, since *Whitman*, five Justices have expressed their desire to revitalize the non-delegation doctrine. *See Paul v. United States*, 140 S. Ct. 342 (2019) (Kavanaugh, J., respecting the denial of certiorari); *Gundy v. United States*, 588 U.S. 128, 148 (2019) (Alito, J, concurring in the judgment); *id.* at 179 (Gorsuch, J., dissenting, joined by Roberts, C.J., and Thomas, J.). The Supreme Court also recently granted review in a case raising a non-delegation question; the decision there may fundamentally alter the Court's non-delegation jurisprudence. *See Consumers' Rsch. v. FCC*, 109 F.4th 743 (5th Cir. 2024), *cert granted*, No. 24-354, 2024 WL 4864036 (U.S. Nov. 22, 2024).

Petitioners preserve their non-delegation argument pending the decision in *Consumers' Research* and, if necessary, further review in this case. But because Section 112(f) presents such an extreme delegation, it is unconstitutional even under current jurisprudence.

First, under the Supreme Court's existing doctrine, "a statutory delegation is constitutional" only if Congress legislates "an intelligible principle to which the person or body authorized to exercise the delegated authority is directed to conform." *Gundy*, 588 U.S. at 135 (plurality op.) (quotation marks and brackets omitted). No such "intelligible principle" exists here. The statute directs EPA to issue whatever emissions standards EPA deems "required in order to provide an ample margin of safety to protect public health"—but nowhere defines what

constitutes an "ample margin of safety." 42 U.S.C. § 7412(f)(2)(A). As this Court has explained, "ample" leaves "EPA great latitude in meeting its responsibility." *NRDC*, 824 F.2d at 1153 (quoting *Environmental Def. Fund v. EPA*, 598 F.2d 62, 81 (D.C. Cir. 1978)). This "deliberately ambiguous" language effectively permits EPA to promulgate whatever regulations it deems appropriate, subject only to arbitrary and capricious review. *See NRDC*, 529 F.3d at 1081. This stands in stark contrast to the provision at issue in *Whitman*, Clean Air Act Section 109(b)(1). That provision authorized EPA only to set ambient air quality standards, with EPA's authority to impose regulations still subject to Section 110's detailed requirements. *See Whitman*, 531 U.S. at 472.

The non-delegation problem is even more troubling given the statute's structure. Under Section 112(f), EPA may promulgate residual risk standards only if Congress refuses to act on EPA's recommendations. In other words, after Congress declines to exercise legislative authority, Section 112(f) transfers that same authority to EPA, allowing the agency to do by executive fiat what Congress refused to do through bicameralism and presentment. This Court should reject this scheme to short-circuit the normal legislative process.

Second, Section 112(f) also flunks the stricter nondelegation test endorsed by Justice Gorsuch in *Gundy*—joined by Chief Justice Roberts and Justice Thomas. *Gundy*, 588 U.S. at 149 (Gorsuch, J., dissenting). Under that test, Congress may

delegate authority only in three discrete circumstances: (1) If "Congress makes the policy decisions," "it may authorize another branch to 'fill up the details' "; (2) if "Congress prescribes the rule governing private conduct, it may make the application of that rule depend on executive fact-finding"; and (3) "Congress may assign the executive and judicial branches certain non-legislative responsibilities." *Id.* at 157-159.

This case fails all three of those criteria: Congress did *not* make the key policy decision in Section 112(f). The Clean Air Act nowhere explains what makes a margin of safety sufficiently "ample," nor prescribes what regulations would be appropriate to achieve it. Congress announced a standard dependent on executive factfinding—but it did not "prescribe" the governing rule. Nor did Congress delegate anything other than sheer legislative authority. Instead, Congress authorized EPA to act if and only if Congress *itself* refused to pass legislation. This is precisely the circumstance in which Congress improperly transferred its power to make laws to the executive.

In response to comments raising these concerns, *see* JA - [Huntsman Petrochemical LLC Comments, 15-17], EPA argued this delegation falls "within the range of" those previously approved by the Supreme Court, citing *Whitman* and two cases from the 1930s, JA___ [RTC 137]. That overreads *Whitman* and fails to account for the existing state-of-play. EPA also cited Congress's decision to

incorporate the 1989 Benzene Rule's framework into Section 112(f)(2), which provides some guidance as to the meaning of "ample." JA - [RTC 137-138]. But the 1989 Benzene Rule only addresses *when* EPA may act, not *how* to act; once EPA finds that regulation is "required in order to provide an ample margin of safety," 42 U.S.C. § 7412(f)(2)(A), it reads the statute to authorize unfettered discretion to impose whatever regulations it desires, without considering costs or environmental risks. This Rule is a prime example: EPA imposed a host of illogical requirements, from unachievable emission limitations and fenceline monitoring requirements that go beyond the source category, to blanket prohibitions on pressure relief devices regardless of safety risks or environmental harm. EPA nevertheless defends these actions not by claiming they are consistent with what Congress wanted EPA to impose to address residual risk, but by claiming Congress imposed *no limitation* on what EPA can impose. Whether measured against *Whitman* or *Gundy*, Section 112(f)(2) represents an impermissible delegation of legislative power.

CONCLUSION

For the foregoing reasons, the challenged aspects of EPA's 2024 Rule should be vacated.

Respectfully submitted,

January 17, 2025

/s/ Catherine E. Stetson

David M. Friedland
Laura K. McAfee
BEVERIDGE & DIAMOND, P.C.
1350 I Street, N.W., Suite 700
Washington, D.C. 20005
(202) 789-6000
dfriedland@bdlaw.com

Catherine E. Stetson
Adam M. Kushner
Katherine Vanderhook-Gomez
Danielle Desaulniers Stempel
Sam H. Zwingli
Ezra P. Louvis
HOGAN LOVELLS US LLP
555 13th Street, N.W.
Washington, D.C. 20004
(202) 637-5491
cate.stetson@hoganlovells.com

Counsel for American Chemistry Council, American Fuel & Petrochemical Manufacturers, and Louisiana Chemical Association

Of Counsel:
Elliott Zenick
AMERICAN CHEMISTRY COUNCIL
700 Second Street NE
Washington, D.C. 20002
(202) 249-6744
elliott_zenick@americanchemistry.com

James C. Percy
JONES WALKER LLP
445 N. Boulevard, Suite 800
Baton Rouge, LA 70802
(225) 248-2130
jpercy@joneswalker.com

Robert E. Holden
Brett S. Venn
JONES WALKER LLP
201 St. Charles Ave
New Orleans, LA 70170
(504) 582-8000
bholden@joneswalker.com
bvenn@joneswalker.com

Jeffrey R. Holmstead
David A. Super
Jason B. Hutt
Kevin M. Voelkel
Stephen C. Wald
BRACEWELL LLP
2001 M Street NW, Suite 900
Washington, DC 20036
(202) 828-5800
jeff.holmstead@bracewell.com
david.super@bracewell.com
jason.hutt@bracewell.com
kevin.voelkel@bracewell.com
stephen.wald@bracewell.com

Counsel for Denka Performance Elastomer, LLC

Allen A. Kacenjar, Jr.
John David Lazzaretti
SQUIRE PATTON BOGGS (US) LLP
127 Public Square
1000 Key Tower
Cleveland, OH 44114
(216) 479-8500
allen.kacenjar@squirepb.com
john.lazzaretti@squirepb.com

Counsel for Huntsman Petrochemical LLC

Eric P. Gotting
Gregory A. Clark
KELLER AND HECKMAN LLP
1001 G Street, N.W.
Suite 500 West
Washington, D.C. 20001
(202) 434-4100
gotting@khlaw.com
clarkg@khlaw.com

Counsel for Vinyl Institute, Inc.

Ken Paxton
Attorney General of Texas
Brent Webster
First Assistant Attorney General
Ralph Molina
Deputy First Assistant Attorney General
James Lloyd
Deputy Attorney General for

Civil Litigation
Kellie E. Billings-Ray
Chief, Environmental Protection Division
Wesley S. Williams
Assistant Attorney General
Roel Torres
Assistant Attorney General
OFFICE OF THE ATTORNEY GENERAL
ENVIRONMENTAL PROTECTION DIVISION
P.O. Box 12548, MC-066
Austin, TX 78711
(512) 473-2012
wesley.williams@oag.texas.gov
roel.torres@oag.texas.gov

Counsel for the State of Texas

CERTIFICATE OF COMPLIANCE

1. This document complies with the type-volume limits of Fed. R. App. P. 32(a)(7) because, excluding the parts of the document exempted by Fed. R. App. P. 32(f), this document contains 21,173 words.

2. This document complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type-style requirements of Fed. R. App. P. 32(a)(6) because this document has been prepared in a proportionally spaced typeface using Microsoft Word for Office 365 in 14-point Times New Roman.

/s/ Catherine E. Stetson

Catherine E. Stetson

ADDENDUM

TABLE OF CONTENTS

Page

42 U.S.C. § 7411 (excerpts) ..... Add. 1

42 U.S.C. § 7412 (excerpts) ..... Add. 2

Declaration of Richard Chism ..... Add. 9

Declaration of Kristi Mills-Jurach ..... Add. 21

ED_021114A_00003731-00121

42 U.S.C. § 7411

§ 7411. Standards of performance for new stationary sources

(a) Definitions

For purposes of this section:

(1) The term "standard of performance" means a standard for emissions of air pollutants which reflects the degree of emission limitation achievable through the application of the best system of emission reduction which (taking into account the cost of achieving such reduction and any nonair quality health and environmental impact and energy requirements) the Administrator determines has been adequately demonstrated.

(2) The term "new source" means any stationary source, the construction or modification of which is commenced after the publication of regulations (or, if earlier, proposed regulations) prescribing a standard of performance under this section which will be applicable to such source.

(3) The term "stationary source" means any building, structure, facility, or installation which emits or may emit any air pollutant. Nothing in subchapter II of this chapter relating to nonroad engines shall be construed to apply to stationary internal combustion engines.

* * *

(b) List of categories of stationary sources; standards of performance; information on pollution control techniques; sources owned or operated by United States; particular systems; revised standards

(1)(A) The Administrator shall, within 90 days after December 31, 1970, publish (and from time to time thereafter shall revise) a list of categories of stationary sources. He shall include a category of sources in such list if in his judgment it causes, or contributes significantly to, air pollution which may reasonably be anticipated to endanger public health or welfare.

* * *

42 U.S.C. § 7412

§ 7412. Hazardous air pollutants

(a) Definitions

For purposes of this section, except subsection (r)--

(1) Major source

The term "major source" means 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. The Administrator may establish a lesser quantity, or in the case of radionuclides different criteria, for a major source than that specified in the previous sentence, on the basis of the potency of the air pollutant, persistence, potential for bioaccumulation, other characteristics of the air pollutant, or other relevant factors.

(2) Area source

The term "area source" means any stationary source of hazardous air pollutants that is not a major source. For purposes of this section, the term "area source" shall not include motor vehicles or nonroad vehicles subject to regulation under subchapter II.

* * *

(c) List of source categories

(1) In general

Not later than 12 months after November 15, 1990, the Administrator shall publish, and shall from time to time, but no less often than every 8 years, revise, if appropriate, in response to public comment or new information, a list of all categories and subcategories of major sources and area sources (listed under paragraph (3)) of the air pollutants listed pursuant to subsection (b). To the extent practicable, the categories and subcategories listed under this subsection shall be consistent with the list of source categories established pursuant to section 7411 of this title and part C. Nothing in the preceding sentence limits the Administrator's authority to establish subcategories under this section, as

appropriate.

* * *

(d) Emission standards

(1) In general

The Administrator shall promulgate regulations establishing emission standards for each category or subcategory of major sources and area sources of hazardous air pollutants listed for regulation pursuant to subsection (c) in accordance with the schedules provided in subsections (c) and (e). The Administrator may distinguish among classes, types, and sizes of sources within a category or subcategory in establishing such standards except that, there shall be no delay in the compliance date for any standard applicable to any source under subsection (i) as the result of the authority provided by this sentence.

(2) Standards and methods

Emissions standards promulgated under this subsection and applicable to new or existing sources of hazardous air pollutants shall require the maximum degree of reduction in emissions of the hazardous air pollutants subject to this section (including a prohibition on such emissions, where achievable) that the Administrator, taking into consideration the cost of achieving such emission reduction, and any non-air quality health and environmental impacts and energy requirements, determines is achievable for new or existing sources in the category or subcategory to which such emission standard applies, through application of measures, processes, methods, systems or techniques including, but not limited to, measures which--

(A) reduce the volume of, or eliminate emissions of, such pollutants through process changes, substitution of materials or other modifications,

(B) enclose systems or processes to eliminate emissions,

(C) collect, capture or treat such pollutants when released from a process, stack, storage or fugitive emissions point,

(D) are design, equipment, work practice, or operational standards (including requirements for operator training or certification) as provided in subsection (h), or

(E) are a combination of the above.

None of the measures described in subparagraphs (A) through (D) shall, consistent with the provisions of section 7414(c) of this title, in any way compromise any United States patent or United States trademark right, or any confidential business information, or any trade secret or any other intellectual property right.

* * *

(6) Review and revision

The Administrator shall review, and revise as necessary (taking into account developments in practices, processes, and control technologies), emission standards promulgated under this section no less often than every 8 years.

* * *

(f) Standard to protect health and environment

(1) Report

Not later than 6 years after November 15, 1990, the Administrator shall investigate and report, after consultation with the Surgeon General and after opportunity for public comment, to Congress on--

(A) methods of calculating the risk to public health remaining, or likely to remain, from sources subject to regulation under this section after the application of standards under subsection (d);

(B) the public health significance of such estimated remaining risk and the technologically and commercially available methods and costs of reducing such risks;

(C) the actual health effects with respect to persons living in the vicinity of sources, any available epidemiological or other health studies, risks presented by background concentrations of hazardous air pollutants, any uncertainties in risk assessment methodology or other health assessment technique, and any negative health or environmental consequences to the community of efforts to reduce such risks; and

(D) recommendations as to legislation regarding such remaining risk.

(2) Emission standards

(A) If Congress does not act on any recommendation submitted under paragraph (1), the Administrator shall, within 8 years after promulgation of standards for each category or subcategory of sources pursuant to subsection (d), promulgate standards for such category or subcategory if promulgation of such standards is required in order to provide an ample margin of safety to protect public health in accordance with this section (as in effect before November 15, 1990) or to prevent, taking into consideration costs, energy, safety, and other relevant factors, an adverse environmental effect. Emission standards promulgated under this subsection shall provide an ample margin of safety to protect public health in accordance with this section (as in effect before November 15, 1990), unless the Administrator determines that a more stringent standard is necessary to prevent, taking into consideration costs, energy, safety, and other relevant factors, an adverse environmental effect. If standards promulgated pursuant to subsection (d) and applicable to a category or subcategory of sources emitting a pollutant (or pollutants) classified as a known, probable or possible human carcinogen do not reduce lifetime excess cancer risks to the individual most exposed to emissions from a source in the category or subcategory to less than one in one million, the Administrator shall promulgate standards under this subsection for such source category.

(B) Nothing in subparagraph (A) or in any other provision of this section shall be construed as affecting, or applying to the Administrator's interpretation of this section, as in effect before November 15, 1990, and set forth in the Federal Register of September 14, 1989 (54 Federal Register 38044).

(C) The Administrator shall determine whether or not to promulgate such standards and, if the Administrator decides to promulgate such standards, shall promulgate the standards 8 years after promulgation of the standards under subsection (d) for each source category or subcategory concerned. In the case of categories or subcategories for which standards under subsection (d) are required to be promulgated within 2 years after November 15, 1990, the Administrator shall have 9 years after promulgation of the standards under subsection (d) to make the determination under the preceding sentence and, if required, to promulgate the standards under this paragraph.

* * *

(h) Work practice standards and other requirements

(1) In general

For purposes of this section, if it is not feasible in the judgment of the Administrator to prescribe or enforce an emission standard for control of a hazardous air pollutant or pollutants, the Administrator may, in lieu thereof, promulgate a design, equipment, work practice, or operational standard, or combination thereof, which in the Administrator's judgment is consistent with the provisions of subsection (d) or (f). In the event the Administrator promulgates a design or equipment standard under this subsection, the Administrator shall include as part of such standard such requirements as will assure the proper operation and maintenance of any such element of design or equipment.

(2) Definition

For the purpose of this subsection, the phrase "not feasible to prescribe or enforce an emission standard" means any situation in which the Administrator determines that--

(A) a hazardous air pollutant or pollutants cannot be emitted through a conveyance designed and constructed to emit or capture such pollutant, or that any requirement for, or use of, such a conveyance would be inconsistent with any Federal, State or local law, or

(B) the application of measurement methodology to a particular class of sources is not practicable due to technological and economic limitations.

* * *

(m) Atmospheric deposition to Great Lakes and coastal waters

* * *

(5) Report

Within 3 years of November 15, 1990, and biennially thereafter, the Administrator, in cooperation with the Under Secretary of Commerce for Oceans and Atmosphere, shall submit to the Congress a report on the results of any monitoring, studies, and investigations conducted pursuant to this subsection. Such report shall include, at a minimum, an assessment of--

(A) the contribution of atmospheric deposition to pollution loadings in the Great Lakes, the Chesapeake Bay, Lake Champlain and coastal waters;

(B) the environmental and public health effects of any pollution which is attributable to atmospheric deposition to the Great Lakes, the Chesapeake Bay, Lake Champlain and coastal waters;

(C) the source or sources of any pollution to the Great Lakes, the Chesapeake Bay, Lake Champlain and coastal waters which is attributable to atmospheric deposition;

(D) whether pollution loadings in the Great Lakes, the Chesapeake Bay, Lake Champlain or coastal waters cause or contribute to exceedances of drinking water standards pursuant to the Safe Drinking Water Act or water quality standards pursuant to the Federal Water Pollution Control Act or, with respect to the Great Lakes, exceedances of the specific objectives of the Great Lakes Water Quality Agreement; and

(E) a description of any revisions of the requirements, standards, and limitations pursuant to this chapter and other applicable Federal laws as are necessary to assure protection of human health and the environment.

(6) Additional regulation

As part of the report to Congress, the Administrator shall determine whether the other provisions of this section are adequate to prevent serious adverse effects to public health and serious or widespread environmental effects, including such effects resulting from indirect exposure pathways, associated with atmospheric deposition to the Great Lakes, the Chesapeake Bay, Lake Champlain and coastal waters of hazardous air pollutants (and their atmospheric transformation products). The Administrator shall take into consideration the tendency of such pollutants to bioaccumulate. Within 5 years after November 15, 1990, the Administrator shall, based on such report and determination, promulgate, in accordance with this section, such further emission standards or control measures as may be necessary and appropriate to prevent such effects, including effects due to bioaccumulation and indirect exposure pathways. Any requirements promulgated pursuant to this paragraph with respect to coastal waters shall only apply to the coastal waters of the States which are subject to section 7627(a) of this title.

* * *

(r) Prevention of accidental releases

* * *

(3) List of substances

The Administrator shall promulgate not later than 24 months after November 15, 1990, an initial list of 100 substances which, in the case of an accidental release, are known to cause or may reasonably be anticipated to cause death, injury, or serious adverse effects to human health or the environment. For purposes of promulgating such list, the Administrator shall use, but is not limited to, the list of extremely hazardous substances published under the Emergency Planning and Community Right-to-Know6 Act of 1986, with such modifications as the Administrator deems appropriate. The initial list shall include chlorine, anhydrous ammonia, methyl chloride, ethylene oxide, vinyl chloride, methyl isocyanate, hydrogen cyanide, ammonia, hydrogen sulfide, toluene diisocyanate, phosgene, bromine, anhydrous hydrogen chloride, hydrogen fluoride, anhydrous sulfur dioxide, and sulfur trioxide. The initial list shall include at least 100 substances which pose the greatest risk of causing death, injury, or serious adverse effects to human health or the environment from accidental releases. Regulations establishing the list shall include an explanation of the basis for establishing the list. The list may be revised from time to time by the Administrator on the Administrator's own motion or by petition and shall be reviewed at least every 5 years. No air pollutant for which a national primary ambient air quality standard has been established shall be included on any such list. No substance, practice, process, or activity regulated under subchapter VI shall be subject to regulations under this subsection. The Administrator shall establish procedures for the addition and deletion of substances from the list established under this paragraph consistent with those applicable to the list in subsection (b).

* * *

IN THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

STATE OF TEXAS, *Petitioners,* v. UNITED STATES ENVIRONMENTAL PROTECTION AGENCY AND MICHAEL S. REGAN, Administrator, United States Environmental Protection Agency *Respondents.*	§ § § § § § § § § § § § § § § §	Case No. 24-1246 (Consolidated with 24-1135, 24-1228, and 24-1246)

DECLARATION OF RICHARD CHISM IN SUPPORT OF PETITIONER STATE OF TEXAS' PETITION FOR REVIEW

I, Richard Chism, hereby declare as follows:

1. My name is Richard Chism and I am the Director of the Office of Air ("OA") at the Texas Commission on Environmental Quality ("TCEQ," "agency," or "commission"), a position I have held since December 2022. I have a Bachelor of Science degree in Ecology from Texas A&M University. Prior to becoming the Director of the OA, I held various positions at the agency, including Director of the Monitoring Operations Division in the Office of Compliance and Enforcement. I have worked at

TCEQ and its predecessor agencies since 1999. I am over the age of eighteen and competent to testify about the matters in this declaration based on my personal knowledge, my experience with the agency, and information provided to me by TCEQ personnel.

I. Texas Commission on Environmental Quality

2. TCEQ is composed of three commissioners, appointed by the Governor, with the advice and consent of the Texas Senate, for staggered six-year terms. TCEQ is the State agency charged with implementing and enforcing the State's various environmental regulatory programs. *See* Tex. Water Code ch. 5. It is one of the largest environmental agencies in the world. TCEQ's mission is to protect the state's public health and natural resources consistent with sustainable economic development by: (1) basing decisions on the law, common sense, sound science, and fiscal responsibility; (2) ensuring that regulations are necessary, effective, and current; (3) applying regulations clearly and consistently; (4) ensuring consistent, just, and timely enforcement when environmental laws are violated; (5) ensuring meaningful public participation in the decision-making process; (6) promoting and fostering voluntary compliance with environmental laws and providing flexibility in achieving environmental

goals; and (7) hiring, developing, and retaining a high-quality, diverse workforce. TCEQ's goal is clean air, clean water, and the safe management of waste.

3. TCEQ is responsible for ensuring that Texas' air meets public health and welfare standards established under the federal Clean Air Act ("CAA"). *See* Texas Clean Air Act, Tex. Health & Safety Code ch. 382 and Tex. Water Code, ch.5. To that end, TCEQ implements the U.S. Environmental Protection Agency's ("EPA") National Ambient Air Quality Standards ("NAAQS") within the boundaries of the State. Among other things, TCEQ enacts rules pertaining to air quality standards, develops State Implementation Plan ("SIP") revisions to meet the federal standards, works to obtain EPA approval of SIP elements, administers incentive and voluntary programs to reduce emissions, issues pre-construction new source review and post-construction federal operating permits to stationary sources, and ensures compliance with state and federal air quality rules.

4. TCEQ has the authority to promulgate and implement administrative regulation related to air quality. *See* Tex. Water Code § 5.103; Tex. Health & Safety Code § 382.017. TCEQ accordingly develops rules

required by the CAA or as deemed necessary for protecting human health and the environment in the State. *See, e.g.*, 30 Tex. Admin. Code chs. 101–122.

5. The TCEQ OA is responsible for preparing and developing plans for the prevention, abatement, and control of air pollution in Texas; complying with the requirements of federal air pollution laws; and enforcing Texas air pollution laws. I am responsible for managing TCEQ OA staff and programs, which includes the Air Quality Division, the Air Permits Division, the Air Grants Division, and the Air Monitoring Division. These divisions within OA are responsible for: developing and implementing state air quality plans for the protection and restoration of air quality including ongoing progress for meeting environmental standards; all TCEQ air permitting activities; administering voluntary and incentive programs to reduce air emissions; and installing and maintaining a network of ambient air stationary monitors as well as short term mobile monitors from which data is received and analyzed to assess, forecast, and evaluate air pollution and public health as well as to inform air quality planning and compliance with the NAAQS.

6. I am providing this declaration in support of the State of Texas' and Texas Commission on Environmental Quality's petition for review of "New Source Performance Standards for the Synthetic Organic Chemical Manufacturing Industry and National Emission Standards for Hazardous Air Pollutants for the Synthetic Organic Chemical Manufacturing Industry and Group I & Group II Polymers and Resins Industry," published at 89 Fed. Reg. 42,932 on May 16, 2024. My opinions in this declaration have been informed by briefings from the TCEQ professional engineering, legal, and technical staff concerning the proposed rule and final rule.

II. EPA's Rulemaking

7. EPA published its proposed rule entitled "New Source Performance Standards for the Synthetic Organic Chemical Manufacturing Industry and National Emission Standards for Hazardous Air Pollutants for the Synthetic Organic Chemical Manufacturing Industry and Group I & II Polymers and Resins Industry," on April 25, 2023. 88 Fed. Reg. 25080 (April 25, 2023). The proposed rule included amendments to both the New Source Performance Standards (NSPS) and the National Emission Standards for Hazardous Air Pollutants (NESHAP) that applied to

the Synthetic Organic Chemical Manufacturing Industry (SOCMI), as well as revisions to the NESHAP for the Group I & II Polymers and Resins Industry. The SOCMI NESHAP requirements are commonly known as the Hazardous Organic NESHAP or HON. *See*, 88 Fed. Reg. 25080, 25083 (April 25, 2023). TCEQ submitted comments on the proposed rule, available in the EPA docket for the rule, EPA-HQ-OAR-2022-0730-0147, at www.regulations.gov.

8. The EPA published its final rule "New Source Performance Standards for the Synthetic Organic Chemical Manufacturing Industry and National Emission Standards for Hazardous Air Pollutants for the Synthetic Organic Chemical Manufacturing Industry and Group I & II Polymers and Resins Industry" on May 16, 2024 (89 Fed. Reg. 42932). The final rule applies to a variety of types of equipment and processes that chemical plants use to make synthetic organic chemicals and polymers and resins.

III. The CAA's Cooperative Federalism

9. The CAA has been recognized as "an experiment in cooperative federalism" through which Congress "establishe[d] a comprehensive program for controlling and improving the nation's air quality through

state and federal regulation." *Texas v. EPA*, 829 F.3d 405, 411 (5th Cir. 2016). The CAA contains multiple regulatory programs for controlling air quality that prescribe both federal and state roles and responsibilities.

IV. Requirements for New and Modified Sources

10. Title I of the CAA provides authority for multiple programs to address air quality, including the NSPS program, 42 U.S.C. §7411, as well as the NESHAP program, 42 U.S.C. §7412.

11. Under the NSPS program, EPA sets technology-based standards for new, reconstructed, and modified stationary sources for specified source categories

12. Under the NESHAP program, the CAA provides a list all Hazardous Air Pollutants (HAPs) that pose a significant health and environmental risk and then for each listed pollutant, EPA must then develop a list of stationary source categories that emit those listed pollutants in significant quantities. EPA is then required to develop "maximum achievable control technology" (MACT) standards for both new and existing major sources in the respective source categories that are based on the degree of emission control that is achievable through the application

of technology used by the best performing sources within the source category (new sources are held to stricter emission standards). The NESHAP MACT program also provides for residual risk reviews in specified circumstances and other specific provisions for area sources.

13. The CAA provides authority for EPA to delegate its authority to implement and enforce portions of the NSPS and NESHAP, 42 U.S.C. §7411(c) and 42 U.S.C. §7412(l). EPA originally delegated NSPS and NESHAP authority to Texas November 15, 1978, as published February 7, 1979, 44 Fed. Reg. 1979, updating this delegation periodically. EPA further delegated specific authority for NESHAPs to Texas as part of its final interim approval of Texas' Federal Operating Permits program required by Title V of the CAA, 42 U.S.C. §7661-7661f; published June 26, 1996, 61 Fed. Reg. 32693.

VI. Initial Implementation Costs

14. I estimate that the activities necessary to implement the HON to include the following:

a. review of the HON to understand the regulatory changes, train permit reviewers, and make changes to agency computer systems used for the development of NSR and Title V permits;

b. review of, and changes to, any permits by rule or standard permits that are utilized by the SOCMI or Group I & II Polymers and Resins Industry that would need to incorporate the revised NSPS and NESHAP; and

c. processing of permit revisions for both for NSR and Title V to incorporate the new NSPS and NESHAP as appropriate.

15. I estimate that these activities will involve at least 12,672 staff hours.

16. Additionally, the work activities described above will divert TCEQ resources from other critical work.

17. OA staff have already begun the process of implementing the HON to maintain compliance/align with HON requirements.

18. Rulemaking to incorporate the HON may also be needed, and if so, will require significant resources. I estimate that costs associated with development of required rulemaking will include 3,845 hours of labor.

VII. Other Immediate Permitting Costs

19. The effective date of the HON also imposes immediate permitting burdens on TCEQ. The permitting process is lengthy and resource intensive, involving both pre-construction (new source review) and post-construction (federal operating permits), which are separate permitting programs in Texas. It involves staff review and development of draft permits, public notice, potential public meetings, potential contested case hearings for new source review permits (which are administrative evidentiary processes held before an administrative law judge), and likely extensive public input. Federal operating permits undergo similar procedural requirements, including public notice, opportunity for a notice and comment hearing and public comment, an EPA review period, and the opportunity for citizens to petition EPA to object to the permit. TCEQ reviews and responds to the submitted comments on the proposed permit changes, in some circumstances adjusting the permits, and participates in contested case hearings.

20. The revised HON is anticipated to impact approximately 146 permits in Texas. All of the affected sources must identify how the HON will affect units at their sites and whether changes will be needed to com-

ply with the HON. If physical or operational changes are needed to comply with HON, those changes must receive pre-construction authorization through the Texas' NSR program. Even if no physical or operational changes are necessary at a particular site, if the site is required to have a Title V permit, their Title V permit must be revised to include the applicable HON requirements. The required permitting changes will result in additional work for commission staff as well as potential delays for planned construction, impacting financial obligations for the regulated entities as well as potential negative effects to the economy.

21. These permitting requirements create additional burdens on TCEQ staff and will coincide with TCEQ's other critical work involving the same key personnel. The Air Permits Division within the OA reviews applications for new source review and federal operating permits. An onslaught of applications will divert attention from new and expanding facilities in Texas, negatively impacting economic growth and public protection. Both the Air Permits Division and the Air Quality Division are responsible for reviewing and commenting on proposed federal regulations, providing valuable comments to EPA on how regulations will impact Texas' air quality and economic activity. Diverting resources away

from these important projects undermines Texas' ability to protect public health.

22. These harms are immediate, as the effective date of the HON has not been stayed and in order for stationary sources to comply with the HON they must have both NSR and Title V permits that incorporate the HON requirements.

* * *

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on January 8, 2025

Richard Chism
Director
Office of Air

USCA Case #24-1135 Document #2094989 Filed: 01/17/2025 Page 141 of 153

ED_021114A_00003731-00141

IN THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

STATE OF TEXAS, *Petitioners,* v. UNITED STATES ENVIRONMENTAL PROTECTION AGENCY AND MICHAEL S. REGAN, Administrator, United States Environmental Protection Agency *Respondents.*	§ § § § § § § § § § § § § § §	Case No. 24-1246 (Consolidated with 24-1135, 24-1228, and 24-1246)

DECLARATION OF KRISTI MILLS-JURACH IN SUPPORT OF PETITIONER STATE OF TEXAS' PETITION FOR REVIEW

I, Kristi Mills-Jurach, hereby declare as follows:

1. My name is Kristi Mills-Jurach, and I am the Assistant Director of the Office of Compliance and Enforcement ("OCE") at the Texas Commission on Environmental Quality ("TCEQ," "agency," or "commission"), a position I have held since June 2021. I have a Bachelor of Science degree in Civil Engineering from the University of Memphis and am a licensed Professional Engineer in Texas. Prior to joining the TCEQ in 2009, I worked as an environmental engineer with Shell Oil Company,

BP Amoco Chemical, Koch Refining, Environmental Resources Management (ERM Southwest) and Samsung Austin Semiconductor. Since joining the TCEQ, I have held various roles including Engineer, Team Leader, Section Manager, and Division Director in the Office of Air ("OA") and OCE prior to being promoted to Assistant Director of OCE. I am over the age of eighteen and competent to testify about the matters in this declaration based on my personal knowledge, my experience with the agency, and information provided to me by TCEQ personnel.

I. Texas Commission on Environmental Quality

2. TCEQ is composed of three commissioners, appointed by the Governor, with the advice and consent of the Texas Senate, for staggered six-year terms. TCEQ is the State agency charged with implementing and enforcing the State's various environmental regulatory programs. *See* Tex. Water Code ch. 5. It is one of the largest environmental agencies in the world. TCEQ's mission is to protect the state's public health and natural resources consistent with sustainable economic development by: (1) basing decisions on the law, common sense, sound science, and fiscal responsibility; (2) ensuring that regulations are necessary, effective, and current; (3) applying regulations clearly and consistently; (4) ensuring

consistent, just, and timely enforcement when environmental laws are violated; (5) ensuring meaningful public participation in the decision-making process; (6) promoting and fostering voluntary compliance with environmental laws and providing flexibility in achieving environmental goals; and (7) hiring, developing, and retaining a high-quality, diverse workforce. TCEQ's goal is clean air, clean water, and the safe management of waste.

3. TCEQ is responsible for ensuring that Texas' air meets public health and welfare standards established under the federal Clean Air Act ("CAA"). *See* Texas Clean Air Act, Tex. Health & Safety Code ch. 382 and Tex. Water Code, ch.5. To that end, TCEQ implements the U.S. Environmental Protection Agency's ("EPA") National Ambient Air Quality Standards ("NAAQS") within the boundaries of the State. Among other things, TCEQ enacts rules pertaining to air quality standards, develops State Implementation Plan ("SIP") revisions to meet the federal standards, works to obtain EPA approval of SIP elements, administers incentive and voluntary programs to reduce emissions, issues pre-construction new

source review and post-construction federal operating permits to stationary sources, and ensures compliance with state and federal air quality rules.

4. TCEQ has the authority to promulgate and implement administrative regulation related to air quality. *See* Tex. Water Code § 5.103; Tex. Health & Safety Code § 382.017. TCEQ accordingly develops rules required by the CAA or as deemed necessary for protecting human health and the environment in the State. *See, e.g.*, 30 Tex. Admin. Code chs. 101–122.

5. The TCEQ OCE is responsible for ensuring compliance with the requirements of federal air pollution laws and enforcing Texas air pollution laws. I am responsible for assisting with the management of all OCE programs, which include the Critical Infrastructure Division, the Enforcement Division, the Program Support & Environmental Assistance Division, as well as sixteen regional offices that are overseen by four regional area offices: the Border and Permian Basin Area, the Central Texas Area, the Coastal and East Texas Area, and the North Central and West Texas Area. These divisions and Area Offices within OCE are responsible for monitoring compliance across nearly every program

within the jurisdiction of TCEQ. Generally, Tex. Water Code ch. 7 grants TCEQ authority to enforce statutes, rules, orders, permits, or other decisions of TCEQ. The major activities performed by TCEQ regional offices include conducting investigations, investigating environmental complaints, addressing violations, and responding to environmental emergencies.

6. I am providing this declaration in support of the State of Texas' and Texas Commission on Environmental Quality's petition for review of "New Source Performance Standards for the Synthetic Organic Chemical Manufacturing Industry and National Emission Standards for Hazardous Air Pollutants for the Synthetic Organic Chemical Manufacturing Industry and Group I & II Polymers and Resins Industry," published at 89 Fed. Reg. 42,932 on May 16, 2024. My opinions in this declaration have been informed by briefings from the TCEQ professional engineering, legal, and technical staff.

II. EPA's Rulemaking

7. EPA published its proposed rule entitled "New Source Performance Standards for the Synthetic Organic Chemical Manufacturing Industry and National Emission Standards for Hazardous Air Pollutants

for the Synthetic Organic Chemical Manufacturing Industry and Group I & II Polymers and Resins Industry," on April 25, 2023. 88 Fed. Reg. 25080 (April 25, 2023). The proposed rule included amendments to both the NSPS and the NESHAP that applied to the Synthetic Organic Chemical Manufacturing Industry (SOCMI), as well as revisions to the NESHAP for the Group I & II Polymers and Resins Industry. The SOCMI NESHAP requirements are commonly known as the Hazardous Organic NESHAP or HON. *See*, 88 Fed. Reg. 25080, 25083 (April 25, 2023). TCEQ submitted comments on the proposed rule, available in the EPA docket for the rule, EPA-HQ-OAR-2022-0730-0147, at www.regulations.gov.

8. The EPA published its final rule "New Source Performance Standards for the Synthetic Organic Chemical Manufacturing Industry and National Emission Standards for Hazardous Air Pollutants for the Synthetic Organic Chemical Manufacturing Industry and Group I & II Polymers and Resins Industry" on May 16, 2024 (89 Fed. Reg. 42932). The final rule applies to a variety of types of equipment and processes that chemical plants use to make synthetic organic chemicals and polymers and resins.

III. The CAA's Cooperative Federalism

9. The CAA has been recognized as "an experiment in cooperative federalism" through which Congress "establishe[d] a comprehensive program for controlling and improving the nation's air quality through state and federal regulation." *Texas v. EPA*, 829 F.3d 405, 411 (5th Cir. 2016). The CAA contains multiple regulatory programs for controlling air quality that prescribe both federal and state roles and responsibilities.

IV. Requirements for New and Modified Sources

10. Title I of the CAA provides authority for multiple programs to address air quality, including the NSPS program, 42 U.S.C. §7411, as well as the NESHAP program, 42 U.S.C. §7412.

11. Under the NSPS program, EPA sets technology-based standards for new, reconstructed, and modified stationary sources for specified source categories.

12. Under the NESHAP program, the CAA provides a list all Hazardous Air Pollutants (HAPs) that pose a significant health and environmental risk and then for each listed pollutant, EPA must then develop a list of stationary source categories that emit those listed pollutants in significant quantities. EPA is then required to develop "maximum

achievable control technology" (MACT) standards for both new and existing major sources in the respective source categories that are based on the degree of emission control that is achievable through the application of technology used by the best performing sources within the source category (new sources are held to stricter emission standards). The NESHAP MACT program also provides for residual risk reviews in specified circumstances and other specific provisions for area sources.

13. The CAA provides authority for EPA to delegate its authority to implement and enforce portions of the NSPS and NESHAP, 42 U.S.C. §7411(c) and 42 U.S.C. §7412(l). EPA originally delegated NSPS and NESHAP authority to Texas November 15, 1978, as published February 7, 1979, 44 Fed. Reg. 1979, updating this delegation periodically. EPA further delegated specific authority for NESHAPs to Texas as part of its final interim approval of Texas' Federal Operating Permits program required by Title V of the CAA, 42 U.S.C. §7661-7661f; published June 26, 1996, 61 Fed. Reg. 32693.

VII. Initial Implementation Costs

14. I estimate that the activities necessary to implement the HON to include the following:

a. review of the HON to understand the regulatory changes;

b. revising investigation checklists and procedures to incorporate the new requirements;

c. development of enforcement initiation criteria related to the new requirements;

d. training investigators, enforcement, and program support and environmental assistance staff; and

e. outreach activities.

15. I estimate that these activities will involve at least 1,000 staff hours initially and an additional 500 staff hours per year.

16. Additionally, the work activities described above will divert TCEQ resources from other critical work.

17. OCE staff have already begun the process of implementing the HON by including the effective requirements in regularly scheduled compliance investigations in accordance with EPA's compliance monitoring strategy.

VIII. Other Immediate Costs

18. The effective date of the HON also imposes immediate permitting burdens on TCEQ, which also impacts OCE staff. The revised HON is anticipated to impact 146 permits in Texas. Investigations of deviation reports and comprehensive onsite investigations include a review of applicable requirements incorporated into air permits.

19. Additionally, OCE staff must incorporate new requirements into compliance monitoring, investigations, and enforcement processes.

20. These requirements create additional burdens on TCEQ staff and will coincide with TCEQ's other critical work involving the same key personnel. OCE staff regularly consults with OA permitting staff during permit application reviews for new source review and federal operating permits in regard to practical enforceability. OCE also conducts investigations to determine compliance with applicable authorizations, requirements, and statutes. Additional applicable requirements will need to be incorporated into these enforceability reviews, subsequent investigations, and programmatic updates. This has the effect of negatively impacting economic growth and public protection by diverting attention from new and expanding facilities in Texas. As noted above, OCE staff

are responsible for a wide variety of tasks to protect public health and ensure compliance with state and federal environmental laws and regulations. Diverting resources away from these important projects undermines Texas' ability to protect public health.

21. These harms are immediate, as the effective date of the HON has not been stayed. In order for stationary sources to comply with the HON, they must have both NSR and Title V permits that incorporate the HON requirements and OCE staff must begin the compliance and enforcement activities discussed in this declaration.

* * *

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on January 9, 2025

Kristi Mills-Jurach, P.E.
Assistant Director
Office of Compliance and Enforcement

CERTIFICATE OF SERVICE

I certify that on January 17, 2025, the foregoing was electronically filed through this Court's CM/ECF system, which will send a notice of filing to all registered users.

/s/ Catherine E. Stetson
Catherine E. Stetson

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF THE DISTRICT OF COLUMBIA

TEXAS ENVIRONMENTAL JUSTICE ADVOCACY SERVICES
900 North Wayside Dr.
Houston, Texas 77023;

AIR ALLIANCE HOUSTON
2520 Caroline St.
Houston, Texas 77004;

CONCERNED CITIZENS OF ST. JOHN
389 E 26th St.
Reserve, Louisiana 70084;

ENVIRONMENTAL JUSTICE HEALTH ALLIANCE FOR CHEMICAL POLICY REFORM
28 Vernon Street, Suite 434
Brattleboro, Vermont 05301;

ENVIRONMENTAL DEFENSE FUND
257 Park Ave S,
New York, New York 10010;

ENVIRONMENTAL INTEGRITY PROJECT
888 17th St. NW, Suite 810
Washington, D.C. 20006;

LOUISIANA ENVIRONMENTAL ACTION NETWORK
P.O. Box 66323
Baton Rouge, Louisiana 70896;

NATURAL RESOURCES DEFENSE COUNCIL, INC.
40 West 20th Street, 11th Floor
New York, New York 10011;

RISE ST. JAMES LOUISIANA
8581 Hwy 18
St. James, Louisiana 70086; *and*

SIERRA CLUB

Case No. 1:25-cv-3745

2101 Webster St., Suite 1300
Oakland, California 94612;

Plaintiffs,

v.

DONALD TRUMP, President of the United States, in his official capacity;

U.S. ENVIRONMENTAL PROTECTION AGENCY; *and*

LEE ZELDIN, Administrator of the U.S. Environmental Protection Agency, in his official capacity;

Defendants.

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

1. On July 17, 2025, President Donald Trump issued a proclamation purporting to exempt 50[1] chemical manufacturing plants from requirements to monitor and control emissions of hazardous air pollutants like ethylene oxide and chloroprene for two years. *Regulatory Relief for Certain Stationary Sources to Promote American Chemical Manufacturing Security*, 90 Fed. Reg. 34,587 (July 23, 2025) ("HON Proclamation") (Ex. 1). EPA had issued these requirements in its 2024 updates to its hazardous air pollutant standards for more than 200 facilities that manufacture synthetic organic chemicals and polymers and resins in a new rule (known as the "HON Rule").[2] By imposing more stringent requirements to prevent and control toxic air

[1] President Trump's Proclamation listed 52 facilities. Based on a review of EPA facility records, two of those appear to be duplicates.

[2] "HON" stands for "Hazardous Organics NESHAP." "NESHAP" stands for "national emissions standards for hazardous air pollutants," the hazardous air pollutant standards issued under 42 U.S.C. § 7412. The HON Rule covers the synthetic organic chemical manufacturing industry and two groups of polymers and resins manufacturers.

pollutant emissions, the updated HON Rule is estimated to reduce the number of people facing elevated cancer risk from HON emissions by 96 percent.

2. President Trump's HON Proclamation, soon after a request from industry trade groups, unilaterally sweeps away those protections for nearly one-quarter of all HON Rule-regulated facilities, giving facilities in states from Louisiana to Michigan a free pass to continue to pollute and put communities at risk for an additional two years. By granting these exemptions, President Trump has allowed facilities to delay controls for toxic pollutants including ethylene oxide—a known carcinogen linked to lymphoma, leukemia, and breast cancer. He has allowed facilities to forgo leak monitoring and repair requirements that would help timely detect and stop toxic emissions from leaky pumps and vents. He has allowed facilities to postpone updating their operational practices to prevent and minimize toxic emissions during maintenance activities. And he has allowed facilities to forgo fenceline monitoring that would identify when toxic emissions escape a facility's boundaries and poison neighboring communities.

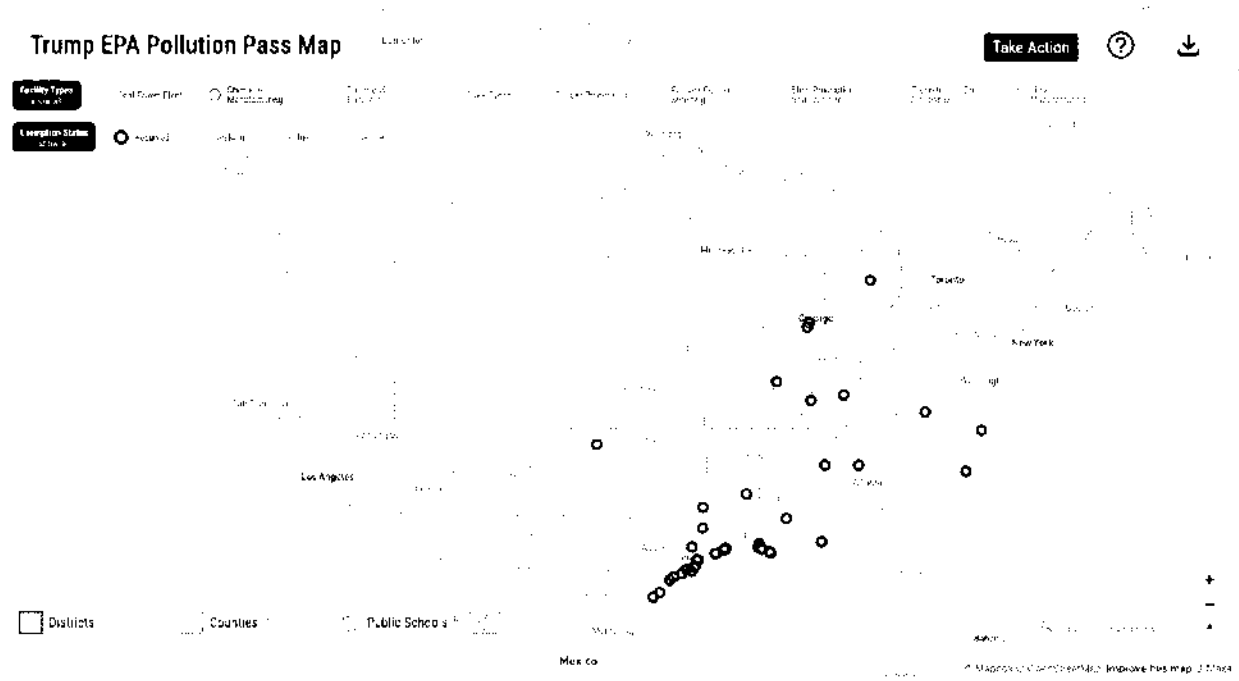


Image from https://www.edf.org/maps/epa-pollution-pass/ (last accessed Oct. 22, 2025)

3. The President granted these sweeping exemptions by seizing on a narrow and, until this year, never-before-used provision of the Clean Air Act, 42 U.S.C. § 7412(i)(4). That provision allows the President to exempt a source from a hazardous air pollutant standard for up to two years only if "the technology to implement" the relevant standard is "not available" and if exempting the source "is in the national security interests of the United States." 42 U.S.C. § 7412(i)(4). Neither of those predicates are met here.

4. In the fifty-five years since Congress enacted Section 7412(i)(4), no President had ever used that exemption authority. In just the first six months of his term, President Trump has done so five times for a total of 170 facilities. Besides the HON Proclamation, President Trump has issued proclamations exempting nearly one-third of U.S. coal-fired power plants from mercury and other air toxics standards, nearly half of commercial medical sterilizers from ethylene oxide standards, and the entire taconite iron-ore processing industry from mercury standards.

5. President Trump's sweeping HON Proclamation grossly exceeds the bounds of the Section 7412(i)(4) exemption authority. The Proclamation exempts nearly one-quarter of HON-regulated facilities from complying with any part of the Rule without any standard- or facility-specific analysis to show that any of the 50 specific facilities meets the statutory standard. In fact, many of the 2024 HON Rule's requirements cannot be reasonably understood as turning on any "technological availability," as required to invoke the Section 7412(i)(4) exemption. Rather, they are operational practices and prohibitions that reduce dangerous emissions from existing equipment and processes. For other requirements, the air pollution control technology needed to comply with the standards is widely available in the industry—and indeed already in use by many of the facilities that received exemptions.

ED_021114A_00004613-00004

6. The scope, content, and context of the Proclamation show it for what it really is: a pretext to relieve polluters from working to comply with the 2024 HON Rule while EPA works administratively to repeal those critical protections. Congress explicitly prohibited that sort of delay pending administrative reconsideration. 42 U.S.C. § 7607(d).

7. The Proclamation violates the Clean Air Act and exceeds the President's lawful authority. Plaintiffs ask the Court to enter appropriate relief declaring the Proclamation unlawful and invalid and enjoining EPA and its Administrator from implementing or giving effect to it.

JURISDICTION AND VENUE

8. This Court has subject matter jurisdiction under 28 U.S.C. § 1331 because this is a civil action arising under laws of the United States, including the Clean Air Act.

9. Venue is proper in this Court under 28 U.S.C. § 1391(e) because Plaintiff Environmental Integrity Project resides in this judicial district, because Defendants reside in this judicial district, and because a substantial part of the events giving rise to the claim occurred in this judicial district.

10. The Court has authority to enter a declaratory judgment and to provide injunctive relief pursuant to Rules 57 and 65 of the Federal Rules of Civil Procedure; the Declaratory Judgment Act, 28 U.S.C. §§ 2201-2202; the All Writs Act, 28 U.S.C. § 1651; and the Court's inherent equitable powers.

PARTIES

The Plaintiffs

11. Plaintiff Louisiana Environmental Action Network ("LEAN") is a nonprofit organization based in Louisiana. LEAN is an environmental justice network of community members that advocate for environmental justice and protection from toxic pollution in

ED_021114A_00004613-00005

Louisiana. Through public education, advocacy, and community organizing, LEAN educates communities about the environmental impacts of industry and development, and empowers them to advocate for protecting human health and the environment.

12. Plaintiff Environmental Justice Health Alliance for Chemical Policy Report ("EJHA") is a national network of grassroots environmental and economic justice organizations and advocates in communities that are disproportionately impacted by toxic chemicals from legacy contamination, ongoing exposure to polluting facilities, and health-harming chemicals in household products. EJHA has over a dozen member community-based environmental justice organizations in ten states. EJHA's member organizations represent communities in areas impacted by hazardous air pollutant emissions, including emissions from HON-regulated facilities. EJHA's mission is to support its affiliate member organizations to achieve a just transition to a pollution-free economy that leaves no community or worker behind.

13. Plaintiff Air Alliance Houston ("AAH") is a nonprofit organization based in Texas. AAH works to reduce air pollution in the Houston region to protect public health and environmental integrity by conducting applied research on air pollution, educating the community about the sources and harms of air pollution, and advocating for improvements at the local, state, and national levels. AAH works closely with constituents to provide the training and technical assistance they need to address air pollution in their daily lives.

14. Plaintiff Concerned Citizens of St. John ("CCSJ") is a nonprofit organization based in St. John the Baptist Parish, Louisiana. CCSJ advocates for community health and safety by working to reduce pollution and to protect the air, water, and soil in Louisiana. CCSJ also works to educate the residents of St. John Parish about environmental pollution and health risks.

ED_021114A_00004613-00006

15. Plaintiff RISE St. James Louisiana is a nonprofit, grassroots, and faith-based organization based in Louisiana. RISE St. James advocates for racial and environmental justice in St. James Parish, Louisiana and in other river parishes impacted by toxic pollution.

16. Plaintiff Texas Environmental Justice Advocacy Services ("t.e.j.a.s.") is a nonprofit organization with its headquarters in Houston, Texas. T.e.j.a.s. promotes environmental protection and environmental justice through education, policy development, community outreach, and legal action to ensure that everyone, regardless of race or income, is entitled to live in a clean environment.

17. Plaintiff Environmental Defense Fund ("EDF") is a nonprofit environmental organization dedicated to finding practical solutions to critical environmental problems through the use of science, economics, policy, and law. EDF regularly collects and publishes data that highlights harm from petrochemical and industrial air pollution, including mapping reported air toxic emissions from petrochemical facilities alongside health risk levels, to provide information to communities and policymakers. *See, e.g.*, Petrochemical Air Pollution Map, https://www.clearcelllab.org/pollutionmap. EDF has offices throughout the United States, including in the District of Columbia. As a membership-based organization, EDF currently has more than 330,000 members, in all 50 states and the District of Columbia. These members have a strong interest in protecting human health and the environment from pollution.

18. Plaintiff Environmental Integrity Project ("EIP") is a nonprofit, nonpartisan organization based in Washington, D.C. that empowers communities and protects public health and the environment by investigating polluters, holding them accountable under the law, and strengthening public policy on toxic air pollution and other environmental health issues. EIP works for more effective enforcement of environmental laws.

19. Plaintiff Natural Resources Defense Council ("NRDC") is a national nonprofit environmental membership organization with hundreds of thousands of members nationwide. NRDC's purpose is to safeguard the Earth — its people, its plants and animals, and the natural systems on which all life depends. Part of NRDC's core mission is to improve air quality and safeguard public health by combating hazardous air pollutant emissions.

20. Plaintiff Sierra Club is a nonprofit corporation with its headquarters located in Oakland, California. The Sierra Club is a national membership organization dedicated to the protection of public health and the environment and regularly advocates for policies that protect clean air. It has chapters in Alabama, Arkansas, Florida, Georgia, Illinois, Indiana, Kentucky, Louisiana, Michigan, Mississippi, North Carolina, Texas, and Virginia, and more than 600,000 members residing in all 50 states, the District of Columbia, and Puerto Rico.

The Defendants

21. Defendant Donald Trump is the President of the United States. He resides and conducts his duties in Washington, D.C. He is sued in his official capacity.

22. Defendant U.S. Environmental Protection Agency ("EPA") is a federal agency of the United States. EPA is headquartered in Washington, D.C.

23. Defendant Lee Zeldin is the Administrator of the U.S. Environmental Protection Agency. He resides and conducts his duties in Washington, D.C. He is sued in his official capacity.

ED_021114A_00004613-00008

LEGAL BACKGROUND

The Clean Air Act's Program to Address Hazardous Air Pollution

24. Clean Air Act Section 112, 42 U.S.C. § 7412, establishes the framework for EPA's regulation of "hazardous air pollutants" from stationary sources, including industrial facilities.

25. "Hazardous air pollutants" for Section 7412 purposes are a group of 188 air pollutants determined by Congress and EPA to be particularly harmful to human health. Ethylene oxide, benzene, 1,3-butadiene, ethylene dichloride, vinyl chloride, and chloroprene are hazardous air pollutants.

26. Section 7412 requires EPA to regulate hazardous air pollutants by issuing emissions standards for categories and subcategories of stationary sources of such pollutants. Emissions standards must require the maximum degree of reduction that EPA deems "achievable," taking into consideration cost and any non-air quality health and environmental impacts and energy requirements. *Id.* § 7412(d)(2), (3)(A)-(B).

27. After EPA establishes Section 7412 standards for a source category, the Clean Air Act requires EPA to perform recurring reviews to ensure that the standards adequately address risks to health and welfare from hazardous air emissions and that they reflect advancements in technology and practice that allow sources to achieve even greater emission reductions. These reviews are often done together and are known as the "residual risk and technology review."

28. In a technology review, EPA must "review, and revise" the Section 7412 standards "as necessary (taking into account developments in practices, processes, and control technologies)." *Id.* § 7412(d)(6).

29. In a risk review, EPA determines whether unacceptable risk to public health remains, or is likely to remain, from hazardous air pollutant emissions even after the application

of Section 7412 standards. If unacceptable risk remains, EPA must promulgate additional standards that eliminate the unacceptable risk, "provide an ample margin of safety to protect public health," and prevent "an adverse environmental effect." *Id.* § 7412(f)(2)(A).

30. Congress also prescribed strict compliance schedules for Section 7412 standards. Residual risk-based emissions standards "shall become effective upon promulgation" for new sources, or 90 days after the effective date for existing sources. *Id.* § 7412(f)(3). EPA may waive compliance for up to two years only if it determines "such period is necessary for the installation of controls and that steps will be taken during the period of the waiver to assure that the health of persons will be protected from imminent endangerment." *Id.* § 7412(f)(4)(B).

31. For standards revised as the result of a technology review, EPA must require existing sources to comply "as expeditiously as practicable," and no later than three years after the effective date. *Id.* § 7412(i)(3)(A). EPA may grant a source up to one additional year to comply only where "such additional period is necessary for the installation of controls." *Id.* § 7412(i)(3)(B).

Clean Air Act Procedural Requirements

32. The Clean Air Act sets out rulemaking requirements that apply to "the promulgation or revision of any . . . emission standard or limitation under section 7412(d)." *Id.* § 7607(d)(1)(C). EPA must establish a rulemaking docket, publish a notice of proposed rulemaking in the Federal Register, and provide a statement of basis and purpose for the rule that includes the factual data on which the proposed rule is based, the methodology used in obtaining and analyzing the data, and the major legal interpretations and policy considerations underlying the proposed rule. *Id.* § 7607(d)(3). EPA must also provide, along with the proposal, any

ED_021114A_00004613-00010

comments by the Scientific Review Committee and the National Academy of Sciences and all data, information, and documents. *Id.*

33. The Clean Air Act also requires EPA to allow any person to submit written comment, and to provide an opportunity for oral presentation of data, views, or arguments, on a proposed rule. *Id.* § 7607(d)(5); *see also id.* § 7607(h). In promulgating a final rule, EPA must provide a statement of basis and purpose as required at the proposal stage and must explain major changes from the proposed to final rule. *Id.* § 7607(d)(6)(A). EPA must also provide a response to each of the significant comments, criticisms, and new data submitted during the comment period. *Id.* § 7607(d)(6)(B). EPA may not base a promulgated rule on "any information or data which has not been placed in the docket as of the date of such promulgation." *Id.* § 7607(d)(6)(C).

34. The Clean Air Act also provides procedures for reconsidering a promulgated rule. The EPA Administrator can "convene a proceeding for reconsideration of the rule" but must "provide the same procedural rights as would have been afforded" in the original proceeding. *Id.* § 7607(d)(7)(B). The Act states, however, that reconsideration "shall not postpone the effectiveness of the rule," except that the Administrator or a reviewing court may stay the effectiveness of the rule "for a period not to exceed three months." *Id.* Section 7607(d)(7)(B) is the sole authority EPA has to stay a rule after its effective date has passed. *See Clean Air Council v. Pruitt*, 862 F.3d 1, 9 (D.C. Cir. 2017).

Presidential Exemption Provision

35. Section 7412(i)(4) of the Clean Air Act authorizes the President, in narrowly prescribed circumstances, to "exempt any stationary source from compliance" with hazardous air pollutant standards promulgated under Section 7412, "for a period of not more than 2 years if the

President determines [1] that the technology to implement such standard is not available and [2] that it is in the national security interests of the United States to do so." 42 U.S.C. § 7412(i)(4).

36. The President may extend the original exemption "for 1 or more additional periods, each period not to exceed 2 years." *Id.*

FACTUAL AND PROCEDURAL BACKGROUND

Synthetic Organic Chemical Manufacturing Industry NESHAP

37. In 1994, EPA promulgated the first hazardous air pollutant standards for synthetic organic chemical manufacturing industry ("SOCMI") processes at 40 C.F.R. part 63, subparts F, G, H, and I. 59 Fed. Reg. 19,402 (Apr. 22, 1994). EPA completed a residual risk and technology review for the HON Rule in 2006. 71 Fed. Reg. 76,603 (Dec. 21, 2006).

38. The SOCMI source category comprises any facility engaged in manufacturing processes that produce synthetic organic chemicals. Those chemicals are primarily used to manufacture plastics, as well as rubbers, paints, adhesives, and pesticides. Demand for synthetic organic chemicals is driven by the growth of automotive and packaging sectors in emerging economies like India, Brazil, Vietnam, and Thailand.

39. Emissions from SOCMI facilities are a major driver of cancer risk for millions of Americans. EPA estimated that emissions from the SOCMI source category alone is responsible for one excess cancer case every 6 months. EPA estimated that approximately 50,000,000 people live within 50 kilometers of SOCMI facilities, and that more than 7 million of those are estimated to have cancer risk above EPA's presumptively "unacceptable" rate of 100-in-1 million because of those facilities' emissions.

40. EPA's estimates are based on modeled emissions from SOCMI facilities based on facilities' reported emissions. Studies have shown that actual hazardous emissions are often

ED_021114A_00004613-00012

higher. One study in Louisiana's "Cancer Alley," an 85-mile stretch along the Mississippi River between Baton Rouge and New Orleans that is home to more than 100 petrochemical manufacturers and refineries, found that pollution levels outside the property lines of ethylene oxide-emitting facilities were 10 times higher than EPA estimates.

Polymers and Resins NESHAP

41. In 1995, EPA established the first standards for certain polymer and resins manufacturing processes at 40 C.F.R. part 63, subpart W, known as the Group II Polymers and Resins NESHAP ("P&R II NESHAP"). 60 Fed. Reg. 12,670 (Mar. 8, 1995). EPA completed a residual risk and technology review for the P&R II NESHAP in 2008. 73 Fed. Reg. 76,220, 76,223 (Dec. 16, 2008).

42. In 1996, EPA established the first standards for various elastomer manufacturing processes at 40 C.F.R. part 63, subpart U, known as the Group I Polymers and Resins NESHAP ("P&R I NESHAP"). 61 Fed. Reg. 46,906 (Sep. 5, 1996). EPA completed a residual risk and technology review for those standards in 2008 and 2011. 73 Fed. Reg. at 76,223; 76 Fed. Reg. 22,566 (Apr. 21, 2011).

43. EPA estimated that of the approximately 1,000,000 people live within 50 kilometers of the Denka facility, a neoprene manufacturer that emits chloroprene, 690,000 are estimated to have a cancer risk at or above 1-in-1 million from primarily the chloroprene emitted from Denka's source category emissions, with 2,000 people estimated to have a cancer risk above 100-in-1 million.

The HON Risk & Technology Review

44. In 2010, EPA for the first time published a cancer potency for chloroprene, a pollutant emitted by the P&R I sources producing neoprene, in its Integrated Risk Information

System ("IRIS"). This cancer potency estimate was not available when EPA conducted its initial residual risk and technology review for P&R I source categories in 2008. 88 Fed. Reg. at 25,090. As a result, EPA's initial risk assessment and hazardous air pollutant standards treated chloroprene as presenting zero risk. Chloroprene is a likely human carcinogen that increases the risks of multiple cancers in addition to increasing the risk of non-cancer nervous system, immune system, and respiratory harms.

45. In 2016, EPA updated its IRIS assessment for ethylene oxide, a pollutant emitted by the SOCMI source category. The updated IRIS assessment showed that ethylene oxide was a significantly more potent carcinogen than previously known. Exposure to even small amounts of ethylene oxide increases the risk of lymphoid cancer, such as non-Hodgkin lymphoma, myeloma, and lymphocytic leukemia, as well as breast cancer. Ethylene oxide exposure is also linked to respiratory, nervous system, and hormone disruption. Children are more susceptible to health effects from ethylene oxide exposure.

46. That change in EPA's understanding of health risks led the Agency to determine that it was necessary to conduct an updated residual risk review for the SOCMI and P&R I source categories, in addition to the technology review required under 42 U.S.C. § 7412(d)(6).

47. In its final Residual Risk Assessment for SOCMI sources, EPA found the cancer risks in communities adjacent to HON facilities are "unacceptable," driven in large part by those facilities' ethylene oxide emissions.

48. Without the requirements of the 2024 HON Rule, approximately 83,000 people living within 50 kilometers of SOCMI sources are exposed to "unacceptable" cancer risk above 100-in-1 million, and over 7 million people are exposed to excess cancer risk of 1-in-1 million.

The highest cancer risk from HON sources is 2,000-in-1 million — approximately 20 times higher than the level of risk that EPA considers presumptively "unacceptable."

49. In addition to ethylene oxide and chloroprene, EPA identified at least eight additional hazardous air pollutants emitted by SOCMI sources contributing to risks above 1-in-1-million — which the Agency described as risk "drivers" — including acrylonitrile, ethylene dichloride, naphthalene, vinyl chloride, benzene, hydrazine, acrylamide, and nickel.

50. Even after implementing the controls required by the 2024 Rule, EPA estimates that several pollutants other than ethylene oxide will cause roughly 40 percent of the remaining cancer risk from SOCMI sources. 89 Fed. Reg. 42,957 (May 16, 2024).

51. In its final Residual Risk Assessment for P&R I neoprene production sources, EPA determined that the maximum individual lifetime cancer risk was 500-in-1-million before implementing the requirements of the 2024 Rule, and that 690,000 people living within 50 kilometers of the neoprene production source would be exposed to lifetime cancer risks greater than 1-in-1-million.

52. EPA also conducted a technology review for the SOCMI and P&R source categories. EPA determined that developments in practices, processes, and control technologies warranted revisions to standards for heat exchange systems, storage vessels, and process vents in one or more of the SOCMI and both P&R source categories. EPA promulgated several new requirements to reflect those developments. 89 Fed. Reg. at 42,948-49.

The 2024 HON Rule

53. EPA finalized the 2024 HON Rule in May 2024. 89 Fed. Reg. at 42,932. The 2024 HON Rule became effective on July 15, 2024.

54. EPA found that the 2024 HON Rule would reduce hazardous air pollutant emissions by 6,230 tons per year, and reduce the number of local residents facing elevated cancer risks from HON emissions by 96 percent.

55. Though EPA was not able to monetize the benefits from these reductions, EPA found the rule's reductions of volatile organic compound emissions and ozone would yield at least $77 to $690 million (using a 3 percent discount rate). 89 Fed. Reg. at 43,060.

56. The 2024 HON Rule was projected to impose about $455 million in total capital costs across all regulated sources.

57. The total annual cost of the rule is about $168 million.

58. The annual cost represents less than 0.1 percent of the value of the U.S. synthetic organic chemical manufacturing industry, which was valued at $168 billion in 2022.

59. The 2024 HON Rule established a variety of requirements applicable to different chemical manufacturing process units ("CMPUs"). Different HON facilities have different arrays of CMPUs, and thus are subject to different combinations of requirements from the 2024 HON Rule. For example, facilities that do not use or emit ethylene oxide would not be required to comply with ethylene oxide-specific requirements.

60. Different HON facilities emit different arrays of hazardous organic air pollutants.

61. For instance, the Formosa Plastics facility in Baton Rouge, Louisiana, is a plastics and resins manufacturer that emitted at least 21 hazardous air pollutants in 2024, including benzene, chloroprene, dioxins, and vinyl chloride.

62. The Westlake Vinyls facility in Geismar, Louisiana, is a plastics and resins manufacturer that emitted at least 29 hazardous air pollutants in 2024, including benzene, chloroprene, dioxins, ethylene oxide, and vinyl chloride.

63. The Citgo Petroleum Corporation Lemont Refinery is a petroleum refinery that emitted at least 34 hazardous air pollutants in 2024, including benzene and 1,3-butadiene.

64. The 2024 HON Rule standards can be grouped and summarized as follows:

65. *Ethylene oxide control requirements:* The 2024 HON Rule requires facilities that use, store, or emit ethylene oxide to reduce ethylene oxide emissions from process vents and storage vessels by either (1) venting the ethylene oxide to a control device that reduces ethylene oxide by a certain amount (for example, greater than or equal to 99.9 percent by weight), or (2) venting the ethylene oxide to a flare that meets preexisting performance, operation, and maintenance requirements. *See* 40 C.F.R. §§ 63.113(j) (process vents), 63.119(a)(5) (storage vessels). The Rule also sets new standards for wastewater containing ethylene oxide, including certain control measures and a prohibition on disposing of such wastewater through any heat exchange system. *Id.* § 63.104(k). The Rule prohibits bypassing air pollution controls for equipment that carries ethylene oxide and makes an atmospheric release from a pressure relief device a violation of the standard. *See* 89 Fed. Reg. at 42,957, 43,017; 40 C.F.R. § 63.165(e)(3)(v)(D). The compliance deadline for these provisions is July 15, 2026. 40 C.F.R. § 63.100(k)(11).

66. *Fenceline monitoring and corrective action requirements:* The 2024 HON Rule requires facilities that use, store, or emit one or more of benzene, 1,3-butadiene, chloroprene, ethylene dichloride, ethylene oxide, and vinyl chloride to sample along the facility's property boundary (known as the "fenceline"). 40 C.F.R. § 63.184. The Rule provides standardized

sampling procedures for each of the pollutants. *See id.* § 63.184(b), (c). The Rule also creates an "action level": if the samples show concentrations of any of the six pollutants above a certain concentration, the facility's owner or operator must take specified actions to identify the root cause of the exceedance and take corrective action, including actions to prevent future exceedances. *Id.* § 63.184(d)(3), (e), (f). The compliance deadline for fenceline monitoring is July 15, 2026, and the compliance deadline for corrective action is July 15, 2027. *Id.* § 63.100(k)(12).

67. *Leak detection and repair requirements:* The 2024 HON Rule requires facilities to implement new leak detection and repair requirements for certain equipment in ethylene oxide service to more quickly identify and correct leaks. These requirements include more frequent monitoring, with a lower leak concentration requiring repair, shorter deadlines to repair leaks, and limitations on any delay of repair. *See, e.g.*, 40 C.F.R. §§ 63.104(g)(6), 63.174(a)(3), (b)(3)(vi), (d) (g)(3), § 63.171(f). The compliance deadline for these requirements is July 15, 2026. *Id.* § 63.100(k)(11). The 2024 HON Rule also requires facilities to implement new leak detection and repair requirements for heat exchange systems generally, and the compliance deadline for those requirements is July 15, 2007, *id.* § 63.100(k)(10).

68. *Work practice standards:* The 2024 HON Rule establishes work practice standards for pressure relief devices and maintenance activities designed to prevent or minimize hazardous air pollutant emissions during maintenance activities or upsets. For instance, the Rule requires facilities with pressure relief devices that vent to the atmosphere to implement three release prevention measures such as routine inspection and maintenance programs or operator training; to monitor pressure relief devices and take corrective action if there are emissions. 40 C.F.R. § 63.165(c)(3)(i)-(iii). The Rule also prescribes how and when operators can open process

ED_021114A_00004613-00018

equipment, including recordkeeping requirements and restrictions on the amount of ethylene oxide released from maintenance vents, and standards for maintenance on storage vessels. *See id.* §§ 63.113(k), 63.119(b)(7) (work practice standards during planned routine maintenance of a fixed roof and an internal floating roof used for storage vessel compliance with total organic HAP emission control requirements). The compliance deadline for these provisions is July 15, 2027. *Id.* § 63.100(k)(10).

69. *Bypass prohibition:* The 2024 HON Rule prohibits owners and operators of HON facilities from bypassing an air pollution control device at any time, and provides that in most instances bypassing a control device is a violation of the applicable emission standard. 40 C.F.R. §§ 63.114(d)(3) (process vents), 63.119(e)(7) (storage vessels), 63.127(d)(3) (transfer racks), 63.148(f)(4) (vapor collection systems and closed vent systems). The compliance deadline for these provisions is July 15, 2027. *Id.* § 63.100(k)(10).

70. *Operating and monitoring requirements for flares:* The Rule sets revised operating and monitoring requirements for flares used as air pollution control devices. *See, e.g., id* §§ 63.108, 63.508. The Rule's requirements mirror and cross-reference the flare requirements promulgated in EPA's 2015 hazardous air pollutant rules for refineries. These revisions include a requirement that facilities operate at a minimum and monitor the net heating value of gases at the flare combustion zone, taking into account any "assist" steam or air added to the stream. The Rule also requires the use of certain methodologies to determine compliance. *See id.* §§ 63.108(a), (c), 63.508(a).

71. EPA determined that existing HON sources could comply with the requirements of the HON Rule within the statutory timeframes of two years (for section 7412(f) ethylene oxide requirements) and three years (for section 7412(d) technology-based requirements) by

ED_021114A_00004613-00019

July 15, 2026, and July 15, 2027, respectively. 89 Fed. Reg. at 42,953-55. Each of these is the maximum compliance timeframe allowed under the statute. EPA also determined that HON sources could comply with fenceline monitoring requirements within two years, and fenceline monitoring root cause analysis and corrective action requirements within three years. *Id.* at 42,954.

72. On January 31, 2025, the industry trade groups American Chemistry Council and the American Fuel and Petrochemical Manufacturers filed a petition for reconsideration of the HON Rule, requesting a broad rollback of the Rule's standards. The industry groups also requested that EPA "provide interim relief . . . while EPA takes regulatory action or addresses the more detailed issues" in the reconsideration petition. Among the options for interim relief suggested by the industry groups was that EPA "should request that the President provide national security exemptions under § 112(i)(4)."

73. Less than two months later, on March 12, 2025, in a press event billed as "the greatest day of deregulation our nation has seen," EPA announced that it would "reconsider" the 2024 HON Rule and 31 other regulations protecting human health and the environment. EPA, News Release, *EPA Launches Biggest Deregulatory Action in U.S. History* (Mar. 12, 2025), https://perma.cc/EXL5-FAMQ (last visited Oct. 21, 2025).

74. Along with its press release, EPA published a "fact sheet" about its planned reconsideration of the HON Rule and seven other recent hazardous air pollutant rules. That fact sheet included an invitation that "[a]ny source interested in a Presidential exemption" from any of the eight rules, "should provide their recommendations to EPA by March 31, 2025." EPA, *Oil and Gas Regulations: Powering the Great American Comeback Fact Sheet* 3, https://perma.cc/L8UM-RN3K (last visited Oct. 21, 2025). The Fact Sheet further explained,

"Sources need only provide why technology is unavailable and why it is in the national security interests of the United States to provide the exemption." *Id.*

75. Following up on its invitation to request exemptions, on or about March 24, 2025, EPA posted a new webpage announcing it had established "an electronic mailbox"—airaction@epa.gov "to allow the regulated community to request a Presidential Exemption under section 112(i)(4)." EPA, *Clean Air Section 112 Presidential Exemption Information* (last updated Apr. 14, 2025), https://perma.cc/WKL5-44FC (last visited Oct. 21, 2025). EPA asked that requests be submitted "by March 31, 2025," a week after the webpage was posted. *Id.*[3]

76. EPA did not solicit any information from the public, or provide any opportunity for public comment.

77. Facility owners and operators across multiple source categories sent exemption requests to that email inbox. Many requests urged the President to interpret the statutory considerations of technological availability and national security to encompass the cost of compliance and economic "security" and development. The industry trade groups American Chemistry Council and the American Fuel and Petrochemical Manufacturers also submitted a request for a blanket two-year exemption from the HON rule for all covered facilities.

The HON Proclamation

78. On July 17, 2025, President Trump issued a proclamation exempting a list of HON-regulated facilities from "those aspects of the HON Rule that were promulgated under section 112 of the Clean Air Act, 42 U.S.C. 7412 for a period of 2 years beyond the HON Rule's relevant compliance dates." 90 Fed. Reg. at 34,587. The HON Proclamation cited "authority

[3] EPA has since removed much of the information in an April 14, 2025 update to the webpage. *See* EPA, *Clean Air Act Section 112 Presidential Exemption Information,* https://perma.cc/WKL5-44FC (last visited Oct. 21, 2025).

vested in [the President] by the Constitution and the laws of the United States, including section 112(i)(4) of the Clean Air Act, 42 U.S.C. 7412(i)(4)." *Id.* The HON Proclamation stated that it "applies to all compliance deadlines established under the HON Rule applicable to the stationary sources listed in Annex I, with each such deadline extended by 2 years from the date originally required for such deadline." *Id.*

79. The Exemption Proclamation included what it referred to as two "determinations."

80. First, the Exemption Proclamation purported to "determine" that "[t]he technology to implement the HON Rule is not available," stating that "[s]uch technology does not exist in a commercially viable form sufficient to allow implementation of and compliance with the HON Rule by the compliance dates in the HON Rule." *Id.* at 34,588.

81. Second, the Exemption Proclamation purported to determine that "[i]t is in the national security interests of the United States to issue this Exemption for the reasons stated in paragraphs 1 and 3 of this proclamation." *Id.* Paragraph 1 asserted that "[m]aintaining a robust domestic chemical industry is vital to safeguarding the supply chains that underpin our economy and to reducing the Nation's dependence on foreign control over materials critical to national resilience." *Id.* at 34,587. Paragraph 3 asserted that "[t]he HON Rule imposes substantial burdens on chemical manufacturers already operating under stringent regulations," and posited that "the timeline for compliance" with the HON Rule "would require shutdowns or massive capital investments before any proven pathway to compliance exists" and would "weaken key supply chains, increase dependence on foreign producers, and impair our ability to respond effectively in a time of crisis." *Id.*

ED_021114A_00004613-00022

82. The Exemption Proclamation and "Annex I" were published in the Federal Register on July 23, 2025. *Id.* at 34,587-91.

83. The Exemption Proclamation included no facility-, standard-, or technology-specific determinations. Instead, the Exemption Proclamation broadly and conclusory purported to "determine" that the technology to implement the 2024 HON Rule (in its entirety) was not available and that exemptions are in the national security interests of the United States.

84. For example, the HON Proclamation purports to exempt from ethylene oxide standards facilities that do not emit ethylene oxide, and thus to which the ethylene oxide control requirements do not apply.

85. The HON Proclamation purports to exempt from fenceline monitoring requirements facilities that have successfully implemented fenceline monitoring, either due to consent decree requirements or the requirements of other hazardous air pollutant standards.

86. The HON Proclamation purports to exempt from ethylene oxide control requirements facilities that already have air pollution control devices and/or flares that would meet those standards.

87. The HON Proclamation purports to exempt facilities from requirements for which "technology" is not needed to "implement" the standards, such as more frequent leak monitoring.

88. The HON Proclamation purports to exempt from the HON standards facilities that have or are in the process of retiring their HON-regulated units.

89. The HON Proclamation's indiscriminate exemptions apply without any consideration of whether the facilities have the technology and operational capability to implement the 2024 HON Rule's standards.

Technology to implement the Rule's requirements is widely available

90. The Proclamation's unsupported determinations are unambiguously contradicted by factual evidence, including EPA's own findings and record for the 2024 HON Rule.

91. *Ethylene oxide control requirements*: Technology to implement the ethylene oxide control requirements is widely available.

92. For example, for the requirement to control emissions from process vents using ethylene oxide, the Rule allows facilities a range of options, including that they may use a control device that reduces ethylene oxide to by greater than or equal to 99.9 percent by weight or may simply use a flare operating in compliance with the revised operating and monitoring requirements. *See* 40 C.F.R. § 63.113(j).

93. Air pollution control devices that are capable of meeting the standards are commercially available and feasible to implement.

94. Flares that are capable of meeting the standards are commercially available and feasible to implement. Many exempted facilities already possess and operate flares capable of meeting the standards.

95. The exempted facilities either do not need any technology to implement aspects of these standards, already have in place the technology necessary to implement other aspects of the standards, or can obtain the widely commercially available and technically feasible technology to implement other aspects of these standards.

96. The same air pollution control devices or flares needed to comply with the control requirements of the 2024 HON Rule are widely used by owners and operators of equipment and processes that are subject to similar ethylene oxide standards imposed in 2020 by the

Miscellaneous Organic Chemical Manufacturing hazardous air pollutant standards (known as the "MON Rule").

97. Many facilities regulated by the MON Rule are co-located with equipment and processes regulated by the HON Rule. On information and belief, only 14 of the exempted facilities would be subject to the ethylene oxide control requirements of the 2024 HON Rule. On information and belief, 9 of those 14 exempted facilities are subject to the MON Rule. As discussed below, EPA assumed for certain HON facilities co-located with MON facilities that "the HON facility likely upgraded at least one HON flare already." It is therefore likely that many of the exempted facilities already have the required control technology in place.

98. Technology to implement the 2024 HON Rule's ethylene oxide wastewater controls is available.

99. The controls for wastewater streams in ethylene oxide service can be implemented with a device called a steam stripper, a technology and a method that has been available since at least 1992, when EPA analyzed the effectiveness of steam stripping to remove organic pollutants from wastewater streams in the original HON rulemaking.

100. HON-regulated facilities already use the technological controls necessary to comply with the wastewater requirements on non-ethylene oxide wastewater streams.

101. *Fenceline monitoring*: Technology to implement the fenceline monitoring requirement is available.

102. The majority of exempted facilities would only be required to use passive diffusive tube monitors to comply with the fenceline monitoring requirements for benzene, chloroprene, 1,3-butadiene, and ethylene dichloride. Fenceline monitoring with passive diffusive

tube monitors has been successfully implemented in the petroleum refineries source category since 2018.

103. Many refineries are co-located with HON-regulated processes. On information and belief, of the 39 exempted facilities that would be required by the 2024 HON Rule to conduct passive fenceline monitoring for at least one pollutant, 10 of these facilities are already conducting this very same passive fenceline monitoring consistent with the standards for the refineries source category.

104. The monitoring technology used by refineries since 2018 is the same technology that the 2024 rule requires for measuring benzene, chloroprene, 1,3-butadiene, and ethylene dichloride. Under the 2024 HON Rule, the majority of HON-regulated sources, including the majority of exempted facilities, would be required to conduct only the passive diffusive tube monitoring.

105. Some facilities would be required to use canister sampling technique Method 327 to comply with the fenceline monitoring requirements for ethylene oxide and vinyl chloride. On information and belief, only 17 of the 50 exempted facilities would be required to use canister monitoring under Method 327.

106. Canister sampling using Method 327 is an available technology.

107. Canister sampling has been an EPA-approved method since at least 1989. The differences between Method 327 and its immediate precursor (Method TO-15A) have to do with "Best Practices" and "enhanced [quality assurance/quality control]," 89 Fed. Reg. at 43,008, not a change in the underlying sampling technology.

108. In developing the 2024 Rule, EPA requested fenceline monitoring data from eleven HON facilities. EPA required that these facilities use a modified Method TO-15 for

ED_021114A_00004613-00026

certain pollutants, in effect requiring what would become Method 327. The subject facilities were able to comply.

109. Today, multiple laboratories in the United States are offering Method 327 services. Canister sampling using Method 327 is an available technology.

110. *Leak detection and repair requirements:* Technology to implement the 2024 Rule's leak detection and repair requirements is available.

111. The technology to monitor heat exchange systems employs common sampling and analysis methods. As such, the Rule does not require facilities to install or implement any new technology.

112. For connectors in ethylene oxide service, the Rule simply requires facilities to conduct the same kind of leak detection practices using the same devices or equipment that facilities had already conducted pursuant to the previous HON requirements, but on a more frequent basis and with quicker repair based on a lower leak concentration. The updated requirements apply narrowly to a subset of facilities subject to the Rule—just those that use ethylene oxide, which EPA estimated only to be 15 existing facilities at the time.

113. *Work practice standards*: Technology to implement work practice standards is available.

114. The work practice standards for pressure relief devices, storage vessels, and other equipment are implemented through routine inspection and maintenance, operator training, and

the use of widely available devices including flow indicators, level indicators, temperature indicators, pressure indicators.

115. *Bypass prohibition*: The bypass prohibition requirements do not require facilities to install or implement any new technological controls; it simply prohibits facilities from bypassing the controls that currently exist.

116. *Flare operating and monitoring standards*: Technology to comply with the Rule's flare operating and monitoring requirements is widely available.

117. For many exempted facilities, the necessary technology to comply with the flare operating and monitoring standards is already in place.

118. The 2024 HON Rule incorporates by reference the flare operating and monitoring requirements established in the 2015 Refineries Rule, which have long been in effect. *See* 40 C.F.R. §§ 63.108(a), 63.508(a). Many exempted facilities are also regulated under that Refineries Rule.

119. There is no need to install new technology to implement many of the flare operating and monitoring requirements. Certain of the revised operating and monitoring requirements do not necessitate additional equipment, or such equipment is already in place at exempted facilities. For example, the requirement for facilities to use a shorter averaging time is

ED_021114A_00004613-00028

important for the purposes of compliance, but only requires different calculations and not different equipment.

120. EPA estimated that only about half of HON-regulated operators may need to make some upgrades to better monitor and operate their existing flares.

121. Even where the installation of new monitoring equipment may be required, all of this technology is readily available and already in use.

122. Refineries have complied with the flare operating and monitoring requirements since 2019, and other types of petrochemical facilities—such as MON and ethylene production have complied since 2023. Of the exempted facilities, 12 are co-located with refineries, 21 are co-located with units subject to the MON rule, and three are co-located with ethylene production units. A total of 29 exempted facilities are therefore co-located with one or more of these other units.

123. In the 2024 HON Rule, EPA assumed that HON-regulated facilities that are co-located with MON or ethylene production sources had likely upgraded at least one of their HON-regulated flares already. Many of the exempted facilities, therefore, likely already have the technology required to implement the standard in place.

The Court's equitable authority to review ultra vires Executive action

124. The Exemption Proclamation exceeds the President's statutory authority because, by granting sweeping exemptions to one quarter of regulated sources without making facility-, standard-, or technology-specific determinations, the Proclamation exceeds the bounds of the President's Section 7412(i)(4) authority.

125. The Proclamation effectively amends the compliance dates of EPA's 2024 Rule, an action outside the bounds of Section 7412(i)(4). Section 7412(i)(4) is a narrow exemption

applicable in specific statutorily defined circumstances; it does not give the President authority to amend EPA standards. Only EPA may amend those standards and only after notice and comment rulemaking.

126. Case law in this Circuit generally allows for review of presidential actions to ensure conformity with statutory requirements, provided that "the authorizing statute or another statute places discernible limits on the President's discretion." *Mountain States Legal Found. v. Bush*, 306 F.3d 1132, 1136 (D.C. Cir. 2002) (citing, *inter alia*, *Chamber of Com. of the U.S. v. Reich*, 74 F.3d 1322, 1331 (D.C. Cir. 1996)).

127. The statutory provision at issue, Section 7412(i)(4), provides such discernable limits on the President's discretion by requiring a determination that, for specific facilities, "technology to implement" a standard "is not available" and that the exemption "is in the national security interests of the United States." 42 U.S.C. § 7412(i)(4).

128. The Court has the power to review the Proclamation to discern whether the President's exercise of statutory authority was unlawful because the necessary factual predicate required by the Clean Air Act is not present, and because the HON Proclamation unlawfully exercises authority not conveyed by Section 7412(i)(4), contrary to Congress's explicit restrictions on stay regulations and compliance deadlines. The Court therefore has the power to declare the HON Proclamation is unlawful and *ultra vires*.

STANDING

129. Plaintiffs' members live, work, and recreate in areas affected by the excess pollution that is and will be emitted from the exempted facilities. Plaintiffs' members are harmed

by breathing air pollution from the exempted facilities and are concerned that exposure to hazardous air pollutants from the exempted facilities could have harmful impacts on their health.

130. Plaintiffs' members stood to benefit from the ethylene oxide requirements, which were slated to go into effect July 15, 2026. Exempted facilities are now able to emit toxic air pollution at higher levels than otherwise would have been allowed, for years beyond the Rule's mandate. Plaintiffs' members are harmed by the excess emissions that will result from the HON Proclamation exemptions.

131. Plaintiffs' members also stood to benefit from the leak detection and repair requirements, maintenance work practice standards, and other requirements that were slated to go into effect July 15, 2027. Exempted facilities are now not required to comply with operational practices, monitoring, and prohibitions that would reduce the emission of toxic air pollutants. Plaintiffs and plaintiffs' members are harmed by the excess emissions that will result from the HON Proclamation exemptions.

132. Exposure to ethylene oxide, chloroprene, vinyl chloride, benzene, 1,3-butadiene, and other hazardous air pollutants emitted by exempted facilities causes adverse health effects.

133. On average, census blocks containing the exempted HON-regulated facilities face cancer risks of 71 per million, compared to national cancer risk average of 28 per million. In some affected communities, the cancer risk is 300 or 400 per million, 10 to 14 times greater than the national average. In these communities, 38 percent of cancer risk can be attributed to industrial pollutant sources like HON-regulated facilities, as opposed to the national average of just 2 percent attributable to industrial pollution sources.

134. Plaintiffs' members also stood to benefit from reduced exposure to the pollutants subject to the fenceline monitoring requirements, also slated to go into effect July 15, 2026.

Facilities subject to the fenceline monitoring requirements would have to take corrective action that would reduce hazardous air pollutant emissions. The exemptions remove those requirements and increase the likelihood of hazardous pollutant exposures in the communities surrounding the exempted facilities. Plaintiffs and their members are harmed by increased exposure to hazardous air pollutants as a result of the HON Proclamation.

135. The HON Rule fenceline monitoring provisions also require facilities to submit quarterly fenceline emissions reports to EPA, which EPA then makes available to the public. The HON Proclamation exempts Annex I facilities from fenceline monitoring requirements. Those exemptions deny Plaintiffs and their members the emissions information those reports would provide.

136. Some Plaintiffs and their members would use such information to raise public awareness of air pollution and to further Plaintiffs' and their members' advocacy, education, and outreach efforts to reduce air pollution and protect public health. Plaintiffs and their members will be deprived of information they would have used to evaluate their pollution exposure and health risks in areas affected by emissions from the exempted facilities. That information would also allow some Plaintiffs to make educated decisions about how they engage in advocacy to reduce air pollution. Plaintiffs and Plaintiffs' members are therefore harmed by the HON Proclamation exemptions.

137. For example, Plaintiff EJHA works to provide organizing, capacity, and technical support to communities and enhance the public's understanding of the health and safety implications of hazardous chemicals. In collaboration with the Coalition to Prevent Chemical Disasters, EJHA launched and now maintains an online tracker that tracks incidents involving hazardous chemicals. EJHA also offers information and analysis based on publicly reported

ED_021114A_00004613-00032

facility emissions information to educate and support its member affiliate organizations to build grassroots power to remedy and redress the health and safety legacy of chemical pollution in their affiliates' communities.

138. For example, EJHA has created facility profiles from emissions data for specific facilities of concern in EJHA affiliate communities. EJHA has used facility emissions data to support affiliates in commenting on facility air permits, including for some HON facilities. EJHA has used facility emissions data to contribute to comments on the 2024 HON Rule and other EPA rulemakings that address chemical facilities. EJHA uses facility emissions data to provide affiliate members with information to advocate within their home communities, and to connect affiliates' localized pollution concern to federal policy.

139. EJHA also convenes and facilitates a joint working group on hazardous facilities with the environmental health network Coming Clean. Several EJHA member organizations participate regularly in the Hazardous Facilities Team, which supports information sharing between place-based environmental justice groups working on local issues and campaigns related to the impacts of hazardous facilities (including HON facilities) in their neighborhoods and provides a space for translating local needs into federal policy. The Team works collaboratively to advance federal policies that will support local needs and establish a more protective "floor" of protections from hazardous facilities at the federal level to protect all communities across the country. Reducing exposure to and cancer and other health effects harms from hazardous air pollutants like ethylene oxide, chloroprene, 1,3-butadiene and dioxins has been a top priority of this Team since its inception.

140. EJHA's affiliate members have members in communities like Westlake, Louisiana, Louisville, Kentucky, and Houston, Texas, which are home to facilities that received

ED_021114A_00004613-00033

exemptions under the HON Proclamation. Because of the exemptions, EJHA will be deprived of emissions information that would allow it to support its member organizations and effectively advocate in furtherance of its mission.

141. EJHA has advocated extensively for fenceline monitoring in the HON Rule and other NESHAP rules, as well as in other policy spaces. EJHA believes fenceline monitoring data (particularly when made available in real time) is critical to community members' ability to take action to protect themselves and their families in times of chemical release and other pollution incidents. Several EJHA affiliate member organizations have as a core tenet of their local work and mission providing community members accurate pollution information and emergency planning and preparedness training in the absence of prevention requirements at the federal level or adequate emergency preparedness and communication at the local level. There is also reason to expect that the 2024 HON Rule's fenceline monitoring requirements would help to prevent catastrophic chemical disasters in EJHA affiliate members' communities by providing earlier warning of a malfunction or other issues before they become a disaster.

142. Jim Vandenbosch is a member of NRDC. He lives less than three miles from the Citgo Petroleum Corporation Lemont Refinery, which received an exemption under the HON Proclamation. The Lemont Refinery emits, among other hazardous air pollutants, 1, 3-butadiene and benzene. Mr. Vandenbosch regularly smells a strong chemical odor from the direction of the refinery and has observed plumes and fires coming from the facility. As a result of the HON Proclamation, the Lemont Refinery will emit more hazardous air pollutants during the two-year exemption period. Mr. Vandenbosch is concerned about the health risk of exposure to the hazardous air pollutant emissions from the Lemont Refinery.

143. Sharon Cayette Lavigne is the Director/Founder and a member of RISE St. James. She is a lifelong resident of St. James, Louisiana. Ms. Lavigne lives and regularly visits areas near numerous Louisiana facilities that have received exemptions under the HON Proclamation. These include the Denka Performance Elastomer facility in St. John the Baptist Parish, and the DuPont Specialty Products Pontchartrain Site in St. John the Baptist Parish; and the BASF North Geismar site, BASF Geismar site, Shell Geismar chemical plant, Westlake Vinyls plant, and Rubicon Geismar plant in Ascension Parish. These five facilities in Ascension Parish are located directly across the Mississippi River from where one of Ms. Lavigne's granddaughters lives. Another of Ms. Lavigne's granddaughters attends Southern University Laboratory School which is 3.7 miles from the Formosa Plastics Plant in Baton Rouge. Ms. Lavigne is concerned about her own and family members' exposure to the hazardous air pollutant emissions from these facilities that will continue for an additional two years due to the HON Proclamation. Ms. Lavigne is specifically concerned for these facilities' effects on her own health, as she already has health issues including autoimmune hepatitis. Because of the HON Proclamation, Ms. Lavigne is concerned that these facilities will not have to comply with fenceline monitoring requirements or the more stringent controls of the HON Rule and will emit more hazardous air pollutants during the two-year exemption period.

144. Diana LeBlanc is a resident of Port Allen, Louisiana and a member of LEAN. Ms. LeBlanc lives and spends time near the Dow facility in Plaquemine, Louisiana and the Formosa facility in Baton Rouge, both of which received exemptions under the HON Proclamation. Ms. LeBlanc suffers from asthma and an immune deficiency disorder, and she is concerned that hazardous air pollution from these facilities will worsen these conditions and expose her and her family to other health risks, including cancer.

145. Concerned Citizens of St. John and Environmental Defense Fund member Letitia Taylor lives in St. John the Baptist parish in Louisiana, about one mile from Denka Performance Elastomer's neoprene plant, which received an exemption under the HON proclamation. While producing neoprene, the Denka facility emits chloroprene, a dangerous chemical. Due to the HON proclamation, the Denka facility will be allowed to continue to emit hazardous air pollutants during the two-year extension. Ms. Taylor is concerned about the impacts of Denka's emissions on her and her family's health, and she spends less time outdoors due to these concerns.

146. Melanie Oldham is a Sierra Club member and lives five miles from the exempted BASF facility in Freeport, Texas. Ms. Oldham suffers from frequent coughs and colds and is concerned about the impacts of the air pollution from the BASF Freeport facility, among other facilities, on her health. She avoids spending time outdoors, and enjoys the time she does spend outdoors less, as a result of these concerns.

147. Jennifer Hadayia is the Executive Director of Air Alliance Houston, an organization dedicated to reducing the public health impacts of air pollution in the Houston area. Ms. Hadayia lives in Houston, Texas, and regularly travels throughout Harris County for work and to visit family. As a result, Ms. Hadayia spends time near HON facilities, including the exempted Celanese Clear Lake and Ineos Styrolution facilities in Pasadena, Texas. Ms. Hadayia is concerned about the impact of these facilities' pollution on her health.

148. Ana Parras is the co-founder and executive co-director of t.e.j.a.s. Ms. Parras lives approximately halfway between the Houston Ship Channel and downtown Houston, near many HON facilities, including the exempted Cealnese Clear Lake and INEOS Styrolution facilities in Pasadena. Ms. Parras suffers from hypersensitivity pneumonitis, a respiratory condition that

ED_021114A_00004613-00036

makes it difficult to breathe. Ms. Parras is concerned about the impacts of the exempted facilities' emissions on her health. Ms. Parras and t.e.j.a.s. participated in the rulemaking process underlying the HON Rule, as well as litigation defending the rule against industry legal challenges. Ms. Parras is concerned that the exemptions will delay compliance with the HON Rule's fenceline monitoring requirements at nearby facilities. Without these fenceline monitoring requirements, t.e.j.a.s. will not be able to fully inform its constituents about potential exposure level, diminishing its ability to educate and conduct outreach to its constituents. The exemption for compliance with the fenceline monitoring requirements would also delay pollution reductions and deprive Ms. Parras, her family, and T.e.j.a.s.'s constituents of the health protections that fenceline monitoring would provide.

CLAIMS FOR RELIEF

COUNT ONE:
Unlawful Executive Action in Violation of the Clean Air Act
(Nonstatutory Review for Violations of Federal Law by Federal Officials; Against All Defendants)

149. Plaintiffs incorporate by reference Paragraph 1-148.

150. The President has limited authority to exempt stationary sources from duly promulgated hazardous air pollutant regulations solely by virtue of the authority delegated by Congress in 42 U.S.C. § 7412(i)(4). The President lacks any independent authority under the U.S. Constitution to issue the exemptions.

151. Section 7412(i)(4) permits the President to exempt a source from a hazardous air pollutant standard only if "the technology to implement such standard is not available" and if an exemption is in the national security interests of the United States.

152. Whether technology to implement a standard is or is not available is a discrete, yes-or-no factual inquiry that limits the President's discretion to grant exemptions.

ED_021114A_00004613-00037

153. Section 7412(i)(4) establishes a judicially manageable standard with clear and precise limits of the sort federal courts routinely construe to determine whether officials have acted consistent with law.

154. There is no statutory basis for the President's indiscriminately broad determinations that technology to implement the 2024 HON Rule is not available or that granting exemptions from that Rule is in the national security interests of the United States. The President patently misconstrued the statutory terms "technology" and "not available" in purporting to exercise the Section 7412(i)(4) exemptions authority.

155. The HON Proclamation's purported determination that technology needed to implement the various diverse standards of the 2024 HON Rule is not available for various diverse HON-regulated facilities is a conclusory statement without specific findings as to any specific standard, any specific technology, or any specific facility.

156. Technology to implement the 2024 HON Rule is in fact available. The relevant technologies to implement each aspect of the 2024 HON Rule standards are in widespread use among chemical manufacturers regulated by the HON Rule and similar regulated sources.

157. Other requirements of the 2024 HON Rule do not require facilities to obtain or deploy any new "technology" within the meaning of Section 7412(i)(4). For instance, leak monitoring requirements simply require more frequent monitoring of the same type the exempted sources are already required to undertake. Similarly, maintenance work practice standards simply require different operational practices to prevent and minimize emissions during maintenance activities facilities already undertake.

ED_021114A_00004613-00038

158. The purported determination that technology to implement the standards is not available is unambiguously contradicted by factual evidence. The HON Proclamation's cursory and conclusory statements to the contrary cannot be credited.

159. The President's purported determination that the technology to implement the 2024 HON Rule is not available rests on an unlimited, untenable interpretation and application of the authority conveyed by Section 7412(i)(4) of the Clean Air Act.

160. The President patently misconstrued the statutory term "national security" in purporting to exercise the Section 7412(i)(4) exemptions authority.

161. National security concerns "only those activities of the Government that are directly concerned with the protection of the Nation from internal subversion or foreign aggression, and not those which contribute to the strength of the Nation only through their impact on the general welfare." *Cole v. Young*, 351 U.S. 536, 544 (1956).

162. The HON Proclamation's purported determination that it is in the national security interests of the United States to issue the exemption is a conclusory statement that reveals no specific consideration whether the varied chemical products produced by exempted sources—including chemicals used for artificial sweeteners, cleaning agents, dyes and textiles, household and personal care products, pesticides, and plastic packaging have any national security nexus.

163. The HON Proclamation's purported determination that it is in the national security interests of the United States to issue the exemption is a conclusory statement without specific findings that the purported compliance burdens on any specific facility threatens national security.

ED_021114A_00004613-00039

164. The President's overly broad interpretation of "national security" is inconsistent with the statute.

165. Because the President grossly exceeded the bounds of his statutory authority by purporting to exempt stationary sources from standards for which the technology to implement is available and the exemptions do not further national security interests, the HON Proclamation is plainly in excess of the President's delegated powers and contrary to the statute's specific limitations on those powers. The President's action is contrary to the Clean Air Act and is ultra vires.

166. The Court possesses inherent equitable power to "grant injunctive relief . . . with respect to violations of federal law by federal officials." *Armstrong v. Exceptional Child Ctr., Inc.*, 575 U.S. 320, 326-27 (2015). Congress has nowhere foreclosed review of the interpretation and application of 42 U.S.C. § 7412(i)(4). There is no alternative statutory procedure for review of Plaintiffs' claim.

167. Because the Exemption Proclamation violates the Clean Air Act and is ultra vires, EPA actions implementing or giving effect to the proclamation likewise violate the Clean Air Act and are ultra vires.

COUNT TWO:
Ultra vires, de facto rulemaking without statutory authority
(Nonstatutory review of action in excess of statutory authority by federal officer; against all Defendants)

168. Plaintiffs incorporate by reference the allegations of Paragraphs 1-167.

169. Congress required EPA to provide for existing sources' compliance with hazardous air pollutant standards "as expeditiously as practicable," and set concrete boundaries on EPA's flexibility to set compliance deadlines "in no event later than 3 years after the effective date of such standard." 42 U.S.C. § 7412(i)(3)(A).

170. Congress gave EPA and state permitting authorities discrete, limited authority to grant an existing source "up to 1 additional year to comply" with standards promulgated under subsection (d) "if such additional period is necessary for the installation of controls." 42 U.S.C. § 7412(i)(3)(B).

171. Congress further conferred discrete, limited authority on EPA to stay the effectiveness of rules, including hazardous air pollutant standards, for no more than three months. 42 U.S.C. § 7607(d)(7)(B).

172. Congress directed EPA to provide for public notice and comment on EPA actions to revise hazardous air pollutant standards, their compliance dates, or to grant source-specific deadline extensions. 42 U.S.C. § 7607(d)(5), (h).

173. The exemption authority conveyed in Section 7412(i)(4) must be construed congruously with the authorities and limitations Congress enacted in Sections 7412 and 7607.

174. EPA and the President are bound by the Clean Air Act's duties with respect to implementing Section 7412(i)(4), following rulemaking procedures, and being bound by lawfully adopted regulations.

175. Reading Section 7412(i)(4) to authorize exemptions for a large swath of the regulated source category, from every single standard and other requirement of a rule, without facility- or standard-specific justification tied to the statutory factors, is contrary to the context, purpose, and structure of the Clean Air Act. The HON Proclamation's extremely broad sweep reflects an interpretation of the Section 7412(i)(4) authority that would swallow and render superfluous statutory limits.

176. The content, context, and scope of the HON Proclamation demonstrates that the Proclamation is not an "exemption" within the meaning of Section 7412(i)(4).

177. The HON Proclamation is functionally a rulemaking and/or stay pending reconsideration granted without observance of the procedural and substantive limitations Congress enacted in Section 7412 and 7607 of the Clean Air Act. The Proclamation was issued without observance of the statutory requirements for rulemaking or for granting a stay pending reconsideration.

178. EPA invited requests for presidential exemptions explicitly in the context of its announced reconsideration of the 2024 HON Rule and seven other hazardous air pollutant rules. *See* supra ¶¶ 53, 54. EPA has stated that the exemptions are offered "while EPA reconsiders" the underlying rule. *See* EPA, Clean Air Act Section 112 Presidential Exemption Information, https://perma.cc/NPT5-RAQY (last accessed Oct. 20, 2025).

179. The President indiscriminately granted exemptions from all compliance obligations of the 2024 HON Rule, without particularized consideration of the specific standards, technologies or practices needed to comply, or facilities and their particular products and processes, all of which is necessary to determine whether technology is not available to implement the standards and whether an exemption is in the national security interests of the United States.

180. The HON Proclamation's purported exercise of Section 7412(i)(4) exemption authority is in fact an exercise of rulemaking and/or stay authority despite the President lacking such power. The Clean Air Act gives only EPA that authority and only after following certain procedures in certain circumstances.

181. The sweeping HON Proclamation exceeds the narrow bounds of Section 7412(i)(4) to achieve improper goals prohibited by other provisions of the Clean Air Act. In granting compliance relief that far exceeds the Section 7412(i)(4) authority, the President

ED_021114A_00004613-00042

bypassed and contravened the statutory requirements on rulemaking and reconsideration to accomplish sweeping compliance exemptions unauthorized by law and in excess of the President's statutory authority.

182. The HON Proclamation is beyond the authority conveyed by the Clean Air Act and is *ultra vires*.

183. Because the HON Proclamation is beyond the Clean Air Act authority and ultra vires, EPA actions implementing or giving effect to the proclamation are similarly ultra vires.

RELIEF REQUESTED

WHEREFORE Plaintiffs request that the Court:

A. Declare that the HON Proclamation is unlawful and invalid and that the Annex I sources remain subject to the 2024 HON Rule as promulgated;

B. Issue injunctive relief:

i. prohibiting EPA and Administrator Lee Zeldin from implementing, relying on, or giving effect to the HON Proclamation, including through implementation of the Clean Air Act's Title V operating permit program; and

ii. directing EPA to promptly notify, in writing, the operators of facilities listed in Annex I and relevant state, local, and/or Tribal permitting authorities that the HON Proclamation is unlawful and invalid, and that any facilities that the HON Proclamation purported to exempt may not lawfully delay or avoid compliance with the deadlines promulgated by the 2024 Rule by relying on the HON Proclamation.

C. Awarding Plaintiffs their fees and costs of litigation as authorized by law;

D. Granting such other relief as the Court deems just and proper.

ED_021114A_00004613-00043

Dated: October 22, 2025

Respectfully submitted,

/s/ Sarah A. Buckley
Sarah A. Buckley (Va. Bar No. 87350), *pro hac vice pending*
Natural Resources Defense Council, Inc.
1152 15th St. NW, Suite 300
Washington, D.C. 20005
sbuckley@nrdc.org
Tel: (202) 836-9555

Counsel for Plaintiffs Natural Resources Defense Council and Environmental Justice Health Alliance for Chemical Policy Reform

Adam Kron (D.C. Bar No. 992135)
Kathleen Riley (D.C. Bar No. 1618580)
Deena Tumeh (D.C. Bar No. 488201)
Earthjustice
1001 G St. NW, Ste. 1000
Washington, D.C. 20001
akron@earthjustice.org
kriley@earthjustice.org
dtumeh@earthjustice.org
Tel: (202) 794-8039

Counsel for Plaintiffs Texas Environmental Justice Advocacy Services, Air Alliance Houston, Concerned Citizens of St. John, Louisiana Environmental Action Network, RISE St. James Louisiana, and Sierra Club

Abel Russ (D.D.C. Bar No. 1007020)
Environmental Integrity Project
888 17th St. NW, Suite 810
Washington, DC 20006
aruss@environmentalintegrity.org
Tel: (802) 482-5379

Counsel for Plaintiff Environmental Integrity Project

Rosalie Winn (Colorado Bar No. 52662),
pro hac vice pending
Environmental Defense Fund
2060 Broadway, Suite 300
Boulder, CO 80302
rwinn@edf.org
Tel: (303) 447-7212

Samantha Liskow, (New York Bar No. 5545140), *admission pending*
Environmental Defense Fund
257 Park Avenue South
New York, NY 10010
sliskow@edf.org
Tel: (212) 616-1247

Counsel for Plaintiff Environmental Defense Fund

ED_021114A_00004613-00045

Exhibit 1

Presidential Documents

Proclamation 10957 of July 17, 2025

Regulatory Relief for Certain Stationary Sources To Promote American Chemical Manufacturing Security

By the President of the United States of America

A Proclamation

1. The United States relies on a strong chemical manufacturing sector to support industries like energy, national defense, agriculture, and health care. These facilities produce essential inputs for critical infrastructure, advanced manufacturing, medical sterilization, semiconductors, and national defense systems. Maintaining a robust domestic chemical industry is vital to safeguarding the supply chains that underpin our economy and to reducing the Nation's dependence on foreign control over materials critical to national resilience. As adversaries expand influence over key inputs, continued domestic production is essential not only to economic resilience but also to military readiness, public health, and national preparedness.

2. On May 16, 2024, the Environmental Protection Agency published a final rule titled *New Source Performance Standards for the Synthetic Organic Chemical Manufacturing Industry and National Emission Standards for Hazardous Air Pollutants for the Synthetic Organic Chemical Manufacturing Industry and Group I & II Polymers and Resins Industry,* 89 FR 42932 (HON Rule). The HON Rule imposes new emissions-control requirements on certain chemical manufacturing facilities, some of which were promulgated pursuant to section 112 of the Clean Air Act, 42 U.S.C. 7412.

3. The HON Rule imposes substantial burdens on chemical manufacturers already operating under stringent regulations. Many of the testing and monitoring requirements outlined in the HON Rule rely on technologies that are not practically available, not demonstrated at the necessary scale, or cannot be implemented safely or consistently under real-world conditions. For many facilities, the timeline for compliance as set forth at 89 FR 42953–42955 would require shutdowns or massive capital investments before any proven pathway to compliance exists. The HON Rule imposes requirements that assume uniform technological availability across facilities, despite significant variation in site conditions, permitting realities, and equipment configurations. A disruption of this capacity would weaken key supply chains, increase dependence on foreign producers, and impair our ability to respond effectively in a time of crisis. These consequences would ripple across sectors vital to America's growing industrial strength and emergency readiness.

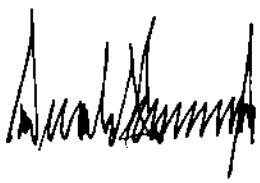
NOW, THEREFORE, I, DONALD J. TRUMP, President of the United States of America, by the authority vested in me by the Constitution and the laws of the United States, including section 112(i)(4) of the Clean Air Act, 42 U.S.C. 7412(i)(4), do hereby proclaim that certain stationary sources subject to the HON Rule, as identified in Annex I of this proclamation, are exempt from compliance with those aspects of the HON Rule that were promulgated under section 112 of the Clean Air Act, 42 U.S.C. 7412 for a period of 2 years beyond the HON Rule's relevant compliance dates (Exemption). This Exemption applies to all compliance deadlines established under the HON Rule applicable to the stationary sources listed in Annex I, with each such deadline extended by 2 years from the date originally required for such deadline. The effect of this Exemption is that, during

each such 2-year period, these stationary sources will be subject to the emissions and compliance obligations that they are currently subject to under the applicable standard as that standard existed prior to the HON Rule. In support of this Exemption, I hereby make the following determinations:

a. The technology to implement the HON Rule is not available. Such technology does not exist in a commercially viable form sufficient to allow implementation of and compliance with the HON Rule by the compliance dates in the HON Rule.

b. It is in the national security interests of the United States to issue this Exemption for the reasons stated in paragraphs 1 and 3 of this proclamation.

IN WITNESS WHEREOF, I have hereunto set my hand this seventeenth day of July, in the year of our Lord two thousand twenty-five, and of the Independence of the United States of America the two hundred and fiftieth.



Billing code 3395–F4–P

ANNEX I

1. Shell Chemical LP
   i. Affected Facility/Source: Geismar Plant, Louisiana

2. SABIC Innovative Plastics Mt. Vernon, LLC
   i. Affected Facility/Source: Manufacturing Plant, Indiana

3. Bakelite Synthetics
   i. Affected Facility/Source:
      a. Riegelwood, North Carolina;
      b. Conway, North Carolina;
      c. Crossett, Arkansas;
      d. Louisville, Kentucky;
      e. Lufkin, Texas;
      f. Taylorsville, Mississippi

4. The Dow Chemical Company
   i. Affected Facility/Source: Glycol II Plant, Louisiana

5. Trinseo LLC
   i. Affected Facility/Source:
      a. Trinseo Facility, Georgia
      b. Trinseo Facility, Michigan

6. Formosa Plastics Corporation, U.S.A.
   i. Affected Facility/Source:
      a. Formosa Plastics Corporation, Louisiana
      b. Formosa Plastics Corporation, Texas

7. Union Carbide Corporation/The Dow Chemical Company
   i. Affected Facility/Source:
      a. Seadrift Operations, Texas
      b. Hahnville, St. Charles Parish Facility, Louisiana

8. Westlake Vinyl's LLC/Westlake Corporation
   i. Affected Facility/Source:
      a. Petrochemical Complex, Louisiana
      b. Styrene Monomer Production Facility, Louisiana
      c. Styrene Marine Terminal, Louisiana
      d. Lake Charles South Facility, Louisiana
      e. Lake Charles North Facility, Louisiana

9. BASF TotalEnergies Petrochemicals LLC
   i. Affected Facility/Source: Port Arthur Facility, Texas

10. BASF Corporation
   i. Affected Facility/Source:
      a. Geismar Facility, Louisiana;
      b. North Geismar Facility, Louisiana;
      c. Freeport Facility, Texas

11. Rubicon LLC
   i. Affected Facility/Source: Geismar Facility, Louisiana

12. CITGO Petroleum Corporation
   i. Affected Facility/Source:
      a. Lake Charles Refinery, Louisiana
      b. Corpus Christi Refinery, Texas
      c. Lemont Refinery, Illinois

13. INEOS Americas LLC
   i. Affected Facility/Source: Bayport EO Plant, Texas

14. Celanese Corporation
   i. Affected Facility/Source:
      a. Narrows Facility, Virginia
      b. Clear Lake Facility, Texas
      c. Bishop Facility, Texas
      d. Bay City Facility, Texas

15. Huntsman Petrochemical LLC
   i. Affected Facility/Source:
      a. Huntsman Pensacola, Florida
      b. Huntsman Conroe, Texas

16. TotalEnergies Petrochemicals & Refining USA, Inc.
   i. Affected Facility/Source:
      a. TotalEnergies Petrochemicals & Refining USA, Inc., Alabama
      b. Cos-Mar StyreneMonomer Plant, Alabama
      c. TotalEnergies Polystrene Plant, Louisiana
      d. Port Arthur Refinery, Texas

17. Indorama Ventures Xylenes and PTA

i. Affected Facility/Source: Decatur Facility, Alabama

18. Denka Performance Elastomer LLC
   i. Affected Facility/Source: LaPlace Neoprene Production Facility, Louisiana

19. Sasol Chemicals (USA) LLC
   i. Affected Facility/Source: Lake Charles Chemical Complex, Louisiana

20. Philips 66 Company
   i. Affected Facility/Source:
      a. Sweeny Refinery, Texas
      b. WRB Refining LP Calvert Refinery, Illinois
      c. WRB Refining LP Borger Refinery, Texas

21. Indorama Ventures Oxides, LLC
   i. Affected Facility/Source: Port Neches Facility, Texas

22. Eastman Chemical Company
   i. Affected Facility/Source: Longview Facility, Texas

23. DuPont Specialty Products USA, LLC
   i. Affected Facility/Source: Pontchartrain Site, Louisiana

24. Stepan Company
   i. Affected Facility/Source: Millsdale Facility, Illinois

25. Ascend Performance Materials Operations LLC
   i. Affected Facility/Source:
      a. Ascend Decatur, Alabama;
      b. Ascend Alvin, Texas;
      c. Ascend Pensacola, Florida

[FR Doc. 2025–13890
Filed 7–22–25; 8:45 am]
Billing code 3395–F4–C

CIVIL COVER SHEET

JS 44 (Rev. 11/2020 DC)

I. (a) PLAINTIFFS

Tex. Env't Just. Advoc. Serv., et al.

(b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF _____
(EXCEPT IN U.S. PLAINTIFF CASES)

DEFENDANTS

U.S. Enviornmental Protection Agency; Lee Zeldin, in his official capacity of Administrator; and Donald J. Trump, in his official capacity as President of the United States.

COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT _____
(IN U.S. PLAINTIFF CASES ONLY)
NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED

(c) ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER)

Sarah Buckley
Natural Resources Defense Council, Inc.,
1152 15th St NW #300, Washington, DC 20005
(202) 289-6868

ATTORNEYS (IF KNOWN)

II. BASIS OF JURISDICTION
(PLACE AN x IN ONE BOX ONLY)

- ○ 1 U.S. Government: Plaintiff
- ○ 3 Federal Question (U.S. Government Not a Party)
- ◉ 2 U.S. Government: Defendant
- ○ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (PLACE AN x IN ONE BOX FOR PLAINTIFF AND ONE BOX FOR DEFENDANT) **FOR DIVERSITY CASES ONLY!**

	PTF	DFT		PTF	DFT
Citizen of this State	○ 1	○ 1	Incorporated or Principal Place of Business in This State	○ 4	○ 4
Citizen of Another State	○ 2	○ 2	Incorporated and Principal Place of Business in Another State	○ 5	○ 5
Citizen or Subject of a Foreign Country	○ 3	○ 3	Foreign Nation	○ 6	○ 6

IV. CASE ASSIGNMENT AND NATURE OF SUIT

(Place an X in one category, A-N, that best represents your Cause of Action and one in a corresponding Nature of Suit)

○ **A. *Antitrust***

- ☐ 410 Antitrust

○ **B. *Personal Injury/ Malpractice***

- ☐ 310 Airplane
- ☐ 315 Airplane Product Liability
- ☐ 320 Assault, Libel & Slander
- ☐ 330 Federal Employers Liability
- ☐ 340 Marine
- ☐ 345 Marine Product Liability
- ☐ 350 Motor Vehicle
- ☐ 355 Motor Vehicle Product Liability
- ☐ 360 Other Personal Injury
- ☐ 362 Medical Malpractice
- ☐ 365 Product Liability
- ☐ 367 Health Care/Pharmaceutical Personal Injury Product Liability
- ☐ 368 Asbestos Product Liability

◉ **C. *Administrative Agency Review***

- ☐ 151 Medicare Act

Social Security
- ☐ 861 HIA (1395ff)
- ☐ 862 Black Lung (923)
- ☐ 863 DIWC/DIWW (405(g))
- ☐ 864 SSID Title XVI
- ☐ 865 RSI (405(g))

Other Statutes
- ☐ 891 Agricultural Acts
- ☒ 893 Environmental Matters
- ☐ 890 Other Statutory Actions (If Administrative Agency is Involved)

○ **D. *Temporary Restraining Order/Preliminary Injunction***

Any nature of suit from any category may be selected for this category of case assignment.

(If Antitrust, then A governs)

○ **E. *General Civil (Other)*** OR ○ **F. *Pro Se General Civil***

Real Property
- ☐ 210 Land Condemnation
- ☐ 220 Foreclosure
- ☐ 230 Rent, Lease & Ejectment
- ☐ 240 Torts to Land
- ☐ 245 Tort Product Liability
- ☐ 290 All Other Real Property

Personal Property
- ☐ 370 Other Fraud
- ☐ 371 Truth in Lending
- ☐ 380 Other Personal Property Damage
- ☐ 385 Property Damage Product Liability

Bankruptcy
- ☐ 422 Appeal 28 USC 158
- ☐ 423 Withdrawal 28 USC 157

Prisoner Petitions
- ☐ 535 Death Penalty
- ☐ 540 Mandamus & Other
- ☐ 550 Civil Rights
- ☐ 555 Prison Conditions
- ☐ 560 Civil Detainee – Conditions of Confinement

Property Rights
- ☐ 820 Copyrights
- ☐ 830 Patent
- ☐ 835 Patent – Abbreviated New Drug Application
- ☐ 840 Trademark
- ☐ 880 Defend Trade Secrets Act of 2016 (DTSA)

Federal Tax Suits
- ☐ 870 Taxes (US plaintiff or defendant)
- ☐ 871 IRS Third Party 26 USC 7609

Forfeiture/Penalty
- ☐ 625 Drug Related Seizure of Property 21 USC 881
- ☐ 690 Other

Other Statutes
- ☐ 375 False Claims Act
- ☐ 376 Qui Tam (31 USC 3729(a))
- ☐ 400 State Reapportionment
- ☐ 430 Banks & Banking
- ☐ 450 Commerce/ICC Rates/etc
- ☐ 460 Deportation
- ☐ 462 Naturalization Application
- ☐ 465 Other Immigration Actions
- ☐ 470 Racketeer Influenced & Corrupt Organization
- ☐ 480 Consumer Credit
- ☐ 485 Telephone Consumer Protection Act (TCPA)
- ☐ 490 Cable/Satellite TV
- ☐ 850 Securities/Commodities/ Exchange
- ☐ 896 Arbitration
- ☐ 899 Administrative Procedure Act/Review or Appeal of Agency Decision
- ☐ 950 Constitutionality of State Statutes
- ☐ 890 Other Statutory Actions (if not administrative agency review or Privacy Act)

○ G. *Habeas Corpus/ 2255* ☐ 530 Habeas Corpus – General ☐ 510 Motion/Vacate Sentence ☐ 463 Habeas Corpus – Alien Detainee	○ H. *Employment Discrimination* ☐ 442 Civil Rights – Employment (criteria: race, gender/sex, national origin, discrimination, disability, age, religion, retaliation) *(If pro se, select this deck)*	○ I. *FOIA/Privacy Act* ☐ 895 Freedom of Information Act ☐ 890 Other Statutory Actions (if Privacy Act) *(If pro se, select this deck)*	○ J. *Student Loan* ☐ 152 Recovery of Defaulted Student Loan (excluding veterans)
○ K. *Labor/ERISA (non-employment)* ☐ 710 Fair Labor Standards Act ☐ 720 Labor/Mgmt. Relations ☐ 740 Labor Railway Act ☐ 751 Family and Medical Leave Act ☐ 790 Other Labor Litigation ☐ 791 Empl. Ret. Inc. Security Act	○ L. *Other Civil Rights (non-employment)* ☐ 441 Voting (if not Voting Rights Act) ☐ 443 Housing/Accommodations ☐ 440 Other Civil Rights ☐ 445 Americans w/Disabilities – Employment ☐ 446 Americans w/Disabilities – Other ☐ 448 Education	○ M. *Contract* ☐ 110 Insurance ☐ 120 Marine ☐ 130 Miller Act ☐ 140 Negotiable Instrument ☐ 150 Recovery of Overpayment & Enforcement of Judgment ☐ 153 Recovery of Overpayment of Veteran's Benefits ☐ 160 Stockholder's Suits ☐ 190 Other Contracts ☐ 195 Contract Product Liability ☐ 196 Franchise	○ N. *Three-Judge Court* ☐ 441 Civil Rights – Voting (if Voting Rights Act)

V. ORIGIN

◉ 1 Original Proceeding ○ 2 Removed from State Court ○ 3 Remanded from Appellate Court ○ 4 Reinstated or Reopened ○ 5 Transferred from another district (specify) ○ 6 Multi-district Litigation ○ 7 Appeal to District Judge from Mag. Judge ○ 8 Multi-district Litigation – Direct File

VI. CAUSE OF ACTION (CITE THE U.S. CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE A BRIEF STATEMENT OF CAUSE.)

The Declaratory Judgment Act, 28 U.S.C. §§ 2201-2202

VII. REQUESTED IN COMPLAINT ☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 **DEMAND $** **JURY DEMAND:** Check YES only if demanded in complaint YES ☐ NO ☒

VIII. RELATED CASE(S) IF ANY (See instruction) YES ☒ NO ☐ If yes, please complete related case form

DATE: October 22, 2025 **SIGNATURE OF ATTORNEY OF RECORD** /s/ Sarah Buckley

INSTRUCTIONS FOR COMPLETING CIVIL COVER SHEET JS 44
Authority for Civil Cover Sheet

The JS-44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and services of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. Listed below are tips for completing the civil cover sheet. These tips coincide with the Roman Numerals on the cover sheet.

I. COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF/DEFENDANT (b) County of residence: Use 11001 to indicate plaintiff if resident of Washington, DC, 88888 if plaintiff is resident of United States but not Washington, DC, and 99999 if plaintiff is outside the United States.

III. CITIZENSHIP OF PRINCIPAL PARTIES: This section is completed only if diversity of citizenship was selected as the Basis of Jurisdiction under Section II.

IV. CASE ASSIGNMENT AND NATURE OF SUIT: The assignment of a judge to your case will depend on the category you select that best represents the primary cause of action found in your complaint. You may select only one category. You must also select one corresponding nature of suit found under the category of the case.

VI. CAUSE OF ACTION: Cite the U.S. Civil Statute underwhich you are filing and write a brief statement of the primary cause.

VIII. RELATED CASE(S), IF ANY: If you indicated that there is a related case, you must complete a related case form, which may be obtained from the Clerk's Office.

Because of the need for accurate and complete information, you should ensure the accuracy of the information provided prior to signing the form.

AO 440 (Rev. 06/12; DC 3/15) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

District of Columbia

Tex. Env't Just. Advoc. Serv., et al. *Plaintiff(s)* v. Donald Trump, President of the United States, in his official capacity, et al. *Defendant(s)*	)	Civil Action No. 1:25-cv-3745

SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)* United States Attorney's Office for the District of Columbia
Civil Process Clerk
U.S. Attorney's Office for D.C.
601 D Street, NW
Washington, DC 20530

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are: Sarah Buckley
Natural Resources Defense Council Inc.
1152 15th St NW #300,
Washington, DC 20005

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

ANGELA D. CAESAR, CLERK OF COURT

Date:

Signature of Clerk or Deputy Clerk

Civil Action No. 1:25-cv-3745

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for *(name of individual and title, if any)*

was received by me on *(date)* .

❒ I personally served the summons on the individual at *(place)*

on *(date)* ; or

❒ I left the summons at the individual's residence or usual place of abode with *(name)*

, a person of suitable age and discretion who resides there,

on *(date)* , and mailed a copy to the individual's last known address; or

❒ I served the summons on *(name of individual)* , who is

designated by law to accept service of process on behalf of *(name of organization)*

on *(date)* ; or

❒ I returned the summons unexecuted because ; or

❒ Other *(specify)*:

My fees are $ for travel and $ for services, for a total of $ 0.00 .

I declare under penalty of perjury that this information is true.

Date:

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc:

AO 440 (Rev. 06/12; DC 3/15) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

District of Columbia

Tex. Env't Just. Advoc. Serv., et al.

Plaintiff(s)

v.

Donald Trump, President of the United States, in his official capacity, et al.

Defendant(s)

Civil Action No. 1:25-cv-3745

SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)* Pamela Bondi, Attorney General of the United States
U.S. Department of Justice
950 Pennsylvania Ave. NW
Washington, D.C. 20530-0001

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are: Sarah Buckley
Natural Resources Defense Council Inc.
1152 15th St NW #300,
Washington, DC 20005

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

ANGELA D. CAESAR, CLERK OF COURT

Date:

Signature of Clerk or Deputy Clerk

Civil Action No. 1:25-cv-3745

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for *(name of individual and title, if any)*

was received by me on *(date)* .

❒ I personally served the summons on the individual at *(place)*

on *(date)* ; or

❒ I left the summons at the individual's residence or usual place of abode with *(name)*

, a person of suitable age and discretion who resides there,

on *(date)* , and mailed a copy to the individual's last known address; or

❒ I served the summons on *(name of individual)* , who is

designated by law to accept service of process on behalf of *(name of organization)*

on *(date)* ; or

❒ I returned the summons unexecuted because ; or

❒ Other *(specify)*:

My fees are $ for travel and $ for services, for a total of $ 0.00 .

I declare under penalty of perjury that this information is true.

Date:

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc:

AO 440 (Rev. 06/12; DC 3/15) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

District of Columbia

Tex. Env't Just. Advoc. Serv., et al. *Plaintiff(s)* v. Donald Trump, President of the United States, in his official capacity, et al. *Defendant(s)*	Civil Action No. 1:25-cv-3745

SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)* Environmental Protection Agency
Office of General Counsel 2310A
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are: Sarah Buckley
Natural Resources Defense Council Inc.
1152 15th St NW #300,
Washington, DC 20005

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

ANGELA D. CAESAR, CLERK OF COURT

Date:

Signature of Clerk or Deputy Clerk

Civil Action No. 1:25-cv-3745

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for *(name of individual and title, if any)*

was received by me on *(date)* .

❒ I personally served the summons on the individual at *(place)*

on *(date)* ; or

❒ I left the summons at the individual's residence or usual place of abode with *(name)*

, a person of suitable age and discretion who resides there,

on *(date)* , and mailed a copy to the individual's last known address; or

❒ I served the summons on *(name of individual)* , who is

designated by law to accept service of process on behalf of *(name of organization)*

on *(date)* ; or

❒ I returned the summons unexecuted because ; or

❒ Other *(specify)*:

My fees are $ for travel and $ for services, for a total of $ 0.00 .

I declare under penalty of perjury that this information is true.

Date:

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc:

AO 440 (Rev. 06/12; DC 3/15) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

District of Columbia

Tex. Env't Just. Advoc. Serv., et al.	)	
Plaintiff(s)	)	
v.	)	Civil Action No. 1:25-cv-3745
Donald Trump, President of the United States, in his official capacity, et al.	)	
Defendant(s)	)	

SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)* Donald J. Trump, President of the United States of America
1600 Pennsylvania Ave. NW
Washington, D.C. 20500

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are: Sarah Buckley
Natural Resources Defense Council Inc.
1152 15th St NW #300,
Washington, DC 20005

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

ANGELA D. CAESAR, CLERK OF COURT

Date:

Signature of Clerk or Deputy Clerk

Civil Action No. 1:25-cv-3745

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for *(name of individual and title, if any)*

was received by me on *(date)* .

❒ I personally served the summons on the individual at *(place)*

on *(date)* ; or

❒ I left the summons at the individual's residence or usual place of abode with *(name)*

, a person of suitable age and discretion who resides there,

on *(date)* , and mailed a copy to the individual's last known address; or

❒ I served the summons on *(name of individual)* , who is

designated by law to accept service of process on behalf of *(name of organization)*

on *(date)* ; or

❒ I returned the summons unexecuted because ; or

❒ Other *(specify)*:

My fees are $ for travel and $ for services, for a total of $ 0.00 .

I declare under penalty of perjury that this information is true.

Date:

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc:

AO 440 (Rev. 06/12; DC 3/15) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

District of Columbia

Tex. Env't Just. Advoc. Serv., et al. *Plaintiff(s)* v. Donald Trump, President of the United States, in his official capacity, et al. *Defendant(s)*	)	Civil Action No. 1:25-cv-3745

SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)* Lee Zeldin
Administrator, United States Environmental Protection Agency
Office of the Administrator, 1101 A
1200 Pennsylvania Ave. NW
Washington, D.C. 20460

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are: Sarah Buckley
Natural Resources Defense Council Inc.
1152 15th St NW #300,
Washington, DC 20005

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

ANGELA D. CAESAR, CLERK OF COURT

Date:

Signature of Clerk or Deputy Clerk

Civil Action No. 1:25-cv-3745

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for *(name of individual and title, if any)*

was received by me on *(date)* .

❒ I personally served the summons on the individual at *(place)*

on *(date)* ; or

❒ I left the summons at the individual's residence or usual place of abode with *(name)*

, a person of suitable age and discretion who resides there,

on *(date)* , and mailed a copy to the individual's last known address; or

❒ I served the summons on *(name of individual)* , who is

designated by law to accept service of process on behalf of *(name of organization)*

on *(date)* ; or

❒ I returned the summons unexecuted because ; or

❒ Other *(specify)*:

My fees are $ for travel and $ for services, for a total of $ 0.00 .

I declare under penalty of perjury that this information is true.

Date:

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc:

Message

From: [redacted]@epa.gov]
Sent: 4/1/2025 5:51:27 PM
To: Szabo, Aaron [Szabo.Aaron@epa.gov]
CC: [redacted]@epa.gov] [redacted]@epa.gov]
Subject: 1st of four e-mails re: Presidential Exemptoin
Attachments: ExemptionRequest.xlsx; 1-49.zip

Aaron,

All of the letters are too big to share in one e-mail. This is e-mail #1 of five and contains:

1. A spreadsheet summary of all of the requests
    a. It is searchable by each individual MATC including MATS so that one can break out a list of the MATS requests
    b. We will send you a more detailed MATS summary shortly that includes facility names and states where the plants are located.
2. The first 49 requests (out of 146)

Do not hesitate to call if you have questions.

March 28, 2025

U.S. Environmental Protection Agency
1200 Pennsylvania Ave. NW
Washington, DC 20460

RE: Presidential Exemption: [National Emission Standards for Hazardous Air Pollutants (NESHAP) for the Synthetic Organic Chemical Manufacturing Industry (SOCMI):
Shell Chemical LP, Geismar Plant, Geismar, Louisiana

To Whom It May Concern,

Shell Chemical LP, Geismar Plant (Shell Geismar) requests an extension (approved via exemption) for the compliance obligations of the National Emission Standards for Hazardous Air Pollutants (NESHAP) for the Synthetic Organic Chemical Manufacturing Industry (SOCMI HON) (referred to as the HON Rule).[1] For the reasons highlighted in this letter, we believe it is necessary and appropriate for the President to grant an extension (approved via exemption) under Clean Air Act (CAA) Section 112(i)(4) for sources regulated by the final rule either on an individual basis or collectively. If done collectively, we request that EPA include our regulated facilities under that collective action.

We support the comments submitted separately by the American Chemistry Council (ACC) and the American Fuel & Petrochemical Manufacturers (AFPM) and are offering additional information in support of our request for an exemption under Clean Air Act (CAA) Section 112(i)(4) for sources regulated by the final rule either on an individual basis or collectively. If done collectively, we request that EPA include our regulated facilities under that collective action.

Per EPA's guidance, the following information is provided:

I. Shell Chemical LP, Geismar Plant
7594 Hwy 75
Geismar, Louisiana 70734

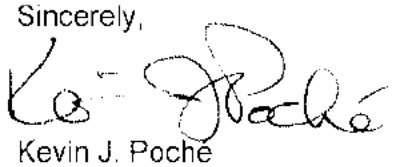
II. Shell LP, Geismar Plant is a major source of hazardous air pollutants and subject to the National Emission Standards for Hazardous Air Pollutants (NESHAP) for the Synthetic Organic Chemical Manufacturing Industry (SOCMI HON), including new provisions contained in the July 2024 final rule for ethylene oxide / ethylene glycol manufacturing. Broadly, with regard to applicability of SOCMI HON at Shell Geismar, there are two process units (EOEG-2 and EOEG-3), along with ancillary infrastructure such as flare systems, product storage, product transfer and loading, and wastewater management/treatment systems.

[1] National Emissions Standards for Hazardous Air Pollutants (NESHAP), Powering the Great American Comeback https://www.epa.gov/system/files/documents/2025-03/neshap_powering-the-great-american-comeback_fact-sheet_2.pdf 89 Fed. Reg. 42932 (May 16, 2024).

III. *Due to the significant amount of planning time and capital expenditure currently ongoing at Shell Geismar to assess, define, select technologies, select vendors, procure long lead item equipment, execute construction, and commission new equipment and practices to meet SOCMI HON requirements, Shell LP requests a two-year extension. Since EPA has publicly stated an intent to reconsider the provisions of SOCMI HON, should such reconsideration result in changes to the regulatory requirements, an additional extension may be required.*

Shell Chemical LP appreciates consideration of this request. Should any additional information be needed in support of this request, please contact me at *kevin.poche@shell.com*

Sincerely,



Kevin J. Poché
Environmental Manager
Shell Chemical LP, Geismar Plant

****

cc: Aaron Szabo, Senior Advisor to the Administrator, Office of the Administrator
Abigale Tardif, Principal Deputy Assistant Administrator, Office of Air and Radiation
Sean Donahue, Principal Deputy General Counsel, Office of General Counsel
Alex Dominguez, Deputy Assistant Administrator for Mobile Sources, Office of Air and Radiation
[redacted], Director, Office of Air Quality Planning and Standards
[redacted], Director, Sector Policies and Programs Division, Office of Air Quality Planning and Standards
[redacted], Refining and Chemicals Group Leader, Office of Air Quality Planning and Standards
[redacted], General Engineer, Office of Air Quality Planning and Standards

March 28, 2025

Mr. Lee Zeldin, Administrator

US Environmental Protection Agency

1200 Pennsylvania Avenue, NW

Washington, DC 20460

Mail Code 1101A

airaction@epa.gov

Subject: Presidential Exemption: National Emissions Standards for Hazardous Air Pollutants: Coal- and Oil-Fired Electric Utility Steam Generating Units Review of the Residual Risk and Technology Review (89 FR 38508; May 7, 2024) (MATS Rule): Rausch Creek Generation, LLC

Dear Administrator Zeldin;

In accordance with President Trump's offer to consider an exemption request on the pending changes to the MATs rule, we are providing information for your evaluation in granting an exemption and providing additional time for us to meet these requirements.

Rule related to the request

40 CFR Part 63 Subpart UUUUU – Effective Date July 6, 2027

Emission standards subject to the request

- 0.01 Lb/MMBtu of filterable particulate matter (PM) per million BTU heat input

Limitations subject to the request

- General requirement to use a PM CEMs or HAP metals CEMS
- Prohibition of using the LEE option for filterable PM or non-mercury HAP metals.

Facility and Affected Sources

Requesting Facility: Rauch Creek Generation, LLC

Affected Source: Source 031 – Fluidized Bed Boiler

Length of compliance period being requested: Delayed compliance until July 6, 2029

Justification for Exemption

Technology

The three issues are interrelated regarding the standard, the technology to implement it, and the option to use existing compliance methods for low emitting EGU's (LEE Units). As a first point of information, the pending 0.01 lb/MMBtu limit is likely technically feasible under the current compliance demonstration methods of a periodic Method 5 Performance

Test, which consists of approximately 3-hours of testing as frequently as once per calendar quarter, or in the case of LEE units, once LEE status is demonstrated, once every 36 months. Ongoing compliance is demonstrated by opacity monitors in the stack.

The ability to meet an emission standard is based on the numerical limit of that standard, the reliability of the test method for that standard, and the frequency of the testing. In the case at hand the requirement to use a PM CEMs introduces a significant question of technical feasibility to meet the more restrictive standard on a continuous basis. PM CEMS do not measure PM directly but use methods such as light scatter or beta attenuation to estimate the PM concentration. Many of these device's outputs are adversely affected by particle size, density, and shape changes. The output of the PM CEMS must be correlated to the particulate concentration in the stack by using the currently approved test Method (Method 5) and developing correlation curves to convert the PM CEMS output to an estimated concentration. Of all of EPA's specifications for continuous emission monitors, PS-11, the performance specification for these instruments, is the only one that uses correlation methods to derive an estimated emission concentration.

The issue of varying particle size, density, and shape changes, which affect the correlation on many types of PM CEMS, could have a great impact on coal-fired power plants burning waste coal, such as is the case with this request. Coal-refuse fired power plants combust a fuel supply that has great variation in fuel chemistry as different waste coal piles are reclaimed and used for fuel. This is a far different situation than in the case of conventional virgin coal-fired power plants which use a much more consistent fuel supply. PM CEMs have not been demonstrated to be technically feasible on coal-refuse power plants and thus the technical feasibility of using these monitors nor the ability to meet the lower standard on a continuous basis with these types of monitors has been established to date as a technical matter.

Furthermore, there are no technically feasible add-on control devices that can be employed on these units, beyond those currently in use, that could provide additional controls to further reduce emissions should the new requirements for monitoring show an inability to comply with the reduced emission standard based on the new monitoring requirements.

Most importantly, based on EPA's own analysis, the reduced PM standard was not implemented for any reasons of health impact or risk[1], but simply because EPA determined, in the Residual Risk and Technology Review, (incorrectly we believe, at least as to the sources burning coal refuse), that the lower standard was promulgated to reflect "the control levels currently achieved by the vast majority of regulated units."[2]

As to the removal of the option to qualify as a LEE unit, the pending change to the regulation imposes a significant financial burden on the cleanest of the coal-fired units, removing an option for less frequent testing after showing that the emissions are one-third or less of the current standard.

National Security Interests of the United States

As President Trump has expressed on many occasions, reliable and cost-effective energy is in the national security interest of the United States. The entire United States is facing an unprecedented surge in energy demand, driven by the rapid expansion of data centers supporting artificial intelligence, widespread electrification of vehicles and heating systems, as well as demand from the new manufacturing industries that this Administration is promoting. At the same

[1] [1] National Emission Standards for Hazardous Air Pollutants: Coal- and Oil-Fired Electric Utility Steam Generating Units Review of the Residual Risk and Technology Review, 89 Federal Register 38508.

[2] National Emission Standards for Hazardous Air Pollutants: Coal- and Oil-Fired Electric Utility Steam Generating Units Review of the Residual Risk and Technology Review, 89 Federal Register 38510

time, the energy landscape is undergoing a major transition, with many thermal and dispatchable generation units retiring while new capacity additions are largely dominated by intermittent renewable resources such as solar and wind projects, as well as short-term storage solutions based on battery storage systems.

PJM, the ISO in which this facility operates, has expressed concerns about the increasing load and decreasing generation in its region. PJM predicts that 40 GW of its existing supply, largely, thermal based generation will retire by 2030. The PJM Long Term Growth Forecast expects loads to increase by over 55 GW by 2035. Finally, PJM's reliability study assumes a major contribution from offshore wind projects in New Jersey, an uncertain resource given the public's opposition to these projects.

The Trump Administration recognizes the urgent need for a balanced, reliable, and affordable power grid, as well as the need to rein in regulations that are not needed to protect public health. Granting of an extension for this facility will provide financial relief to allow a full evaluation of the technical and financial feasibility of the benefits and costs of the more restrictive regulations and allow our plant to continue to provide a dispatchable generation resource for the security of the United States and give us, and PJM more time to plan for the continued operation of this critical resource and continue to provide a stable energy supply for the PJM grid.

Thank you for your consideration in this matter.

Sincerely,

John Oelbracht

John Oelbracht, Plant Manager

From: Burris, Dave W.
To: AirAction
Subject: Presidential Exemption: Section 112 of the Clean Air Act: San Miguel Electric Cooperative, Inc.
Date: Friday, March 28, 2025 9:23:52 AM
Attachments: image002.png
image003.png
SMEC Clean Air Act Exemption Request.docx

Caution: This email originated from outside EPA, please exercise additional caution when deciding whether to open attachments or click on provided links.

Emission Standards subject to request

- non-Hg HAP metal surrogate fPM emission standard for all existing coal-fired EGUs of 0.010 lb/MMBtu. [40 CFR 63.9991(a), Table 2]
- Hg emission standard of 1.2 lb of Hg per trillion British thermal units of heat input (lb/TBtu) [40 CFR 63.9991(a), Table 2]

Facility Name

- San Miguel Electric Cooperative, Inc. in Christine, TX

Length of compliance period

- 2 years

Justification – Why the Technology to Implement the Standard is Unavailable

The proposed Hg emission limit of 1.2 lb/TBtu is not technically achievable. San Miguel has an average mercury inlet concentration on 34 lb/TBtu based on the average concentration since 2011. This is due to the highly variable mercury content of lignite.

Table 1: Historical Mercury Inlet Concentrations Since 2011 and Required Removal Rates

Calculated Mercury Inlet and Mercury Capture Rates at Full Load Using Lignite Monthly Composite Data from 2011- Present	
Mercury Inlet (lb/Tbtu)	**Capture Percentage Required to Reach Target of 1.2 lb/Tbtu**
22.8 (minimum)	94.7%
34.0 (average)	96.3%
69.4 (maximum)	98.3%

A 2013 technical report prepared by Sargent & Lundy that was prepared for EPA analyzed mercury controls (the "S&L Report"). The report describes in detail how activated carbon injection is rendered significantly less effective when the flue gas contains SO_3, stating:

> *Some flue gas constituents, especially SO_3, reduce the mercury removal effectiveness of both activated carbon and non-carbon sorbents. With flue gas SO^3 concentrations greater than 5 7 ppmv, the sorbent feed rate may be increased significantly to meet a high Hg removal and 90% or greater mercury removal may not be feasible in some cases. Based on commercial testing, the capacity of activated carbon can be cut by as much as one-half with an SO_3 increase from just 5 ppmv to 10 ppmv.*

The higher sulfur content of lignite equates to greater production rates of SO_3. Texas lignite units often have high flue gas SO_3 concentrations and could be considered medium- to high-sulfur coals based on pounds of SO_2 produced per million Btu of heat input. Gulf Coast lignite generally features higher sulfur content - by a factor of two or more. Notably, Texas lignite is

disadvantaged as the alkalinity to sulfur ratio is half that of Powder River Basin Coal (PRB).

As to San Miguel, since 2017, the sulfur percentage of the lignite fuel ranges from a minimum of 1.31 % to a maximum of 3.42%. The lignite fuel used at San Miguel during that time period had an average of 2.48% sulfur content. Based on a fuel analysis conducted in 2014, San Miguel has an average sulfur content of 9.6 lb/SO_2 per million Btu.

Lignite presents significantly greater variability in Hg and sulfur than PRB. Consequently, the higher sulfur content of lignite combined with equal or lower total alkali relative to sulfur allows measurable levels of SO_3 in the lignite-generated flue gas.

EPA has not demonstrated any technical developments since the issuances of the previous MATS requirements. The 2020 Final Rule did not discover any developments in control technologies, practices, or processes. In 2023 as to the fPM emission standard, the Proposed Rule concurs. It states that EPA found "no new practices, processes, or control technologies for non-Hg HAP." (88 Fed. Reg. 24868). Yet, EPA identifies fPM "developments" to justify an emissions change based on reporting fPM emissions levels and lower costs than originally assumed. Similarly, for Hg, in 2023, EPA identifies new "developments" for lignite EGUs based on the operator's compliance with the regulations.

In the Proposed Rule, EPA provides no new control technologies or methods. For both pollutants, EPA finds "developments" based on control performance (lower emissions data). It appears that because operators have been diligent in reducing emissions and have been able to achieve the standards set by EPA, EPA feels the need to again tighten the applicable standards. In sum, EPA has found that the current MATS requirements provide an ample margin of safety and has identified no new control technologies or methods.

The proposed fPM emission limit of 0.010 lb/MMBtu is not technically achievable. Particulate at San Miguel is captured and removed from the flue gas path primarily by the existing electrostatic precipitators ("ESPs"). The wet flue gas desulfurization ("WFGD") system downstream of the ESPs will also capture some of the particulate that makes it through the ESPs. The effectiveness of the existing ESPs and WFGD system to control PM emissions is demonstrated by the data in Table 2. San Miguel works extremely hard to maintain compliance with this standard. Compliance with the proposed fPM emission limit of 0.010 lb/MMBtu will be marginal under even the best operating scenarios.

Table 2: Summary of Filterable Particulate Matter (fPM) Quarterly Emissions Since 2016

	Measu
	fPM 0
	lb/MMBtu
	lim

Justification – Why an Extension is in the National Security Interests of the United States

San Miguel is a 400 MW, mine-mouth, lignite-fired EGU located in Atascosa County, Texas. San Miguel is a not-for-profit electric cooperative created on February 17, 1977, under the Rural Electric Cooperative Act of the State of Texas. One hundred percent of the output of the plant is sold to San Miguel's member rural electric cooperatives through the South Texas Electric Cooperative ("STEC"). The electricity that San Miguel produces powers

approximately 200,000 rural Texas homes in 45 South Texas counties.

San Miguel has conducted a thorough review of the capital and O&M costs that it will be required to take in order to comply with the Proposed Rule. The data provided below in Table 3.

Table 3: Summary of Capital and O&M Costs

High Estimate	Capital	O&M	NPV	Total Levelized Cost
Option	(2024$)	(2024$)	(2024$)	$/yr (2024$)
New Mercury Controls	$10,800,000	$12,745,000	$213,493,000	$21,126,000
New Baghouse	$160,000,000	$4,220,000	$209,671,000	$20,747,000
New Particulate CEMS	$1,950,000	$25,000	$2,133,000	$211,000

Low Estimate	Capital	O&M	NPV	Total Levelized Cost
Option	(2024$)	(2024$)	(2024$)	$/yr (2024$)
New Mercury Controls	$8,100,000	$10,631,000	$177,277,000	$17,542,000
New Baghouse	$130,000,000	$3,430,000	$170,378,000	$16,859,000
New Particulate CEMS	$1,450,000	$25,000	$1,688,000	$167,000

The annual operating and maintenance cost of the mercury control system is estimated at approximately $10,631,000 - $12,745,000, or about **$10,000/lb Hg removed.**

To achieve compliance with the proposed 0.01 lb/MMBtu limit, San Miguel may consider several options including: 1) ESP upgrades, 2) full fabric filter downstream, 3) reduced size fabric filter downstream, and 4) an ESP to fabric filter conversion. Capital costs for the ESP upgrades are projected in the $20 M range. However, there is no way to know with any certainty if the ESP upgrades will be able to achieve compliance with the proposed fPM limit of 0.01 lb/MMBtu on a continuous basis. As such, an ESP upgrade is considered technically not feasible.

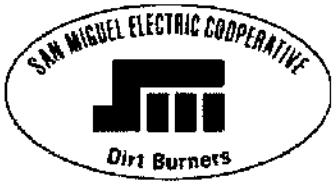
A full-size baghouse installation in the $130 M to $160 M range. The reduced size baghouse would fall around 10 to 20 percent lower in total installed cost ($98 M - $145 M). The ESP to fabric filter conversion would fall around 20 to 40 percent lower cost ($80 M - $ 130 M) than the full-size fabric filter and would require a 3 to 4-month unit outage.

A cost increase of $35M to $45M annually would require rate payers to spend an extra 33% for their electricity. Because of this sharp increase in expense, it may not be feasible to operate the power plant. SMEC would have to consider securing generation from other sources.

The ERCOT grid, which distributes the power generated at SMEC, will likely lose a key dispatchable asset in their portfolio. While renewable sources of energy continue to generate more power for the grid, their lack of dependability to generate at anytime, especially during periods of inclement weather, presents an ominous concern to the public. Providing low-cost, dependable, and dispatchable sources of energy is vital to our national security interests, public health, and strength of our economy.

David Burris, PE

Fuels and Environemntal Manager
San Miguel Electric Cooperative, Inc.
Office - (830) 784-3411 Ext. 204
Cell - (210) 725-3159
Email - dburris@smeci.net



To: [HYPERLINK "mailto:airaction@epa.gov"]

Subject: Presidential Exemption: Section 112 of the Clean Air Act : San Miguel Electric Cooperative, Inc.

Emission Standards subject to request

- non-Hg HAP metal surrogate fPM emission standard for all existing coal-fired EGUs of 0.010 lb/MMBtu. [40 CFR 63.9991(a), Table 2]
- Hg emission standard of 1.2 lb of Hg per trillion British thermal units of heat input (lb/TBtu) [40 CFR 63.9991(a), Table 2]

Facility Name

- San Miguel Electric Cooperative, Inc. in Christine, TX

Length of compliance period

- 2 years

Justification – Why the Technology to Implement the Standard is Unavailable

The proposed Hg emission limit of 1.2 lb/TBtu is not technically achievable. San Miguel has an average mercury inlet concentration on 34 lb/TBtu based on the average concentration since 2011. This is due to the highly variable mercury content of lignite.

Table 1: Historical Mercury Inlet Concentrations Since 2011 and Required Removal Rates

Calculated Mercury Inlet and Mercury Capture Rates at Full Load Using Lignite Monthly Composite Data from 2011- Present	
Mercury Inlet (lb/Tbtu)	Capture Percentage Required to Reach Target of 1.2 lb/Tbtu
22.8 (minimum)	94.7%
34.0 (average)	96.3%
69.4 (maximum)	98.3%

A 2013 technical report prepared by Sargent & Lundy that was prepared for EPA analyzed mercury controls (the "S&L Report"). The report describes in detail how activated carbon injection is rendered significantly less effective when the flue gas contains SO_3, stating:

> *Some flue gas constituents, especially SO_3, reduce the mercury removal effectiveness of both activated carbon and non-carbon sorbents. With flue gas SO^3 concentrations greater than 5 7 ppmv, the sorbent feed rate may be increased significantly to meet a high Hg removal and 90% or greater mercury removal may not be feasible in some cases. Based on commercial testing, the capacity of activated carbon can be cut by as much as one-half with an SO_3 increase from just 5 ppmv to 10 ppmv.*

The higher sulfur content of lignite equates to greater production rates of SO_3. Texas lignite units often have high flue gas SO_3 concentrations and could be considered medium- to high-sulfur coals based on pounds of SO_2 produced per million Btu of heat input. Gulf Coast lignite generally features higher sulfur content - by a factor of two or more. Notably, Texas lignite is disadvantaged as the alkalinity to sulfur ratio is half that of Powder River Basin Coal (PRB).

As to San Miguel, since 2017, the sulfur percentage of the lignite fuel ranges from a minimum of 1.31 % to a maximum of 3.42%. The lignite fuel used at San Miguel during that time period had an average of 2.48% sulfur content. Based on a fuel analysis conducted in 2014, San Miguel has an average sulfur content of 9.6 lb/SO_2 per million Btu.

Lignite presents significantly greater variability in Hg and sulfur than PRB. Consequently, the higher sulfur content of lignite combined with equal or lower total alkali relative to sulfur allows measurable levels of SO_3 in the lignite-generated flue gas.

EPA has not demonstrated any technical developments since the issuances of the previous MATS requirements. The 2020 Final Rule did not discover any developments in control technologies, practices, or processes. In 2023 as to the fPM emission standard, the Proposed Rule concurs. It states that EPA found "no new practices, processes, or control technologies for non-Hg HAP." (88 Fed. Reg. 24868). Yet, EPA identifies fPM "developments" to justify an emissions change based on reporting fPM emissions levels and lower costs than originally assumed. Similarly, for Hg, in 2023, EPA identifies new "developments" for lignite EGUs based on the operator's compliance with the regulations.

In the Proposed Rule, EPA provides no new control technologies or methods. For both pollutants, EPA finds "developments" based on control performance (lower emissions data). It appears that because operators have been diligent in reducing emissions and have been able to achieve the standards set by EPA, EPA feels the need to again tighten the applicable standards. In sum, EPA has found that the current MATS requirements provide an ample margin of safety and has identified no new control technologies or methods.

The proposed fPM emission limit of 0.010 lb/MMBtu is not technically achievable.
Particulate at San Miguel is captured and removed from the flue gas path primarily by the existing electrostatic precipitators ("ESPs"). The wet flue gas desulfurization ("WFGD") system downstream of the ESPs will also capture some of the particulate that makes it through the ESPs. The effectiveness of the existing ESPs and WFGD system to control PM emissions is demonstrated by the data in Table 2. San Miguel works extremely hard to maintain compliance with this standard. Compliance with the proposed fPM emission limit of 0.010 lb/MMBtu will be marginal under even the best operating scenarios.

Table 2: Summary of Filterable Particulate Matter (fPM) Quarterly Emissions Since 2016

	Measured fPM 0.03 lb/MMBtu current limit	Margin with Proposed Limit (lb/MMBtu)	Percent Margin (%)
min	0.00600	0.00400	40.0%
5th percentile	0.00614	0.00386	38.6%
average	0.03266	-0.02266	-226.6%
95th percentile	0.16411	-0.15411	-1541.1%
max	0.23300	-0.22300	-2230.0%

Justification – Why an Extension is in the National Security Interests of the United States

San Miguel is a 400 MW, mine-mouth, lignite-fired EGU located in Atascosa County, Texas. San Miguel is a not-for-profit electric cooperative created on February 17, 1977, under the Rural Electric Cooperative Act of the State of Texas. One hundred percent of the output of the plant is sold to San Miguel's member rural electric cooperatives through the South Texas Electric Cooperative ("STEC"). The electricity that San Miguel produces powers approximately 200,000 rural Texas homes in 45 South Texas counties.

San Miguel has conducted a thorough review of the capital and O&M costs that it will be required to take in order to comply with the Proposed Rule. The data provided below in Table 3.

Table 3: Summary of Capital and O&M Costs

High Estimate Option	Capital (2024$)	O&M (2024$)	NPV (2024$)	Total Levelized Cost $/yr (2024$)
New Mercury Controls	$10,800,000	$12,745,000	$213,493,000	$21,126,000
New Baghouse	$160,000,000	$4,220,000	$209,671,000	$20,747,000
New Particulate CEMS	$1,950,000	$25,000	$2,133,000	$211,000

Low Estimate Option	Capital (2024$)	O&M (2024$)	NPV (2024$)	Total Levelized Cost $/yr (2024$)
New Mercury Controls	$8,100,000	$10,631,000	$177,277,000	$17,542,000
New Baghouse	$130,000,000	$3,430,000	$170,378,000	$16,859,000
New Particulate CEMS	$1,450,000	$25,000	$1,688,000	$167,000

The annual operating and maintenance cost of the mercury control system is estimated at approximately $10,631,000 - $12,745,000, or about **$10,000/lb Hg removed.**

To achieve compliance with the proposed 0.01 lb/MMBtu limit, San Miguel may consider several options including: 1) ESP upgrades, 2) full fabric filter downstream, 3) reduced size fabric filter downstream, and 4) an ESP to fabric filter conversion. Capital costs for the ESP upgrades are projected in the $20 M range. However, there is no way to know with any certainty

if the ESP upgrades will be able to achieve compliance with the proposed fPM limit of 0.01 lb/MMBtu on a continuous basis. As such, an ESP upgrade is considered technically not feasible.

A full-size baghouse installation in the $130 M to $160 M range. The reduced size baghouse would fall around 10 to 20 percent lower in total installed cost ($98 M - $145 M). The ESP to fabric filter conversion would fall around 20 to 40 percent lower cost ($80 M - $ 130 M) than the full-size fabric filter and would require a 3 to 4-month unit outage.

A cost increase of $35M to $45M annually would require rate payers to spend an extra 33% for their electricity. Because of this sharp increase in expense, it may not be feasible to operate the power plant. SMEC would have to consider securing generation from other sources.

The ERCOT grid, which distributes the power generated at SMEC, will likely lose a key dispatchable asset in their portfolio. While renewable sources of energy continue to generate more power for the grid, their lack of dependability to generate at anytime, especially during periods of inclement weather, presents an ominous concern to the public. Providing low-cost, dependable, and dispatchable sources of energy is vital to our national security interests, public health, and strength of our economy.

To: [HYPERLINK "mailto:airaction@epa.gov"]

Subject: Presidential Exemption: Section 112 of the Clean Air Act : San Miguel Electric Cooperative, Inc.

Emission Standards subject to request

- non-Hg HAP metal surrogate fPM emission standard for all existing coal-fired EGUs of 0.010 lb/MMBtu. [40 CFR 63.9991(a), Table 2]
- Hg emission standard of 1.2 lb of Hg per trillion British thermal units of heat input (lb/TBtu) [40 CFR 63.9991(a), Table 2]

Facility Name

- San Miguel Electric Cooperative, Inc. in Christine, TX

Length of compliance period

- 2 years

Justification – Why the Technology to Implement the Standard is Unavailable

The proposed Hg emission limit of 1.2 lb/TBtu is not technically achievable. San Miguel has an average mercury inlet concentration on 34 lb/TBtu based on the average concentration since 2011. This is due to the highly variable mercury content of lignite.

Table 1: Historical Mercury Inlet Concentrations Since 2011 and Required Removal Rates

Calculated Mercury Inlet and Mercury Capture Rates at Full Load Using Lignite Monthly Composite Data from 2011- Present	
Mercury Inlet (lb/Tbtu)	Capture Percentage Required to Reach Target of 1.2 lb/Tbtu
22.8 (minimum)	94.7%
34.0 (average)	96.3%
69.4 (maximum)	98.3%

A 2013 technical report prepared by Sargent & Lundy that was prepared for EPA analyzed mercury controls (the "S&L Report"). The report describes in detail how activated carbon injection is rendered significantly less effective when the flue gas contains SO_3, stating:

> *Some flue gas constituents, especially SO_3, reduce the mercury removal effectiveness of both activated carbon and non-carbon sorbents. With flue gas SO^3 concentrations greater than 5 7 ppmv, the sorbent feed rate may be increased significantly to meet a high Hg removal and 90% or greater mercury removal may not be feasible in some cases. Based on commercial testing, the capacity of activated carbon can be cut by as much as one-half with an SO_3 increase from just 5 ppmv to 10 ppmv.*

The higher sulfur content of lignite equates to greater production rates of SO_3. Texas lignite units often have high flue gas SO_3 concentrations and could be considered medium- to high-sulfur coals based on pounds of SO_2 produced per million Btu of heat input. Gulf Coast lignite generally features higher sulfur content - by a factor of two or more. Notably, Texas lignite is disadvantaged as the alkalinity to sulfur ratio is half that of Powder River Basin Coal (PRB).

As to San Miguel, since 2017, the sulfur percentage of the lignite fuel ranges from a minimum of 1.31 % to a maximum of 3.42%. The lignite fuel used at San Miguel during that time period had an average of 2.48% sulfur content. Based on a fuel analysis conducted in 2014, San Miguel has an average sulfur content of 9.6 lb/SO_2 per million Btu.

Lignite presents significantly greater variability in Hg and sulfur than PRB. Consequently, the higher sulfur content of lignite combined with equal or lower total alkali relative to sulfur allows measurable levels of SO_3 in the lignite-generated flue gas.

EPA has not demonstrated any technical developments since the issuances of the previous MATS requirements. The 2020 Final Rule did not discover any developments in control technologies, practices, or processes. In 2023 as to the fPM emission standard, the Proposed Rule concurs. It states that EPA found "no new practices, processes, or control technologies for non-Hg HAP." (88 Fed. Reg. 24868). Yet, EPA identifies fPM "developments" to justify an emissions change based on reporting fPM emissions levels and lower costs than originally assumed. Similarly, for Hg, in 2023, EPA identifies new "developments" for lignite EGUs based on the operator's compliance with the regulations.

In the Proposed Rule, EPA provides no new control technologies or methods. For both pollutants, EPA finds "developments" based on control performance (lower emissions data). It appears that because operators have been diligent in reducing emissions and have been able to achieve the standards set by EPA, EPA feels the need to again tighten the applicable standards. In sum, EPA has found that the current MATS requirements provide an ample margin of safety and has identified no new control technologies or methods.

The proposed fPM emission limit of 0.010 lb/MMBtu is not technically achievable.
Particulate at San Miguel is captured and removed from the flue gas path primarily by the existing electrostatic precipitators ("ESPs"). The wet flue gas desulfurization ("WFGD") system downstream of the ESPs will also capture some of the particulate that makes it through the ESPs. The effectiveness of the existing ESPs and WFGD system to control PM emissions is demonstrated by the data in Table 2. San Miguel works extremely hard to maintain compliance with this standard. Compliance with the proposed fPM emission limit of 0.010 lb/MMBtu will be marginal under even the best operating scenarios.

Table 2: Summary of Filterable Particulate Matter (fPM) Quarterly Emissions Since 2016

	Measured fPM 0.03 lb/MMBtu current limit	Margin with Proposed Limit (lb/MMBtu)	Percent Margin (%)
min	0.00600	0.00400	40.0%
5th percentile	0.00614	0.00386	38.6%
average	0.03266	-0.02266	-226.6%
95th percentile	0.16411	-0.15411	-1541.1%
max	0.23300	-0.22300	-2230.0%

Justification – Why an Extension is in the National Security Interests of the United States

San Miguel is a 400 MW, mine-mouth, lignite-fired EGU located in Atascosa County, Texas. San Miguel is a not-for-profit electric cooperative created on February 17, 1977, under the Rural Electric Cooperative Act of the State of Texas. One hundred percent of the output of the plant is sold to San Miguel's member rural electric cooperatives through the South Texas Electric Cooperative ("STEC"). The electricity that San Miguel produces powers approximately 200,000 rural Texas homes in 45 South Texas counties.

San Miguel has conducted a thorough review of the capital and O&M costs that it will be required to take in order to comply with the Proposed Rule. The data provided below in Table 3.

Table 3: Summary of Capital and O&M Costs

High Estimate Option	Capital (2024$)	O&M (2024$)	NPV (2024$)	Total Levelized Cost $/yr (2024$)
New Mercury Controls	$10,800,000	$12,745,000	$213,493,000	$21,126,000
New Baghouse	$160,000,000	$4,220,000	$209,671,000	$20,747,000
New Particulate CEMS	$1,950,000	$25,000	$2,133,000	$211,000

Low Estimate Option	Capital (2024$)	O&M (2024$)	NPV (2024$)	Total Levelized Cost $/yr (2024$)
New Mercury Controls	$8,100,000	$10,631,000	$177,277,000	$17,542,000
New Baghouse	$130,000,000	$3,430,000	$170,378,000	$16,859,000
New Particulate CEMS	$1,450,000	$25,000	$1,688,000	$167,000

The annual operating and maintenance cost of the mercury control system is estimated at approximately $10,631,000 - $12,745,000, or about **$10,000/lb Hg removed.**

To achieve compliance with the proposed 0.01 lb/MMBtu limit, San Miguel may consider several options including: 1) ESP upgrades, 2) full fabric filter downstream, 3) reduced size fabric filter downstream, and 4) an ESP to fabric filter conversion. Capital costs for the ESP upgrades are projected in the $20 M range. However, there is no way to know with any certainty

if the ESP upgrades will be able to achieve compliance with the proposed fPM limit of 0.01 lb/MMBtu on a continuous basis. As such, an ESP upgrade is considered technically not feasible.

A full-size baghouse installation in the $130 M to $160 M range. The reduced size baghouse would fall around 10 to 20 percent lower in total installed cost ($98 M - $145 M). The ESP to fabric filter conversion would fall around 20 to 40 percent lower cost ($80 M - $ 130 M) than the full-size fabric filter and would require a 3 to 4-month unit outage.

A cost increase of $35M to $45M annually would require rate payers to spend an extra 33% for their electricity. Because of this sharp increase in expense, it may not be feasible to operate the power plant. SMEC would have to consider securing generation from other sources.

The ERCOT grid, which distributes the power generated at SMEC, will likely lose a key dispatchable asset in their portfolio. While renewable sources of energy continue to generate more power for the grid, their lack of dependability to generate at anytime, especially during periods of inclement weather, presents an ominous concern to the public. Providing low-cost, dependable, and dispatchable sources of energy is vital to our national security interests, public health, and strength of our economy.

March 28, 2025

U.S. Environmental Protection Agency
1200 Pennsylvania Ave. NW
Washington, DC 20460

RE: Presidential Exemption: New Source Performance Standards for the Synthetic Organic Chemical Manufacturing Industry and National Emission Standards for Hazardous Air Pollutants (NESHAP) for the Synthetic Organic Chemical Manufacturing Industry (SOCMI) and Group I & II Polymers and Resins Industry: SABIC Innovative Plastics Mt. Vernon, LLC

To Whom It May Concern,

SABIC Innovative Plastics Mt. Vernon, LLC ("SABIC") requests an exemption from the compliance obligations of the New Source Performance Standards for the Synthetic Organic Chemical Manufacturing Industry and National Emission Standards for Hazardous Air Pollutants (NESHAP) for the Synthetic Organic Chemical Manufacturing Industry (SOCMI) and Group I & II Polymers and Resins Industry (collectively referred to as the HON Rule).[1] For the reasons highlighted in this letter, we believe it is necessary and appropriate for the President to grant an exemption under Clean Air Act (CAA) Section 112(i)(4) for sources regulated by the final rule either on an individual basis or collectively. If done collectively, we request that EPA include SABIC's regulated facilities under that collective action.

We urge the Administration to swiftly consider and issue such an action based on an understanding that both: 1) "availability" for the purposes of this section refers not only to the existence of technology capable of achieving compliance with the rule, but encompasses practical challenges with the timeframes necessary to plan, procure, and install required technologies and such activity cannot occur within the current compliance timeframe; and 2) national security encompasses not only military defense applications and infrastructure, but also economic security, a perspective that has been acknowledged by the President in Executive Orders and key security agencies like the Department of Defense. Indeed, as the White House has stated regarding domestic priorities, "economic security is national security."[2] As additional support on this point, we reference the separate joint coalition submission sent to EPA from

[1] National Emissions Standards for Hazardous Air Pollutants (NESHAP), Powering the Great American Comeback https://www.epa.gov/system/files/documents/2025-03/neshap_powering-the-great-american-comeback_fact-sheet_2.pdf 89 Fed. Reg. 42932 (May 16, 2024).
[2] https://www.whitehouse.gov/presidential-actions/2025/02/america-first-investment-policy/.

SABIC Innovative Plastics Mt. Vernon, LLC
One Lexan Lane
Mount Vernon, IN 47620
USA
T: +1 812 833 8891
F: +1 812 831 4656
E: MTV.Environmental@sabic.com
www.sabic.com

associations the American Chemistry Council (ACC) and the American Fuel & Petrochemicals Manufacturers (AFPM).

We believe that the Administration has already been provided with sufficient information (including prior comments and the underlying petition for reconsideration on the HON rule) to support an exemption covering all regulated facilities or on a facility-specific basis. This letter provides additional detail and support on the time-critical nature of the request for relief and to address EPA's request for information. We submit both in support of a category-wide grant, as well as to provide facility-specific information if the President pursues a facility-specific exemption action.

SABIC operates a manufacturing plant in Mt. Vernon Indiana that is subject to EPA's HON final rule. Specifically, the final HON rule significantly impacts manufacturing processes for phenol and BPA that are key raw materials for polycarbonate (PC) and co-polycarbonates.

PC and co-polycarbonates are amorphous engineering thermoplastics used in a diverse set of domestic applications and markets, including health care, consumer electronics, aerospace, mobility, military, infrastructure, and personal protective wear. Their transparency, high impact strength, mechanical performance, heat resistance, thermal performance, chemical resistance, and resistance to fire and corrosion, along with other chemical and physical properties uniquely suit them for key applications in medical devices, health care, and automotive safety. SABIC's HON plants are significant contributors to the economic health and employment opportunities in their locations.

SABIC estimates that to comply with HON final rule, significant upgrade to existing equipment including new or updated emissions control devices will be required resulting in significant capital expenditures and operating expenses for our SABIC HON affected process units. In addition, our phenol and BPA plant would require unplanned shutdowns to implement capital projects and would tremendously impact the production of polycarbonates. SABIC's PC plants represent over 60% of the domestic PC capacity to serve the American markets.

Based on compliance timeline provided in the final HON rule at 40 CFR 63.100(k)(10) and (12) for existing sources, the decision about capital expenditures would need to be made as early as April/May of 2025. The HON final rule does not provide sufficient time to upgrade existing equipment and emissions control devices or install new control devices which require significant time in planning, designing, procurement and installing equipment. Therefore, we request additional compliance time of at least two more years to comply with final HON rule for existing sources beyond compliance time provided at 40 CFR 63.100(k)(10) and (12).

We thank EPA for your consideration of this request. If you have any questions, please free to contact Balvant Darji via email at balvant.darji@sabic.com. Thank you very much.

Sincerely,



Niall McConville
President and Director
SABIC Mt. Vernon Manufacturing

Classification: Controlled Unclassified Information

cc: Aaron Szabo, Senior Advisor to the Administrator, Office of the Administrator
Abigale Tardif, Principal Deputy Assistant Administrator, Office of Air and Radiation
Sean Donahue, Principal Deputy General Counsel, Office of General Counsel
Alex Dominguez, Deputy Assistant Administrator for Mobile Sources, Office of Air and Radiation
[redacted], Director, Office of Air Quality Planning and Standards
[redacted], Director, Sector Policies and Programs Division, Office of Air Quality Planning and Standards
[redacted], Refining and Chemicals Group Leader, Office of Air Quality Planning and Standards
[redacted], General Engineer, Office of Air Quality Planning and Standards

OLYMPUS
Power, LLC.

[illegible] Headquarters Plaza, West Tower, 8th Floor, Morristown, NJ 07960
p. 973-889-0100 f. 973-889-0200
www.olympuspower.com

March 28, 2025

Mr. Lee Zeldin, Administrator
US Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, DC 20460
Mail Code 1101A
airaction@epa.gov

Subject: Presidential Exemption, National Emissions Standards for Hazardous Air Pollutants: Coal- and Oil-Fired Electric Utility Steam Generating Units Review of the Residual Risk and Technology Review (89 FR 38508; May 7, 2024) (MATS Rule), for Northampton Generating Unit 1 located in Northampton, Pennsylvania.

Dear Administrator Zeldin:

Olympus Power, LLC (Olympus) is writing to request a Presidential two-year exemption from the revised MATS rule Filterable Particulate Matter (FPM) emissions standard for Northampton Generating Unit 1. In the revised MATS rule not only was the numerical limit reduced by 67% from 0.030 pounds FPM/million British thermal units (lbs. FPM/MMBtu) to 0.010 lbs. FPM/MMBtu, but the compliance methodology was also changed from:

- requiring filterable particulate matter source emissions testing using the average of three test runs, in accordance with Table 5 to Subpart UUUUU of Part 63 – Performance Testing Requirements, 1. Filterable Particulate matter (PM), Emissions Testing, to determine the emissions from the unit; to
- requiring the use of continuous filterable particulate matter continuous emissions monitoring system (FPM CEMS).

Requiring FPM CEMS as the compliance methodology also changes the compliance averaging period from testing once every three years as a Filterable Particulate Matter Low Emitting Electric Generating Unit (FPM LEE) to continuous monitoring, FPM CEMS. The abandonment of the methodologies specified in the current Title 40 Part 63, Subpart UUUUU changes the limit far more dramatically and is far more stringent than just a change in the

numerical value of the FPM limit from 0.030 lbs. FPM/MMBtu to 0.010 lbs. FPM/MMBtu. This request is especially important because while the revised MATS rule is currently held in abeyance, it is not stayed.

The revised MATS rule also eliminates the category of Filterable Particulate Matter Low Emitting Electric Generating Unit (FPM LEE). The FPM LEE designation was contained in the original MATS rule as a "reward" for a unit consistently achieving emissions rates of 0.015 lbs. FPM/MMBtu or less during quarterly testing conducted over a three-year period. If the FPM LEE criteria were achieved by a unit, then the source emissions testing program frequency was changed from quarterly to once every three years. This construct relieved the generating units of costly (burdensome) testing obligations as a reward for consistently lower emissions. The new proposal discards that benefit and imposes new substantial costs. Contrary to EPA's justification of the change in requirement to FPM CEMS which used quarterly emissions testing which would have been required by non-FPM LEE units, the FPM LEEs they represented as already meeting the revised limit of 0.010 lbs. FPM/MMBtu were all conducting emissions testing once each three years. Consequently, the EPA grossly overestimated the cost of the current FPM emissions testing by representing quarterly emissions testing to inappropriately justify the extreme cost burden of the design, procurement, installation, certification, operation and quality assurance requirements of the FPM CEMS.

Northampton Generating Unit 1 includes a circulating fluidized bed boiler and a fabric filter for collection of FPM. Importantly, fabric filters are the most effective device for the collection of FPM. In the case of Northampton Generating Unit 1, the unit is already required to meet an FPM limit of 0.0088 lbs. FPM/MMBtu. However, that Title V permit limit is specified and required to be demonstrated using filterable particulate matter source emissions testing, similar to the filterable particulate matter source emissions testing required by the original MATS Rule as opposed to being obligated to demonstrate compliance using an FPM CEMS which would make the numerical FPM emission limit much more stringent. Consequently, it is uncertain if Northampton Generating Unit 1 will be able to achieve the revised FPM emission limit because a specified emission limit is not only dependent upon the numerical value of the limit but also upon the compliance demonstration method(s) and the averaging period of the limit.

At this time, it is unknown whether an additional technology that could be added beyond the already existing fabric filter to ensure continuous compliance and accomplish whatever additional FPM emissions control might be necessary under the revised MATS FPM standard is even commercially available. Consequently, additional time is necessary to investigate, and if necessary, implement projects to discover, test and implement this unknown technology. Further, the cost of this unknown FPM control equipment that might be necessary is unknowable. This is an important point because Northampton Generating is located in Pennsylvania, a restructured electric generating market.

Pennsylvania in the late 1990's restructured its electric market and consequently, electric generators in Pennsylvania are merchant generators and are not guaranteed cost recovery or a

return on investment to accomplish these projects at these facilities. Funding for these projects must be provided from private sources and these additional costs would have to be recovered in the electric markets, which in the case of Pennsylvania is being manipulated by an agreement between the Governor and the PJM Regional Transmission Organization (PJM) to impede the ability for electric generating sources to recover these costs that would be obligated by the revised MATS regulation.

Importantly, President Trump has identified that it is beyond dispute that a reliable and cost-effective electric grid is critical to the national security of the United States. In light of the substantial and unexpected increase in electricity demand growth, keeping the plant online will help to meet this national security objective. However, the issues relating to the ability of merchant generators to recover the costs that would be necessary to continuously achieve the revised FPM limit using the specified FPM CEMS to demonstrate compliance implicates the economic viability of Northampton Generating and other merchant generators in a number of states with restructured electric generation threatening the reliability of various electric grids. In Pennsylvania, by threatening the economics of the coal refuse to energy facilities, the revised MATS rule further threatens the accomplishment of their primary mission which is the removal, remediation and reclamation of highly polluting coal refuse piles; the recovery of mining affected lands; and the improvement of the legacy energy communities of Pennsylvania.

It is also noteworthy that PJM has, itself, highlighted several EPA regulatory processes that it believes have forced the early retirements of electric generating sources and impaired their viability at such an accelerated rate that there may not be adequate generating resources to serve future system demand. System reliability and resilience requirements are only exacerbated by the coming wave of new data centers which have high electricity demands. Regulations such as the new MATS Rule only serve to call the system wide reliability and resilience further into question.

Olympus appreciates the opportunity to make this request for a Presidential two-year exemption from the revised MATS rule FPM emissions standard for Northampton Generating Unit 1. If there are any questions or additional information is required, please contact Vincent Brisini at vbrisini@olympuspower.com or Lauren Quintrell at lquintrell@northgenco.com.

Respectfully submitted,

Vincent J. Brisini
Director of Environmental Affairs

cc: Sean P. Lane, Olympus Power, LLC

ED_021114A_00008584-00003

Dustin Burkhard, Olympus Power, LLC

Shawn Smith, Olympus Power, LLC

William Wood, Olympus Power, LLC

Lauren Quintrell, Northampton Generating Company

From: Blake Pinkerton
To: AirAction
Subject: Presidential Exemption: NESHAP MATS Rule, Thomas Hill Energy Center and New Madrid Power Plant
Date: Friday, March 28, 2025 11:49:59 AM

Caution: This email originated from outside EPA, please exercise additional caution when deciding whether to open attachments or click on provided links.

Associated Electric Cooperative Inc. is preparing to request a Presidential Exemption under Clean Air Act Section 112(i)(4) in response to the EPA's call for justification from affected facilities. This exemption allows up to a two-year compliance waiver for stationary sources if required technology is unavailable and national security interests are met, with a possible two-year extension. The EPA is reconsidering the NESHAP rules, including the MATS Rule, and has requested submissions by March 31, 2025. We are submitting the following request and welcome any feedback.

Emissions standards/limitations subject to this request:
MATS Rule:

- fPM (Paticulate Matter) Emission standard (limitation) 0.01 lb/mmBtu (lowered from 0.3 lb/mmBtu)
- Requirement to no longer allow stack testing to demonstrate compliance but rather require a utility to install and maintain a PM CEMS (Continous Emission Monitor) to demonstrate compliance
- The removal of the fPM Low Emitting EGU (LEE) program.

Affected Facilities/sources:

- Thomas Hill Energy Center
  - Unit 1 (EP-01) Coal Fired Cyclone Boiler
  - Unit 2 (EP-02) Coal Fired Cyclone Boiler
  - Unit 3 (EP-03) Pulverized Coal Fired Tangential Boiler
- New Madrid Power Plant
  - Unit 1 (EP-01) Coal Fired Cyclone Boiler
  - Unit 2 (EP-02) Coal Fired Cyclone Boiler

Length of Compliance period requested:

- Requesting a 2-year extension from the original compliance date of July 8, 2027 per the presidential exemption process allowed in the Clean Air Act section 112 (i)(4).

Response on the Feasibility and National Security Risks of PM CEMS in the MATS Rule for Associated Electric Cooperative Inc (AECI).

Technical Infeasibility of PM CEMS for AECI's Generation Fleet

1. **Unproven Accuracy and Reliability in AECI's Coal-Fired Plants**
   Associated Electric Cooperative Inc. (AECI) operates a diverse generation fleet, including coal-fired power plants that provide critical baseload power to its member cooperatives across Missouri, Iowa, and Oklahoma. PM CEMS technology has not been proven to provide consistently accurate measurements across varied plant configurations and coal types used by AECI, making it an unreliable tool for regulatory compliance. The inherent variability in coal composition and plant operating conditions results in fluctuating PM CEMS readings that lack the precision required for enforcement.

2. **Significant Calibration and Maintenance Burdens for AECI's Facilities**
   Unlike larger investor-owned utilities with extensive technical resources, AECI's plants serve a cooperative model where efficiency and cost-effectiveness are paramount. PM CEMS require frequent manual calibrations, maintenance, and specialized expertise to function properly. Given the rural locations of many AECI facilities, securing qualified technicians to meet compliance demands would create logistical and financial burdens that strain cooperative operations.

3. **Redundancy with AECI's Existing Emissions Control Investments**
   AECI has already invested in state of the art emissions control technologies, including electrostatic precipitators, which effectively reduce particulate matter emissions well below regulated thresholds. Requiring PM CEMS on top of these systems would provide little environmental benefit while imposing excessive compliance costs that do not align with AECI's mission to provide affordable and reliable power to its members.

4. **Unattainable Emission Control Upgrades Threaten AECI's Compliance and Grid Reliability**

   The stricter PM limits in the MATS Rule pose a significant challenge due to the unavailability of essential emissions control upgrades like Electrostatic Precipitators (ESPs) and Baghouses. Supply chain disruptions, extended lead times for manufacturing, and a shortage of specialized labor make it nearly impossible for AECI to procure and install these technologies within the required timeframe. Additionally, the high costs and prolonged downtime needed for retrofitting, place a heavy financial burden on AECI and its member cooperatives. Without feasible access to these upgrades, AECI risks potential plant shutdowns, jeopardizing grid reliability and affordable power for rural communities.

5. **Excessive Costs for AECI and Its Member Cooperatives**

   As a generation and transmission cooperative serving six regional cooperatives and 51

member-owned distribution cooperatives, AECI operates on a not-for-profit basis. Any additional compliance costs must be passed directly to its member cooperatives, affecting rural communities, farms, and small businesses already facing economic pressures. Installing and maintaining PM CEMS across AECI's coal fleet would require millions in unnecessary expenditures, diverting funds that could otherwise be used for grid modernization and reliability improvements.

Threats to National and Regional Energy Security

1. **Grid Reliability Risks for Rural Missouri, Iowa, and Oklahoma**
   AECI's coal fired plants provide critical baseload power that ensures reliability for the cooperative's member-owners, particularly in rural areas where energy demand fluctuates with agricultural operations and seasonal weather patterns. Prematurely retiring these plants due to unworkable PM CEMS mandates could lead to grid instability, blackouts, and increased reliance on intermittent generation sources that do not provide the same level of reliability.

2. **Increased Dependence on Natural Gas and Market Volatility**
   Forcing AECI to phase out coal due to infeasible monitoring requirements would push the cooperative to rely more heavily on natural gas, which is subject to volatile pricing and supply chain constraints. AECI has already experienced challenges with natural gas supply during extreme weather events, such as Winter Storm Uri, which underscored the importance of fuel diversity. Eliminating coal-fired generation without a feasible replacement would expose AECI's members to higher electricity costs and supply shortages.

3. **Supply Chain Risks Due to Foreign Dependence on PM CEMS Technology**
   Many of the critical components required for PM CEMS are sourced from foreign manufacturers, increasing AECI's dependence on unreliable supply chains. Given the current global landscape, requiring these systems introduces unnecessary vulnerabilities that could disrupt compliance efforts and lead to operational shutdowns due to component shortages or delays.

4. **Impact on National Security Infrastructure and Military Installations**
   AECI supplies power to critical infrastructure, including military bases and defense related industries in its service territory. Any regulatory requirement that forces premature retirements or operational shutdowns of AECI's baseload generation could compromise energy security for these facilities, increasing the risk of operational disruptions. Ensuring the reliability of energy supply is vital for national security, and PM CEMS mandates threaten that stability without providing meaningful environmental benefits.

For AECI, the PM CEMS requirements in the MATS rule present both technical and national security risks. The technology is unreliable, cost-prohibitive, and redundant given the cooperative's existing emissions control measures. Furthermore, the impact on grid reliability, increased dependence on volatile energy markets, and risks to national security make this mandate an unjustified burden on AECI and its member cooperatives. A balanced regulatory approach that accounts for the unique

structure of AECI's cooperative model and the critical role its baseload generation plays in maintaining energy security is essential to ensure compliance without jeopardizing affordability and reliability for rural communities.

Blake Pinkerton

Manager, Air Quality
Associated Electric Cooperative Inc.
2814 South Golden Ave, PO Box 754
Springfield, MO 65807
417-371-5315

CONFIDENTIALITY NOTICE: This e-mail message is intended for the exclusive use of the addressee(s) listed above. This message and any file(s) attached hereto may contain confidential information that is privileged or otherwise protected from disclosure. If you have received this message in error, please notify me immediately by return e-mail and promptly delete this message and any attachments from your computer system.

REQUEST FOR PRESIDENTIAL EXEMPTION

***National Emission Standards for Hazardous Air Pollutants: Lime Manufacturing Plants Technology Review*, EPA Docket No. OAR-2017-0015, RIN 2060-AV59, 89 Fed. Reg. 57,738: All Major Source Lime Manufacturing Facilities Listed on the Attached List**

Pursuant to Section 112(i)(4) of the Clean Air Act ("CAA"), the National Lime Association ("NLA") hereby requests and recommends that the President issue a two-year exemption from the current July 16, 2027, compliance date of emissions standards promulgated in the final rule *National Emission Standards for Hazardous Air Pollutants: Lime Manufacturing Plants Technology Review* (the "Lime Rule"), published in the *Federal Register* at 89 Fed. Reg. 57,738 (July 16, 2024), extending the compliance date to July 16, 2029, for each major source lime plant subject to the rule, pending EPA's reconsideration of the rule. NLA members include all major source lime plants in the United States (except for one operated by a non-member steel company, Cleveland Cliffs, which will submit a separate request). NLA has submitted several rounds of extensive comments and scientific data and analysis on the EPA Lime Rule. All NLA's comments, reports, and submissions in the EPA Lime Rulemaking docket are hereby incorporated by reference herein.

A list of all 28 major source lime plants operated by NLA members is attached hereto. Also attached are letters from each NLA member company that operates major source lime plants delegating authority to NLA to submit this request. NLA asks that the requested exemption be granted to each lime plant listed, because all are affected as explained below.

This statement explains why an exemption is appropriate for sources impacted by the Lime Rule, because, as specified in section 112(i)(4), the technology to implement such standard is not available and an exemption is in the national security interests of the United States.

PROCEDURAL BACKGROUND

On July 16, 2024, EPA promulgated the final Lime Rule, revising maximum achievable control technology ("MACT") standards for hydrogen chloride (HCl), mercury, organic hazardous air pollutants ("oHAP"), and dioxins/furans ("D/F"). EPA claimed that this action was taken in response to the D.C. Circuit's decision in *Louisiana Environmental Action Network v. EPA* ("*LEAN*"), 955 F.3d 1088 (D.C. Cir. 2020). NLA filed a petition for review of the final Lime Rule in the D.C. Circuit. The Court has ordered that the case be held in abeyance, with a motion to govern further proceedings due by April 28, 2025. NLA also filed a petition for reconsideration of the rule with EPA, which was denied by the Acting EPA Administrator in the waning days of the Biden Administration on January 10, 2025.

On March 12, 2025, EPA announced its intention to reconsider the Lime Rule, citing numerous issues with a group of rules establishing or modifying various National Emission Standards for Hazardous Air Pollutants (NESHAP). EPA further indicated that the President was considering issuing exemptions from compliance dates under Clean Air Act Section 112(i)(4) where appropriate, and that affected sources should provide recommendations for such exemptions to EPA by March 31, 2025.

REGULATORY BACKGROUND

EPA's regulation of hazardous air pollutants ("HAPs") from lime manufacturing started two decades ago when, in 2004, EPA promulgated the National Emission Standards for Hazardous Air Pollutants for Lime Manufacturing Plants. (40 CFR §§ 63.7080-7083.) In so doing, EPA noted that: "the purpose of the final NESHAP is to protect public health by reducing emissions of HAP from lime manufacturing plants." 69 Fed. Reg. 394, 395 (Jan. 5, 2004). EPA carefully evaluated the lime manufacturing sector and regulated HAP emissions by establishing a particulate matter ("PM") standard as a surrogate for non-volatile and semi-volatile metal HAPs. As part of this evaluation EPA addressed all four of the additional HAPs emitted by the lime industry: HCl, mercury, oHAP, and D/F. Based on this evaluation, EPA found that new regulations were not necessary for any of those additional HAPs based on the best available science. EPA's 2004 rule was not challenged by the lime industry or any environmental groups.

In 2020, EPA issued a final rule to fulfill its obligations under CAA sections 112(d)(6) and (f)(2), or the "risk and technology review" ("RTR"). Here, EPA found that "risks are acceptable and that the current NESHAP provides an ample margin of safety to protect public health," and therefore found that it was unnecessary to set standards for HCl, mercury, organics, or D/F, fulfilling its 112(f)(2) obligation. *National Emission Standards for Hazardous Air Pollutants: Lime Manufacturing Plants Residual Risk and Technology Review*, 85 Fed. Reg. 44960 (July 24, 2020). EPA further determined that "[t]here are no developments in practices, processes, or control technologies that necessitate revisions to the standards," fulfilling its 112(d)(6) obligation. *Id.*

EPA's findings were based on solid scientific analysis finding that both cancer and noncancer risks from the lime industry are exceedingly low. In the agency's own words, "EPA's estimated baseline maximum inhalation cancer risk (MIR) posed by the source category is 1-in-1 million based on actual emissions, and 2-in-1 million based upon MACT- allowable emissions. The total estimated cancer incidence based on actual emission levels is 0.001 excess cancer cases per year, or one case every 1,000 years. The total estimated cancer incidence based on allowable emission levels is 0.003 excess cancer cases per year, or one case every 333 years." EPA also noted: "The maximum chronic noncancer TOSHI [Target Organ-Specific Hazard Index] values for the source category were estimated to be less than 1 (0.04) based on actual emissions and less than 1 (0.05) based upon allowable emissions."[1]

In the rulemaking process that led to EPA's 2024 Lime Rule, EPA performed a full risk assessment for all four pollutants (HCl, mercury, oHAP, and D/F), and yet again determined that emissions of all these pollutants from the lime industry presented an acceptable risk with an ample margin of safety, *without any additional controls*. NLA provided detailed comments explaining why EPA should decline to set new standards, or in the alternative, should set standards that were reasonable, less costly and more likely achievable by the industry. Nevertheless, EPA promulgated the final Lime Rule imposing onerous, unreasonable and

[1] *National Emission Standards for Hazardous Air Pollutants: Lime Manufacturing Plants Residual Risk and Technology Review* 84 Fed. Reg, 48722, 48723 (Sept 16, 2019).

ED_021114A_00008586-00002

extremely costly standards for all four of these pollutants. EPA's own regulatory impact analysis found that the rule would cost in excess of $2 billion for the lime industry, while the benefits are too negligible to monetize. This is because even without additional controls risks are already acceptable with an ample margin of safety, and thus the Lime Rule provides no quantifiable benefits.

NLA strongly supports EPA's plan to reconsider this final regulation, for numerous legal and technical reasons previously raised in NLA's comments during the notice and comment period preceding the Lime Rule, in NLA's lawsuit, and in NLA's petition for reconsideration.

A. TECHNOLOGY TO IMPLEMENT THE LIME STANDARDS IS UNAVAILABLE

1. Technology to Implement the Standard May Not Be Fully Available by the Current Compliance Date

EPA identified three different candidate control technologies as necessary for lime kilns to comply with the rule. Installation and use of these technologies will require significant research and development, pilot plant experimentation, and great expense (and uncertainty). Furthermore, as discussed further below, the candidate technologies' application to achieve the very low levels of HAP emissions from lime kilns is far from demonstrated in practice and may not be achievable for many lime kilns.[2]

The standards promulgated by EPA will require major sources in the lime industry to make substantial capital expenditures, and to purchase and install major pieces of emissions treatment equipment at the same time numerous other industries will also be installing similar equipment. At present, lime plants are utilizing control technology to address PM as required in the original 2004 rule, but no lime plant in the United States is using any technology to control any of the four pollutants covered by the Lime Rule. All controls will have to be newly installed. These will require substantial physical changes to lime plants, including major capital expenditures.

In addition, sources will need to hire and train additional personnel to operate this equipment, and will need to retain outside experts, such as analytical laboratories and others, to comply with the standards. Some of the equipment that will be required to implement the standards will require permits from state and/or federal permitting authorities. The current compliance date, July 16, 2027, is a little over two years away, an extremely short period to marshal capital expenditures of $485 million (the amount estimated by EPA) for such a small industry. Furthermore, it would be unreasonable, and unfair, to require lime producers to begin expending substantial financial and other resources to prepare for compliance with the Lime Rule at a time when EPA intends to reconsider the rule.

Accordingly, even for technologies that theoretically exist and could potentially be installed at lime plants, the standard of unavailability in section 112(i)(4) is met due to the short time frame for compliance, and the two-year exemption is necessary.

---

[2] *See National Lime Association comments on EPA Lime Rule* EPA-HQ-OAR 2017-0015 (Feb. 21, 2023) at p. 59. NLA's comments are incorporated herein by reference.

ED_021114A_00008586-00003

2. EPA's Rulemaking Standard Does Not Establish That Standards in the Lime Rule Are Achievable with Available Technology

As noted above, EPA imposed standards requiring use of multiple control technologies, even though none of these technologies were in use at any U.S. lime plant as EPA developed its rule. This means that the efficacy of these technologies in actual lime plants is speculative, and will need significant testing and piloting before compliance can be assured, and in some cases, there is serious doubt about whether compliance is possible at all. The record is thus insufficient to demonstrate that these technologies are available to implement the standards. Issues specific to the four HAPs are outlined below.

Dioxins/Furans (D/F)

The extremely low standard set by EPA for D/F was based on a single stack test, because the agency rejected other available test results for technical reasons. EPA also rejected NLA's assertion that additional data would be needed to set a valid standard. The standard based on a multiple of the extremely low detection limit for D/F will be very difficult for lime plants to meet consistently with any existing technology, and some plants believe that it will be impossible to guarantee compliance because the generation of D/F at very low levels (in the parts per billion) can vary significantly. EPA set the D/F standard at the lowest level its policies allow such a standard to be set. EPA rejected NLA's requests for a reasonable work practice standard or for an alternative compliance method.

Activated Carbon Injection (ACI) was identified by EPA as the technology to control D/F emissions. There are numerous known challenges to using ACI to control D/F in lime kilns, especially with the extremely low limits set in the standard. Notably, no current lime kiln is using ACI technology to control D/F, so there will be additional challenges that will appear.

ACI is known to exhibit reduced effectiveness at temperatures above 350 degrees F. Most lime kilns operate at temperatures higher than 450 degrees F. To address this issue, cooling of kiln gases would be required, with unpredictable effects (although it is expected that this cooling would place additional strain on the kiln system and reduce lime production). In addition, cooling kiln gases to reduce D/F emissions may complicate addressing other HAP standards.

D/F control effectiveness is also influenced by the relative concentration of the type of D/F in the flue gas stream. In a lime kiln, formation of the D/F species is complex and is influenced by temperature profile, residence time at critical temperatures, presence of chloride ions and aromatic organics as precursors. A detailed, lengthy and costly program of stack testing would be needed for each lime kiln to define the ACI rate and required gas stream temperature for control to determine if ACI would be feasible. Also, the extremely low concentrations of D/F known to be present in lime kiln exhaust gas makes effective ACI control even more challenging and problematic.

EPA relied, in part, on information from Portland cement kilns for its evaluation of ACI for use in lime kilns. However, the MACT limit for cement kilns is roughly 10 times higher than the limit EPA set for lime kilns, so it is unclear if results in cement kilns can accurately predict efficacy in meeting the much lower lime D/F standard for the lime industry.

ED_021114A_00008586-00004

EPA's finding that the extremely low D/F standards it set are achievable for the lime industry using untested ACI technology was unreasonable, and thus the technology should be deemed unavailable.

Organic Hazardous Air Pollutant (oHAP) Emissions

EPA has also set an extremely low standard for oHAPs. Emission of these pollutants can vary widely, even in a single kiln, due to differences in the raw materials and fuels used. Even with very low emissions – and acceptable risk with an ample margin of safety – an unusual "spike" of one organic material could cause exceedance of the oHAP standard even when treatment technology is in use.

Regenerative Thermal Oxidation (RTO) is the control technology that EPA states would be used to control oHAP emissions. RTOs have not been installed on any lime kiln in the United States for oHAP control. RTOs have multiple technical issues which make their use impractical and technically infeasible. For example, sulfur dioxide (SO_2) in the kiln exhaust may need to be removed by a wet scrubber to prevent oxidation of SO_2 to SO_3 in the RTO combustion chamber and creating acid mist and visible emissions. Most lime kilns do not currently utilize a wet scrubber.

The normal maximum RTO operating temperature is between 1600 and 1700 degrees F. Thus, the flue gas from a lime kiln will need to be reheated following the cooling gas treatment for D/F described above. Given the need to scrub the exhaust gas to remove SO_2 before the RTO, a large amount of clean fossil fuel energy (e.g., natural gas) will be required to reach the RTO minimum operating temperatures. Many lime plants may have insufficient or unavailable supplies of natural gas to support the use of an RTO. This will require adding infrastructure at additional and substantial cost. In some cases, new natural gas pipelines would need to be constructed and permitted, and easements obtained to bring the fuel to the lime plant across private or public lands or national forests. An RTO will also require additional power demand and infrastructure that may not be available at a given lime plant. An RTO will also require permitting.

Thus, at present, it has not been established that effective technology is available to implement the standards EPA set for oHAPs.

Hydrogen Chloride (HCl)

To treat HCl, EPA finds that lime plants will need to use dry sorbent injection (DSI), in which lime product is injected into the kiln gases to remove HCl. While this technology has been used in other industries to treat HCl, prior to EPA's final rule it was not in use in the United States at any lime kiln. This means that EPA's projections of the feasibility and costs of using this technology were not based on data from lime kilns, and thus are speculative.[3]

[3] In its comments on EPA's proposed rule, NLA pointed out that EPA should not attempt to set MACT floor standards where no sources were actually controlling for the pollutant in

(Continued ...)

ED_021114A_00008586-00005

In its comments submitted to EPA, with support from its technical consultants, NLA identified numerous technical problems with EPA's prediction of the efficacy of DSI for control of HCl in lime kilns. For example, EPA assumed an unreasonably high control efficiency for this technology (98%), whereas NLA's consultants project control efficiency as likely less than 90%. Many lime kilns may require redesign of ducting and/or relocation of the existing PM control devices (at great expense) to attempt to reach reasonable control efficiencies. Injection of a sorbent may interfere with lime plants' ability to meet the existing PM standard, and thus may require replacement of existing PM control equipment resulting in increased costs and additional technical challenges above that estimated by EPA.

Accordingly, even though DSI can theoretically be installed at lime plants to control HCl, the parameters and efficacy of that application are unknown until actual testing is done. This will take a significant amount of time, and thus it is unknown if this technology can be consistently installed at lime plants and successfully achieve the HCl standards before the current compliance date. Thus, this technology should be deemed currently unavailable.

Mercury

As with D/F, the technology identified by EPA for treatment of mercury is ACI. As with all the technologies addressed here, ACI has not been used at lime plants in the United States to treat mercury. Once again, EPA's projections of the feasibility and costs of using this technology were not based on data from lime kilns, and thus are speculative. With mercury, an added challenge is that the same technology is to be used to treat both mercury and D/F, and testing will be required to make sure that parameters can be set so that both standards are met in the same device. Again, this will require extensive testing, to be carried out in equipment that currently does not exist.

NLA's comments cited additional technical issues with treatment of mercury in lime kilns with ACI. For example, the absorption mechanisms differ between the elemental or oxidized form of mercury. Each kiln would need to be studied for the form(s) of mercury in the exhaust to determine potential control alternatives. Activated carbon can be used for capture of the elemental form of mercury whereas brominated carbon is used for capture of ionic form. Brominated carbons are significantly more expensive. In addition, specific conditions in each kiln can significantly affect ACI's effectiveness, including the presence of water vapor or sulfur dioxide, requiring adjustment of injection rates.

Testing to determine how to treat mercury in each lime kiln will take a significant amount of time, and thus it is unknown if this technology can be consistently installed at lime plants and successfully achieve the mercury standards before the current compliance date. Thus, this technology should be deemed currently unavailable.

Overall, EPA's candidate control technologies identified as necessary for lime kilns to comply with the Lime Rule will require significant research and development, pilot plant

---

question, because where no sources are controlling, it is nonsensical to refer to the "best performers." The speculative nature of EPA's technology predictions adds focus to this issue.

ED_021114A_00008586-00006

experimentation, and great expense (and uncertainty). Furthermore, their application to achieve the very low levels of HAP emissions from lime kilns is far from demonstrated in practice and may not be achievable for many lime kilns.[4] Accordingly, a two-year extension of time for compliance is clearly appropriate for all affected sources in the lime industry.

3. The Technologies That Would Be Required Under the Rule Will Cause More Environmental Harm Than Benefit

As noted above, EPA found that to comply with the standards for organic HAPs some sources would need to install RTOs. These units require substantial energy to operate, normally provided by natural gas. Combustion of gas in these units will generate tens of thousands of tons of carbon dioxide and other greenhouse gases, as well as NOx and carbon monoxide that would be released into the atmosphere. In addition, any natural gas unnecessarily consumed in this process would be a wasted resource that could have been used for another beneficial purpose such as heating homes, producing cleaner electricity, or storage for future use. Since EPA's risk assessment shows that use of these devices is not necessary to address any unacceptable risk, their operation will result in more potential harm to the environment than benefit.

The treatment technology that will be needed to address D/F and mercury is ACI. Use of this technology is likely to result in carbon residues appearing in lime kiln dust, which is a byproduct of lime manufacturing, and which is typically sold in commerce. The presence of carbon residues in this material may render it unusable and thus unsalable, increasing the amount of solid waste that would require disposal. This constitutes another unnecessary harm to the environment.

To control HCl, EPA finds that lime plants will need to use DSI, in which lime product is injected into the kiln gases—wasting that product. Lime is a valuable resource that can be used for many environmentally beneficial purposes. But EPA's rule would force lime companies to use significant amounts of their own product to reduce HCl emissions that EPA has twice found to pose acceptable risk with an ample margin of safety. Instead of using that lime for unneeded HCl emissions reductions, that same lime could be used to make other much more significant environmental improvements. For example, lime is used to scrub sulfur dioxide emissions, to treat drinking water, to treat acid mine drainage, and in many other applications.

EPA's own analysis acknowledged that the imposition of new emissions standards will result in secondary impacts from projected controls required for compliance. EPA expects lime plants to use 1.12 million additional gallons of water per year to address HCl controls with wet packed tower gas absorbers ("WPTGAs"). EPA predicts that solid waste from WPTGAs, Dry Sorbent Injection, and Activated Carbon Injection will increase solid waste by 13,500 tons per year. And finally, EPA states that all types of pollution controls installed under the rule (including WPTGAs, Dry Sorbent Injection; Regenerative Thermal Oxidizers; Activated Carbon

[4] For additional information on issues with control technologies in the lime industry, *see Appendix A of the National Lime Association comments on EPA Lime Rule,* EPA-HQ-OAR 2017-0015 (Feb. 21, 2023).

ED_021114A_00008586-00007

Injection; and Heat Exchangers) will collectively use an additional 1.77 ***trillion*** Btu's of energy annually (equivalent to unnecessarily burning about 88,000 tons of coal annually).[5] This wasteful use of natural resources constitutes environmental harm.

NLA believes that a technology should not be considered "available" if its use would cause more harm to the environment that the benefits it would confer.

4. <u>The Standards Cannot Be Implemented with Cost-Effective Technology</u>

No *cost-effective* technology is available, or could be available, to implement the standards established in the Lime Rule. EPA estimates that the rule will cost the industry up to $2.4 billion over the next 20 years ($485 million in capital investment) or $175 million annually. (NLA's cost estimates are even higher: $924 million capital investment and $180 million annually.) As noted above, EPA's own risk assessment showed that even without controls, emissions from the industry presented an acceptable level of risk with an ample margin of safety. As a result, any costs expended to meet these standards are unreasonable, and, by definition, not cost-effective. This factor is particularly significant for small business sources that cannot spread compliance costs across multiple locations, and the U.S. Small Business Administration's Office of Advocacy raised serious concerns about the Lime Rule's feasibility and cost, leading EPA to reopen the rule for additional proceedings to address issues affecting small businesses.

For all the reasons stated above, none of the technologies identified to implement standards in the Lime Rule are available within the period between the present and the compliance date of July 16, 2027, and an exemption should be granted extending the compliance date until July 16, 2029, to all the sources on the attached list, while EPA reconsiders the rule.

B. IT IS IN THE NATIONAL SECURITY INTERESTS OF THE UNITED STATES TO PROVIDE AN EXEMPTION FROM THE LIME RULE COMPLIANCE DATE

Lime production is essential to the national security of the United States. EPA's Lime Rule, if implemented, would both increase the cost of lime, and restrict the availability of lime products. This would have a negative impact on multiple other industries and activities, harming the national security interests of the United States.

The U.S. Geological Survey has noted that the major markets for lime, in descending order of consumption are "steelmaking, chemical and industrial applications (such as the manufacture of fertilizer, glass, paper and pulp, and precipitated calcium carbonate, and in sugar refining), flue gas treatment, construction, water treatment, and nonferrous-metal mining." These are all essential industries.

---

[5] *See Regulatory Impact Analysis for the Final Amendments to the National Emission Standards for Hazardous Air Pollutants: Lime Manufacturing Plants,* EPA-452/R-24-014 (June 2024) at pp. 29-30.

ED_021114A_00008586-00008

For steel production lime is used as a flux and slagging agent to remove impurities. The steel industry accounts for approximately 30% of all lime sold or used in the United States. Lime is also used in nonferrous metallurgy, such as in the production or recovery of copper, zinc, alumina, magnesia, uranium, nickel, gold, and silver. Lime is also used widely in construction, including in the building of roads and airports.

Lime is used across the United States to treat drinking water, and to treat sewage. Lime is an essential element in the production of numerous materials that would be needed during any medical crisis, such as paper products (including toilet paper), as well as latex and glass products used in medical applications. Lime products are also used in the production of animal feed, food and medicinal products (antacids, stabilizers, vitamins, etc.). Lime is also essential for the treatment of air emissions from numerous industries, including flue gas desulfurization in coal-fired power plants.

During the COVID-19 pandemic, many state governors issued emergency orders instructing industrial plants to shut down operations to control the spread of the virus. Lime plants were routinely exempted from these emergency state orders because lime is considered essential to public health and welfare due to its use in ensuring adequate supplies of clean drinking water, wastewater treatment, and addressing acid mine drainage in rivers and streams.[6] In addition, there was a recognition that lime was an essential ingredient for a variety of critical uses, including manufacture of metal, paper, and chemical products, animal feed, pollution control, road construction, and stabilization of earthen dams.

Lime products are typically not stored or stockpiled for a long period of time, with most of the industry practicing on-demand production and delivery. If lime production were to be disrupted, stocks of lime for all the uses mentioned above would be rapidly depleted, in some cases in a matter of days.

More details on the essential uses of lime can be found in U.S. Geological Survey documents at https://pubs.usgs.gov/myb/vol1/2019/myb1-2019-lime.pdf.

Accordingly, the Lime Rule implicates national security interests because lime products are essential to an array of essential industries and activities, including steelmaking, clean drinking water, and many others.

For all the reasons stated above, NLA urges the issuance of a 2-year exemption from the current July 16, 2027, compliance date of the final Lime Rule *National Emission Standards for Hazardous Air Pollutants: Lime Manufacturing Plants Technology Review* (the "Lime Rule"), published in the *Federal Register* at 89 Fed. Reg. 57,738 (July 16, 2024), extending the compliance date to July 16, 2029, pending EPA's review of the rule for possible revision. Attached is a list of all the major sources in the lime industry that require a two-year extension of the compliance date.

---

[6] *See, e.g., Pennsylvania Governor Wolf's Listing of Life-Sustaining Businesses*, (Including Lime)(March 24, 2020). PA-List-of-Life-Sustaining-Businesses-Updated.pdf.

ED_021114A_00008586-00009

If EPA requires any further information to support this request, or requires information in a different format, please contact NLA staff members Hunter Prillaman (hprillaman@lime.org) or Bradford Frisby (bfrisby@lime.org) and we will promptly supply additional information.

Respectfully submitted,



William C. Herz

Executive Director
National Lime Association

ED_021114A_00008586-00010

List of Major Sources Operated by NLA Members

NLA Company	NLA Plant	Street Address	City	County	ST	ZIP
CARMEUSE	ANNVILLE OPERATION	3 CLEAR SPRING RD	ANNVILLE	LEBANON	PA	17003
CARMEUSE	BLACK RIVER OPERATION	9043 HWY 154	BUTLER	PENDLETON	KY	41006
CARMEUSE	BUFFINGTON OPERATION	1 NORTH CARMEUSE LN	GARY	LAKE	IN	46406
CARMEUSE	GRAND RIVER OPERATION	15 WILLIAMS ST	GRAND RIVER	LAKE	OH	44045
CARMEUSE	LONGVIEW OPERATION	599 HWY 31 S	SAGINAW	SHELBY	AL	35137
CARMEUSE	MAPLE GROVE OPERATION	1967 COUNTY RD 42	BETTSVILLE	SENECA	OH	44815
CARMEUSE	MAYSVILLE OPERATION	9222 SPRINGDALE RD	MAYSVILLE	MASON	KY	41056
CARMEUSE	RIVER ROUGE OPERATION	25 MARION AVE	RIVER ROUGE	WAYNE	MI	48218
CARMEUSE	MANITOWOC OPERATION	4110 ROCKWOOD RD	MANITOWOC	MANITOWOC	WI	54220
CARMEUSE	O-N MINERALS (CHEMSTONE) COMPANY	1696 ORADNA ROAD	STRASBURG	SHENDANDOAH	VA	22657
GRAYMONT	CRICKET MOUNTAIN	32 MILES S.W. OF DELTA HWY. 257	DELTA	MILLARD	UT	84624
GRAYMONT	EDEN	N4520 COUNTY ROAD V	EDEN	FOND DU LAC	WI	53019
GRAYMONT	GREEN BAY	137 JAMES ST	GREEN BAY	BROWN	WI	54303
GRAYMONT	PLEASANT GAP	375 GRAYMONT ROAD	BELLEFONTE	CENTRE	PA	16823
GRAYMONT	PORT INLAND	181W COUNTY RD 432	GULLIVER	SCHOOLCRAFT	MI	49840

NLA Company	NLA Plant	Street Address	City	County	ST	ZIP
GRAYMONT	SUPERIOR	800 HILL AVENUE	SUPERIOR	DOUGLAS	WI	54880
GREER	RIVERTON	1088 GERMAN VALLEY LIMESTONE RD	RIVERTON	PENDLETON	WV	26814
LHOIST	APEX	12101 HWY 91	NORTH LAS VEGAS	CLARK	NV	89165
LHOIST	KIMBALLTON	2093 BIG STONY CREEK RD	RIPPLEMEAD	GILES	VA	24150
LHOIST	MONTEVALLO	7444 HWY 25 S	MONTEVALLO	SHELBY	AL	35040
LHOIST	NELSON	2.5 MILES S OF MILE 112 RTE 66	PEACH SPRINGS	YAVAPAI	AZ	86434
LHOIST	O'NEAL	2885 HWY 31 S	CALERA	SHELBY	AL	35040
LHOIST	STE. GENEVIEVE	20947 WHITE SANDS RD	SAINTE GENEVIEVE	STE GENEVIEVE	MO	63670
MARTIN MARIETTA	WOODVILLE	755 LIME RD	WOODVILLE	SANDUSKY	OH	43469
MLC	STE. GENEVIEVE	16147 US HWY 61	SAINTE GENEVIEVE	STE. GENEVIEVE	MO	63670
PETE LIEN	JONATHON	445 JONATHON QUARRY HAUL ROAD	LARAMIE	ALBANY	WY	82072
PETE LIEN	RAPID CITY COMPLEX	3613 UNIVERSAL DR	RAPID CITY	PENNINGTON	SD	57702
RHI MAGNESITA	YORK	320 N BAKER RD	YORK	YORK	PA	17408

Carmeuse Americas
11 Stanwix Street, 21st Floor • Pittsburgh, PA 15222
Phone: 412.995.5500 • Fax: 412.995.5570
info@carmeuse.com

March 26, 2025

Mr. William C. Herz, Executive Director
National Lime Association
200 North Glebe Road, Suite 800
Arlington, Virginia 22203

Dear Bill,

As the authorized representative of Carmeuse Americas and its affiliates, I hereby authorize the National Lime Association (NLA) to submit a request on our behalf for a two-year presidential exemption of our major source lime plants pursuant to Clean Air Act § 112(i)(4) from the requirements of the final rule titled: "National Emission Standards for Hazardous Air Pollutants: Lime Manufacturing Plants Technology Review" (89 FR 57738; July 16, 2024) (Lime Rule). Such exemption, if granted, would extend the compliance date from July 16, 2027 to July 16, 2029, while EPA reconsiders the Lime Rule.

The facilities in this request include the following major source lime plants owned and controlled by Carmeuse Americas and its affiliates:

1. Annville, Carmeuse Lime, Inc., 3 Clear Spring Road, Annville, PA 17003
2. Black River, Carmeuse Lime & Stone, Inc., 9043 Highway 154, Butler, KY 41006
3. Buffington, Carmeuse Lime, Inc., 1 N. Carmeuse Dr., Gary, IN 46402
4. Grand River, Carmeuse Lime, Inc., 15 Williams St., Grand River, OH 44045
5. Longview, Carmeuse Lime & Stone, Inc., 599 Highway 31 South, Saginaw, AL 35137
6. Maple Grove, Carmeuse Lime, Inc., 1967 W. County Road #42, Maple Grove, OH 44815
7. Maysville, Carmeuse Lime & Stone, Inc., 9222 Springdale Rd., Maysville, KY 41056
8. River Rouge, Carmeuse Lime, Inc., 25 Marion Ave., River Rouge, MI 48218
9. Manitowoc, Carmeuse Lime, Inc., 4110 Rockwood Road, Manitowoc, WI 54220
10. Strasburg, O-N Minerals (Chemstone) Company, 1696 Oranda Road, Strasburg, VA 22657

The emissions standards subject to this exemption include hazardous air pollutant (HAP) standards for hydrogen chloride, mercury, organics, and dioxins & furans.

NLA will provide the agency with additional information on why the technology to implement the standard is not available and why it is in the national security interests of the United States to grant the exemption.

Sincerely,
DocuSigned by:
Frudenberg Joseph
Joseph Frudenberg
Environmental Counsel

March 26, 2025

Mr. William C. Herz
Executive Director
National Lime Association
200 North Glebe Road
Suite 800
Arlington, Virginia 22203

Dear Bill,

As Vice-President, Corporate Affairs, Environment and Sustainability of the Graymont Lime Company, I hereby authorize the National Lime Association (NLA) to submit a request on our behalf for a two-year presidential exemption of our major source lime plants pursuant to Clean Air Act § 112(i)(4) from the requirements of the final rule titled: "National Emission Standards for
Hazardous Air Pollutants: Lime Manufacturing Plants Technology Review" (89 FR 57738; July 16, 2024) (Lime Rule). Such exemption, if granted, would extend the compliance date from July 16, 2027 to July 16, 2029, while EPA reconsiders the Lime Rule.

The facilities in this request include the following major source lime plants owned and controlled by Graymont Lime Company:

Cricket Mountain, UT

Port Inland, MI

Green Bay, WI

Eden, WI

Superior, WI

Pleasant Gap, PA

The emissions standards subject to this exemption include hazardous air pollutant (HAP) standards for hydrogen chloride, mercury, organics, and dioxins & furans.

NLA will provide the agency with additional information on why the technology to implement the standard is not available and why it is in the national security interests of the United States to grant the exemption.

Sincerely,

Matthieu Bouchard

Graymont Lime Company

GREER LIME COMPANY

a division of Greer Industries, Inc.

P.O. BOX 1900 • MORGANTOWN, WEST VIRGINIA 26507-1900
598 Canyon Road, Greer Mansion, Morgantown, WV 26508
PHONE: (304) 296-1751 • FAX: (304) 594-2158 • www.greerlime.com

March 25, 2025

Mr. William C. Herz
Executive Director
National Lime Association
200 North Glebe Road
Suite 800
Arlington, Virginia 22203

Dear Bill,

As Executive Vice President of Greer Industries, Inc. dba Greer Lime Company, I hereby authorize the National Lime Association (NLA) to submit a request on our behalf for a two-year presidential exemption of our major source lime plants pursuant to Clean Air Act § 112(i)(4) from the requirements of the final rule titled: "National Emission Standards for Hazardous Air Pollutants: Lime Manufacturing Plants Technology Review" (89 FR 57738; July 16, 2024) (Lime Rule). Such exemption, if granted, would extend the compliance date from July 16, 2027 to July 16, 2029, while EPA reconsiders the Lime Rule.

This request is for our single major source lime plant located in Riverton, Pendleton County, West Virginia.

The emissions standards subject to this exemption include hazardous air pollutant (HAP) standards for hydrogen chloride, mercury, organics, and dioxins & furans.

NLA will provide the agency with additional information on why the technology to implement the standard is not available and why it is in the national security interests of the United States to grant the exemption.

Sincerely,

J. Robert Gwynne

J. Robert Gwynne
Executive Vice President
Greer Industries, Inc.

ISO 9001:2015 CERTIFIED COMPANY
PRI Certification

NSF

Lhoist

March 26, 2025

Mr. William C. Herz
Executive Director
National Lime Association
200 North Glebe Road
Suite 800
Arlington, Virginia 22203

Dear Mr. Herz,

As Chief Executive Officer of Lhoist North America, I hereby authorize the National Lime Association (NLA) to submit a request on our behalf for a two-year presidential exemption of our major source lime plants pursuant to Clean Air Act § 112(i)(4) from the requirements of the final rule titled: "National Emission Standards for Hazardous Air Pollutants: Lime Manufacturing Plants Technology Review" (89 FR 57738; July 16, 2024) (Lime Rule). Such exemption, if granted, would extend the compliance date from July 16, 2027 to July 16, 2029, while EPA reconsiders the Lime Rule.

The facilities in this request include the following major source lime plants owned and controlled by Lhoist North America:

Montevallo Plant (FRS ID: 110041200642)

O'Neal Plant (FRS ID: 110008056584)

Ste. Genevieve Plant (FRS ID: 110018008378)

Kimballton Plant (FRS ID: 110020671450)

Apex Plant (FRS ID: 110043816074)

Nelson Plant (FRS ID: 110008061453)

The emissions standards subject to this exemption include hazardous air pollutant (HAP) standards for hydrogen chloride, mercury, organics, and dioxins & furans.

NLA will provide the agency with additional information on why the technology to implement the standard is not available and why it is in the national security interests of the United States to grant the exemption.

Sincerely,

Philipp Niemann
Chief Executive Officer
Lhoist North America

Martin Marietta
Magnesia Specialties

Bradley D. Kohn
Vice President and Secretary

March 26, 2025

Mr. William C. Herz
Executive Director
National Lime Association
200 North Glebe Road
Suite 800
Arlington, Virginia 22203

Dear Mr. Herz,

As Vice President and Secretary of Martin Marietta Magnesia Specialties, LLC, I hereby authorize the National Lime Association (NLA) to submit a request on our behalf for a two-year presidential exemption of our major source lime plants pursuant to Clean Air Act § 112(i)(4) from the requirements of the final rule titled: "National Emission Standards for Hazardous Air Pollutants: Lime Manufacturing Plants Technology Review" (89 FR 57738; July 16, 2024) (Lime Rule). Such exemption, if granted, would extend the compliance date from July 16, 2027, to July 16, 2029, while EPA reconsiders the Lime Rule.

The facilities in this request include the following major source lime plants owned and controlled by Martin Marietta Magnesia Specialties, LLC: those certain lime production facilities located at 755 Lime Road Woodville, Ohio 43469.

The emissions standards subject to this exemption include hazardous air pollutant (HAP) standards for hydrogen chloride, mercury, organics, and dioxins & furans.

NLA will provide the agency with additional information on why the technology to implement the standard is not available and why it is in the national security interests of the United States to grant the exemption.

Sincerely,

Bradley D. Kohn

4123 Parklake Avenue, Raleigh, North Carolina 27612
(919) 788-4321 (314) 489-3446
brad.kohn@martinmarietta.com

March 26, 2025

Mr. William C. Herz
Executive Director
National Lime Association
200 North Glebe Road
Suite 800
Arlington, Virginia 22203

Dear Bill,

As Chief Operating Officer of MLC (Mississippi Lime Company, LLC d/b/a MLC), I hereby authorize the National Lime Association (NLA) to submit a request on our behalf for a two-year presidential exemption of our major source lime plant pursuant to Clean Air Act § 112(i)(4) from the requirements of the final rule titled: "National Emission Standards for Hazardous Air Pollutants: Lime Manufacturing Plants Technology Review" (89 FR 57738; July 16, 2024) (Lime Rule). Such exemption, if granted, would extend the compliance date from July 16, 2027 to July 16, 2029, while EPA reconsiders the Lime Rule.

The facility in this request is MLC's major source lime plant in Ste. Genevieve, Missouri, which is owned and controlled by MLC.

The emissions standards subject to this exemption include hazardous air pollutant (HAP) standards for hydrogen chloride, mercury, organics, and dioxins & furans.

NLA will provide the agency with additional information on why the technology to implement the standard is not available and why it is in the national security interests of the United States to grant the exemption.

Sincerely,



Paul Hogan
Chief Executive Officer
MLC

PETE

MAILING ADDRESS: P.O. BOX 440 RAPID CITY, SD 57709-0440 PH. 605-342-7224
PHYSICAL ADDRESS: 3401 UNIVERSAL DR. RAPID CITY, SD 57702 FX. 605-342-6979

IEN

& SONS, INC.

March 26, 2025

Mr. William C. Herz
Executive Director
National Lime Association
200 North Glebe Road
Suite 800
Arlington, Virginia 22203

Dear Bill,

As Chief Operating Officer of Pete Lien & Sons, Inc., I hereby authorize the National Lime Association (NLA) to submit a request on our behalf for a two-year presidential exemption of our major source lime plants pursuant to Clean Air Act § 112(i)(4) from the requirements of the final rule titled: "National Emission Standards for Hazardous Air Pollutants: Lime Manufacturing Plants Technology Review" (89 FR 57738; July 16, 2024) (Lime Rule). Such exemption, if granted, would extend the compliance date from July 16, 2027 to July 16, 2029, while EPA reconsiders the Lime Rule.

The facilities in this request include the following major source lime plants owned and controlled by Pete Lien & Sons, Inc.:

- Rapid City Lime Plant; 3615 Universal Drive, Rapid City, SD, 57702
- Jonathon Lime Plant; 445 Jonathon Quarry Haul Road, Laramie, WY, 82072

The emissions standards subject to this exemption include hazardous air pollutant (HAP) standards for hydrogen chloride, mercury, organics, and dioxins & furans.

NLA will provide the agency with additional information on why the technology to implement the standard is not available and why it is in the national security interests of the United States to grant the exemption.

Sincerely,

Brian Tideman
Chief Operating Officer
Pete Lien & Sons, Inc.
605-342-7224

RHI MAGNESITA

Magnesita Refractories Company
425 S. Salem Church Road
York, PA 17408
www.rhimagnesita.com

March 26, 2025

Mr. William C. Herz
Executive Director
National Lime Association
200 North Glebe Road
Suite 800
Arlington, Virginia 22203

Dear Bill,

As General Counsel and Secretary of Magnesita Refractories Company, I hereby authorize the National Lime Association (NLA) to submit a request on our behalf for a two-year presidential exemption of our major source lime plants pursuant to Clean Air Act § 112(i)(4) from the requirements of the final rule titled: "National Emission Standards for Hazardous Air Pollutants: Lime Manufacturing Plants Technology Review" (89 FR 57738; July 16, 2024) (Lime Rule). Such exemption, if granted, would extend the compliance date from July 16, 2027 to July 16, 2029, while EPA reconsiders the Lime Rule.

The facilities in this request include the following major source lime plants owned and controlled by Magnesita Refractories Company:

York Plant
425 S. Salem Church Road
York, PA 17408

The emissions standards subject to this exemption include hazardous air pollutant (HAP) standards for hydrogen chloride, mercury, organics, and dioxins & furans.
NLA will provide the agency with additional information on why the technology to implement the standard is not available and why it is in the national security interests of the United States to grant the exemption.

Sincerely,

Mark Plantan
General Counsel and Secretary
Magnesita Refractories Company
RHI Magnesita

Lhoist

March 26, 2025

Mr. Lee Zeldin
EPA Administrator
1200 Pennsylvania Avenue, N.W.
Washington, DC 20460

Sent Via Email: airaction@epa.gov

Subject: Request For Presidential Exemption – New Sources

Dear Mr. Zeldin,

Pursuant to Section 112(i)(4) of the Clean Air Act (CAA), Lhoist North America (LNA) hereby requests and recommends that the President issue a two-year exemption from the emissions standards promulgated in the final rule *National Emission Standards for Hazardous Air Pollutants: Lime Manufacturing Plants Technology Review* (the "Lime Rule"), published in the *Federal Register* at 89 Fed. Reg. 57,738 (July 16, 2024).

The National Lime Association (NLA) submitted a similar request and recommendation which would extend the compliance deadline of the Lime Rule for existing sources from July 16, 2027 to July 16, 2029. LNA believes this exemption should be applied to all applicable sources and include both existing and new sources, as defined in the Lime Rule. LNA proposes that the two-year exemption be applied to new sources upon the date of startup, but not extend beyond July 16, 2029.

The Clifton Plant (FRS ID: 110013286595) is currently regulated as an Area Source of Hazardous Air Pollutants (HAPs). The Facility is expected to commence operation of two new lime kilns that are expected to make the Facility a Major Source of HAP. Without this Presidential exemption, the two new sources will become subject to the Major Source emission standards for hydrogen chloride, mercury, organics, and dioxins & furans upon startup.

NLA has provided EPA with supplemental information on why the technology to implement the standard is not available and why it is in the national security interests of the United States to grant the exemption. Regardless of if the source is defined as new or existing, the justification provided by NLA is the same and has been included with this letter.

Sincerely,

Philipp Niemann
Chief Executive Officer
Lhoist North America

Attached: NLA Request For Presidential Exemption

REQUEST FOR PRESIDENTIAL EXEMPTION: National Emission Standards for Hazardous Air Pollutants: Lime Manufacturing Plants Technology Review, EPA Docket No. OAR-2017-0015, RIN 2060-AV59, 89 Fed. Reg. 57,738: All Major Source Lime Manufacturing Facilities Listed on the Attached List

Pursuant to Section 112(i)(4) of the Clean Air Act ("CAA"), the National Lime Association ("NLA") hereby requests and recommends that the President issue a two-year exemption from the current July 16, 2027, compliance date of emissions standards promulgated in the final rule *National Emission Standards for Hazardous Air Pollutants: Lime Manufacturing Plants Technology Review* (the "Lime Rule"), published in the *Federal Register* at 89 Fed. Reg. 57,738 (July 16, 2024), extending the compliance date to July 16, 2029, for each lime plant subject to the rule, pending EPA's reconsideration of the rule. NLA members include all major source lime plants in the United States (except for one operated by a steel company, which will submit a separate request). NLA has submitted several rounds of extensive comments and scientific data and analysis on the EPA Lime Rule.

A list of all lime plants operated by NLA members that were considered major sources at the time the Lime Rule was promulgated is attached hereto. Also attached are letters from each NLA member company with such plants delegating authority to NLA to submit this request. NLA asks that the requested exemption be granted to each lime plant listed, because all are affected as explained below.

This statement explains why an exemption is appropriate for sources impacted by the Lime Rule, because, as specified in section 112(i)(4), the technology to implement such standard is not available and an exemption is in the national security interests of the United States.

PROCEDURAL BACKGROUND

On July 16, 2024, EPA promulgated the final Lime Rule, revising maximum achievable control technology ("MACT") standards for hydrogen chloride (HCl), mercury, organic hazardous air pollutants ("oHAP"), and dioxins/furans ("D/F"). EPA claimed that this action was taken in response to the D.C. Circuit's decision in *Louisiana Environmental Action Network v. EPA* ("*LEAN*"), 955 F.3d 1088 (D.C. Cir. 2020). NLA filed a petition for review of the final Lime Rule in the D.C. Circuit. The Court has ordered that case to be held in abeyance, with a motion to govern further proceedings due by April 28, 2025. NLA also filed a petition for reconsideration of the rule with EPA, which was denied by the Acting EPA Administrator in the waning days of the Biden Administration on January 10, 2025.

On March 12, 2025, EPA announced its intention to reconsider the Lime Rule, citing numerous issues with a group of rules establishing or modifying various National Emission Standards for Hazardous Air Pollutants (NESHAP). EPA further indicated that the President was considering issuing exemptions from compliance dates under Clean Air Act Section 112(i)(4) where appropriate, and that affected sources should provide recommendations for such exemptions to EPA by March 31, 2025.

REGULATORY BACKGROUND

EPA's regulation of hazardous air pollutants ("HAPs") from lime manufacturing started two decades ago when, in 2004, EPA promulgated the National Emission Standards for Hazardous Air Pollutants for Lime Manufacturing Plants. (40 CFR §§ 63.7080-7083.) In so doing, EPA noted that: "the purpose of the final NESHAP is to protect public health by reducing emissions of HAP from lime manufacturing plants." 69 Fed. Reg. 394, 395 (Jan. 5, 2004). EPA carefully evaluated the lime manufacturing sector and regulated HAP emissions by establishing a particulate matter ("PM") standard as a surrogate for non-volatile and semi-volatile metal HAPs. As part of this evaluation EPA addressed all four of the additional HAPs emitted by the lime industry: HCl, mercury, oHAP, and D/F. Based on this evaluation, EPA found that new regulations were not necessary for any of those additional HAPs based on the best available science. EPA's 2004 rule was not challenged by the lime industry or any environmental groups.

In 2020, EPA issued a final rule to fulfill its obligations under CAA sections 112(d)(6) and (f)(2), or the "risk and technology review" ("RTR"). Here, EPA found that "risks are acceptable and that the current NESHAP provides an ample margin of safety to protect public health" and therefore found that it was unnecessary to set standards for HCl, mercury, organics, or D/F, fulfilling its 112(f)(2) obligation. *National Emission Standards for Hazardous Air Pollutants: Lime Manufacturing Plants Residual Risk and Technology Review*, 85 Fed. Reg. 44960 (July 24, 2020). EPA further determined that "[t]here are no developments in practices, processes, or control technologies that necessitate revisions to the standards," Fulfilling its 112(d)(6) obligation. *Id.*

In the rulemaking process that led to EPA's 2024 Lime Rule, EPA performed a full risk assessment for all four pollutants (HCl, mercury, oHAP, and D/F), and yet again determined that emissions of all these pollutants from the lime industry presented an acceptable risk with an ample margin of safety, *without any additional controls*. NLA provided detailed comments explaining why EPA should decline to set new standards, or in the alternative, should set standards that were reasonable, less costly and more likely achievable by the industry. Nevertheless, EPA promulgated the final Lime Rule imposing onerous, unreasonable and extremely costly standards for all four of these pollutants. EPA's own regulatory impact analysis found that the rule would cost in excess of $2 billion for the lime industry, while the benefits are too negligible to monetize. This is because since even without additional controls risks are already acceptable with an ample margin of safety, the Lime Rule provides no benefits.

NLA strongly supports EPA's plan to reconsider this final regulation, for numerous legal and technical reasons previously raised in NLA's comments during the notice and comment period preceding the Lime Rule, in NLA's lawsuit, and in NLA's petition for reconsideration.

A. TECHNOLOGY TO IMPLEMENT THE LIME STANDARDS IS UNAVAILABLE

1. The Standards Cannot Be Implemented with Cost-Effective Technology

No *cost-effective* technology is available, or could be available, to implement the standards established in the Lime Rule. EPA estimates that the rule will cost the industry $2.4 billion over the next 20 years ($485 million in capital investment) or $175 million annually. (NLA's cost estimates are even higher: $924 million capital investment and $180 million annually.) As noted above, EPA's own risk assessment showed that even without controls, emissions from the industry presented an acceptable level of risk with an ample margin of safety. As a result, any costs expended to meet these standards are unreasonable, and, by definition, not cost-effective. This factor is particularly significant for small business sources that cannot spread compliance costs across multiple locations, and the U.S. Small Business Administration's Office of Advocacy raised serious concerns about the Lime Rule's feasibility and cost, leading EPA to reopen the rule for additional proceedings to address issues affecting small businesses.

2. Technology to Implement the Standard May Not Be Fully Available by the Current Compliance Date

Overall, EPA's candidate control technologies identified as necessary for lime kilns to comply with the rule will require significant research and development, pilot plant experimentation, and great expense (and uncertainty). Furthermore, the candidate technologies' application to achieve the very low levels of HAP emissions from lime kilns is far from demonstrated in practice and may not be achievable for many lime kilns.[1]

The standards promulgated by EPA will require major sources in the lime industry to make substantial capital expenditures, and to purchase and install major pieces of emissions treatment equipment at the same time numerous other industries will also be installing similar equipment. At present, lime plants are utilizing control technology to address PM as required in the original 2004 rule, but no lime plant in the United States is using any technology to control any of the four pollutants covered by the Lime Rule. All controls will have to be newly installed. These will require substantial physical changes to lime plants, including, as noted above, major capital expenditures.

In addition, sources will need to hire and train additional personnel to operate this equipment, and will need to retain outside experts, such as analytical laboratories and others, to comply with the standards. Some of the equipment that will be required to implement the standards will require permits from state and/or federal permitting authorities. The current compliance date, July 16, 2027, is a little over two years away, an extremely short period to marshal capital expenditures of $485 million for such a small industry. Furthermore, it would be unreasonable, and unfair, to require lime producers to begin expending substantial financial and other resources to prepare for compliance with the Lime Rule at a time when EPA intends to reconsider the rule.

---

[1] *See National Lime Association comments on EPA Lime Rule* EPA-HQ-OAR 2017-0015 (Feb. 21, 2023) at p. 59. NLA's comments are incorporated herein by reference.

ED_021114A_00008587-00004

Accordingly, even for technologies that theoretically exist and could potentially be installed at lime plants, the standard of unavailability in section 112(i)(4) is met due to the short time frame for compliance, and the two-year exemption is necessary.

3. EPA's Rulemaking Standard Does Not Establish That Standards in the Lime Rule Are Achievable with Available Technology

As noted above, EPA imposed standards requiring use of multiple control technologies, despite the fact that none of these technologies were in use at any U.S. lime plant as EPA developed its rule. This means that the efficacy of these technologies in actual lime plants is speculative, and will need significant testing and piloting before compliance can be assured, and in some cases there is serious doubt about whether compliance is possible at all. The record is thus insufficient to demonstrate that these technologies are available to implement the standards. Issues specific to the four HAPs are outlined below.

Dioxins/Furans (D/F)

The extremely low standard set by EPA for D/F was based on a single test, because the agency rejected other available test results for technical reasons. EPA also rejected NLA's assertion that additional data would be needed to set a valid standard. The standard—based on a multiple of the extremely low detection limit for D/F—will be very difficult for lime plants to meet consistently with any existing technology, and some plants believe that it will be impossible to guarantee compliance because the generation of D/F at very low levels can vary significantly. EPA set the D/F standard at the lowest level its policies allow such a standard to be set. EPA rejected NLA's requests for a reasonable work practice standard or for an alternative compliance method.

Activated Carbon Injection (ACI) was identified by EPA as the technology to control D/F emissions. There are numerous known challenges to using ACI to control D/F in lime kilns, especially with the extremely low limits set in the standard. Notably, no current lime kiln is using ACI technology to control D/F, so there will be additional challenges that will appear.

ACI is known to exhibit reduced effectiveness at temperatures above 350 degrees F. Most lime kilns operate at temperatures higher than 450 degrees F. To address this issue, cooling of kiln gases would be required, with unpredictable effects (although it is expected that this cooling would place additional strain on the kiln system and reduce lime production). In addition, cooling kiln gases to reduce D/F emissions may complicate addressing other HAP standards.

D/F control effectiveness is also influenced by the relative concentration of the type of D/F in the flue gas stream. In a lime kiln, formation of the D/F species is complex and is influenced by temperature profile, residence time at critical temperatures, presence of chloride ions and aromatic organics as precursors. A detailed, lengthy and costly program of stack testing would be needed for each lime kiln to define the ACI rate and required gas stream temperature for control to determine if ACI would be feasible. Also, the extremely low concentrations of D/F known to be present in lime kiln exhaust gas makes effective ACI control even more challenging and problematic.

ED_021114A_00008587-00005

EPA relied, in part, on information from Portland cement kilns for its evaluation of ACI for use in lime kilns. However, the MACT limit for cement kilns is roughly 10 times higher than the limit EPA set for lime kilns, so it is unclear if results in cement kilns can accurately predict efficacy in meeting the much lower lime D/F standard for the lime industry.

EPA's finding that the extremely low D/F standards it set are achievable for the lime industry using untested ACI technology was unreasonable, and thus the technology should be deemed unavailable.

Organic Hazardous Air Pollutant (oHAP) Emissions

EPA has also set an extremely low standard for oHAPs. Emission of these pollutants can vary widely, even in a single kiln, due to differences in the raw materials and fuels used. Even with very low emissions—and acceptable risk with an ample margin of safety—an unusual "spike" of one organic material could cause exceedance of the oHAP standard even when treatment technology is in use.

Regenerative Thermal Oxidation (RTO) is the control technology that EPA states would be used to control oHAP emissions. RTOs have not been installed on any lime kiln for oHAP control. RTOs have multiple technical issues which make their use impractical and technically infeasible. For example, sulfur dioxide (SO_2) in the kiln exhaust will need to be removed by a wet scrubber to prevent oxidation of SO_2 to SO_3 in the RTO combustion chamber and creating acid mist and visible emissions. Most lime kilns do not currently utilize a wet scrubber.

The normal maximum RTO operating temperature is between 1600 and 1700 degrees F. Thus, the flue gas from a lime kiln will need to be reheated following the cooling gas treatment for D/F described above. Given the need to scrub the exhaust gas to remove SO_2 before the RTO, a large amount of clean fossil fuel energy (e.g., natural gas) will be required to reach the RTO minimum operating temperatures. Many lime plants may have insufficient or unavailable supplies of natural gas to support the use of an RTO. This will require adding infrastructure at additional and substantial cost. In some cases, new natural gas pipelines would need to be constructed, and easements obtained to bring the fuel to the lime plant across private or public lands or national forests. An RTO will also require additional power demand and infrastructure that may not be available at a given lime plant. An RTO will also require permitting.

Thus, at present, it has not been established that effective technology is available to implement the standards EPA set for oHAPs.

Hydrogen Chloride (HCl)

To treat HCl, EPA finds that lime plants will need to use dry sorbent injection (DSI), in which lime product is injected into the kiln gases to remove HCl. While this technology has been used in other industries to treat HCl, prior to EPA's final rule it was not in use in the United States at any lime kiln. This means that EPA's projections of the feasibility and costs of using

ED_021114A_00008587-00006

this technology were not based on data from lime kilns, and thus are speculative.[2] Accordingly, even though DSI can theoretically be installed at lime plants to control HCl, the parameters and efficacy of that application are unknown until actual testing is done. This will take a significant amount of time, and thus it is unknown if this technology can be consistently installed at lime plants and successfully achieve the HCl standards before the current compliance date. Thus, this technology should be deemed currently unavailable.

In its comments submitted to EPA, with support from its technical consultants, NLA identified numerous technical problems with EPA's prediction of the efficacy of DSI for control of HCl in lime kilns. For example, EPA assumed an unreasonably high control efficiency for this technology (98%), whereas NLA's consultants project control efficiency as likely less than 90%. Many lime kilns may require redesign of ducting and/or relocation of the existing PM control devices (at great expense) to attempt to reach reasonable control efficiencies. Injection of a sorbent may interfere with lime plants' ability to meet the existing PM standard, and thus may require replacement of existing PM control equipment resulting in increased costs and additional technical challenges above that estimated by EPA.

Mercury

As with D/F, the technology identified by EPA for treatment of mercury is ACI. As with all the technologies addressed here, ACI has not been used at lime plants in the United States to treat mercury. Once again, EPA's projections of the feasibility and costs of using this technology were not based on data from lime kilns, and thus are speculative. With mercury, an added challenge is that the same technology is to be used to treat both mercury and D/F, and testing will be required to make sure that parameters can be set so that both standards are met in the same device. Again, this will require extensive testing, to be carried out in equipment that currently does not exist.

NLA's comments cited additional technical issues with treatment of mercury in lime kilns with ACI. For example, the absorption mechanisms differ between the elemental or oxidized form of mercury. Each kiln would need to be studied for the form(s) of mercury in the exhaust to determine potential control alternatives. Activated carbon can be used for capture of the elemental form of mercury whereas brominated carbon is used for capture of ionic form. Brominated carbons are significantly more expensive. In addition, specific conditions in each kiln can significantly affect ACI's effectiveness, including the presence of water vapor or sulfur dioxide, requiring adjustment of injection rates.

Testing to determine how to treat mercury in each lime kiln will take a significant amount of time, and thus it is unknown if this technology can be consistently installed at lime plants and

[2] In its comments on EPA's proposed rule, NLA pointed out that EPA should not attempt to set MACT floor standards where no sources were actually controlling for the pollutant in question, because where no sources are controlling, it is nonsensical to refer to the "best performers." The speculative nature of EPA's technology predictions adds focus to this issue.

ED_021114A_00008587-00007

successfully achieve the mercury standards before the current compliance date. Thus, this technology should be deemed currently unavailable.

Overall, EPA's candidate control technologies identified as necessary for lime kilns to comply with the Proposed Rule will require significant research and development, pilot plant experimentation, and great expense (and uncertainty). Furthermore, their application to achieve the very low levels of HAP emissions from lime kilns is far from demonstrated in practice and may not be achievable for many lime kilns. Accordingly, a two-year extension of time for compliance is clearly appropriate for all affected sources in the lime industry. For additional information on issues with control technologies in the lime industry, *see Appendix A of the National Lime Association comments on EPA Lime Rule,* EPA-HQ-OAR 2017-0015 (Feb. 21, 2023).

4. The Technologies That Would Be Required Under the Rule Will Cause More Environmental Harm Than Benefit

As noted above, EPA found that to comply with the standards for organic HAPs some sources would need to install RTOs. These units require substantial energy to operate, normally provided by natural gas. Combustion of gas in these units will generate many tons of carbon dioxide and other greenhouse gases, as well as NOx and carbon monoxide that would be released into the atmosphere. In addition, any natural gas unnecessarily consumed in this process would be a wasted resource that could have been used for another beneficial purpose such as heating homes, producing cleaner electricity, or storage for future use. Since EPA's risk assessment shows that use of these devices is not necessary to address any unacceptable risk, their operation will result in more potential harm to the environment than benefit.

The treatment technology that will be needed to address D/F and mercury is ACI. Use of this technology is likely to result in carbon residues appearing in lime kiln dust, which is a byproduct of lime manufacturing, and which is typically sold in commerce. The presence of carbon residues in this material may render it unusable and thus unsalable, increasing the amount of solid waste that would require disposal. Again, this constitutes unnecessary harm to the environment.

To control HCl, EPA finds that lime plants will need to use DSI, in which lime product is injected into the kiln gases—wasting that product. Lime is a valuable resource that can be used for many environmentally beneficial purposes. But EPA's rule would force lime companies to use significant amounts of their own product to reduce HCl emissions that EPA has twice found to pose acceptable risk with an ample margin of safety. Instead of using that lime for unneeded HCl emissions reductions, that same lime could be used to make other much more significant environmental improvements. For example, lime is used to scrub sulfur dioxide emissions, to treat drinking water, to treat acid mine drainage, and in many other applications.

EPA's own analysis acknowledged that the imposition of new emissions standards will result in secondary impacts from projected controls required for compliance. EPA expects lime plants to use 1.12 million additional gallons of water per year to address HCl controls with wet packed tower gas absorbers ("WPTGAs"). EPA predicts that solid waste from WPTGAs, Dry Sorbent Injection, and Activated Carbon Injection will increase solid waste by 13,400 tons per

ED_021114A_00008587-00008

year. And finally, EPA states that all types of pollution controls installed under the rule (including WPTGAs, Dry Sorbent Injection; Regenerative Thermal Oxidizers; Activated Carbon Injection; and Heat Exchangers) will collectively use an additional 696 ***billion*** Btu's of energy annually. This wasteful use of natural resources is an environmental harm.

NLA believes that a technology should not be considered "available" if its use would cause more harm to the environment that the benefits it would confer.

For all the reasons stated above, none of the technologies identified to implement standards in the Lime Rule are available within the period between the present and the compliance date of July 16, 2027, and an exemption should be granted extending the compliance date until July 16, 2029, to all the sources on the attached list, while EPA reconsiders the rule.

B. IT IS IN THE NATIONAL SECURITY INTERESTS OF THE UNITED STATES TO PROVIDE AN EXEMPTION FROM THE LIME RULE COMPLIANCE DATE

EPA's Lime Rule, if implemented, would both increase the cost of lime, and restrict the availability of lime products. This would have a negative impact on multiple other industries and activities, harming the national security interests of the United States.

The U.S. Geological Survey has noted that the major markets for lime, in descending order of consumption are "steelmaking, chemical and industrial applications (such as the manufacture of fertilizer, glass, paper and pulp, and precipitated calcium carbonate, and in sugar refining), flue gas treatment, construction, water treatment, and nonferrous-metal mining." These are all essential industries.

For steel production lime is used as a flux and slagging agent to remove impurities. The steel industry accounts for approximately 30% of all lime sold or used in the United States. Lime is also used in nonferrous metallurgy, such as in the production or recovery of copper, zinc, alumina, magnesia, uranium, nickel, gold, and silver. Lime is also used widely in construction, including in the building of roads and airports.

Lime is used across the United States to treat drinking water, and to treat sewage. Lime is an essential element in the production of numerous materials that would be needed in the course of any medical crisis, such as paper products (including toilet paper), as well as latex and glass products used in medical applications. Lime products are also used in the production of animal feed, food and medicinal products (antacids, stabilizers, vitamins, etc.).

During the COVID-19 pandemic, many state governors issued emergency orders instructing industrial plants to shut down operations to control the spread of the virus. Lime plants were routinely exempted from these emergency state orders because lime is considered essential to public health and welfare due to its use in ensuring adequate supplies of clean

ED_021114A_00008587-00009

drinking water, wastewater treatment, and addressing acid mine drainage in rivers and streams.[3] In addition, there was a recognition that lime was an essential ingredient for a variety of critical uses, including manufacture of metal, paper, and chemical products, animal feed, pollution control, road construction, and stabilization of earthen dams. Lime products are typically not stored or stockpiled for a long period of time, with most of the industry practicing on demand production and delivery. If lime production were to be disrupted, stocks of lime for the uses mentioned above would be rapidly depleted, in some cases in a matter of days.

More details on the essential uses of lime can be found in U.S. Geological Survey documents at https://pubs.usgs.gov/myb/vol1/2019/myb1-2019-lime.pdf.

Accordingly, the Lime Rule implicates national security interests because lime products are essential to an array of essential industries and activities, including steelmaking, clean drinking water, and many others.

For all the reasons stated above, NLA urges the issuance of a 2-year exemption from the current July 16, 2027, compliance date of the final Lime Rule *National Emission Standards for Hazardous Air Pollutants: Lime Manufacturing Plants Technology Review* (the "Lime Rule"), published in the *Federal Register* at 89 Fed. Reg. 57,738 (July 16, 2024), extending the compliance date to July 16, 2029, pending EPA's review of the rule for possible revision. Attached is a list of all of the stationary sources in the lime industry that require a two-year extension of the compliance date.

Respectfully submitted,

William C. Herz
Executive Director
National Lime Association

[3] *See, e.g., Pennsylvania Governor Wolf's Listing of Life-Sustaining Businesses*, (Including Lime)(March 24, 2020). PA-List-of-Life-Sustaining-Businesses-Updated.pdf.

ED_021114A_00008587-00010

Panther Creek Power

Mr. Lee Zeldin, Administrator
US Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, DC 20460
Mail Code 1101A
airaction@epa.gov

Subject: Presidential Exemption: National Emissions Standards for Hazardous Air Pollutants: Coal- and Oil-Fired Electric Utility Steam Generating Units Review of the Residual Risk and Technology Review (89 FR 38508; May 7, 2024) (MATS Rule): Panther Creek Opr LLC/Nesquehoning

Dear Administrator Zeldin;

In accordance with President Trump's offer to consider an exemption request on the pending changes to the MATs rule, we are providing information for your evaluation in granting an exemption and providing additional time for us to meet these requirements.

Rule related to the request

40 CFR Part 63 Subpart UUUUU – Effective Date July 6, 2027

Emission standards subject to the request

- 0.01 Lb/MMBtu of filterable particulate matter (PM) per million BTU heat input

Limitations subject to the request

- General requirement to use a PM CEMs or HAP metals CEMS
- Prohibition of using the LEE option for filterable PM or non-mercury HAP metals.

Facility and Affected Sources

Requesting Facility: Panther Creek Power Opr LLC/Nesquehoning

Affected Sources: Source 031 – Pyropower Unit 1, 032 – Pyropower Unit 2

Length of compliance period being requested: Delayed compliance until July 6, 2029

Justification for Exemption

Technology

The three issues are interrelated regarding the standard, the technology to implement it, and the option to use existing compliance methods for low emitting EGU's (LEE Units). As a first point of information, the pending 0.01 lb/MMBtu limit is likely technically feasible under the current compliance demonstration methods of a periodic Method 5 Performance Test, which consists of approximately 3-hours of testing as frequently as once per calendar quarter, or in the case of LEE units, once LEE status is demonstrated, once every 36 months. Ongoing compliance is demonstrated by opacity monitors in the stack.

The ability to meet an emission standard is based on the numerical limit of that standard, the reliability of the test method for that standard, and the frequency of the testing. In the case at hand the requirement to use a PM CEMs introduces a significant question of technical feasibility to meet the more restrictive standard on a continuous basis. PM CEMS do not measure PM directly but use methods such as light scatter or beta attenuation to estimate the PM concentration. Many of these device's outputs are adversely affected by particle size, density, and shape changes. The output of the PM CEMS must be correlated to the particulate concentration in the stack by using the currently approved test Method (Method 5) and developing correlation curves to convert the PM CEMS output to an estimated concentration. Of all of EPA's specifications for continuous emission monitors, PS-11, the performance specification for these instruments, is the only one that uses correlation methods to derive an estimated emission concentration.

The issue of varying particle size, density, and shape changes, which affect the correlation on many types of PM CEMS, could have a great impact on coal-fired power plants burning waste coal, such as is the case with this request. Coal-refuse fired power plants combust a fuel supply that has great variation in fuel chemistry as different waste coal piles are reclaimed and used for fuel. This is a far different situation than in the case of conventional virgin coal-fired power plants which use a much more consistent fuel supply. PM CEMs have not been demonstrated to be technically feasible on coal-refuse power plants and thus the

technical feasibility of using these monitors nor the ability to meet the lower standard on a continuous basis with these types of monitors has been established to date as a technical matter.

Furthermore, there are no technically feasible add-on control devices that can be employed on these units, beyond those currently in use, that could provide additional controls to further reduce emissions should the new requirements for monitoring show an inability to comply with the reduced emission standard based on the new monitoring requirements.

Most importantly, based on EPA's own analysis, the reduced PM standard was not implemented for any reasons of health impact or risk[1], but simply because EPA determined, in the Residual Risk and Technology Review, (incorrectly we believe, at least as to the sources burning coal refuse), that the lower standard was promulgated to reflect "the control levels currently achieved by the vast majority of regulated units."[2]

As to the removal of the option to qualify as a LEE unit, the pending change to the regulation imposes a significant financial burden on the cleanest of the coal-fired units, removing an option for less frequent testing after showing that the emissions are one-third or less of the current standard.

National Security Interests of the United States

As President Trump has expressed on many occasions, reliable and cost-effective energy is in the national security interest of the United States. The entire United States is facing an unprecedented surge in energy demand, driven by the rapid expansion of data centers supporting artificial intelligence, widespread electrification of vehicles and heating systems, as well as demand from the new manufacturing industries that this Administration is promoting. At the same time, the energy landscape is undergoing a major transition, with many thermal and dispatchable generation units retiring while new capacity additions are largely dominated by intermittent renewable resources such as solar and wind projects, as well as short-term storage solutions based on battery storage systems.

PJM, the ISO in which this facility operates, has expressed concerns about the increasing load and decreasing generation in its region. PJM predicts that 40 GW of its existing supply, largely, thermal based generation will retire by 2030. The PJM Long Term Growth Forecast expects loads to increase by over 55 GW by 2035. Finally, PJM's reliability study assumes a

---

[1] [1] National Emission Standards for Hazardous Air Pollutants: Coal- and Oil-Fired Electric Utility Steam Generating Units Review of the Residual Risk and Technology Review, 89 Federal Register 38508.

[2] National Emission Standards for Hazardous Air Pollutants: Coal- and Oil-Fired Electric Utility Steam Generating Units Review of the Residual Risk and Technology Review, 89 Federal Register 38510

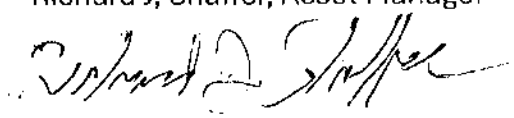
major contribution from offshore wind projects in New Jersey, an uncertain resource given the public's opposition to these projects.

The Trump Administration recognizes the urgent need for a balanced, reliable, and affordable power grid, as well as the need to rein in regulations that are not needed to protect public health. Granting of an extension for this facility will provide financial relief to allow a full evaluation of the technical and financial feasibility of the benefits and costs of the more restrictive regulations and allow our plant to continue to provide a dispatchable generation resource for the security of the United States and give us, and PJM more time to plan for the continued operation of this critical resource and continue to provide a stable energy supply for the PJM grid.

Thank you for your consideration in this matter.

Sincerely,

Richard J, Shaffer, Asset Manager



SCRUBGRASS RECLAMATION COMPANY LP

2151 Lisbon Rd
Kennerdell PA 16374
Phone: 814-385-6661 • Fax # 814-385-6704

Mr. Lee Zeldin, Administrator
US Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, DC 20460
Mail Code 1101A
airaction@epa.gov

Subject: Presidential Exemption: National Emissions Standards for Hazardous Air Pollutants: Coal- and Oil-Fired Electric Utility Steam Generating Units Review of the Residual Risk and Technology Review (89 FR 38508; May 7, 2024) (MATS Rule): Scrubgrass Reclamation Co LP

Dear Administrator Zeldin;

In accordance with President Trump's offer to consider an exemption request on the pending changes to the MATs rule, we are providing information for your evaluation in granting an exemption and providing additional time for us to meet these requirements.

Rule related to the request

40 CFR Part 63 Subpart UUUUU – Effective Date July 6, 2027

Emission standards subject to the request

- 0.01 Lb/MMBtu of filterable particulate matter (PM) per million BTU heat input

Limitations subject to the request

- General requirement to use a PM CEMs or HAP metals CEMS
- Prohibition of using the LEE option for filterable PM or non-mercury HAP metals.

Facility and Affected Sources

Requesting Facility: Scrubgrass Generating Plant/Venango

Affected Sources: Source 031 - #1 CFB Boiler, 032 #2 CFB Boiler

Length of compliance period being requested: Delayed compliance until July 6, 2029

SCRUBGRASS RECLAMATION COMPANY LP

2151 Lisbon Rd
Kennerdell PA 16374
Phone: 814-385-6661 • Fax # 814-385-6704

Justification for Exemption

Technology

The three issues are interrelated regarding the standard, the technology to implement it, and the option to use existing compliance methods for low emitting EGU's (LEE Units). As a first point of information, the pending 0.01 lb/MMBtu limit is likely technically feasible under the current compliance demonstration methods of a periodic Method 5 Performance Test, which consists of approximately 3-hours of testing as frequently as once per calendar quarter, or in the case of LEE units, once LEE status is demonstrated, once every 36 months. Ongoing compliance is demonstrated by opacity monitors in the stack.

The ability to meet an emission standard is based on the numerical limit of that standard, the reliability of the test method for that standard, and the frequency of the testing. In the case at hand the requirement to use a PM CEMs introduces a significant question of technical feasibility to meet the more restrictive standard on a continuous basis. PM CEMS do not measure PM directly but use methods such as light scatter or beta attenuation to estimate the PM concentration. Many of these device's outputs are adversely affected by particle size, density, and shape changes. The output of the PM CEMS must be correlated to the particulate concentration in the stack by using the currently approved test Method (Method 5) and developing correlation curves to convert the PM CEMS output to an estimated concentration. Of all of EPA's specifications for continuous emission monitors, PS-11, the performance specification for these instruments, is the only one that uses correlation methods to derive an estimated emission concentration.

The issue of varying particle size, density, and shape changes, which affect the correlation on many types of PM CEMS, could have a great impact on coal-fired power plants burning waste coal, such as is the case with this request. Coal-refuse fired power plants combust a fuel supply that has great variation in fuel chemistry as different waste coal piles are reclaimed and used for fuel. This is a far different situation than in the case of conventional virgin coal-fired power plants which use a much more consistent fuel supply. PM CEMs have not been demonstrated to be technically feasible on coal-refuse power plants and thus the technical feasibility of using these monitors nor the ability to meet the lower standard on a continuous basis with these types of monitors has been established to date as a technical matter.

Furthermore, there are no technically feasible add-on control devices that can be employed on these units, beyond those currently in use, that could provide additional controls to further reduce emissions should the new requirements for monitoring show an inability to comply with the reduced emission standard based on the new monitoring requirements.

Most importantly, based on EPA's own analysis, the reduced PM standard was not implemented for any reasons of health impact or risk[1], but simply because EPA determined, in the Residual Risk and

SCRUBGRASS RECLAMATION COMPANY LP

2151 Lisbon Rd
Kennerdell PA 16374
Phone: 814-385-6661 • Fax # 814-385-6704

Technology Review, (incorrectly we believe, at least as to the sources burning coal refuse), that the lower standard was promulgated to reflect "the control levels currently achieved by the vast majority of regulated units."[2]

As to the removal of the option to qualify as a LEE unit, the pending change to the regulation imposes a significant financial burden on the cleanest of the coal-fired units, removing an option for less frequent testing after showing that the emissions are one-third or less of the current standard.

National Security Interests of the United States

As President Trump has expressed on many occasions, reliable and cost-effective energy is in the national security interest of the United States. The entire United States is facing an unprecedented surge in energy demand, driven by the rapid expansion of data centers supporting artificial intelligence, widespread electrification of vehicles and heating systems, as well as demand from the new manufacturing industries that this Administration is promoting. At the same time, the energy landscape is undergoing a major transition, with many thermal and dispatchable generation units retiring while new capacity additions are largely dominated by intermittent renewable resources such as solar and wind projects, as well as short-term storage solutions based on battery storage systems.

PJM, the ISO in which this facility operates, has expressed concerns about the increasing load and decreasing generation in its region. PJM predicts that 40 GW of its existing supply, largely, thermal based generation will retire by 2030. The PJM Long Term Growth Forecast expects loads to increase by over 55 GW by 2035. Finally, PJM's reliability study assumes a major contribution from offshore wind projects in New Jersey, an uncertain resource given the public's opposition to these projects.

The Trump Administration recognizes the urgent need for a balanced, reliable, and affordable power grid, as well as the need to rein in regulations that are not needed to protect public health. Granting of an extension for this facility will provide financial relief to allow a full evaluation of the technical and financial feasibility of the benefits and costs of the more restrictive regulations and allow our plant to continue to provide a dispatchable generation resource for the security of the United States and give us, and PJM more time to plan for the continued operation of this critical resource and continue to provide a stable energy supply for the PJM grid. Thank you for your consideration in this matter.

Sincerely,

Richard J, Shaffer, Asset Manager

Richard J Shaffer

[1] [1] National Emission Standards for Hazardous Air Pollutants: Coal- and Oil-Fired Electric Utility Steam Generating Units Review of the Residual Risk and Technology Review, 89 Federal Register 38508.

[2] National Emission Standards for Hazardous Air Pollutants: Coal- and Oil-Fired Electric Utility Steam Generating Units Review of the Residual Risk and Technology Review, 89 Federal Register 38510

OLYMPUS
Power, LLC.

19 Headquarters Plaza, West Tower, 8th Floor, Morristown, NJ 07960
p. 973-889-0100 f. 973-889-0200
www.olympuspower.com

March 28, 2025

Mr. Lee Zeldin, Administrator
US Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, DC 20460
Mail Code 1101A
airaction@epa.gov

Subject: Presidential Exemption, National Emissions Standards for Hazardous Air Pollutants: Coal- and Oil-Fired Electric Utility Steam Generating Units Review of the Residual Risk and Technology Review (89 FR 38508; May 7, 2024) (MATS Rule), for Walleye Power, LLC Bay Shore Unit 1 located in Oregon, Ohio.

Dear Administrator Zeldin:

Olympus Power, LLC (Olympus) is writing to request a Presidential two-year exemption from the revised MATS rule Filterable Particulate Matter (FPM) emissions standard for Walleye Power, LLC Bay Shore Unit 1 (Bay Shore Unit 1). In the revised MATS rule for existing Solid oil-derived fuel compliance methodology for FPM was changed from:

- requiring filterable particulate matter source emissions testing using the average of three test runs, in accordance with Table 5 to Subpart UUUUU of Part 63 – Performance Testing Requirements, 1. Filterable Particulate matter (PM), Emissions Testing, to determine the emissions from the unit; to
- requiring the use of continuous filterable particulate matter continuous emissions monitoring system (FPM CEMS).

Requiring FPM CEMS as the compliance methodology also changes the compliance averaging period from testing once every three years as a Filterable Particulate Matter Low Emitting Electric Generating Unit (FPM LEE) to continuous monitoring, FPM CEMS. The abandonment of the methodologies specified in the current Title 40 Part 63, Subpart UUUUU changes the FPM limit in the revised rule to a far more stringent limit tan the numerical limit demonstrated using the methodologies contained in Table 5 to Subpart UUUUU of Part 63 –

Performance Testing Requirements, 1. Filterable Particulate matter (PM), Emissions Testing. This request is especially important because while the revised MATS rule is currently held in abeyance, it is not stayed.

The revised MATS rule also eliminates the category of Filterable Particulate Matter Low Emitting Electric Generating Unit (FPM LEE). The FPM LEE designation was contained in the original MATS rule as a "reward" for a unit consistently achieving emissions rates that were 50% or less during quarterly testing conducted over a three-year period. If the FPM LEE criteria were achieved by a unit, then the source emissions testing program frequency was changed from quarterly to once every three years. This construct relieved the generating units of costly (burdensome) testing obligations as a reward for consistently lower emissions. The new proposal discards that benefit and imposes new substantial costs. Contrary to EPA's justification of the change in requirement to FPM CEMS which used quarterly emissions testing which would have been required by non-FPM LEE units, the FPM LEEs were all conducting emissions testing once every three years. Consequently, the EPA grossly overestimates the cost of the current FPM emissions testing by representing quarterly emissions testing to inappropriately justify the extreme cost burden of the design, procurement, installation, certification, operation and quality assurance requirements of the FPM CEMS.

Bay Shore Unit 1 includes a circulating fluidized bed boiler and a fabric filter for collection of FPM. Importantly, fabric filters are the most effective device for the collection of FPM. In the case of Bay Shore Unit 1, the unit was designated as an FPM LEE using the test methods identified in Table 5 to Subpart UUUUU of Part 63 – Performance Testing Requirements, 1. Filterable Particulate matter (PM), Emissions Testing. Those are the test methods required by the original MATS Rule and not using FPM CEMS. FPM CMS requirements would make the numerical FPM emission limit much more stringent. Consequently, it is uncertain if Bay Shore Unit 1 will be able to continue to achieve the solid oil-derived fuel FPM emission limit on a continuous basis because a specified emission limit is not only dependent upon the numerical value of the limit but also upon the compliance demonstration method(s) and the averaging period of the limit.

At this time, it is unknown whether an additional technology could be added beyond the already existing fabric filter to ensure continuous compliance and accomplish whatever additional FPM emissions control might be necessary under the revised MATS FPM standard is even commercially available. Consequently, additional time is necessary to investigate, and if necessary, implement projects to discover, test and implement this unknown technology. Further, the cost of this unknown FPM control equipment that might be necessary is itself unknowable. This is an important point because Bay Shore Unit 1 is located in Ohio, a restructured electric generating market.

Ohio in the late 1990's restructured its electric market and consequently, electric generators in Ohio are merchant generators and are not guaranteed cost recovery or a return on investment to accomplish these projects at these facilities. Funding for these projects must be provided from private sources and these additional costs would have to be recovered in the

ED_021114A_00008590-00002

electric markets, which in the case of the PJM Regional Transmission Organization (PJM) is being manipulated by an agreement between the Governor of Pennsylvania and the PJM to impede the ability for electric generating sources to recover these costs that would be obligated by the revised MATS regulation.

Importantly, President Trump has identified that it is beyond dispute that a reliable and cost-effective electric grid is critical to the national security of the United States. Considering the substantial and unexpected increase in electricity demand growth, keeping the plant online will help to meet this national security objective. However, the issues relating to the ability of merchant generators to recover the costs that would be necessary to continuously achieve the revised FPM limit using the specified FPM CEMS to demonstrate compliance implicates the economic viability of Bay Shore Unit 1 and other merchant generators in a number of states with restructured electric generation threatening the reliability of various electric grids.

It is also noteworthy that PJM and the Midcontinent Independent System Operator (MISO) have highlighted several EPA regulatory processes that it believes have forced the early retirements of electric generating sources and impaired their viability at such an accelerated rate that there may not be adequate generating resources to serve future system demand. System reliability and resilience requirements are only exacerbated by the coming wave of new data centers which have high electricity demands. Regulations such as the new MATS Rule only serve to call the system wide reliability and resilience further into question.

Olympus appreciates the opportunity to make this request for a Presidential two-year exemption from the revised MATS rule FPM emissions standard for Bay Shore Unit 1. If there are any questions or additional information is required, please contact Vincent Brisini at vbrisini@olympuspower.com or Cody Magaan @cmagaan@bayshore-opo.com.

Respectfully submitted,

Vincent J. Brisini
Director of Environmental Affairs

cc: Sean P. Lane, Olympus Power, LLC
Todd Shirley, Olympus Power, LLC
Shawn Smith, Olympus Power, LLC
Frederick Kramer, Walleye Power, LLC – Bay Shore
Cody Magaan, Walleye Power, LLC – Bay Shore

ED_021114A_00008590-00003

wfec
western farmers
electric cooperative
3000 S Telephone Rd Moore, OK 73160 (405) 247-3351 www.wfec.com

VIA EMAIL (airaction@epa.gov)

March 28, 2025

Honorable Lee Zeldin
Office of the Administrator (1101A)
United States Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460
zeldin.lee@epa.gov

SUBJECT: PRESIDENTIAL EXEMPTION: NESHAP FOR COAL- AND OIL-FIRED ELECTRIC STEAM GENERATING UNITS (40 C.F.R. Part 63, SUBPART UUUUU)
HUGO GENERATING STATION, HU-UNIT1
WESTERN FARMERS ELECTRIC COOPERATIVE
PERMIT NUMBER: 2018-0201-TVR2
SECTION 21 T6S, R19E, CHOCTAW COUNTY, OK

Dear Administrator Zeldin:

Western Farmers Electric Cooperative ("WFEC") respectfully requests the United States Environmental Protection Agency ("EPA") grant WFEC Hugo Generating Station's HU-UNIT1 ("HU-UNIT1") a two-year exemption from compliance with the 0.010 lb/MMBtu filterable Particulate Matter (fPM) emission limitation in Table 2 of the National Emission Standards for Hazardous Air Pollutants ("NESHAP") for coal- and oil-fired electric utility steam generating units ("EGUs") — i.e., the Mercury and Air Toxics Standards ("MATS") ("Final Rule"), 89 Fed. Reg. 38,508 (May 7, 2024), codified at 40 C.F.R. Part 63, Subpart UUUUU. Compliance with the revised standard may only be met through installation and certification of a particulate matter continuous emissions monitoring system ("PM CEMS") based on a continuous 30-boiler operating day rolling average on or after July 6, 2027. It is WFEC's understanding that the two-year exemption from the 0.010 lb/MMBtu fPM emission limitation will also delay the requirement in 40 C.F.R. § 63.10000(c)(1)(iv)(B) to install and certify the PM CEMS and the requirement in 40 C.F.R. § 63.10007(c) to demonstrate continuous compliance with the applicable filterable PM emission standard through the use of a PM CEMS on or after July 8, 2027.

In order to grant this two-year extension request, EPA has asked affected sources to provide a justification to support this request, including:

1. An explanation why the technology to implement the standard is not available, and
2. An explanation why an extension is in the national security interests of the United States.

The following sections provide the justification for this extension request.

ED_021114A_00008591-00001

Background

WFEC is a generation and transmission cooperative that provides electric service to 21 member cooperatives, located primarily in Oklahoma and New Mexico, with some service areas extending into parts of Texas and Kansas. Through these cooperatives, WFEC provides service to nearly 717,000 customers through 340,000 meters. As an electric cooperative, WFEC operates on a not-for-profit basis and is Oklahoma's largest locally owned power supply system. WFEC's Hugo Generating Station is an approximately 446 MW coal-fired power station located near Hugo, Oklahoma, comprising one coal steam unit. WFEC is a member of the 14-state Southwest Power Pool ("SPP") integrated market, which serves more than 17.5 million people throughout the midwestern United States.

Item 1: Technology to Implement the Standard is Not Available

WFEC HU-UNIT1 complies with the current 0.030 lb/MMBtu fPM standard by conducting periodic stack testing. The stack testing is conducted at maximum achievable load conditions and does not reflect the full range of operational variability of the unit and control device. WFEC has no basis for determining how operational variability may impact compliance with the revised standard. WFEC requires additional time as allowed by the extension to assess the impact of operational variability on its ability to achieve continuous compliance with the revised limitation.

Achieving compliance with the Final Rule's requirements by 2027 is infeasible and impossible due to several challenges related to the availability of technology, including: (1) the lack of existing control technology capable of achieving the Final Rule's fPM emissions standard on a continuous basis, and (2) the inability of existing PM CEMS to measure fPM emissions at the level required by the Final Rule.

1. The Necessary Control Technology Is Not Available

There is no data to support a conclusion that HU-UNIT1 will be capable of meeting the 0.010 lb/MMBtu limit continuously across all operating conditions, as is required by the Final Rule. HU-UNIT1 employs state-of-the-art electrostatic precipitators ("ESPs") to comply with the current MATS standards, with compliance demonstrated through fPM stack testing conducted under prescribed "representative testing conditions."[1] While WFEC is proud to have demonstrated compliance with the current standard, this does not necessarily support a conclusion that HU-UNIT1 can achieve compliance with the revised standard, which must be demonstrated to be continuous across all operating conditions. The current compliance testing conditions do not include data across a unit's entire load range, since stack testing is conducted at maximum achievable load and excludes startups, shutdowns, maintenance, and malfunction events. Under EPA's Final Rule, the PM CEMS would capture fPM emissions during all operating conditions. EGUs' operational limitations could hinder the ability of some coal-fired EGUs to continuously comply with the fPM standard. Key factors include the following:

- *Peak conditions.* HU-UNIT1 will likely have difficulty continuously meeting the 0.010 lb/MMBtu limit during peak load conditions when maintenance and cleaning of the electrostatic precipitators ("ESPs") are minimized due to SPP's dispatch scheduling. Due to the changing SPP load requirements and grid conditions in the past two years, SPP has issued more resource advisories which has required HU-UNIT1 to operate at a higher capacity factor than in previous

[1] *See* EPA, *Memorandum re Issuance of the Clean Air Act National Stack Testing Guidance*, 14-17 (Apr. 27, 2009), https://www.epa.gov/sites/default/files/2013-09/documents/stacktesting_1.pdf (excluding start up, shutdown, malfunction, and other non-representative operating conditions).

years. It may be difficult to maintain optimal operation of the ESP during peak conditions unless there are additional outages scheduled for such maintenance, which may not always be feasible.

- *Coal characteristics*. The availability of coal is limited to certain regions and, as a result, the characteristics of coal vary depending on location. Ash content of the coal being fired may impact the ability of HU-UNIT1 to comply with the fPM limit, regardless of the effectiveness of the control technologies in place.[2]

EPA did not consider operational variability in establishing the revised limitation as will likely become apparent during EPA's reconsideration process. EPA purposely and selectively picked stack test data (representing only the maximum achievable load operation during discreet time periods) and established a revised limitation that applies during all operational periods outside of a prescriptive startup definition. EPA set a revised standard and an associated continuous compliance demonstration (via PM CEMS) that does not reflect operational variability of EGUs.

There is no data or other basis to conclude that continuous compliance is achievable for affected units based on currently available technology during all operational periods. By enforcing the current compliance deadline, EPA runs the risk of significantly restricting HU-UNIT1's operational flexibility and decreasing reliability of the unit.

Operational flexibility is critical for HU-UNIT1, which will likely be called on to operate by SPP based on fluctuations in demand, unexpected downtime of other units in the region, extreme weather, and other scenarios that are outside of WFEC's control. HU-UNIT1 might need to derate for a significant period of time or adjust HU-UNIT1's coal supply to comply with the proposed fPM limit on a continuous basis, creating additional reliability risks.

These operational challenges support the finding that technology is not currently available to continuously meet the Final Rule's fPM limit.

2. The Necessary Monitoring Technology Is Not Available

EPA failed to consider the practical accuracy limitations of the measurement techniques used as the basis of the revised standard. EPA relied upon a combination of stack test data (as discussed above) as well as existing PM CEMS data. Existing PM CEMS were subject to an allowable measurement error tolerance of ±25% of the current fPM emission standard of 0.030 lb/mmBtu. In other words, EPA relied on monitoring systems with an allowable measurement error of approximately ±0.0075 lb/MMBtu to establish the revised limitation of 0.010 lb/MMBtu. In short, WFEC has no data upon which to conclude that a commercially available PM CEMS can reliably measure emissions at HU-UNIT1 at the level of the revised standard.

EPA has recognized that PM CEMS presents technical challenges that may impact the feasibility of compliance by 2027. EPA agrees that "measuring very low and non-normal high fPM emissions can be

[2] *See* EPA AP-42, Fifth Edition, Vo. 1, Ch. 1.1, Table 1.1-6 "Cumulative Particle Size Distribution and Size-Specific Emission Factors for Dry Bottom Boilers Burning Pulverized Bituminous and Subbituminous Coal," at 1.1-26, https://www.epa.gov/sites/default/files/2020-09/documents/1.1_bituminous_and_subbituminous_coal_combustion.pdf (reflecting direct and linear relationship between ash content and controlled fPM emission).

challenging."[3] In developing the 2012 MATS Rules, EPA emphasized that PM CEMS may impose unique compliance challenges because their operation is site-specific and must be individually calibrated against an accepted reference test, where each PM CEMS must be tested multiple times against a wide range of PM emissions to determine the correlation between the CEMS output and the PM standard.[4] EPA has failed to show how correlation curves can be developed to produce data sets that are shown to be valid and repeatable at such low fPM emission levels. In the NESHAP for the Portland Cement Manufacturing Industry, 78 Fed. Reg. 10,006 (February 12, 2012), EPA changed the compliance basis for PM standards from continuous monitoring using a PM CEMS to stack testing or continuous parameter monitoring due to concerns raised over the low level of PM emissions and the technical feasibility of the PM CEMS equipment at the time. The same equipment is commercially available today, with no significant monitoring capability improvements.

Given these monitoring challenges, achieving compliance with the Final Rule's continuous monitoring requirements is infeasible. Other continuous monitoring methods to measure non-mercury hazardous air pollutant metals directly, such as non-mercury sorbent trap technology, are still being developed and are not currently available on the market.[5] In the absence of available technologies that can achieve the Final Rule's monitoring requirements for fPM emissions, EPA should grant a two-year compliance exemption.

Lastly, WFEC recommends that EPA take a broad approach in evaluating whether "technology to implement [a] standard is not available," pursuant to CAA Section 112(i)(4). While EPA has not identified specific circumstances that would support a finding that technology is unavailable, the Agency's prior related actions suggest that this finding should be treated liberally, based on a variety of circumstances related to supply chain issues and reliability challenges. For example, a 2025 Presidential Memorandum directed the EPA Administrator to consider "shortages of labor, parts, control technology supply, supply-chain disruption, or other factors out of the facility's control" as grounds supporting an exemption.[6]

As stated above, achieving compliance with the Final Rule's requirements by 2027 is infeasible due to several challenges related to the availability of technology, including: (1) the inability of existing PM CEMS to measure fPM emissions at the level required by the Final Rule; and (2) the lack of existing control technology capable of achieving the Final Rule's fPM emissions standard on a continuous basis.

Item 2: An Extension is in the National Security Interests of the United States

The reliability of the energy grid is critical to the national security interests of the United States. In establishing the revised standard, EPA failed to consider normal fluctuations in unit operations that are necessary to support the reliability of the nation's energy grid, to support future growth in demand, and to maintain fuel flexibility. HU-UNIT1would need to commit in excess of $5,000,000 in capital investments

[3] EPA, *Summary of Public Comments and Responses on Proposed Rule*, 58 (Apr. 2024), https://www.regulations.gov/document/EPA-HQ-OAR-2018-0794-6922.
[4] Memorandum from Conniesue Oldham, Group Leader, OAQPS/AQAD, to Bob Schell, Group Leader, OAQPS/SPPD, *Particulate Matter Continuous Emissions Monitoring System (PM CEMS) Capabilities*, 3 (Jun. 13, 2023), https://www.regulations.gov/document/EPA-HQ-OAR-2018-0794-5828.
[5] *See, e.g.*, EPRI, *Demonstration of Sorbent Traps for Continuous Measurement of Metal Hazards Air Pollutants (HAPS)* (Oct. 2024), https://msites.epri.com/spn/research/056617/demonstration-of-sorbent-traps-for-continuous-measurement-of-metal-hazards-air-pollutants-haps.
[6] *Memorandum on the Orderly Implementation of the Air Toxics Standards for Ethylene Oxide Commercial Sterilizers*, Section 2(b)(i) (Jan. 16, 2025).

to meet the 2027 standard or cease operation by that date, all while being faced with the uncertainty of other regulatory actions that are also being reconsidered.

As EPA recognized in a recent rulemaking, "several coal-based EGUs have already been considering retirement in 2028 (or earlier) under compliance pathways available under the Clean Water Act effluent guidelines and the coal combustion residuals rule under the Resource Conservation and Recovery Act."[7] The Final Rule may further disrupt these plans and risk capacity shortfalls until replacement generation can be procured. These early retirements will significantly impact grid reliability. Regional Transmission Organizations ("RTOs") and Independent System Operators ("ISOs"), such as SPP[8], have issued warnings about the adequacy of generation resources to meet peak demand situations.[9] The North American Electric Reliability Corporation ("NERC")'s 2024 Long-Term Reliability Assessment indicated that "[t]here are over 8 GW of coal and gas-fired generators that have indicated they plan to retire over the next 10 years in SPP," emphasizing that "[w]ithout sufficient dispatchable generation, SPP can experience energy shortages when output from wind resources is low."[10]

EPA has previously found that circumstances where "[g]eneration from the retiring unit is needed to maintain reliability while other units install emission controls" provide a reasonable basis for granting a one-year compliance extension for MATS.[11] There is significant overlap between the availability of a one-year compliance extension and circumstances supporting a Presidential Exemption. Under CAA Section 112(i)(3)(B), a one-year extension is available if it is "necessary for the installation of controls." A Presidential Exemption pursuant to Section 112(i)(4) can similarly be granted based on the unavailability of technology, which may relate to supply-chain shortages and other installation challenges that would also fall within the scope of Section 112(i)(3)(B).[12]

President Trump has emphasized that "[a]n affordable and reliable domestic supply of energy is a fundamental requirement for the national and economic security of any nation" and that "[t]he United States' insufficient energy production, transportation, refining, and generation constitutes an unusual and extraordinary threat to our Nation's economy, national security, and foreign policy."[13] Based on these concerns, President Trump declared a National Energy Emergency pursuant to the National Emergencies Act (50 U.S.C. § 1601 *et seq.*), and 3 U.S.C. § 301.[14] President Trump has further emphasized that "high energy costs devastate American consumers by driving up the cost of transportation, heating, utilities, farming, and manufacturing, while weakening our national security," and highlighted the need to "protect

---

[7] 88 Fed. Reg. 36,654, 36,796 (Jun. 5, 2023).
[8] WFEC is a member of SPP. SPP serves a fourteen-state footprint in the central United States. SPP's amended tariff allowing for western expansion was approved by the Federal Energy Regulatory Commission on March 20, 2025, which will allow operations in both the Western and Eastern Interconnections of the nation's power grid.
[9] *See, e.g.*, North Dakota Industrial Commission and North Dakota Transmission Authority, *Analysis of Proposed EPA MATS Residual Risk and Technology Review and Potential Effects on Grid Reliability in North Dakota*, 9 (Apr. 2, 2024), https://www.ndic.nd.gov/sites/www/files/documents/TransmissionAuthority/Publications/MATS_Analysis_Report.pdf
[10] NERC, 2024 Long-Term Reliability Assessment, (Dec. 2024), https://www.nerc.com/pa/RAPA/ra/Reliability%20Assessments%20DL/NERC_Long%20Term%20Reliability%20Assessment_2024.pdf.
[11] 77 Fed. Reg. 9340, 9410 (Feb. 16, 2012).
[12] *Memorandum on the Orderly Implementation of the Air Toxics Standards for Ethylene Oxide Commercial Sterilizers*, Section 2(b)(i) (Jan. 16, 2025).
[13] Executive Order 14156, *Declaring a National Energy Emergency*, 90 Fed. Reg. 8,433 (Jan. 29, 2025).
[14] *See id.*

the United States's economic and national security and military preparedness by ensuring that an abundant supply of reliable energy is readily accessible in every State and territory of the Nation."[15] In addition, in announcing the Executive Order on Removing Barriers to American Leadership in Artificial Intelligence, the White House stated that "[t]he United States must act decisively to retain leadership in AI and enhance our economic and national security."[16] Retaining sources of reliable electricity is essential for the U.S. to meet its AI goal.

Consistent with these national security concerns, state and grid regulators have attested to the Final Rule's significant, foreseeable, and negative impacts on grid reliability and energy prices. There is a significant likelihood that power plants will be forced to retire based on inability to comply with the Final Rule's requirements by the 2027 deadline.

***

WFEC appreciates the opportunity to request a two-year exemption. WFEC requests the EPA grant WFEC HU-UNIT1 a two-year exemption from the Final Rule based on the significant national security issues and technological challenges described above.

Respectfully,

Gary R. Roulet
Chief Executive Officer

cc: Matthew A. Caves, WFEC, Vice President, Legal & Regulatory Compliance
Justin Soderberg, WFEC, Vice President, Generation
Mark Hardaway, WFEC, Plant Manager, Hugo

[15] Executive Order 14154, *Unleashing American Energy*, 90 Fed. Reg. 8353 (Jan. 29, 2025).
[16] The White House, *Fact Sheet: President Donald J. Trump Takes Action to Enhance America's AI Leadership* (Jan. 23, 2025), https://www.whitehouse.gov/fact-sheets/2025/01/fact-sheet-president-donald-j-trump-takes-action-to-enhance-americas-ai-leadership/.

Seward
Generation

595 Power Plant Road
New Florence, PA 15944
814-446-7162

March 31, 2025

President Donald J. Trump
The White House
Office of the President
1600 Pennsylvania Avenue, N.W.
Washington, DC 20500

RE: Presidential Exemption: National Emission Standards for Hazardous Air Pollutants: Coal- and Oil-Fired Electric Utility Steam Generating Units Review of the Residual Risk and Technology Review" (89 FR 38508; May 7, 2024) (MATS Rule): Seward Generation LLC

Dear President Trump:

In accordance with the terms of your Executive Orders and to Power the Great American Comeback, Seward Generation LLC (Seward) here by requests a Presidential exemption for the Seward Generating Station with respect to compliance with the MATS Rule for a period of two years because the technology to implement the standard is not available and it is in the national security interests of the United States to do so.

Emissions standards or limitations subject to the request

This request is for exemption from compliance with the "National Emission Standards for Hazardous Air Pollutants: Coal- and Oil-Fired Electric Utility Steam Generating Units Review of the Residual Risk and Technology Review"

Length of compliance period being requested

Two years.

Seward notes that the two-years will cover sources beyond the original compliance date of July 2027, allowing an extension to July 2029 and that the statute allows for potential renewal.

Justification to support the request

As is shown below the Seward facility is a Low Emitting EGU (LEE) affected MATS facility. Mercury testing occurs annually, and particulate testing is conducted every three years in accordance with the Title V Operating Permit. The plant continues to meet LEE criteria and are in compliance with not only the current PM emission limit of 0.030 lbs/mmbtu and would also be in compliance with "new" compliance limit of 0.010 lbs/mmbtu.

Seward
Generation

595 Power Plant Road
New Florence, PA 15944
814-446-7162

FACILITY	PADEP PM LIMIT	EPA MATS PM LIMIT	EPA MATS LIMIT PROPOSED	RECENT TESTED PM EMISSION VALUE
Seward Generation	0.10 lbs/mmbtu	0.030 lbs/mmbtu	0.010 lbs/mmbtu	0.00736 lbs/mmbtu

Under the MATS Rule, there is a requirement to install PM CEMS. Seward submits that the technology to implement such standard is not available, installing relevant upgrades that are needed to comply by the Rule's Compliance Deadline is not feasible, converting to Gas-fired Boilers is not feasible by the rule's compliance deadline, and that there are various issues with PM CEMS that demonstrate a lack of technical availability by of means of demonstrating compliance with the rule.

Seward believes that EPA significantly underestimated costs associated with a PM CEMS. Installation of a PM CEMS at a single unit, including site preparation and engineering activities, analyzer equipment and installation cost, and initial PS-11 correlation testing is estimated to range from $180,000 to over $400,000 (depending on vendor and brand). However, Seward estimates that the installation of PM CEMS at all three plants could exceed $350,000-$550,000.00 and would include analyzers, engineering stack studies/port installation, upgraded umbilical collection lines, revise DAHS programming, daily calibrations, semi-annual RATA certifications, and annual maintenance. Another factor is that CEMS parts need to be replaced over time. Manufacturers have stopped making CEMS replacement parts, making it necessary to replace an entire PM CEMS system more often. In addition, EPA did not account in its MATS Rule for the fact that PM CEMS needing to be replaced every 10 years or the cost of the replacement ($180,000 to over $400,000).

Seward notes that ongoing PM CEMS correlation testing with injection of media in the effluent to artificially raise emission levels costs at least $250,000 per test evolution at one source, and testing is required by MATS once every three years. For some EGUs, annual costs associated with a PM CEMS are estimated to range from $92,900 to over $154,600, whereas annual costs associated with stack testing are estimated to range from $24,000 to $32,000.



Seward
Generation

595 Power Plant Road
New Florence, PA 15944
814-446-7162

During the comments period on the proposed MATS Rule, many commenters provided data showing that, by eliminating the LEE provisions which allow once per three-year emissions testing as an incentive to be a low emitter, EPA is forcing massive cost increases by the requirement of continuous emissions monitoring, record keeping, and reporting on the lowest emitting affected EGUs.

Seward believes that PM CEMS cannot be used to demonstrate compliance with the new MATS Rule. The fPM standards were lowered by 2/3rds. Starting in 2027, sources will be required to demonstrate compliance with a PM CEMS on the more stringent fPM standards which are 0.010 lbs/MMBtu. Demonstrating compliance with emissions standards this low utilizing a PM CEMS is not a viable option. Some units have used PM CEMS for many years and have encountered problems with operating their PM CEMS with regard to (i) meeting the Quality Assurance-Quality Control (QA-QC) criteria; and (ii) establishing the correlation curve.

PM CEMS also fail to meet the QA/QC criteria. When a PM CEMS fails to meet the QA-QC criteria, the collected data are considered out-of-control and are no longer considered valid. An owner/operator has no real time indication that its EGU might have failed the required QA-QC criteria until several weeks after the testing has been completed. This could result in hundreds of hours of monitor downtime being created retroactively after the QA-QC criteria failure has been identified and is required to be reported as a deviation under the MATS rule. Most states have minimum data availability requirements that could result in enforcement actions. At the more stringent fPM standard of 0.010 lb/MMBtu, the likelihood of out-of-control periods increases. This downtime is not reflective of poor maintenance or operation but rather the difficulties associated with the quality assurance procedure at such low emission levels and is not accounted for in the EPA analysis.

Finally, there currently is no calibration procedure available that can accurately verify continuous measurements of fPM at levels as low as 0.010 lb/MMBtu. Moreover, PM CEMS is not a direct measure of compliance with the applicable emission limitation; rather, emissions are correlated and as such can be in error as much as +/- 25% when having to correlate to standards as low as 0.010 lbs/MMBtu.

Seward
Generation

595 Power Plant Road
New Florence, PA 15944
814-446-7162

National security interests of the United States to provide the exemption

Several of President Trump's Executive orders support the national security interest in granting this emption, including:

EO 14156, Declaring a National Energy Emergency

- "Our nation's current inadequate development of domestic energy resources… poses an imminent and growing threat to the United States'… national security."
- "The United States' in sufficient energy production, transportation, refining, and generation constitutes an … extraordinary threat to our… national security."

EO14154, Unleashing American Energy

- "It is the policy of the United States… to protect the (Nation's) economic and national security… by ensuring that an abundant supply of reliable energy is readily accessible."
- "High energy costs… weaken our national security."

Executive Order 14213 – "Establishing the National Energy Dominance Council"

Accordingly, Seward believes that a Presidential Exemption is in the national security interests of the United States. There is growing demand for electricity to support the grid. Many states need additional electricity supply due to data centers, artificial intelligence, and manufacturing. To illustrate, the Department of Energy recently released a new report indicating that domestic energy usage (and therefore demand) from data centers is expected to double, or even triple, by 2028. The power sector also continues to break daily peak load records due to extreme weather events and generation shifting. In sum, there is significant demand for electricity and a concomitant need to reinforce system reliability and capacity.

Conclusion

For the foregoing reasons Seward respectfully requests a two-year Presidential exemption from compliance with the MATS Rule for the Seward Generation LLC.

Sincerely,

Mark Crawford
Environmental Manager
Seward Generation LLC

Ebensburg Power Company

2840 New Germany Road • PO Box 845 • Ebensburg, PA 15931 • Tel: (814) 472-1140 • Fax: (814) 472-1143

March 28, 2025

President Donald J. Trump
The White House
Office of the President
1600 Pennsylvania Avenue, N.W.
Washington, DC 20500

RE: Presidential Exemption: National Emission Standards for Hazardous Air Pollutants: Coal- and Oil-Fired Electric Utility Steam Generating Units Review of the Residual Risk and Technology Review" (89 FR 38508; May 7, 2024) (MATS Rule): Ebensburg Power Company"

Dear President Trump:

In accordance with the terms of your Executive Orders and to Power the Great American Comeback, Ebensburg Power Company (EPC) here by requests a Presidential exemption for the EPC generating station with respect to compliance with the MATS Rule for a period of two years because the technology to implement the standard is not available and it is in the national security interests of the United States to do so.

Emissions standards or limitations subject to the request

This request is for exemption from compliance with the "National Emission Standards for Hazardous Air Pollutants: Coal- and Oil-Fired Electric Utility Steam Generating Units Review of the Residual Risk and Technology Review"

Length of compliance period being requested

Two years.

EPC notes that the two-year period will cover sources beyond the original compliance date of July 2027, allowing an extension to July 2029 and that the statute allows for potential renewal.

Justification to support the request

As is shown below the EPC facility is a Low Emitting EGU (LEE) affected MATS facility. Mercury testing occurs annually, and particulate testing is conducted every three years in accordance with the Title V Operating Permit. The plant continues to meet LEE criteria and are in compliance with not only the current PM emission limit of 0.030 lbs/mmbtu and would also be in compliance with "new" compliance limit of 0.010 lbs/mmbtu.

FACILITY	PADEP PM LIMIT	EPA MATS PM LIMIT	EPA MATS LIMIT PROPOSED	RECENT TESTED PM EMISSION VALUE
Ebensburg Power	0.10 lbs/mmbtu	0.030 lbs/mmbtu	0.010 lbs/mmbtu	0.00188 lbs/mmbtu

Under the MATS Rule, there is a requirement to install PM CEMS. EPC submits that the technology to implement such standard is not available, installing relevant upgrades that are needed to comply by the Rule's Compliance Deadline is not feasible, converting to Gas-fired Boilers is not feasible by the rule's compliance deadline, and that there are various issues with PM CEMS that demonstrate a lack of technical availability by of means of demonstrating compliance with the rule.

EPC believes that EPA significantly underestimated costs associated with a PM CEMS. Installation of a PM CEMS at a single unit, including site preparation and engineering activities, analyzer equipment and installation cost, and initial PS-11 correlation testing is estimated to range from $180,000 to over $400,000 (depending on vendor and brand). However, EPC estimates that the installation of PM CEMS at all three plants could exceed $350,000-$550,000.00 and would include analyzers, engineering stack studies/port installation, upgraded umbilical collection lines, revise DAHS programming, daily calibrations, semi-annual RATA certifications, and annual maintenance. Another factor is that the CEMS parts need to be replaced over time. Manufacturers have stopped making CEMS replacement parts, making it necessary to replace an entire PM CEMS system more often. In addition, EPA did not account in its MATS Rule for the fact that PM CEMS needed to be replaced every 10 years or the cost of the replacement ($180,000 to over $400,000).

EPC notes that ongoing PM CEMS correlation testing with injection of media in the effluent to artificially raise emission levels costs at least $250,000 per test evolution at one source, and testing is required by MATS once every three years. For some EGUs, annual costs associated with PM CEMS are estimated to range from $92,900 to over $154,600, whereas annual costs associated with stack testing are estimated to range from $24,000 to $32,000.

During the comments period on the proposed MATS Rule, many commenters provided data showing that, by eliminating the LEE provisions which allow once per three-year emissions testing as an incentive to be a low emitter, EPA is forcing massive cost increases by the requirement of continuous emissions monitoring, record keeping, and reporting on the lowest emitting affected EGUs.

EPC believes that PM CEMS cannot be used to demonstrate compliance with the new MATS Rule. The fPM standards were lowered by 2/3rds. Starting in 2027, sources will be required to demonstrate compliance with a PM CEMS on the more stringent fPM standards which are 0.010 lbs/MMBtu. Demonstrating compliance with emissions standards this low utilizing a PM CEMS is not a viable option. Some units have used PM CEMS for many years and have encountered problems with operating their PM CEMS with regard to (i) meeting the Quality Assurance-Quality Control (QA-QC) criteria; and (ii) establishing the correlation curve.

PM CEMS also fail to meet the QA/QC criteria. When a PM CEMS fails to meet the QA-QC criteria, the collected data are considered out-of-control and are no longer considered valid. An owner/operator has no real time indication that its EGU might have failed the required QA-QC criteria until several weeks after the testing has been completed. This could result in hundreds of hours of monitor downtime being created retroactively after the QA-QC criteria failure has been identified and is required to be reported as a deviation under the MATS rule.

Most states have minimum data availability requirements that could result in enforcement actions. At the more stringent fPM standard of 0.010 lb/MMBtu, the likelihood of out-of-control periods increases. This downtime is not reflective of poor maintenance or operation but rather the difficulties associated with the quality assurance procedure at such low emission levels and is not accounted for in the EPA analysis.

Finally, there currently is no calibration procedure available that can accurately verify continuous measurements of fPM at levels as low as 0.010 lb/MMBtu. Moreover, PM CEMS is not a direct measure of compliance with the applicable emission limitation; rather, emissions are correlated and as such can be in error as much as +/- 25% when having to correlate to standards as low as 0.010 lbs/MMBtu.

National security interests of the United States to provide the exemption

Several of President Trump's Executive orders support the national security interest in granting this exemption, including:

EO 14156, Declaring a National Energy Emergency

- "Our nation's current inadequate development of domestic energy resources… poses an imminent and growing threat to the United States'… national security."

- "The United States' in sufficient energy production, transportation, refining, and generation constitutes an … extraordinary threat to our… national security."

EO14154, Unleashing American Energy

- "It is the policy of the United States… to protect the (Nation's) economic and national security… by ensuring that an abundant supply of reliable energy is readily accessible."

- "High energy costs… weaken our national security."

Executive Order 14213 - "Establishing the National Energy Dominance Council"

Accordingly, EPC believes that a Presidential Exemption is in the national security interests of the United States. There is growing demand for electricity to support the grid. Many states need additional electricity supply due to data centers, artificial intelligence, and manufacturing. To illustrate, the Department of Energy recently released a new report indicating that domestic energy usage (and therefore demand) from data centers is expected to double, or even triple, by 2028. The power sector also continues to break daily peak load records due to extreme weather events and generation shifting. In sum, there is significant demand for electricity and a concomitant need to reinforce system reliability and capacity.

Conclusion

For the foregoing reasons EPC respectfully requests a two-year Presidential Exemption from compliance with the MATS Rule for the Ebensburg Power Company.

Sincerely,

Mark Crawford
Environmental Manager

Colver
Green Energy

Colver Green Energy

141 Interpower Drive • Colver, PA 15927 • Tel: (814) 748-7961

March 28, 2025

President Donald J. Trump
The White House
Office of the President
1600 Pennsylvania Avenue, N.W.
Washington, DC 20500

RE: Presidential Exemption: National Emission Standards for Hazardous Air Pollutants: Coal- and Oil-Fired Electric Utility Steam Generating Units Review of the Residual Risk and Technology Review" (89 FR 38508; May 7, 2024) (MATS Rule): Colver Green Energy Generation LLC

Dear President Trump:

In accordance with the terms of your Executive Orders and to Power the Great American Comeback, Colver Green Energy (Colver) here by requests a Presidential exemption for the Colver generating station with respect to compliance with the MATS Rule for a period of two years because the technology to implement the standard is not available and it is in the national security interests of the United States to do so.

Emissions standards or limitations subject to the request

This request is for exemption from compliance with the "National Emission Standards for Hazardous Air Pollutants: Coal- and Oil-Fired Electric Utility Steam Generating Units Review of the Residual Risk and Technology Review"

Length of compliance period being requested

Two years.

Colver notes that the two-years will cover sources beyond the original compliance date of July 2027, allowing an extension to July 2029 and that the statute allows for potential renewal.

Justification to support the request

As shown below the Colver facility is a Low Emitting EGU (LEE) affected MATS facility. Mercury testing occurs annually, and particulate testing is conducted every three years in accordance with the Title V Operating Permit.

The plant continues to meet LEE criteria and are in compliance with not only the current PM emission limit of 0.030 lbs/mmbtu and would also be in compliance with "new" compliance limit of 0.010 lbs/mmbtu.

FACILITY	PADEP PM LIMIT	EPA MATS PM LIMIT	EPA MATS LIMIT PROPOSED	RECENT TESTED PM EMISSION VALUE
Colver Green Energy	0.10 lbs/mmbtu	0.030 lbs/mmbtu	0.010 lbs/mmbtu	0.000313 lbs/mmbtu

Under the MATS Rule, there is a requirement to install PM CEMS. Colver submits that the technology to implement such standard is not available, installing relevant upgrades that are needed to comply by the Rule's Compliance Deadline is not feasible, converting to Gas-fired Boilers is not feasible by the rule's compliance deadline, and that there are various issues with PM CEMS that demonstrate a lack of technical availability by of means of demonstrating compliance with the rule.

Colver believes that EPA significantly underestimated costs associated with a PM CEMS. Installation of a PM CEMS at a single unit, including site preparation and engineering activities, analyzer equipment and installation cost, and initial PS-11 correlation testing is estimated to range from $180,000 to over $400,000 (depending on vendor and brand). However, Colver estimates that the installation of PM CEMS at all three plants could exceed $350,000-$550,000.00 and would include analyzers, engineering stack studies/port installation, upgraded umbilical collection lines, revise DAHS programming, daily calibrations, semi-annual RATA certifications, and annual maintenance. Another factor is that the CEMS parts need to be replaced over time. Manufacturers have stopped making CEMS replacement parts, making it necessary to replace an entire PM CEMS system more often. In addition, EPA did not account in its MATS Rule for the fact that PM CEMS needed to be replaced every 10 years or the cost of the replacement ($180,000 to over $400,000).

Colver notes that ongoing PM CEMS correlation testing with injection of media in the effluent to artificially raise emission levels costs at least $250,000 per test evolution at one source, and testing is required by MATS once every three years. For some EGUs, annual costs associated with PM CEMS are estimated to range from $92,900 to over $154,600, whereas annual costs associated with stack testing are estimated to range from $24,000 to $32,000.

During the comments period on the proposed MATS Rule, many commenters provided data showing that, by eliminating the LEE provisions which allow once per three-year emissions testing as an incentive to be a low emitter, EPA is forcing massive cost increases by the requirement of continuous emissions monitoring, record keeping, and reporting on the lowest emitting affected EGUs.

Colver believes that PM CEMS cannot be used to demonstrate compliance with the new MATS Rule. The fPM standards were lowered by 2/3rds. Starting in 2027, sources will be required to demonstrate compliance with a PM CEMS on the more stringent fPM standards which are 0.010 lbs/MMBtu. Demonstrating compliance with emissions standards this low utilizing a PM CEMS is not a viable option. Some units have used PM CEMS for many years and have encountered

problems with operating their PM CEMS with regard to (i) meeting the Quality Assurance-Quality Control (QA-QC) criteria; and (ii) establishing the correlation curve.

PM CEMS also fail to meet the QA/QC criteria. When a PM CEMS fails to meet the QA-QC criteria, the collected data are considered out-of-control and are no longer considered valid. An owner/operator has no real time indication that its EGU might have failed the required QA-QC criteria until several weeks after the testing has been completed. This could result in hundreds of hours of monitor downtime being created retroactively after the QA-QC criteria failure has been identified and is required to be reported as a deviation under the MATS rule. Most states have minimum data availability requirements that could result in enforcement actions. At the more stringent fPM standard of 0.010 lb/MMBtu, the likelihood of out-of-control periods increases. This downtime is not reflective of poor maintenance or operation but rather the difficulties associated with the quality assurance procedure at such low emission levels and is not accounted for in the EPA analysis.

Finally, there currently is no calibration procedure available that can accurately verify continuous measurements of fPM at levels as low as 0.010 lb/MMBtu. Moreover, PM CEMS is not a direct measure of compliance with the applicable emission limitation; rather, emissions are correlated and as such can be in error as much as +/- 25% when having to correlate to standards as low as 0.010 lbs/MMBtu.

National security interests of the United States to provide the exemption

Several of President Trump's Executive orders support the national security interest in granting this emption, including:

EO 14156, Declaring a National Energy Emergency

- "Our nation's current inadequate development of domestic energy resources… poses an imminent and growing threat to the United States'… national security."
- "The United States' in sufficient energy production, transportation, refining, and generation constitutes an … extraordinary threat to our… national security."

EO14154, Unleashing American Energy

- "It is the policy of the United States… to protect the (Nation's) economic and national security… by ensuring that an abundant supply of reliable energy is readily accessible."
- "High energy costs… weaken our national security."

Executive Order 14213 - "Establishing the National Energy Dominance Council"

Accordingly, Colver believes that a Presidential Exemption is in the national security interests of the United States. There is growing demand for electricity to support the grid. Many states need additional electricity supply due to data centers, artificial intelligence, and manufacturing. To

illustrate, the Department of Energy recently released a new report indicating that domestic energy usage (and therefore demand) from data centers is expected to double, or even triple, by 2028. The power sector also continues to break daily peak load records due to extreme weather events and generation shifting. In sum, there is significant demand for electricity and a concomitant need to reinforce system reliability and capacity.

Conclusion

For the foregoing reasons Colver respectfully requests a two-year Presidential exemption from compliance with the MATS Rule for Colver Green Energy.

Sincerely,

Mark Crawford,
Environmental Manager

From: Brennan Zaunbrecher
To: AirAction
Subject: Presidential Exemption: Clean Air Act NSR and NNSR Requirements: Thunderhead Bexar County, TX Data Center Power Project
Date: Friday, March 28, 2025 3:25:51 PM

Caution: This email originated from outside EPA, please exercise additional caution when deciding whether to open attachments or click on provided links.

Presidential Exemption: Clean Air Act NSR and NNSR Requirements: Thunderhead Bexar County, TX Data Center Power Project

To Whom It May Concern:

Thunderhead Energy Solutions LLC requests a two-year Presidential exemption from certain Clean Air Act requirements for our 500MW behind-the-meter natural gas power facility supporting critical data center infrastructure in Bexar County, Texas.

- Emissions standards subject to exemption request: New Source Review (NSR) permitting requirements, Non-attainment New Source Review (NNSR) requirements, Title V Operating Permit timeline requirements, and New Source Performance Standards (NSPS) for Stationary Combustion Turbines (40 CFR Part 60, Subpart KKKK)
- Facility: Thunderhead San Antonio Data Center Power Project utilizing Solar Turbines (Caterpillar) Titan-130 industrial gas turbines with EnergyLink SCR technology (Best Available Control Technology, "BACT") for emissions reduction
- Duration: Two-year exemption to allow expedited construction and operation
- Justification: Current permitting timelines create critical delays and/or outright roadblocks for essential digital infrastructure. Despite employing advanced emissions control technology, the standard permitting process would prevent timely deployment of urgently needed computing capacity and ultimately limit the operable electric generation capacity via NOx, CO, VOC, particulate matter, sulfuric acid, and sulfur dioxide emissions limitations. There is no commercial technology to completely eliminate NOx, CO, VOC, particulate matter, sulfuric acid, or sulfur dioxide emissions from gas-fired EGUs.
- National security relevance: The facility will support enterprise cloud and AI computing infrastructure essential to U.S. national security interests, including classified government workloads and critical AI development. Current grid constraints in Bexar County, TX prevent timely utility-scale power deployment, while our behind-the-meter natural gas solution can deliver 500MW in 18-24 months, significantly accelerating national security-related computing capacity.

This bridge natural gas solution represents the only viable path to rapidly deploy the power capacity required for next-generation computing infrastructure critical to maintaining U.S. technological leadership. We respectfully request this time-limited exemption to expedite deployment while maintaining substantial emissions controls through our SCR implementation.

Sincerely,

Brennan Zaunbrecher
Founder

Thunderhead Energy Solutions LLC

From: Brennan Zaunbrecher
To: AirAction
Subject: Presidential Exemption: Clean Air Act NSR and NNSR Requirements: Thunderhead Dekalb Co, IL Data Center Power Project
Date: Friday, March 28, 2025 3:29:19 PM

Caution: This email originated from outside EPA, please exercise additional caution when deciding whether to open attachments or click on provided links.

To Whom It May Concern:

Thunderhead Energy Solutions LLC requests a two-year Presidential exemption from certain Clean Air Act requirements for our 500MW behind-the-meter natural gas power facility supporting critical data center infrastructure in Dekalb County, IL.

- Emissions standards subject to exemption request: New Source Review (NSR) permitting requirements, Non-attainment New Source Review (NNSR) requirements, Title V Operating Permit timeline requirements, and New Source Performance Standards (NSPS) for Stationary Combustion Turbines (40 CFR Part 60, Subpart KKKK)
- Facility: Thunderhead Data Center Power Project utilizing Solar Turbines (Caterpillar) Titan-130 industrial gas turbines with EnergyLink SCR technology (Best Available Control Technology, "BACT") for emissions reduction
- Duration: Two-year exemption to allow expedited construction and operation
- Justification: Current permitting timelines create critical delays and/or outright roadblocks for essential digital infrastructure. Despite employing advanced emissions control technology, the standard permitting process would prevent timely deployment of urgently needed computing capacity and ultimately limit the operable electric generation capacity via NOx, CO, VOC, particulate matter, sulfuric acid, and sulfur dioxide emissions limitations. There is no commercial technology to completely eliminate NOx, CO, VOC, particulate matter, sulfuric acid, or sulfur dioxide emissions from gas-fired EGUs.
- National security relevance: The facility will support enterprise cloud and AI computing infrastructure essential to U.S. national security interests, including classified government workloads and critical AI development. Current grid constraints in Dekalb County, IL prevent timely utility-scale power deployment, while our behind-the-meter natural gas solution can deliver 500MW in 18-24 months, significantly accelerating national security-related computing capacity.

This bridge natural gas solution represents the only viable path to rapidly deploy the power capacity required for next-generation computing infrastructure critical to maintaining U.S. technological leadership. We respectfully request this time-limited exemption to expedite deployment while maintaining substantial emissions controls through our SCR implementation.

Sincerely,

Brennan Zaunbrecher
Founder
Thunderhead Energy Solutions LLC

From: Brennan Zaunbrecher
To: AirAction
Subject: Presidential Exemption: Clean Air Act NSR and NNSR Requirements: Thunderhead Kendall Co, IL Data Center Power Project
Date: Friday, March 28, 2025 3:31:21 PM

Caution: This email originated from outside EPA, please exercise additional caution when deciding whether to open attachments or click on provided links.

To Whom It May Concern:

Thunderhead Energy Solutions LLC requests a two-year Presidential exemption from certain Clean Air Act requirements for our 250MW behind-the-meter natural gas power facility supporting critical data center infrastructure in Kendall County, IL.

- Emissions standards subject to exemption request: New Source Review (NSR) permitting requirements, Non-attainment New Source Review (NNSR) requirements, Title V Operating Permit timeline requirements, and New Source Performance Standards (NSPS) for Stationary Combustion Turbines (40 CFR Part 60, Subpart KKKK)
- Facility: Thunderhead Data Center Power Project utilizing Solar Turbines (Caterpillar) Titan-130 industrial gas turbines with EnergyLink SCR technology (Best Available Control Technology, "BACT") for emissions reduction
- Duration: Two-year exemption to allow expedited construction and operation
- Justification: Current permitting timelines create critical delays and/or outright roadblocks for essential digital infrastructure. Despite employing advanced emissions control technology, the standard permitting process would prevent timely deployment of urgently needed computing capacity and ultimately limit the operable electric generation capacity via NOx, CO, VOC, particulate matter, sulfuric acid, and sulfur dioxide emissions limitations. There is no commercial technology to completely eliminate NOx, CO, VOC, particulate matter, sulfuric acid, or sulfur dioxide emissions from gas-fired EGUs.
- National security relevance: The facility will support enterprise cloud and AI computing infrastructure essential to U.S. national security interests, including classified government workloads and critical AI development. Current grid constraints in Kendall County, IL prevent timely utility-scale power deployment, while our behind-the-meter natural gas solution can deliver 250MW in 18-24 months, significantly accelerating national security-related computing capacity.

This bridge natural gas solution represents the only viable path to rapidly deploy the power capacity required for next-generation computing infrastructure critical to maintaining U.S. technological leadership. We respectfully request this time-limited exemption to expedite deployment while maintaining substantial emissions controls through our SCR implementation.

Sincerely,

Brennan Zaunbrecher
Founder
Thunderhead Energy Solutions LLC

From: Brennan Zaunbrecher
To: AirAction
Subject: Presidential Exemption: Clean Air Act NSR and NNSR Requirements: Thunderhead Winnebago Co, IL Data Center Power Project
Date: Friday, March 28, 2025 3:33:07 PM

Caution: This email originated from outside EPA, please exercise additional caution when deciding whether to open attachments or click on provided links.

To Whom It May Concern:

Thunderhead Energy Solutions LLC requests a two-year Presidential exemption from certain Clean Air Act requirements for our 250MW behind-the-meter natural gas power facility supporting critical data center infrastructure in Winnebago County, IL.

- Emissions standards subject to exemption request: New Source Review (NSR) permitting requirements, Non-attainment New Source Review (NNSR) requirements, Title V Operating Permit timeline requirements, and New Source Performance Standards (NSPS) for Stationary Combustion Turbines (40 CFR Part 60, Subpart KKKK)
- Facility: Thunderhead Data Center Power Project utilizing Solar Turbines (Caterpillar) Titan-130 industrial gas turbines with EnergyLink SCR technology (Best Available Control Technology, "BACT") for emissions reduction
- Duration: Two-year exemption to allow expedited construction and operation
- Justification: Current permitting timelines create critical delays and/or outright roadblocks for essential digital infrastructure. Despite employing advanced emissions control technology, the standard permitting process would prevent timely deployment of urgently needed computing capacity and ultimately limit the operable electric generation capacity via NOx, CO, VOC, particulate matter, sulfuric acid, and sulfur dioxide emissions limitations. There is no commercial technology to completely eliminate NOx, CO, VOC, particulate matter, sulfuric acid, or sulfur dioxide emissions from gas-fired EGUs.
- National security relevance: The facility will support enterprise cloud and AI computing infrastructure essential to U.S. national security interests, including classified government workloads and critical AI development. Current grid constraints in Winnebago County, IL prevent timely utility-scale power deployment, while our behind-the-meter natural gas solution can deliver 250MW in 18-24 months, significantly accelerating national security-related computing capacity.

This bridge natural gas solution represents the only viable path to rapidly deploy the power capacity required for next-generation computing infrastructure critical to maintaining U.S. technological leadership. We respectfully request this time-limited exemption to expedite deployment while maintaining substantial emissions controls through our SCR implementation.

Sincerely,

Brennan Zaunbrecher
Founder
Thunderhead Energy Solutions LLC

From: Brennan Zaunbrecher
To: AirAction
Subject: Presidential Exemption: Clean Air Act NSR and NNSR Requirements: Thunderhead Ellis Co, TX Data Center Power Project
Date: Friday, March 28, 2025 3:35:49 PM

Caution: This email originated from outside EPA, please exercise additional caution when deciding whether to open attachments or click on provided links.

To Whom It May Concern:

Thunderhead Energy Solutions LLC requests a two-year Presidential exemption from certain Clean Air Act requirements for our 700MW behind-the-meter natural gas power facility supporting critical data center infrastructure in Ellis County, TX.

- Emissions standards subject to exemption request: New Source Review (NSR) permitting requirements, Non-attainment New Source Review (NNSR) requirements, Title V Operating Permit timeline requirements, and New Source Performance Standards (NSPS) for Stationary Combustion Turbines (40 CFR Part 60, Subpart KKKK)
- Facility: Thunderhead Data Center Power Project utilizing Solar Turbines (Caterpillar) Titan-130 industrial gas turbines with EnergyLink SCR technology (Best Available Control Technology, "BACT") for emissions reduction
- Duration: Two-year exemption to allow expedited construction and operation
- Justification: Current permitting timelines create critical delays and/or outright roadblocks for essential digital infrastructure. Despite employing advanced emissions control technology, the standard permitting process would prevent timely deployment of urgently needed computing capacity and ultimately limit the operable electric generation capacity via NOx, CO, VOC, particulate matter, sulfuric acid, and sulfur dioxide emissions limitations. There is no commercial technology to completely eliminate NOx, CO, VOC, particulate matter, sulfuric acid, or sulfur dioxide emissions from gas-fired EGUs.
- National security relevance: The facility will support enterprise cloud and AI computing infrastructure essential to U.S. national security interests, including classified government workloads and critical AI development. Current grid constraints in Ellis County, TX prevent timely utility-scale power deployment, while our behind-the-meter natural gas solution can deliver 700MW in 18-24 months, significantly accelerating national security-related computing capacity.

This bridge natural gas solution represents the only viable path to rapidly deploy the power capacity required for next-generation computing infrastructure critical to maintaining U.S. technological leadership. We respectfully request this time-limited exemption to expedite deployment while maintaining substantial emissions controls through our SCR implementation.

Sincerely,

Brennan Zaunbrecher
Founder
Thunderhead Energy Solutions LLC

From:	Brennan Zaunbrecher
To:	AirAction
Subject:	Presidential Exemption: Clean Air Act NSR and NNSR Requirements: Thunderhead Jefferson Co, MT Data Center Power Project
Date:	Friday, March 28, 2025 3:39:24 PM

Caution: This email originated from outside EPA, please exercise additional caution when deciding whether to open attachments or click on provided links.

To Whom It May Concern:

Thunderhead Energy Solutions LLC requests a two-year Presidential exemption from certain Clean Air Act requirements for our 500MW behind-the-meter natural gas power facility supporting critical data center infrastructure in Jefferson County, MT.

- Emissions standards subject to exemption request: New Source Review (NSR) permitting requirements, Non-attainment New Source Review (NNSR) requirements, Title V Operating Permit timeline requirements, and New Source Performance Standards (NSPS) for Stationary Combustion Turbines (40 CFR Part 60, Subpart KKKK)
- Facility: Thunderhead Data Center Power Project utilizing Solar Turbines (Caterpillar) Titan-130 industrial gas turbines with EnergyLink SCR technology (Best Available Control Technology, "BACT") for emissions reduction
- Duration: Two-year exemption to allow expedited construction and operation
- Justification: Current permitting timelines create critical delays and/or outright roadblocks for essential digital infrastructure. Despite employing advanced emissions control technology, the standard permitting process would prevent timely deployment of urgently needed computing capacity and ultimately limit the operable electric generation capacity via NOx, CO, VOC, particulate matter, sulfuric acid, and sulfur dioxide emissions limitations. There is no commercial technology to completely eliminate NOx, CO, VOC, particulate matter, sulfuric acid, or sulfur dioxide emissions from gas-fired EGUs.
- National security relevance: The facility will support enterprise cloud and AI computing infrastructure essential to U.S. national security interests, including classified government workloads and critical AI development. Current grid constraints in Jefferson County, MT prevent timely utility-scale power deployment, while our behind-the-meter natural gas solution can deliver 500MW in 18-24 months, significantly accelerating national security-related computing capacity.

This bridge natural gas solution represents the only viable path to rapidly deploy the power capacity required for next-generation computing infrastructure critical to maintaining U.S. technological leadership. We respectfully request this time-limited exemption to expedite deployment while maintaining substantial emissions controls through our SCR implementation.

Sincerely,

Brennan Zaunbrecher
Founder
Thunderhead Energy Solutions LLC

From: Brennan Zaunbrecher
To: AirAction
Subject: Presidential Exemption: Clean Air Act NSR and NNSR Requirements: Thunderhead Loving County, TX Data Center Power Project
Date: Friday, March 28, 2025 3:41:28 PM

Caution: This email originated from outside EPA, please exercise additional caution when deciding whether to open attachments or click on provided links.

To Whom It May Concern:

Thunderhead Energy Solutions LLC requests a two-year Presidential exemption from certain Clean Air Act requirements for our 5,000MW behind-the-meter natural gas power facility supporting critical data center infrastructure in Loving County, TX.

- Emissions standards subject to exemption request: New Source Review (NSR) permitting requirements, Non-attainment New Source Review (NNSR) requirements, Title V Operating Permit timeline requirements, and New Source Performance Standards (NSPS) for Stationary Combustion Turbines (40 CFR Part 60, Subpart KKKK)
- Facility: Thunderhead Data Center Power Project utilizing Solar Turbines (Caterpillar) Titan-130 industrial gas turbines with EnergyLink SCR technology (Best Available Control Technology, "BACT") for emissions reduction
- Duration: Two-year exemption to allow expedited construction and operation
- Justification: Current permitting timelines create critical delays and/or outright roadblocks for essential digital infrastructure. Despite employing advanced emissions control technology, the standard permitting process would prevent timely deployment of urgently needed computing capacity and ultimately limit the operable electric generation capacity via NOx, CO, VOC, particulate matter, sulfuric acid, and sulfur dioxide emissions limitations. There is no commercial technology to completely eliminate NOx, CO, VOC, particulate matter, sulfuric acid, or sulfur dioxide emissions from gas-fired EGUs.
- National security relevance: The facility will support enterprise cloud and AI computing infrastructure essential to U.S. national security interests, including classified government workloads and critical AI development. Current grid constraints in Loving County, TX prevent timely utility-scale power deployment, while our behind-the-meter natural gas solution can deliver 5,000MW in 36-48 months, significantly accelerating national security-related computing capacity.

This bridge natural gas solution represents the only viable path to rapidly deploy the power capacity required for next-generation computing infrastructure critical to maintaining U.S. technological leadership. We respectfully request this time-limited exemption to expedite deployment while maintaining substantial emissions controls through our SCR implementation.

Sincerely,

Brennan Zaunbrecher
Founder
Thunderhead Energy Solutions LLC

From:	Brennan Zaunbrecher
To:	AirAction
Subject:	Presidential Exemption: Clean Air Act NSR and NNSR Requirements: Thunderhead Winkler County, TX Data Center Power Project
Date:	Friday, March 28, 2025 3:43:10 PM

Caution: This email originated from outside EPA, please exercise additional caution when deciding whether to open attachments or click on provided links.

To Whom It May Concern:

Thunderhead Energy Solutions LLC requests a two-year Presidential exemption from certain Clean Air Act requirements for our 5,000MW behind-the-meter natural gas power facility supporting critical data center infrastructure in Winkler County, TX.

- Emissions standards subject to exemption request: New Source Review (NSR) permitting requirements, Non-attainment New Source Review (NNSR) requirements, Title V Operating Permit timeline requirements, and New Source Performance Standards (NSPS) for Stationary Combustion Turbines (40 CFR Part 60, Subpart KKKK)
- Facility: Thunderhead Data Center Power Project utilizing Solar Turbines (Caterpillar) Titan-130 industrial gas turbines with EnergyLink SCR technology (Best Available Control Technology, "BACT") for emissions reduction
- Duration: Two-year exemption to allow expedited construction and operation
- Justification: Current permitting timelines create critical delays and/or outright roadblocks for essential digital infrastructure. Despite employing advanced emissions control technology, the standard permitting process would prevent timely deployment of urgently needed computing capacity and ultimately limit the operable electric generation capacity via NOx, CO, VOC, particulate matter, sulfuric acid, and sulfur dioxide emissions limitations. There is no commercial technology to completely eliminate NOx, CO, VOC, particulate matter, sulfuric acid, or sulfur dioxide emissions from gas-fired EGUs.
- National security relevance: The facility will support enterprise cloud and AI computing infrastructure essential to U.S. national security interests, including classified government workloads and critical AI development. Current grid constraints in Winkler County, TX prevent timely utility-scale power deployment, while our behind-the-meter natural gas solution can deliver 5,000MW in 36-48 months, significantly accelerating national security-related computing capacity.

This bridge natural gas solution represents the only viable path to rapidly deploy the power capacity required for next-generation computing infrastructure critical to maintaining U.S. technological leadership. We respectfully request this time-limited exemption to expedite deployment while maintaining substantial emissions controls through our SCR implementation.

Sincerely,

Brennan Zaunbrecher
Founder
Thunderhead Energy Solutions LLC

From:	Brennan Zaunbrecher
To:	AirAction
Subject:	Presidential Exemption: Clear Air Act NSR and NNSR Requirements: Thunderhead Pecos County, TX Data Center Power Project
Date:	Friday, March 28, 2025 3:44:08 PM

Caution: This email originated from outside EPA, please exercise additional caution when deciding whether to open attachments or click on provided links.

To Whom It May Concern:

Thunderhead Energy Solutions LLC requests a two-year Presidential exemption from certain Clean Air Act requirements for our 5,000MW behind-the-meter natural gas power facility supporting critical data center infrastructure in Pecos County, TX.

- Emissions standards subject to exemption request: New Source Review (NSR) permitting requirements, Non-attainment New Source Review (NNSR) requirements, Title V Operating Permit timeline requirements, and New Source Performance Standards (NSPS) for Stationary Combustion Turbines (40 CFR Part 60, Subpart KKKK)
- Facility: Thunderhead Data Center Power Project utilizing Solar Turbines (Caterpillar) Titan-130 industrial gas turbines with EnergyLink SCR technology (Best Available Control Technology, "BACT") for emissions reduction
- Duration: Two-year exemption to allow expedited construction and operation
- Justification: Current permitting timelines create critical delays and/or outright roadblocks for essential digital infrastructure. Despite employing advanced emissions control technology, the standard permitting process would prevent timely deployment of urgently needed computing capacity and ultimately limit the operable electric generation capacity via NOx, CO, VOC, particulate matter, sulfuric acid, and sulfur dioxide emissions limitations. There is no commercial technology to completely eliminate NOx, CO, VOC, particulate matter, sulfuric acid, or sulfur dioxide emissions from gas-fired EGUs.
- National security relevance: The facility will support enterprise cloud and AI computing infrastructure essential to U.S. national security interests, including classified government workloads and critical AI development. Current grid constraints in Pecos County, TX prevent timely utility-scale power deployment, while our behind-the-meter natural gas solution can deliver 5,000MW in 36-48 months, significantly accelerating national security-related computing capacity.

This bridge natural gas solution represents the only viable path to rapidly deploy the power capacity required for next-generation computing infrastructure critical to maintaining U.S. technological leadership. We respectfully request this time-limited exemption to expedite deployment while maintaining substantial emissions controls through our SCR implementation.

Sincerely,

Brennan Zaunbrecher
Founder
Thunderhead Energy Solutions LLC

Exhibit 1

Talen Montana Comments

TALEN MONTANA

COMMENTS OF TALEN MONTANA, LLC ON THE PROPOSAL ON NATIONAL EMISSION STANDARDS FOR HAZARDOUS AIR POLLUTANTS: COAL- AND OIL-FIRED ELECTRIC UTILITY STEAM GENERATING UNITS REVIEW OF THE RESIDUAL RISK AND TECHNOLOGY REVIEW

Docket ID: EPA-HQ-OAR-2018-0794

I. INTRODUCTION

On April 24, 2023, EPA published in the *Federal Register*, at 88 Fed. Reg. 24,854, a Proposal that would amend the National Emission Standards for Hazardous Air Pollutants ("NESHAP") for coal- and oil-fired electric utility steam generating units ("EGUs") — *i.e.*, the Mercury and Air Toxics Standards ("MATS") ("Proposal" or "Proposed Rule"). Among other amendments, EPA is proposing to: (i) tighten the surrogate filterable particulate matter ("fPM") standard for demonstrating compliance with the emissions limits for non-mercury ("non-Hg") metal hazardous air pollutants ("HAPs") from 0.03 lb/MMBtu to 0.010 lb/MMBtu; and (ii) require continuous emissions monitoring systems ("CEMS") for demonstrating compliance with the fPM standard.[1]

Talen Montana, LLC ("Talen Montana") is part-owner and operator of Units 3&4 of the Colstrip Steam Electric Station ("Colstrip") in Rosebud County, Montana. On behalf of itself as an owner and with knowledge gained as the operator of Colstrip, Talen Montana has significant concerns about the Proposed Rule, particularly with the proposed tightening of the fPM standard. These concerns stem from the unique design and circumstances of Colstrip. Colstrip currently uses venturi wet scrubbers to address both sulfur dioxide ("SO_2") and fPM emissions. It would be extremely expensive — and potentially cost prohibitive — for Colstrip to comply with the 0.010 lb/MMBtu fPM limit because the venturi wet scrubbers cannot meet that limit. Colstrip would need to undertake a massive and complex construction project to install new controls — either new fabric filters ("FFs") or electrostatic precipitators ("ESPs") — when Colstrip's remaining life and future generation is likely limited given EPA's other rulemakings targeting older sources like Colstrip. The high costs associated with installing, testing, and implementing new controls, coupled with limited time and electric generation for the recovery of such costs, may cause Colstrip to shut down prematurely if the owners deem that it is not economically feasible to install the necessary controls to comply with the proposed fPM standard.

A premature shutdown of Colstrip would have significant economic impacts on Montana and beyond and raises serious concerns about grid reliability and transmission, factors that were not considered by EPA in setting the proposed fPM standard. Moreover, Colstrip bears a hugely disproportionate burden under the Proposed Rule, especially where EPA has not found any unacceptable risk related to Colstrip's (or any other affected facility's) operation under the current fPM standard. Indeed, by EPA's own calculations, Colstrip is expected to bear almost 50 percent

[1] *See* 88 Fed. Reg. 24,854 (Apr. 24, 2023).

ED_021114A_00008606-00002

of the costs of the Proposed Rule. For these reasons, as well as other legal and technical reasons discussed below, Talen Montana asks that EPA not finalize the proposed 0.010 lb/MMBtu fPM limit. However, should EPA ultimately finalize the proposed 0.010 lb/MMBtu fPM limit, Talen strongly urges EPA to establish a subcategory for coal-fired units that use wet scrubbers to address both SO_2 and PM emissions and that do not presently have an ESP or FF, where the fPM limit for those units is no lower than 0.025 lb/MMBtu fPM. Given that EPA's rationale for the Proposed Rule is that existing control technology is more effective and cost effective than was known at the time of the original MATS rule, a targeted limit that is specific to the existing wet scrubber technology is consistent and appropriate with that approach.

As an additional alternative, Talen Montana requests that EPA establish a subcategory for near-term existing coal units electing to retire where the fPM limit remains at 0.030 lb/MMBtu until ceasing operations. This would be consistent with the approach EPA has taken in other rulemakings. Under such an approach, units could opt-in to the subcategory by making an enforceable retirement commitment within a specified timeline after the Proposed Rule is finalized and with retirement planned by a specified date. For this subcategory, Talen Montana proposes that units opt-in within 18 months after the effective date of the final rule with a retirement date no later than December 31, 2035 (with a "safety valve" that would allow longer operation depending on circumstances in the future, as described below).

II. BACKGROUND

Colstrip is one of the largest coal-fired electric generating facilities west of the Mississippi River, supplying electricity throughout Montana and the Pacific Northwest. Talen Montana has a 15% ownership stake in Colstrip, which currently consists of two active coal-fired generating units capable of producing up to 1,480 MW of electricity that have been operating for approximately 37 years. Each of the units has approximately 740 MW of generating capacity, and the adjacent Rosebud coal mine supplies Colstrip's low-sulfur subbituminous coal.

A. Colstrip's Unique Design

Colstrip's design sets it apart from other coal-fired units in the country that are currently operating. Colstrip began construction in the 1970s and Units 3 and 4 began operations in the 1980s. Colstrip was designed to utilize low-sulfur coal and with then state-of-the-art venturi wet scrubbers to reduce its SO_2 emissions below the applicable limits. Colstrip also relies on the venturi wet scrubbers to mitigate fPM.

Colstrip has eight wet venturi scrubbers on each of unit. Seven scrubbers are used during normal full load operation and one scrubber is a "backup," used only when one of the other seven scrubbers in operation needs to be removed from service or is undergoing routine cleaning and maintenance. Below is a diagram of the wet venturi scrubber used at Colstrip Units 3&4:

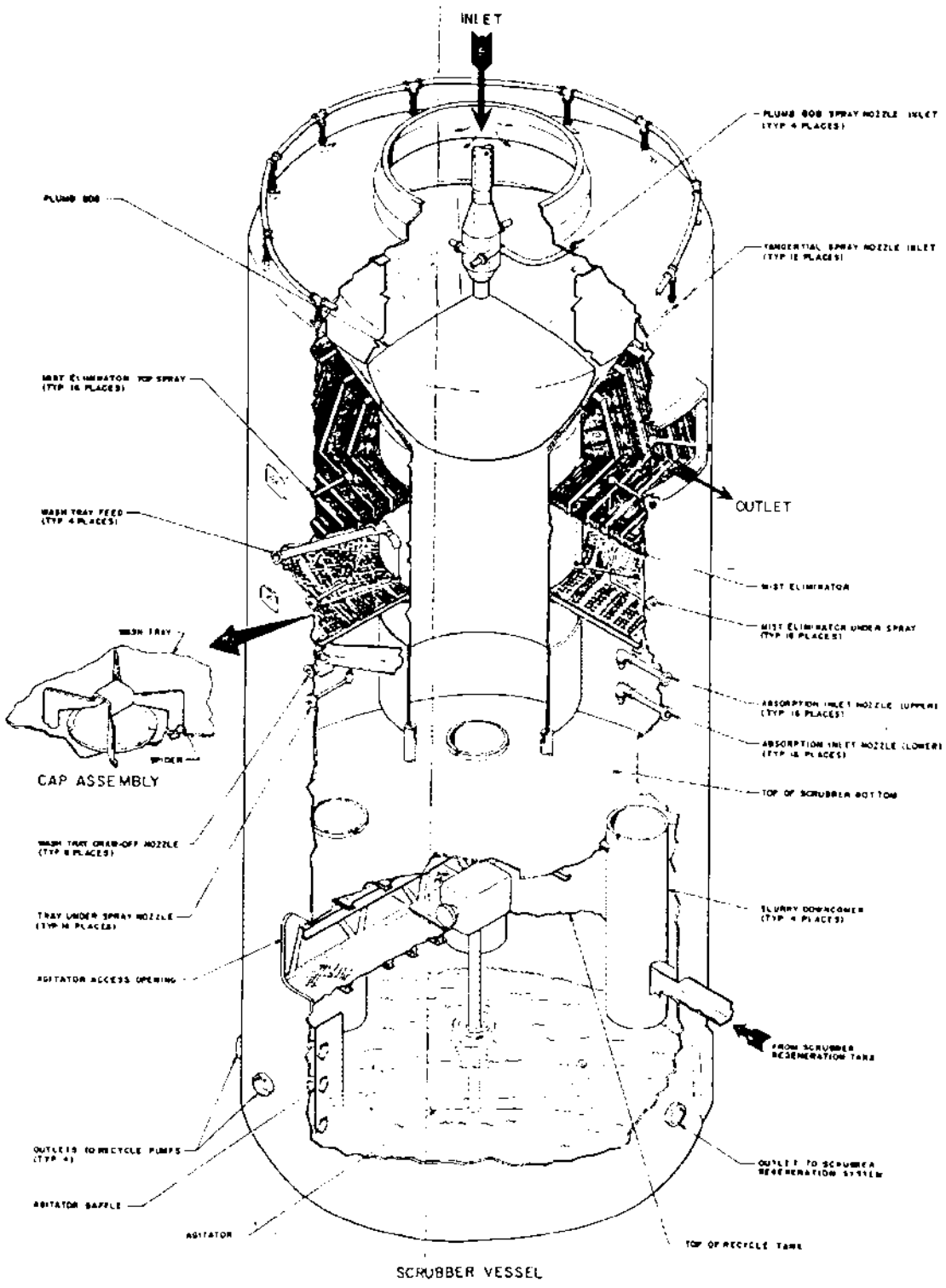


Figure 1 - Diagram of Colstrip Scrubber

The venturi wet scrubbers at Colstrip Units 3 and 4 remove approximately 99.7% of fly ash particulate from the flue gas and 95% of the SO2 via a sequence of removal processes. The flue gas enters the scrubber vessel and is accelerated by the converging surfaces of the plumb bob and venturi bowl. The flue gas and slurry meet in the venturi throat where turbulence atomizes the slurry. Acceleration of the flue gas causes the particulate to collide with and be absorbed by slurry droplets. The majority of the fly ash particulate and most of the SO_2 are removed in the venturi section. The wet venturi scrubbers utilize the alkalinity of the fly ash particle removed to help meet the high level of SO_2 removal. The throat area of the venturi is adjusted by moving the plumb bob up or down to obtain the desired pressure drop across the plumb bob of each scrubber. The flue gas velocity caused by this pressure drop ensures optimum fly ash removal. The slurry and collected fly ash are separated from the flue gas as it turns up to enter the absorption area. The flue gas then enters the absorption spray area in the annular space between the downcomer and shell of the scrubber vessel. The flue gas is contacted with recycle slurry for additional removal of SO_2. Above the absorption section is the wash tray which uses recirculation water to contact the flue gas and remove entrained recycle slurry from the flue gas. The flue gas then flows through the mist eliminator where entrained droplets are removed.

As EPA recognized, Colstrip does not have a FF or an ESP and would need to install one to comply with the proposed 0.010 lb/MMBtu fPM limit, as the current venturi wet scrubbers will not be able to meet the proposed limit.[2] While EPA recognizes that Colstrip's venturi wet scrubbers would not be able to comply with the proposed limit, EPA assumes Colstrip could make a "minimal cost ($10/kW) for [wet scrubber] maintenance or minor upgrades . . . to meet a potential 0.015 lb/MMBtu standard."[3] This assumption, however, is inaccurate. Colstrip has typically been able to remain just below the current limit of 0.030 lb/MMBtu. However, due to occasional variability in fuel and operating condition, Colstrip has, since 2018, hired consultants and engineers to explore ways to further enhance the efficiencies of the venturi wet scrubbers. This work, as described below, has made the venturi wet scrubber emissions more stable. But, as reflected in Attachment A (Colstrip's MATS PM CEMS compliance data from September 2018 to April 2023), the work demonstrated that 0.015 lb/MMBtu fPM is not achievable with upgrades to the existing wet scrubbers and further that the efforts to reduce fPM emissions with the existing control technology has reached its limits:

- The original operating condition for the plumb bob delta P (pressure drop) was 17" to meet particulate and SO2 removal requirements. In an effort to optimize the performance of the scrubbers, the plumb bob delta P is currently operated at 27-28", the maximum delta P achievable which is limited by the capability of the induced draft ("ID") Fans.

- The original mist eliminators have been upgraded with improved performance to better control entrained droplets in the flue gas. In 2018, the mist eliminator supplier (Munters)

[2] *See* 2023 Technology Review for the Coal- and Oil-Fired EGU Source Category ("Technical Memo"), Doc. ID. EPA-HQ-OAR-2018-0794-5789, at PDF p. 9, posted Apr. 24, 2023.
[3] *See id.*

conducted a mist eliminator performance test, and the results showed dry conditions with very little or any droplet carry over.

- Scrubber slurry solids level has been controlled to 25-30% solids to minimize potential particulate contribution from entrained droplets in the flue gas.

- Flow distribution plates have been installed on each scrubber to improve the flow balance across the scrubber, provide a more uniform flow, and improve particulate removal performance.

Colstrip also implemented additional measures to address combustion conditions to help ensure that combustion of the coal occurs in a manner that prevents to formation of small fly ash particles that are difficult to remove in the wet venturi scrubbers, including:

- Combustion tuning and incorporation of optimum conditions over variable operating conditions into the Combustion Optimizer System.

- Optimization of the furnace sootblower system to ensure optimum heat transfer in the furnace and prevent elevated temperatures in the upper part of the furnace that can contribute to formation of small particulate particles that are difficult to remove in the wet venturi scrubbers.

- Optimization of coal mill fineness by regularly performing coal mill sieve analysis to ensure correct particle size distribution of the coal entering the furnace.

Together, these comprehensive efforts reflect all known upgrades available to be implemented to the Colstrip scrubber/combustion process to reduce fPM, which enables Colstrip to achieve compliance with the current 0.030 lb/MMBtu fPM limit with an adequate compliance margin. While the majority of stack testing has shown emission rates between 0.020 lb/MMBtu and 0.025 lb/MMBtu fPM, there have been several instances where stack tests were above 0.025 lb/MMBtu fPM.[4] In 2022, based on stack tests, the two units combined achieved approximately 0.022 lb/MMBtu fPM on an annual basis.

With the extensive scrubber/combustion process reviews by consultants and engineers and implementation of the upgrades previously identified, Talen Montana believes that these efforts have optimized the current control technology to the maximum extent feasible. While Colstrip remains dedicated to continued optimization to control fPM, Colstrip cannot meet a the more stringent fPM limits in the Proposed Rule (either the 0.015 lb/MMBtu or the proposed 0.010 lb/MMBtu) without installation of a FF or ESP, which as noted previously would be a massive, complex, and expensive construction project.

[4] *See* Attachment A.

TALEN MONTANA

B. Colstrip's Unique Circumstances

Despite the importance of Colstrip to Montana and the surrounding region, Colstrip's future is uncertain. Colstrip's remaining life and future generation may be limited by the Inflation Reduction Act ("IRA"), which EPA's IPM runs suggest will cause Colstrip to significantly reduce generation as more renewables come online and other EPA rulemakings targeting older sources such as Colstrip are implemented. These rulemakings, excluding forthcoming ones, impacting Colstrip include: (i) the proposed rule on the Hazardous Solid Waste Management System: Disposal of Coal Combustion Residuals ("CCR") from Electric Utilities; Legacy CCR Surface Impoundments (88 Fed. Reg. 31,982 (May 18, 2023)) ("Proposed CCR Rule"); and (ii) the proposed rule on New Source Performance Standards for Greenhouse Gas ("GHG") Emissions from New, Modified, and Reconstructed Fossil Fuel-Fired EGUs; Emission Guidelines for GHG Emissions from Existing Fossil Fuel-Fired EGUs; and Repeal of the Affordable Clean Energy Rule (88 Fed. Reg. 33,240 (May 23, 2023)) ("Proposed GHG Rule").

The costs associated with complying with the proposed fPM limit, compounded with the proposed requirements in these other rulemakings, are massive. Given the reduced lifespan and generation that may be on the horizon for Colstrip, it will be extremely difficult to justify installing new controls to meet such the fPM limit in the Proposed Rule. At a certain point, it is likely that the owners will determine that it is no longer economically feasible to continue operating Colstrip, as they will not be able to recoup the cost of installing controls.

Furthermore, any closure plans necessitate intensive engagement and coordination among stakeholders because Colstrip is vital to Montana and the surrounding region. As concluded in a 2017 study by University of Montana's Bureau of Business and Economic Research, "[t]he early retirement of Colstrip Units 3 and 4 would ultimately produce:

- [A]n economy with, on average, almost 3,300 fewer jobs than would have been present if the units continued to operate through the 2028-43 period[.]
- [A] loss of income received by Montana households varying between $250 and $350 million per year, adding up to a total of about $5.2 billion over the full 16-year period 2028-43. Losses in after-tax income . . . for Montana households would total almost $4.6 billion over the same period.
- [D]eclines in annual gross sales by businesses and other organization, or economic output, between $700 and $800 million, cumulating to $12.5 billion over the full sixteen period.

- [A] decline in population which occurs as works and families migrate to other economic opportunities, growing to more than 7,000 people by year 2043."[5]

Colstrip also is vital to ensuring that Montanans have affordable and reliability electricity, especially during peak winter and summer months. Colstrip is one of Montana's most important energy assets, especially as demand for reliable baseload power in the western U.S. continues to grow. As Montana state Governor Gianforte has recognized, Montana needs Colstrip.[6]

Thus, EPA's proposal to make the fPM limit more stringent, as well as require CEMS to demonstrate compliance with that limit, has far-reaching ramifications given Colstrip's unique design and circumstances. Talen Montana strongly recommends that EPA reconsider its proposed amendments or to provide the relief requested by Talen Montana herein.

III. COMMENTS

Talen Montana understands that EPA conducted the MATS Residual Risk and Technology Review ("RTR") pursuant to President Biden's Executive Order 13990.[7] The order required EPA to review certain actions undertaken by the prior administration, including the MATS RTR finalized in May 2020.[8] The 2020 MATS RTR indicated that HAP emissions from the source category are acceptable and also did not identify any cost-effective controls that would achieve further HAP emission reductions.[9] While EPA acknowledges in the Proposal that the 2020 Residual Risk Review was sound and is not proposing to modify it, EPA is proposing to determine that the 2020 Technology Review was flawed because it "did not consider developments in the cost and effectiveness of . . . proven technologies, nor did EPA evaluate the current performance of emission reduction control equipment and strategies at existing MATS-affected EGUs."[10] Following the consideration of such factors, EPA is proposing that the updated technology review requires certain changes to MATS.[11] These changes include the fPM limit and the use of PM CEMS.[12]

---

[5] Barkey, Patrick M. "The Economic Impact of the Early Retirement of Colstrip Units 3 and 4 Final Report," June 2018 at 6.

[6] "Governor Gianforte: 'Montana Needs Colstrip,'" State of Montana Newsroom, Jan. 17, 2023, https://news.mt.gov/Governors-Office/Governor_Gianforte_Montana_Needs_Colstrip.

[7] 88 Fed. Reg. at 24,856.

[8] *See* National Emission Standards for Hazardous Air Pollutants: Coal- and Oil-Fired Electric Utility Steam Generating Units-Reconsideration of Supplemental Finding and Residual Risk and Technology Review, 85 Fed. Reg. 31,286 (May 22, 2020).

[9] *See id.*

[10] 88 Fed. Reg. at 24,865.

[11] *See id.* at 24,856.

[12] *See id.* at 24,857-58.

A. EPA Has Not Established a Sufficient Basis for Tightening the fPM Limit.

Existing coal-fired EGUs currently can demonstrate compliance with the emission limits for non-Hg metal HAPs by meeting: (i) the individual emission limits for each of the 10 non-Hg metals; (ii) an emission standard for total non-Hg metals; or (iii) a surrogate fPM emission standard of 0.030 lb/MMBtu.[13] EPA is proposing to eliminate the non-Hg HAP metals standards, leaving only the surrogate fPM standard. Further, EPA is proposing to tighten the surrogate fPM standard to 0.010 lb/MMBtu, which is comparable to the MATS new source standard of 0.09 lb/MWh fPM (equivalent to a new coal-fired EGU with a heat rate of 9.0 MMBtu/MWh).[14] EPA also is soliciting comment on whether to revise the fPM standard to an even more stringent level of 0.006 lbs/MMBtu.[15]

EPA's proposal to tighten the fPM limit is based on its evaluation that "most-existing coal-fired EGUs are reporting fPM well below the current fPM emission limit of 3.0E-02 lb/MMBtu" and that "the fleet is achieving these performance levels at lower costs than assumed during promulgation of the original MATS fPM emission limit."[16] EPA acknowledged that it did not identify any new practices, processes, or control technologies for non-Hg metal HAPs.[17] For the reasons discussed below, this rationale is not a sufficient basis for tightening the fPM limit.

1. EPA exceeds its statutory authority in 42 U.S.C. § 7412(d)(6).

42 U.S.C. § 7412(d)(6) requires EPA to "review, and revise as necessary (taking into account *developments* in practices, processes, and control technologies) emission standards . . . every eight years."[18] Among other considerations, EPA deems "[a]ny *improvements* in add-on control technology or other equipment (that were identified and considered during development of the original MACT [Maximum Achievable Control Technology] standards) that could result in additional emission reductions" as such "development" under § 7412(d).[19] But EPA has identified no such "developments" or "improvements." Rather, EPA is revising the fPM limit because the Agency says it now has more information about the cost and performance of existing technology than it did when promulgating the original MATS rule.[20] According to EPA's evaluation of such information, existing controls are cheaper and perform better than anticipated, and as discussed below, EPA's evaluation is flawed.[21]

---

[13] *See* Table 1, Emission Limits for New or Reconstructed EGUs, Subpart UUUUU, 40 C.F.R. Part 63.
[14] 88 Fed. Reg. at 24,856.
[15] *Id.* at 24,857.
[16] *Id.* at 24,868.
[17] *Id.* at 24,867-68.
[18] 42 U.S.C. § 7412(d)(6) (emphasis added).
[19] 88 Fed. Reg. at 24,863.
[20] *See id.* at 24,863 fn. 15. *See also* National Emission Standards for Hazardous Air Pollutants From Coal- and Oil-Fired Electric Utility Steam Generating Units and Standards of Performance for Fossil-Fuel-Fired Electric Utility, Industrial-Commercial-Institutional, and Small Industrial-Commercial-Institutional Steam Generating Units, 77 Fed. Reg. 9304 (Feb. 16, 2012).
[21] *See* 88 Fed. Reg. at 24,867-68.

The statute places guardrails on EPA's discretion to revise the existing standards. EPA does recognize that § 7412(d)(6) provides the Agency with authority to revise emission standards but only on specific grounds. This is most evidently reflected in a mere footnote that EPA inserted in the Proposed Rule, where EPA explains that the term "developments" could encompass "getting new or better information about the performance of an add-on or existing control technology (*e.g.*, emissions data from affected sources showing an add-on control technology performs better than anticipated during development of the rule)."[22] Such an interpretation of the term "developments," however, impermissibly stretches the statutory authority EPA has in revising emission standards.[23] Nowhere does the statute provide EPA the discretion to make such revisions for any other reason not enumerated in the statute. To establish a sufficient basis for tightening the fPM limit, EPA needs to point to a *change* in practices, processes, or control technologies and equipment that justifies the corresponding change to the fPM limit. EPA has not done so. As such, EPA does not have authority to promulgate the revised fPM standards.

2. EPA's proposal to tighten the fPM limit is arbitrary and capricious.

a) EPA's evaluation of current fPM emission levels is flawed.

EPA's proposal to tighten the fPM limit is arbitrary and capricious because its evaluation justifying the proposed tightening of the fPM limit relies on questionable methods of analysis and is flawed. EPA states that its proposal to tighten the fPM standard is based on its review of "developments in the current emission levels of fPM from existing coal-fired EGUs, the costs of control technologies, and the effectiveness of those technologies, as well as the costs of meeting a standard that is more stringent than 3.0 E-02 lb/MMBtu and the other statutory factors."[24] According to EPA:

> Currently, 96 percent of existing coal-fired capacity without known retirement plans before the proposed compliance period already have *demonstrated* an emission rate of 1.5E-02 lb/MMBtu or lower, 91 percent of existing coal-fired capacity have *demonstrated* an emission rate of 1.0E-02 lb/MMBtu or lower, and 72 precent of existing coal-fired capacity have *demonstrated* an emission rate of 6.0E-03 lb/MMBtu or lower."[25]

The statistics above appear to be based on the evaluation summarized in the 2023 Technology Review for the Coal- and Oil-Fired EGU Source Category ("Technical Memo"). EPA should not rely on the 96% threshold as justification for setting the proposed fPM limit at 0.010 lb/MMBtu. EPA's reliance on that evaluation is problematic for several reasons and likely overstates the universe of units that will be able to meet the proposed standard.

[22] *See* 88 Fed. Reg. 24,863 fn. 15.
[23] *See e.g.*, *Utility Air Regulatory Group v. EPA*, 573 U.S. 302, 328 (2014) ("We reaffirm the core administrative-law principle that an agency may not rewrite clear statutory terms to suit its own sense of how the statute should operate.").
[24] *See* 88 Fed. Reg. at 24,857.
[25] *Id.* at 24,868 (emphases added).

First, the evaluation summarized in the Technical Memo excludes units that have shut down, will shut down, or will no longer burn coal/oil by December 31, 2028, or reported data in lbs/MWh.[26] By failing to include units that will shut down or no longer burn coal/oil by December 31, 2028, EPA is not appropriately accounting for units that are likely emitting fPM at levels closer to the current standard than the more stringent proposed fPM limit. EPA should have accounted for such units given that affected EGUs will have up to three years after the effective date of the final rule to demonstrate compliance with the revised limit, and some of the excluded units may not have retired or ceased burning coal or oil by the compliance deadline.[27] These units should be included when evaluating what fPM levels current technologies are capable of achieving.

If the final rule is issued before December 31, 2025, or if the announced retirements are delayed, these excluded units might become subject to a tighter standard that they cannot meet without large capital outlays to install PM control technology despite near-term projected fuel switches or retirement dates that would render such investments not cost-effective. Units that are retiring in the near-term and cannot meet the fPM limit without the installation of controls could be forced to shut down early, which could destabilize electric reliability in their service areas and could have long-lasting effects. Significant dollars would need to be spent to restart certain generating facilities if it is later determined that the decision to shut down early was detrimental to reliable grid operations. A compliance date based on three years after the final rule's effective date is inconsistent with other recent EPA rulemakings, which recognize that significant investments in emissions controls should not be required for EGUs that will retire in the near-term.

Second, the evaluation is based on selected quarterly data from 2017, 2019, and 2021.[28] The Agency fails to explain how and why it selected the specific quarterly data for those years for its evaluation when EPA has all quarterly tests and PM CEMS for the entire fleet since the effective date of the original MATS rule.[29] The Agency also fails to explain why it used a single quarter of data to present the unit's "baseline" and why "[t]he 99th percentile of the *lowest* quarter was chosen to describe the baseline fPM rate for each EGU."[30] This results in a questionable dataset comprised of an extremely small industry sample size and where a single data point is narrowed down for each EGU. For example, for Colstrip, EPA utilized a baseline of 0.018 lb/MMBtu fPM for Unit 3 and 0.021 lb/MMBtu fPM for Unit 4.[31] These numbers do not reflect what is consistently achievable for Colstrip, as Colstrip has already optimized its existing controls to the greatest extent

[26] *See* Technical Memo at PDF p. 2.

[27] 88 Fed. Reg. at 24,868, fn. 20. EPA excluded units that have *announced* that they will shut down by the end of 2028 based on the National Electric Energy Data System ("NEEDS") database, but such retirement plans are not legally binding and thus such units should *not* be excluded from the Agency's evaluation.

[28] Technical Memo at PDF p. 2. ("Quarterly data from 2017 (variable quarters) and 2019 (quarters three and occasionally four) were first reviewed because data for all affected EGUs subject to numeric emissions limits had been previously extracted from CEDRI. In addition, the EPA obtained first and third quarter data for calendar year 2021 for a subset of EGUs with larger fPM rates (generally greater than 1.0E-02 lb/MMBtu for either 2017 or 2019).")

[29] The fact that this information had previously been extracted from CEDRI is no explanation at all. *See id.*

[30] Technical Memo at PDF p. 4. (emphasis added).

[31] *See id.* at PDF p. 4; Appendix C, *id.* at PDF p. 46.

practicable and cannot sustain emissions this low. In 2022, Colstrip achieved approximately 0.022 lb/MMBtu on an annual basis, far above EPA's assumption of the 99th percentile of the lowest quarter.

EPA should use all data available from coal-fired EGUs except as noted below with respect to units co-firing natural gas and units with an early retirement date to provide a full picture of achieved fPM emission rates. At the least, EPA should provide justification for its selection of the data, why reliance on the selected data is appropriate, and why certain quarterly data from 2017, 2019, and 2021 were excluded, so that interested stakeholders can verify the accuracy and representativeness of the underlying unit-specific data.[32]

Among other issues in the evaluation, EPA:

- Included some units that will be converted to gas in 2025.
- Did not include data for all quarters but instead selected only quarters with the lowest emissions for some units and excluded other quarters with higher emissions (peaking for some units, ramping for others).
- Excluded some units with no current plans to retire or switch to gas.
- Included some units that have a federally enforceable requirement to cease coal combustion by December 31, 2028 (despite stating that the evaluation excluded coal-fired EGUs that will retire by that date).
- Used the last day of a quarter in some cases and the *average* of 30-day averages for others.
- Included only certain test runs in conducting its distribution analysis.[33]

As to the last point above, EPA should use a historical data pool that encompasses data from different times of year and operating conditions. EPA should include all affected units and all operating quarters in its analysis. Without a more comprehensive data pool, it is difficult to see how EPA could conduct a proper statistical analysis to justify the proposed fPM limit. Talen Montana strongly recommends that EPA correct the deficiencies identified above, as well as make its statistical analysis or Python code used for the fPM evaluation available for public review, to ensure that the proposed fPM limit is not deemed arbitrary and capricious.

[32] It is confusing as to which units EPA included/excluded, and as to which quarterly data sets were included/excluded. EPA failed to explain its rationale for determining which units and data sets should be included or excluded. The lack of explanation, coupled with the large number of supporting documents in the docket, makes it extremely difficult to identify the unit-specific data compiled, analyzed, and ultimately relied upon by EPA and, more importantly, to meaningfully review EPA's evaluation.

[33] For the same reasons articulated in fn. 32, it is confusing as to which test runs EPA included/excluded in its distribution analysis, and EPA's lack of rationale for how it determined which test runs to use.

Third, the evaluation fails to properly address differences in typical unit operating variability by combining stack test data with PM CEMS data. Stack test data represent unit performance at a discrete point in time under full load conditions, whereas PM CEMS data provide a more comprehensive assessment of unit operating variability under all load and process conditions. These are two different data sets and should be treated independently. This is reflected in EPA's performance specification for PM CEMS, which only requires the readings to be within +/-25% of actual stack testing values two-thirds of the time (with the other one-third of the time not having any accuracy constraint) to be considered as valid readings.[34] EPA fails to explain how using such an error prone data set is justified for establishing an emissions standard. The evaluation fails to recognize that PM CEMS is not constrained to a linear correlation with direct emissions. In cases where non-linear correlations are used, an allowable +/-25% error from the correlated value could have a much larger deviation from the actual measured emissions compared to when a linear correlation is used.[35] Any emissions analysis based upon PM CEMS readings must attempt to compare unit performance in the allowable error band.

Further, any unit using a PM CEMS to demonstrate compliance with the emissions limit also must conduct annual emissions measurements under steady-state conditions, which are utilized in either a Response Correlation Audit ("RCA") or Relative Response Audit ("RRA"). The tested unit must show compliance in the short-term via stack testing measurement values and in the long-term via PM CEMS 30-day average values. For these purposes, PM CEMS data and the PM testing measurements should be treated separately and not merged as a data set. Failing to address these differences is especially problematic because EPA is proposing to require PM CEMS as the sole compliance demonstration method, as discussed further below. EPA should thus revise its current "apples-to-oranges" comparison to establish consistently achievable baseline emissions for each unit by using all available data *and* by accounting for any bias related to operating variability.

Fourth, the evaluation fails to take into consideration different control configurations — specifically, the variation in PM removal efficiencies. Some PM control technology, such as hot-side electrostatic precipitators ("ESPs"), inherently have higher particulate emissions. Similarly, depending on the coal combusted, units that utilize hydrated lime as a control technology for minimizing SO_2 and acid gases inherently have higher variability in particulate emissions. Wet flue gas desulfurization ("WFGD") controls, like Colstrip's venturi wet scrubbers, also may result in higher variability in particulate emissions. EPA should factor in these specific control configurations. EPA also should analyze more comprehensive data sets across a longer time frame — rather than using a snapshot of EGUs "demonstrating" the proposed limit during selected quarters prior to concluding that continuous compliance with the proposed limit is achievable.

Fifth, the evaluation fails to recognize that some units have converted to natural gas co-firing. Since these units continue to have the capability to combust coal, all of their emissions data is reported as subject to MATS. However, co-firing natural gas inherently results in significantly

[34] *See* Appendix F, 40 C.F.R. Part 60, Procedure 2.
[35] *See* Appendix B, 40 C.F.R. Part 60, Performance Specification 11.

reduced fPM emissions, which could bias the data set low. EPA should exclude data from units that co-fire natural gas in evaluating what a revised fPM standard should be. Any proposed fPM limit that EPA establishes should be based on fPM from affected units that only combust coal.

Lastly, EPA's evaluation is replete with questionable assumptions and statements. For instance, in the technical reports developed by Sargent & Lundy ("S&L"), on which EPA relies for cost and emissions reductions assumptions, S&L acknowledges that "[b]ased on S&L's recent industry experience, the lowest filterable PM emission rates that an ESP supplier has been willing to guarantee is 0.030 lb/MMBtu for a new and/or completely rebuilt ESP."[36] Yet, the study states that "it is clear that emission levels down to 0.010 lb/MMBtu and below are achievable in most ESP applications based on the reported emissions data" despite acknowledging that the authors are unable to tie a specific performance improvement to a specific set of ESP upgrades.[37] EPA should not rely on such unsupported statements to justify a fPM limit of 0.010 lb/MMBtu.

b) EPA's fPM proposal disproportionately impacts Colstrip.

EPA's proposal to tighten the fPM limit also is arbitrary and capricious because it disproportionately impacts Colstrip. Even if EPA were correct that most units subject to the Proposed Rule would have to do nothing and that the remainder would only need to upgrade existing control technology, the same is not true for Colstrip.[38] As EPA acknowledges in the proposal, Colstrip would need to install new ESPs or FFs — and the Colstrip units, based on EPA's analysis, would be the only two units that would need to do so to comply with the proposed 0.010 lb/MMBtu fPM limit.[39]

Given that EPA's rationale for the Proposed Rule is that *existing* control technology is more effective and cost effective than was known at the time of the original MATS rule — that 91% of units already have either a FF or ESP and are meeting the proposed standard and that the rest would only need to upgrade existing control technology at relatively low cost — it simply does not follow that Colstrip should be required to install new, complex, and prohibitively expensive control technology to meet a significantly lower standard.[40] The logical conclusion that should flow from EPA's rationale (assuming that it is not flawed), is that Colstrip should upgrade its *existing* venturi wet scrubber technology to the greatest extent possible.

Instead, EPA proposed that Colstrip should meet the proposed standard by installing new FFs or ESPs at Colstrip. Below is a table summarizing the total annualized cost and the annualized

[36] Sargent & Lundy. PM Incremental Improvement Memo, Doc. ID. EPA-HQ-OAR-2018-0794-5836 at 2 (Mar. 2023). *See also* Technical Memo at PDF p. 8.
[37] PM Incremental Improvement Memo at 2.
[38] *See* Technical Memo at PDF p. 9-10.
[39] *See id.* at PDF p. 10 ("For the *one* facility with existing venturi-type WS (and without an existing ESP or FF), EPA assumes that ESP upgrades will reduce fPM emission to 1.5E-02 lb/MMBtu. To achieve the lower potential fPM standards, EPA assumes that these EGUs would require FF installation, reducing baseline fPM rates by 90% subject to a floor of 2.0 E-03 lb/MMBtu." (emphasis added)).
[40] *See* 88 Fed. Reg. at 24,868; Technical Memo at PDF p. 9-10.

cost EPA attributes for Colstrip to comply with 0.015 lb/MMBtu, 0.010 lb/MMBtu, and 0.006 lb/MMBtu fPM limits:

Table 1: Annual Costs by Potential fPM Standard

	Potential fPM Standard		
Annualized Costs	**0.015 lb/MMBtu**	**0.010 lb/MMBtu**	**0.006 lb/MMBtu**
Total of All Facilities[41]	$13-9-$19.3M	$77.3-$93.2M	$633M
Colstrip[42]	Unit 3: $843,600 Unit 4: $843,600 Total: $1,687,200	Unit 3: $18,992,866 Unit 4: $19,058,306 Total: $38,051,172	Unit 3: $18,992,866 Unit 4: $19,058,306 Total: $38,051,172

As reflected by EPA's own numbers, the annualized cost for Colstrip to comply with the proposed 0.010 lb/MMBtu fPM limit is approximately $38M, which represents 41-49% of the total annualized cost of the Proposed Rule. ***This means that EPA is asking the owners of one facility — representing 0.7% of EGUs subject to the Proposed Rule — to bear nearly 50% of the costs associated with the proposed amendment.***[43] This result is grossly unreasonable, unwarranted, and inconsistent with EPA's rationale for the Proposed Rule and should not be finalized.

c) EPA's cost effectiveness analysis is flawed.

Additionally, EPA's proposal to tighten the fPM standard is arbitrary and capricious because the Agency's cost-benefit analysis is flawed. First, EPA overestimated the benefits attributed to Colstrip if Colstrip were to comply with the 0.010 lb/MMBtu fPM limit. Below is a table summarizing the total fPM emission reductions calculated by EPA and the fPM emission reduction from Colstrip (as calculated by EPA) if Colstrip were to comply with a 0.015 lb/MMBtu, 0.010 lb/MMBtu, and 0.006 lb/MMBtu fPM limits.

[41] Table 7, Technical Memo at PDF p. 12.
[42] Appendix D, *id.* at PDF p. 80 (total annualized costs for Colstrip is calculated by summing the annualized costs for Units 3 and 4).
[43] *See id.* at PDF p. 2 (evaluating fPM rates from a total of 275 individuals EGUs with Colstrip representing two of those EGUs)

TALEN MONTANA

Table 2: fPM Emission Reductions by Potential fPM Standard

	Potential fPM Standard		
fPM Emission Reduction	**0.015 lb/MMBtu**	**0.010 lb/MMBtu**	**0.006 lb/MMBtu**
Total of All Facilities[44]	463 tons/yr	2074 tons/yr	6163 tons/yr
Colstrip[45]	Unit 3: 82.3 tons/yr Unit 4: 166.6 tons/yr Total: 248.9 tons/yr	Unit 3: 442.1 tons/yr Unit 4: 528.3 tons/yr Total: 970.4 tons/yr	Unit 3: 442.1 tons/yr Unit 4: 528.3 tons/yr Total: 970.4 tons/yr

As reflected above, EPA associated nearly 47% of the total fPM emission reduction for the proposed 0.010 lb/MMBtu fPM limit to Colstrip. However, that result relies on questionable assumptions. For instance, to achieve the 0.015 lb/MMBtu fPM limit, EPA assumed that Colstrip would conduct maintenance of its venturi wet scrubbers. But maintenance alone (or any other optimization measures) will not further improve the performance of Colstrip's wet scrubbers, as they are already performing at maximum optimization, as discussed above in Section II.A.[46]

Similarly, to achieve both the 0.010 lb/MMBtu and 0.006 lb/MMBtu fPM limits, EPA assumes that Colstrip will install a new FF that would "reduce[] baseline fPM rates by 90% subject to a floor of 2.0E-03 lb/MMBtu."[47] In taking the 99th percentile of the lowest quarter to describe the baseline fPM rate for each EGU, EPA assumes for Colstrip a baseline of 0.018 lb/MMBtu fPM for Unit 3 and 0.021 lb/MMBtu fPM for Unit 4.[48] ***With a 90% reduction, this means that EPA is assuming that Unit 3 would achieve 0.0018 lb/MMBtu fPM (subject to the 0.0020 lb/MMBtu fPM floor caveat) and Unit 4 would achieve 0.0021 lb/MMBtu fPM with a FF.*** But such emission rates are significantly below either the proposed 0.010 lb/MMBtu fPM limit or the more stringent 0.006 lb/MMBtu fPM limit EPA is considering.

Moreover, EPA has provided zero engineering justification for its assumption that any EGU could achieve such emission rates with FFs/baghouses, much less Colstrip's units with their unique configuration. S&L's technical reports in fact states that FF vendors would not be able to guarantee rates as low as EPA's 0.0020 lb/MMBtu fPM floor assumption. For instance, S&L state that "[w]ith the usage of more expensive fiberglass bags with a PTFE [polytetrafluroethylene] membrane coating, it is expected that 0.00375 lb/MMBtu of filterable PM emission could be achieved *but would not be guaranteed by vendors*" and "[a]s such, a best-case scenario would be

[44] Table 6, *id.* at PDF p. 11.
[45] Appendix D, *id.* at PDF p. 80 (total fPM emission reductions for Colstrip are calculated by summing the annualized costs for Units 3 and 4).
[46] *See id.*; Table 5, *id.* at PDF p. 10-12.
[47] *See id.* at PDF p. 10.
[48] *See id.* at PDF p. 4; Appendix C, *id.* at PDF p. 46.

ED_021114A_00008606-00016

achieving 0.005 lb/MMBtu."[49] Indeed, based on Talen Montana's discussions with consultants and vendors, it may not be possible to guarantee anything under 0.010 lb/MMBtu depending on the configuration. As a result, EPA has grossly overestimated the emission reductions from Colstrip that, coupled with EPA's unjustified assumptions, renders its cost-benefit analysis flawed. For example, EPA estimates fPM emission reductions of 970.4 tons/yr from Colstrip assuming that Colstrip will achieve emission rates of 0.0020 lb/MMBtu fPM for Unit 3 and 0.0021 lb/MMBtu fPM for Unit 4 once controls are installed. However, as discussed below, Colstrip may only attain an emission rate of 0.010 lb/MMBtu fPM, which corresponds to a reduction of 538 tons/yr using EPA's "baseline."

Second, EPA also underestimated the cost per ton of fPM reduced for Colstrip because EPA's cost effectiveness analysis fails to account for the impacts of the IRA. As EPA states in the Proposal, the Agency's estimates in the analysis "do not account for any future changes in the composition of the operational coal-fired EGU fleet that are likely to occur by 2028 as a result of other factors affecting the power sector, such as the Inflation Reduction Act (IRA), future regulatory actions, or changes in economic conditions."[50] This is problematic because it means that EPA is assuming that Colstrip Units 3 and 4 will continue to operate as baseload units for the foreseeable future.[51] But such an assumption is contrary to EPA's post-IRA IPM model, which predicts that Colstrip will shift away from operating as baseload units and its utilization will decrease. Specifically, the post-IRA IPM model — which accounts for future changes that are likely to occur *only* as a result of the IRA and *not* other factors (*e.g.*, Proposed Rule, Proposed GHG Rule) assumes that Colstrip will:

- Through 2030, continue to operate as baseload units with an estimated combined heat input of 113 TBtu/year.[52]
- By 2040, reduce its utilization by 25% so that it is estimated to operate at a combined heat input of 85 TBtu/year.[53]
- By 2050, reduce its utilization by 88% so that it is estimated to operate at a combined heat input of 13 TBtu/year.[54]

As reflected in Attachment B, the cost effectiveness of installing new baghouses at Colstrip significantly decreases over time because of reduced utilization. Utilizing EPA's cost numbers (and presumed emission reductions), the cost effectiveness is estimated to be $39,192/ton fPM reduction in 2030 assuming baseload operation (*i.e.*, 113 TBtu/year). However, the cost

[49] PM Incremental Improvement Memo at 9 (original underline omitted, italicized emphasis added). *See also id.* at 10 ("[S]uppliers *may* be willing to provide a filterable PM guarantee of 0.005 lb/MMBtu for new baghouses with PTFE bags." (original underline omitted, italicized emphasis added)).
[50] 88 Fed. Reg. at 24,869-70.
[51] *See* Technical Memo at PDF p. 11.
[52] Post-IRA 2022 Reference Case, https://www.epa.gov/power-sector-modeling/post-ira-2022-reference-case.
[53] *Id.*
[54] *Id.*

effectiveness would be $51,071/ton fPM by 2040 assuming 75% of baseload utilization and $330,026/ton fPM by 2050 assuming 12% of baseload utilization. The post-IRA IPM model predicts an 88% reduction in fPM emissions from Colstrip by 2050, as a result of the IRA *only* and *without* reductions from the Proposed Rule. Thus, by not incorporating the post-IRA IPM model into the analysis, EPA's cost effectiveness estimate for Colstrip is severely underestimated because it is premised on the Colstrip units operating at baseload utilization across a fifteen-year time horizon and fails to account for the change in utilization that Colstrip is projected to undergo by the latter part of that horizon.[55] In other words, Colstrip is projected to operate and emit less, and thus the same costs will be borne to generate fewer tons of reductions.

Third, EPA fails to account for the reduction in remaining useful life and utilization that also may result from EPA's other rulemakings targeting Colstrip, including the Proposed CCR Rule and the Proposed GHG Rule. For instance, EPA's Proposed GHG Rule, if finalized, would make it challenging for Colstrip to meaningfully operate past 2034, or even 2031, given the proposed 20% capacity factor limit for near-term units in the Proposed GHG Rule (assuming that units would need to adopt that limit from 2031 to 2034). But the Proposed Rule would require the Colstrip owners to spend hundreds of millions of dollars to install FFs or ESPs by 2027 or 2028, only to potentially shut down or seriously curtail operations by 2031 due to the Proposed GHG Rule. In considering the cost effectiveness of the rule, EPA should have considered that the costs to upgrade Colstrip may only be spread over three to four years. This would yield astronomically high annualized costs. Moreover, it is highly improbable that the Colstrip owners would shell out those huge sums of money to operate for three or four more years, as the owners would not be able to recoup those costs. Colstrip shutting down prematurely would have far-reaching ramifications on Montana's economy and the surrounding region and grid stability and transmission, as discussed in Section II.B. — none of which EPA considered.

B. The Cost for Colstrip to Comply with the Proposed 0.010 lb/MMBtu fPM Limit is Exorbitant and Requires Significant Time to Install, Test, and Implement the Controls.

Talen Montana retained Burns and McDonell ("B&M"), an engineering consulting firm, to evaluate the cost and feasibility of control technologies available to Colstrip to comply with the proposed 0.01 lb/MMBtu fPM limit. Working with equipment vendors, B&M evaluated the cost and feasibility of a number of controls, including an ESP or a FF upstream of Colstrip's existing wet scrubbers, a wet ESP, and an ESP or a FF downstream of Colstrip's existing wet scrubbers. For the purposes of these comments, B&M conducted a high-level feasibility and cost review that would need to be refined with additional engineering. Actual costs when compared to this level of estimate could be as much as 50% higher than those projected here. Sufficient time was not

[55] *See* Technical Memo at PDF p. 10.

available during the comment period to further refine the feasibility and costs, and EPA rejected Talen Montana's request for more time to undertake additional efforts.[56]

B&M's estimates for the two units combined are summarized below (see Attachment C for the memorandum from B&M which contains a detailed summary of estimates). The first table is how B&M estimates costs, including cost escalation during construction. The second table is meant to be more aligned with how EPA estimates costs, which leads to underestimates:

[56] *See* Talen Montana's Request for Extension of the Comment Period on the National Emissions Standards for Hazardous Air Pollutants: Coal- and Oil-Fired Electric Utility Steam Generating Units Review of the Residual Risk and Technology Review, Doc. ID. EPA-HQ-OAR-2018-0794-5880, submitted May 25, 2023 (denied on June 12, 2023).

ED_021114A_00008606-00019

TALEN MONTANA

Table 3: Annual Costs of Control Options at Colstrip to Meet the Proposed 0.010 lb/MMBtu fPM Limit (B&M Class 5 Feasibility Estimates)

		Installed Capital Cost	*Annualized Cost of Controls*
Total (EPA)[57]			$77.3-$93.2M
Colstrip[58]	**Baghouse (EPA)[59]**		$38,051,172
	Upstream ESP (B&M)	$486.0M	$87.4M
	Upstream FF (B&M)	$404.9M	$78.0M
	Wet ESP (B&M)	$744.5M	$104.9M
	Reheat ESP (B&M)	$263.5M	$41.8M
	Reheat FF (B&M)	$351.2M	$56.5M

Table 4: Annual Costs of Control Options at Colstrip to Meet the Proposed 0.010 lb/MMBtu fPM Limit (B&M Estimates Using EPA Cost Approach)

		Installed Capital Cost	*Annualized Cost of Controls*
Total (EPA)[60]			$77.3-$93.2M
Colstrip[61]	**Baghouse (EPA)[62]**		$38,051,172
	Upstream ESP (B&M)	$406.1M	$77.8M
	Upstream FF (B&M)	$338.3M	$70.1M
	Wet ESP (B&M)	$622.2M	$90.4M
	Reheat ESP (B&M)	$220.2M	$36.6M
	Reheat FF (B&M)	$293.4M	$49.7M

[57] Table 7, Technical Memo at PDF p. 12 (for all EGUs subject to the Proposed Rule).

[58] Cost estimates are based on the following assumptions, scope, and other cost factors. Assumptions include: 85% capacity factor, $15/ton disposal, $200/ton lime, $45/MW power, 15-year life, and 8.25% prime rate. Scope includes: ductwork, foundations, control device, electrical (percent based), no fans, no stack modifications, and ash and lime silos and slurring/feed for upstream control options. Other cost factors include: 5% indirect costs, 8% engineering cost, 5% escalation during construction, 15% contingency costs, and 0% owners' cost.

[59] Appendix D, *id.* at PDF p. 80 (total annualized costs for Colstrip is calculated by summing the annualized costs for Units 3 and 4).

[60] Table 7, Technical Memo at PDF p. 12 (for all EGUs subject to the Proposed Rule).

[61] Cost estimates are based on the following assumptions, scope, and other cost factors. Assumptions include: 85% capacity factor, $15/ton disposal, $200/ton lime, $45/MW power, 15-year life, and 8.25% prime rate. Scope includes: ductwork, foundations, control device, electrical (percent based), no fans, no stack modifications, and ash and lime silos and slurring/feed for upstream control options. Other cost factors include: 0% indirect costs, 8% engineering cost, 0% escalation during construction, 10% contingency costs, and 0% owners' cost.

[62] Appendix D, *id.* at PDF p. 80 (total annualized costs for Colstrip is calculated by summing the annualized costs for Units 3 and 4).

As reflected above, B&M's estimates of annualized costs are significantly higher than EPA's $38M estimate[63] for a new FF at Colstrip, ranging from $41.7M to $104.9M (using B&M's Class 5 Estimate) and $36.6M to $90.3M (using EPA's approach), assuming that Colstrip is just able to meet the proposed 0.010 lb/MMBtu fPM limit.

Further, the cost effectiveness of each of the control options that B&M evaluated are below, where the first B&M column is based on a fPM baseline of 0.022 lb/MMBtu, which represents Colstrip's average fPM emission rate in 2022, and the second B&M column is based on a fPM baseline of 0.0195 lb/MMBtu, which represents the average of the EPA's fPM baselines for Colstrip's Units 3 and 4. The B&M estimates are calculated using EPA's cost approach.[64]

Table 5: Cost Effectiveness of Control Options at Colstrip

		***EPA*[65]**	***B&M 0.022 lb/MMBtu fPM baseline***	***B&M 0.0195 lb/MMBtu fPM baseline***
Colstrip	**Baghouse**	$39,192/ton		
	Upstream ESP		$114,900/ton	$145,000/ton
	Upstream FF		$103,200/ton	$130,300/ton
	Wet ESP		$133,100/ton	$168,000/ton
	Reheat ESP		$53,900/ton	$68,000/ton
	Reheat FF		$73,200/ton	$92,400/ton

As reflected above, the cost effectiveness for Colstrip to install the various controls are significantly higher than EPA's estimate of $39,192/ton (see Section III.A.2.c, assuming baseload operation), ranging from $73,156/ton to $133,104/ton (using the actual 0.022 lb/MMBtu fPM baseline) and from $68,114/ton to $168,132/ton (using an average of EPA's fPM baseline for the units). In the B&M scenarios, the cost per ton is calculated assuming that the units will just be able to achieve 0.010 lb/MMBtu after controls based on the technical review to date, as opposed to EPA's unrealistic assumptions of a 90% reduction in fPM down to 0.002 lb/MMBtu.

At this preliminary stage, the downstream ("Reheat") options are the most cost-effective. The upstream options, and wet ESP option, are even more costly, and come with additional technical challenges, as outlined in the B&M memorandum attached as Attachment C. Despite the lower cost of the Reheat ESP compared to the Reheat FF, the Reheat ESP comes with more technical challenges in meeting the 0.010 lb/MMBtu standard.[66] The Reheat FF has fewer technological challenges and could be the preferred alternative should Colstrip retrofit to comply with the Proposal. However, with an annualized cost of $56.5 M (using B&M's Class 5 estimates)

[63] Note that EPA fails to provide meaningful information as to how annualized control costs were estimated, how capital costs were specifically calculated for Colstrip, or what specific control configurations were accounted for in the estimates. This has made it difficult for Talen Montana to fully comment on EPA's cost estimates.
[64] *Supra* fn. 61.
[65] *See* Attachment B.
[66] *See* Attachment C.

or $49.7M (B&M's estimates using EPA's cost approach), and with a limited lifespan and limited generation to recoup the costs, it is far more likely that Colstrip would suffer a premature retirement with the potential for serious economic disruption and impacts on grid reliability and transmission.

C. Should EPA Finalize the Proposed 0.010 lb/MMBtu fPM Limit, EPA Should Create Additional Subcategories.

EPA should not finalize the 0.010 lb/MMBtu fPM limit. But should EPA do so, the Agency should establish subcategories so that it accounts for Colstrip's unique design and circumstances. Specifically, EPA should establish a subcategory for coal-fired units that use wet scrubbers to address both SO_2 and PM, and that do not have ESPs or FFs, where the fPM limit for those units is no lower than 0.025 lb/MMBtu pursuant to its authority under 42 U.S.C. § 7412(c)(5). As discussed above, application of the 0.010 lb/MMBtu fPM standard to Colstrip is not appropriate or warranted. At most, EPA should require Colstrip to optimize its existing control technology, consistent with the burden borne by other EGUs, as evaluated by the Agency. While Talen Montana believes that its efforts to reduce fPM have already been optimized, a limit of 0.025 lb/MMBtu fPM may be more achievable, especially as compared to the 0.010 lb/MMBtu fPM limit, as it would at least provide Colstrip an opportunity to try to meet the limit without new control technology. It also would provide for a more stringent limit for Colstrip, with additional emission reductions, and would be more appropriate for Colstrip given its unique circumstances.

As an additional alternative, EPA should establish a subcategory with units making an enforceable commitment to retire, where the fPM limit remains at 0.03 lb/MMBtu through retirement.[67] This would be in line with how EPA is providing lead time for older sources in other rulemakings.[68] Creating a subcategory in the MATS rule for units committing to retire would greatly assist companies with moving forward on retirement plans without running the risk of being forced to retire early, which could create reliability concerns or, in the alternative, deliberating whether to install controls and continue operation longer than planned to recoup investments in the controls.

Here, EPA should create a retirement subcategory allowing units to continue to meet the existing 0.03 lb/MMBtu fPM standard so long as they opt-in to the retirement subcategory within 18 months after finalization of the rule, with a retirement date no later than December 31, 2035 (and where continued operation after 2035 would later be permitted if (i) the unit is essential to maintain regional grid reliability, as determined by the Western Regional Adequacy Program, Regional Transmission Organizations, Independent System Operators, North American Electric Reliability Corporation, or other similar system reliability authorities; or (ii) or if EPA determines

[67] A unit should qualify for the retirement subcategory as long as it commits to cease burning coal by the proposed deadline of December 31, 2035.

[68] *See e.g.*, Proposed GHG Rule, 88 Fed. Reg. 33,240, 33,245 (May 23, 2023) (near-term retirement units); Federal "Good Neighbor Plan" for the 2015 Ozone National Ambient Air Quality Standards, 88 Fed. Reg. 36,654 (June 5, 2023).

that additional time is required for transition to renewable or clean energy generation).[69] This would provide units another compliance option and needed flexibility.

D. EPA Should Retain the fPM Emission Monitoring Options.

EGUs that do not qualify for the low emitting EGU program currently demonstrate compliance with the fPM standard by conducting quarterly performance testing (*i.e.*, quarterly stack testing), using a PM continuous parameter monitoring system ("CPMS"), or using a PM CEMS.[70] EPA is proposing to eliminate the quarterly stack testing and CPMS options for all coal-fired EGUs — specifically, requiring all coal-fired EGUs to use PM CEMS "[a]fter considering updated information on the costs for quarterly performance testing compared to the costs of PM CEMS and on the measurement capabilities of PM CEMS, as well as other benefits of using PM CEMS, which include increased transparency and accelerated identification of anomalous emissions."[71] According to EPA, PM CEMS data "supply real-time, quality-assured feedback that can lead to improved control device and power plant operation, which, in turn, can lead to fPM emission reductions."[72]

Talen Montana disagrees with EPA's conclusions and strongly believes that sound engineering approaches using control device operating parameters, such as those found in EPA's required compliance assurance monitoring ("CAM") plans achieve the same ultimate objective of fPM emission reductions. It is unclear how adding another measurement system, particularly given the challenges with PM CEMS as described below, would be cost-effective. Talen Montana urges EPA to retain the option for quarterly stack testing (without any changes to testing frequency) and the CPMS option for all coal-fired EGUs.

1. General Challenges with PM CEMS

EPA should retain the quarterly stack testing and PM CPMS options particularly if the Agency intends to finalize the proposed 0.010 lb/MMBtu fPM emission limit to afford entities flexibility in demonstrating compliance with the more stringent limit. Currently, two-thirds of existing EGUs have chosen to demonstrate compliance via the quarterly stack testing approach, and EPA should continue to retain that option in light of the difficulties with using PM CEMS. EPA justifies the proposed requirement to use PM CEMS based on cost, but the Agency understates the costs of PM CEMS and significantly overstates stack testing costs.[73] The costs associated with installing, maintaining, and operating a PM CEMS far outweigh the costs of demonstrating compliance through stack testing, as discussed below.

[69] It makes sense for units retiring in this time frame to be allowed to continue operations without installation of new controls because the annualized costs for an eight-year period (*i.e.*, installation in the 2027-2028 time period and retirement by the end of 2035) would be excessive. For example, the annualized costs for the reheat FF with an eight-year life would be $76.6M versus $56.5M with a 15-year life.
[70] *See* 40 C.F.R. § 63.10011(b).
[71] *See* 88 Fed. Reg. at 24,857.
[72] *Id.* at 24,872.
[73] *Id.*

In addition, use of PM CEMS may not be appropriate for all coal-fired units given the challenges associated with: (i) meeting the Quality Assurance-Quality Control ("QA-QC") criteria required under Procedure 2; and (ii) establishing the correlation curve using Performance Specification 11 ("PS-11"). First, when a PM CEMS fails to meet the QA-QC criteria required under Procedure 2, the collected data is considered out-of-control and is no longer considered valid.[74] Because the measured emissions values are dependent upon laboratory analysis, an owner/operator has no real time indication that its EGU might have failed the required QA-QC criteria until several weeks after the testing has been completed. This can result in hundreds of hours of monitor downtime being created retroactively after the QA-QC criteria failure has been identified. Monitor downtime is required to be reported as a deviation under the MATS rule, and most states have minimum data availability requirements that could result in enforcement actions. At the more stringent fPM criteria of 0.010 lb/MMBtu (or 0.006 lb/MMBtu), the likelihood of out-of-control periods increases. This downtime is not reflective of poor maintenance or operation but rather the difficulties associated with the required calibration procedure at such low emission levels. Thus, in conjunction with this rulemaking, EPA should include additional provisions in Appendix C of 40 C.F.R. Part 63, Subpart UUUUU to mitigate the effects of this downtime, such as provisional data periods following a failed RRA or RCA. Moreover, there currently is no calibration procedure available that can accurately verify continuous measuring of fPM at levels as low as 0.010 lb/MMBtu, much less 0.006 lb/MMBtu.[75]

EPA attempts to address these issues by proposing to amend Table 2 of 40 C.F.R. Part 63 Subpart UUUUU to require sample volumes of at least 4 dscm per run, rather than at least 1 dscm per run.[76] While the additional sample volume will reduce measurement uncertainty, it does not address the unit and control device operating variability that occurs during correlation testing that would make it difficult to achieve the distinct PM test conditions required under PS-11 and Procedure 2. In addition, when developing the initial correlation curve or conducting ongoing RCAs, emissions controls are de-tuned to simulate upset conditions and to achieve dust loadings at mid- (25-75% of the maximum expected concentration) and high- (50-100% of the maximum expected concentrations) levels.[77] For units equipped with WFGD systems, expanding the test runs to collect 4 dscm of sample volume significantly increases the flyash carryover to the scrubber.[78] This off-spec material is then required to be landfilled instead of beneficially reused.

---

[74] *See* Appendix F, 40 C.F.R. Part 60, Procedure 2.

[75] *See* Nicklin, D. et. al., "Techniques to measure particulate matter emissions from stationary sources: A critical technology review using Multi Criteria Decision Analysis (MCDA)," *Journal of Environmental Management*, 296:18-20 (2021).

[76] *See* MATS RTR Rule Text Redline Strikeout document (final) ("Redline Final"), posted on Apr. 25, 2023, at PDF p. 86, 89, 91, 96, 98, Doc. ID. EPA-HQ-OAR-2018-0794-5831. *See also* 88 Fed. Reg. at 24,873-74.

[77] Trying to simulate different ranges of particulates created for test activities often has unintended consequences on the FGD's performance that can take days to normalize and clean up so that the equipment resumes performing as designed. Any additional ash carryover into the FGD increases the opportunity to blind the FGD such that the only recovery is to shut the unit down to add lime or to dump the ash into a storage tank because the material can no longer be stored in the onsite landfill as the chloride content of the sludge, at that point, has become too high.

[78] Ash reinjection may be not feasible for some sources due to stratification issues or ash drop-out effects.

Furthermore, it can take days to weeks for the scrubber chemistry to again reach optimal, steady-state conditions; and maintaining optimal scrubber chemistry is needed to ensure effective removal of mercury emissions. The increased particulate loading will physically impact the equipment and degrade the scrubber's performance, such as: scaling inside the scrubber vessel; plugging spray headers; causing buildup on mist eliminators; and eroding booster and ID fan blades and absorber recirculating pumps.

Second, PM CEMS require the use of PS-11 to establish a correlation curve.[79] For the PS-11 PM CEMS correlation test, a minimum of 15 sets of reference method testing must be conducted that are evenly spaced over three different levels of PM mass concentration by varying process operating conditions, by varying PM control device conditions, or by means of PM spiking.[80] If it is not possible to obtain three distinct levels of PM concentration, zero point testing may be used to perform correlation testing over the maximum range of PM concentration that is practical for the PM CEMS.[81] Each run requires roughly three to four hours, and most sources conduct 18 to 20 test runs for a robust correlation.[82] Barring unpredictable circumstances, based on the proposed sampling time, PS-11 may require seven to ten days to complete. Additional time likely will be needed to maintain the distinct PM test conditions that are required. Sources also will require accurate, preliminary test results to evaluate each test condition and may even need to obtain final results before concluding the test program, which further extend the length and cost of the tests. These activities increase the cost of MATS compliance and overall EGU operation, as well as disrupt the normal operation of the EGU. Ongoing PM CEMS correlation testing with injection of media in the effluent to artificially raise emission levels costs at least $250,000 per test evolution at one source, and testing is required by MATS once every three years. For Colstrip's Units 3 and 4, PM CEMS would cost approximately $136,000/year, whereas quarterly MATS PM stack testing costs approximately $24,000/year. Thus, EPA may have significantly underestimated annual costs associated with a PM CEMS (from $18,111 to $95,397 depending on type) and overestimated annual costs associated with stack testing ($85,127), particularly when specific control configurations are taken into account.[83] Furthermore, the excessive costs of installing and maintaining PM CEMS become even more onerous if required on a unit with limited remaining life (see earlier discussion on how other rules may force retirement, cessation of coal, or decreased capacity factors, or if an early retirement subcategory is created).

More importantly, EPA has failed to show how correlations can be developed on data sets where the upper end of the emissions testing is capped at 0.010 lb/MMBtu fPM following PS-11 requirements. Emissions levels are supposed to be evenly distributed between the low, mid, and high PM emission levels. Even when allowing for a low-emitting unit to use a zero point in the correlation, a correlation still needs data variation to be a valid regression model. By limiting the

[79] *See* Appendix B, 40 C.F.R. Part 60, Performance Specification 11.
[80] *See id.*
[81] *See id.*
[82] *See id.*
[83] 88 Fed. Reg. 24,872-73.

dataset pursuant to the proposed 0.010 lb/MMBtu fPM limit EPA needs to establish that the PS-11 correlation will still be valid at such low levels.

2. Colstrip's Challenges with PM CEMS

Colstrip has utilized PM CEMS as a particulate control performance indicator in its PM CAM Plan since 2014. The initial PM CEMS were a light scattering technology that encountered times when they did not accurately indicate particulate emissions from the wet venturi scrubber at Colstrip Units 3&4. In September 2020, the PM CEMS were changed to the MSI BetaGuard 3.0 PM CEMS. The BetaGuard PM CEMS has performed better than the light scattering technology at Colstrip; however, it still exhibits variability that would not be acceptable to be used as a continuous compliance monitor. When compared to the quarterly MATS PM compliance test results, the BetaGuard PM CEMS has provided mg/m^3 values that varied from the RM5 mg/m^3 value by -24% to +31%. Talen Montana believes this range of variability with the PM CEMS is not acceptable for use as a compliance monitor, but its use as part of a PM CAM Plan like Colstrip utilizes, is reasonable.

The PM CAM Plan is a requirement under Colstrip's Title V Operating Permit to help ensure compliance to the particulate standard utilizing performance indicators and an operational parameter. The performance indicators include opacity monitoring and PM CEMS, and the operational parameter is scrubber plumb bob delta P.

PM CEMS requirements under Colstrip's PM CAM Plan are robust and include:

- Installation per manufacturer's standards.
- Daily zero and span checks using manufacturer's standards.
- Initial correlation based on three levels (zero, normal operations, and at scrubber operations that increase PM but not at a level that puts Colstrip's Title V requirements at risk). This initial correlation used three RM5 runs at normal operations and two RM5 runs at the higher PM level. This correlation relates PM CEMS mg/m^3 to RM5 mg/m^3.
- A PM CEMS CAM Plan excursion limit in terms of mg/m^3 is established.
- A PM CEMS CAM Plan excursion requires a prompt investigation to identify and correct the condition, followed by a RM5 test to confirm compliance with the particulate standard.
- On a quarterly basis, one RM5 test (comprised of three runs) will be conducted to update the initial correlation. If the result from the average of the three runs differs

from the initial correlation by 25% or more of the CAM Plan excursion limit, then the initial correlation will be repeated.

- An on-going PM CEMS correlation adjustment will be made quarterly based on the correlation from all RM5 test data.

- PM CEMS daily averages are submitted to MDEQ on a quarterly basis.

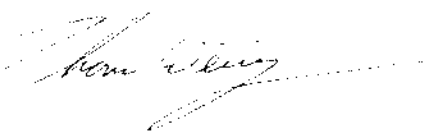
Given Colstrip's experience with the use of PM CEMS as a performance indicator, which shows that the CEMS results are highly variable and not reliable, EPA should not finalize the CEMS requirement in the Proposed Rule. If EPA does finalize the CEMS requirement, EPA should: (i) carve out units like Colstrip Units 3 and 4 that already have a CAMS plan that utilizes performance indicators and operational parameters to ensure compliance with the particulate standard; and (ii) not require PM CEMS for units that would only be subject to MATS for a limited time after the effective date of the final rule.

IV. CONCLUSION

Talen Montana appreciates the opportunity to submit comments on the Proposed Rule. Talen Montana respectfully requests that EPA consider the recommendations above to ensure that the Agency accounts for Colstrip's unique design and circumstances, as well as to account for the prohibitive costs that Colstrip faces if it were forced to comply with the proposed fPM limit. Colstrip is vital to Montana, and premature retirement could jeopardize Montanans' access to affordable and reliable electricity, especially during extreme weather conditions.

Dated: June 23, 2023

Respectfully submitted,



Thomas Weissinger
Sr. Director – Environmental
Talen Energy
thomas.weissinger@talenenergy.com

TALEN MONTANA

ATTACHMENT A

Please see native Excel file "ATTACHMENT A" accompanying Talen Montana's comments.

TALEN MONTANA

ATTACHMENT B

The following table summarizes how the cost effectiveness of installing a new baghouse at Colstrip was calculated using EPA's post-IRA IPM model. The table was prepared by Trinity Consultants, which Talen Montana retained for the purposes of preparing comments on the Proposed Rule.

Colstrip New Baghouse Cost Effectiveness

Scenario	Unit	Heat Input (MMBtu/yr)	Current FPM Emission Factor (lb/MMBtu)	FPM Emissions (tpy)	% Reduction in FPM without Proposed Rule	New Baghouse Cost ($/yr)	FPM Emission Factor with New Baghouse (lb/MMBtu)	FPM Emissions with New Baghouse (tpy)	FPM Emissions Reduction from New Baghouse (tpy)	New Baghouse Cost Effectiveness ($/ton)
EPA Proposed Emission Reductions (Baseload Operation)	3	55,255,556	0.018	497.3		18,992,866	0.0020	54.7	442.6	42,912
	4	55,904,762	0.021	587.0		19,058,306	0.0021	58.7	528.3	36,075
	Total	**111,160,317**		**1084.3**		**38,051,172**		**113.4**	**970.9**	**39,192**
Emission Reductions Using 2040 Base Case	3	42,374,312	0.018	381.4		18,992,866	0.0020	42.0	339.4	55,957
	4	42,925,688	0.021	450.7		19,058,306	0.0021	45.07	405.6	46,982
	Total	**85,300,000**		**832.1**	**23%**	**38,051,172**		**87.0**	**745.1**	**51,071**
Emission Reductions Using 2050 Base Case	3	6,557,338	0.018	59.0		18,992,866	0.0020	6.5	52.5	361,602
	4	6,642,662	0.021	69.7		19,058,306	0.0021	6.97	62.8	303,606
	Total	**13,200,000**		**128.8**	**88%**	**38,051,172**		**13.5**	**115.3**	**330,026**

Scenarios. The scenarios presented for calculating the cost effectiveness of installing a baghouse at Colstrip are: (i) based on the utilization and heat input predicted EPA's post-IRA IPM model from present to 2050;[84] (ii) based on EPA's "baseline" for Colstrip, which represents the 99th percentile of the lowest

[84] Final Version of the RIA [Regulatory Impact Analysis] for the Proposed EGU MATS RTR, Doc ID. EPA-HQ-OAR-2018-0794-5837; Post-IRA 2022 Reference Case, https://www.epa.gov/power-sector-modeling/post-ira-2022-reference-case.

quarter among the 2017, 2019, and 2021 data EPA evaluated;[85] and (iii) based on EPA's assumption that installing a baghouse would "reduc[e] baseline fPM rates by 90% subject to a floor of 2.0E-03 lb/MMBtu.[86]

Heat Input (MMBtu/yr). Heat input is calculated by EPA's Post-IRA 2022 Reference Case.[87]

Current FPM Emission Factor (lb/MMBtu). Current fPM emission factor is EPA's "baseline" for Colstrip, which represents the 99th percentile of the lowest quarter among the 2017, 2019, and 2021 data EPA evaluated.[88]

FPM Emissions (tpy). fPM emissions are calculated by multiplying the Heat Input (MMBtu/yr) by the Current FPM Emission Factor (lb/MMBtu) and diving by 2000 lb/ton.

New Baghouse Cost (S/yr). New baghouse cost is EPA's annualized cost estimate for Colstrip to achieve compliance with the proposed 0.010 lb/MMBtu fPM limit via a new baghouse.[89]

FPM Emission Factor with New Baghouse (lb/MMBtu). fPM emission factor with new baghouse is based on EPA's assumption that installing a baghouse would "reduc[e] baseline fPM rates by 90% subject to a floor of 2.0E-03 lb/MMBtu.[90]

FPM Emissions with New Baghouse (tpy). fPM emissions with new baghouse are calculated by multiplying the Heat Input (MMBtu/yr) by the fPM New Baghouse Emissions factor (lb/MMBtu) and then diving by 2000 lb/ton.

FPM Emissions Reduction from New Baghouse (tpy). fPM emission reduction from new baghouse is calculated by subtracting fPM emissions with new baghouse (tpy) and fPM emissions (tpy).

New baghouse cost effectiveness (S/ton). New baghouse cost effectiveness is calculated by dividing new baghouse cost (S/yr) by fPM emissions reduction from new baghouse (tpy).

[85] *See* Technical Memo at PDF p. 4.
[86] *See id.* at PDF p. 10.
[87] Post-IRA 2022 Reference Case, https://www.epa.gov/power-sector-modeling/post-ira-2022-reference-case.
[88] *See id.* at PDF p. 4.
[89] Appendix D, *id.* at PDF p. 80.
[90] *See id.* at PDF p. 10.

ATTACHMENT C

BURNS McDONNELL

June 23, 2023

Mr. Gordon Criswell
Talen Montana
580 Willow Ave, PO Box 38
Colstrip, MT 59323

Re: Talen Energy Colstrip/ Mercury and Air Toxics Standards (MATS) Analysis

Dear Mr. Criswell:

Talen Montana, LLC (Talen) engaged Burns & McDonnell Engineering Company, Inc. (BMcD) to assist it in evaluating the potential cost impacts of complying with the potential particulate limits in EPA's proposed MATS rule. The scope of work included the following:

1. Evaluate the proposed filterable particulate matter limit of 0.01 lb fPM/mmBtu and evaluate what particulate control technologies could maintain the limit at Colstrip.
2. Provide an AACE Class 5 estimate of the necessary capital improvements and operations/maintenance costs.

Background Information

The Colstrip units being evaluated are two approximately 740 MW units (net) that fire PRB coal and utilize a plumb bob wet scrubber to simultaneously remove filterable particulate and sulfur dioxide (SO_2) from the flue gas. This approach has the advantage of using the alkalinity inherent to PRB fly ash as reagent to help remove SO_2. However, this control technology is not as effective at removing fine particulate matter (fPM) as more modern particulate control technologies. The system was originally designed to achieve an emission rate of 0.05 lb fPM/mmBtu at a plumb bob pressure drop of 17".

Over the years the Colstrip plant has worked with scrubber consultants and engineers to improve the fPM removal ability of the scrubber. Changes and upgrades have increased the pressure drop to the system maximum across the scrubber's plumb bob, optimized mist eliminators, and installed flow distribution plates to optimize scrubber performance. Beyond the scrubber, Colstrip has made operational changes to improve the fPM removal including improving boiler wall cleaning to impact the size of the fPM and increase removal across the scrubber, implemented a combustion optimization system, and performed preventative maintenance on the coal mills to maintain the coal grind size and thus the resulting

[illegible]

fPM size. However, even with these previous scrubber upgrades, operational changes and maintenance practices focused on fPM removal, the best single quarterly fPM compliance test the unit has achieved (not maintained) is 0.017 lb/mmBtu.

The upgraded system typically operates between 0.020 and 0.027 lb fPM/mmBtu. The average quarterly fPM compliance tests for 2022 was 0.022 lb/mmBtu. These rates are in compliance with the current limit of 0.030 lb fPM/mmBtu but would not be in compliance with the proposed MATS rule. The proposed MATS rule would reduce the fPM limit to 0.010 lb fPM/mmBtu.

Particulate Control Technology Discussion

Potential Particulate Control Options to Achieve New MATS fPM Limit

BMcD evaluated several options to reduce fPM at Colstrip. These options include dry/wet electrostatic precipitators (ESP) and baghouses/fabric filters (FF). The traditional location for a dry ESP or FF is between the air heater outlet and the scrubber. A wet ESP would be located after the scrubber systems while the flue gas is saturated. Colstrip Units have a feature that is uncommon at wet scrubbed United States power plants. After each scrubber vessel there is a reheat system that warms the flue gas approximately 60°F which results in a 'dry' (non-saturated) flue gas. This situation creates the opportunity to utilize an ESP or FF downstream of the scrubber provided that the reheat system is operational.

Burns & McDonnell (BMcD) discussed these different conditions with Southern Environmental Inc. (SEI) – an equipment supplier – and requested budgetary pricing for each option as SEI can supply all of these technologies. SEI indicated they believe that all of these options can achieve the proposed 0.010 lb fPM/mmBtu emission rate. However, guaranteeing that these rates can be continuously maintained at the stack is not certain for all technologies. We identify a few technological challenges to consider when evaluating these technologies below:

ESP/FF Located Upstream of Scrubber

If the fPM control device is installed upstream of the scrubbers, there is a question of whether the scrubbers will remove or re-introduce fPM into the flue gas. An ESP or FF upstream of the scrubber can be guaranteed to maintain 0.010 lb fPM/mmBtu at the particulate control device outlet. Nearly all of the fPM passing through the scrubber is particulate smaller than 2.5 microns ($PM_{2.5}$) as the scrubber is excellent at

removing larger particulates but not great at removing smaller particulates. If an ESP or FF is installed upstream of the scrubber, all of the PM entering the scrubber will be $PM_{2.5}$and the scrubber will do little to reduce the $PM_{2.5}$ concentrations. Also, since the existing scrubbers use the alkalinity inherent to PRB fly ash as reagent to help remove SO_2, fly ash that is collected in the ESP/FF would have to be reintroduced to the scrubber for SO_2 removal and this fly ash could be re-emitted as particulate after the scrubber. Therefore, this evaluation has assumed that additional lime will be used in lieu of fly ash to control SO_2 emissions. This does not eliminate the risk the scrubbers could re-emit fPM but does reduce the risk.

Wet ESP

A wet ESP downstream of the scrubber can be guaranteed to maintain 0.010 lb fPM/mmBtu at the particulate control device outlet/stack inlet. However, the flue gas entering the scrubber must be saturated and the stack is not designed for wet flue gas. The flue gas would need to be captured prior to the existing reheat system, routed to the wet ESP and then either routed back to the existing reheat system or through a new reheat system and fan. Because of the complexity of the tie in and the fact the wet ESP and reheat system would need to be made out of high alloy to address corrosion; the cost estimate demonstrates this is the most expensive option.

ESP/FF Located Downstream of Scrubber

An ESP or FF downstream of the scrubber is expected to maintain 0.010 lb fPM/mmBtu. A FF can be guaranteed to maintain 0.010 lb fPM/mmBtu if the flue gas is maintained at least 30° above the dew point. This is critical because if the bags in the fabric filter become wetted for even a short period, the bags could be damaged catastrophically and fail to perform. This requirement could be challenging if there is an upset in the reheat system or any time steam may not be available.

An ESP can likely be guaranteed to maintain 0.010 lb fPM/mmBtu; however, there is some concern due to the fPM particle size in this location. ESP systems can remove $PM_{2.5}$ and smaller particles. However, it is more difficult to remove the smaller particles than the larger particles. Further evaluation or testing maybe required for a guarantee to be provided. The advantage of a dry ESP in this location is a dry ESP is not as susceptible as a FF to wet flue gas conditions. The dry ESP cannot operate in saturated flue gas, and continuous operation in saturated conditions would damage

the ESP, but short-lived incidents with exposure to saturated flue gas are not expected to catastrophically damage the ESP.

Cost Estimate for Particulate Control Technology

Burns & McDonnell produced AACE Class 5 estimates for these control technologies based on the 'flange to flange' budgetary price information SEI shared and BMcD's previous experience in building up the fully-installed cost of such projects. The estimated costs are intended to include new ductwork, foundations, support steel, insulation, ash piping, electrical upgrades, new ash silos, new carbon injection systems, and (as applicable) new lime silos and feed systems. The costs do not include new fans, stack modifications, taxes, water treatment, or significant demolition. The Class 5 estimates presented here include: indirects, engineering, escalation during the project, and contingency. The cost estimating method favored by the EPA differs from typical industry cost estimates. Key differences of the EPA cost estimating method include removal of indirect costs and all escalation, and reducing the contingency to 10%. The Class 5 estimates we prepared, and the EPA cost estimates do not include Owners costs or an EPC fee.

The capital cost estimates provided are considered AACE Class 5 feasibility estimates and are provided in 2023 dollars unless indicated otherwise. The estimates were built up using heavy construction cost data from RSMeans, vendor input for major equipment, and in-house information from other projects. Engineering, Construction Management, Start-Up, and Contingency are based on percentages of the total direct cost for these Class 5 estimates. All sales taxes are excluded from the estimates. Talen should not use these estimates to establish the project budget as they are only intended to assist in selecting the preferred solution(s) at the site. The selected alternative(s) should be investigated further, with additional design and more detailed quantity buildup completed along with soliciting local contractors for labor pricing prior to establishing the project budget.

BMcD's estimates, analyses, and recommendations contained in this email are based on professional experience, qualifications, and judgment. BMcD has no control over weather; cost and availability of labor, material, and equipment; labor productivity; energy or commodity pricing; demand or usage; population demographics; market conditions; changes in technology; and other economic or political factors affecting such estimates, analyses, and recommendations. Therefore, BMcD makes no guarantee or warranty (actual, expressed, or implied) that actual results will not vary,

perhaps significantly, from the estimates, analyses, and recommendations contained herein.

In the preparation of this, information provided by Talen was used by BMcD to make certain assumptions with respect to conditions that may exist in the future. While BMcD believes the assumptions made are reasonable for the purposes of this study, BMcD makes no representation that the conditions assumed will, in fact, occur. In addition, while BMcD has no reason to believe that the information provided by Talen, and on which this report is based, is inaccurate in any material respect, BMcD has not independently verified such information and cannot guarantee its accuracy or completeness.

Cost Summary

We prepared the following cost summary of the various options. Table 1 is a summary of key assumptions while Tables 2-5 are the costs summarized and levelized to dollars per ton. Tables 2 and 4 assume the baseline is the 2022 average emission rate of 0.022 lb fPM/mmBtu while Tables 3 and 5 assume the average emission rate the EPA used in the MATS evaluation of Colstrip (0.0195 lb fPM/mmBtu).

Table 1: Summary of Capital and O&M Costs

Capacity Factor:	85%
Life, years	15
Cost of Money, %	8.25
Capital Recovery Factor	0.118619
Property Taxes, Insurance	0
Disposal cost, $/ton	15
Power cost, $/MW	45
Lime cost, $/ton	200

Table 2: Summary of Capital, O&M and Levelized Costs for Class 5 Estimate Method, 2022 Emission Baseline

Summary of Particulate Emissions Control Costs from Colstrip									
PM-10 Control Alternative (Ranked by PM-10 Rate)	**PM Removal Efficiency** % (Note B)	**Emissions**				**Economic Impacts**			
		Emission Rate lb/MMBtu	Hourly Emission Lbs/Hr	Annual Emission Tons/yr	Emission Reduction Tons/yr	Installed Capital Cost in millions $	Annual O & M Cost in millions $	Total Annual Cost millions/yr	Average Control Cost $/ton
Upstream ESP	54.55	0.010	152	566	679	486.0	29.8	87.4	128,700
Upstream FF	54.55	0.010	152	566	679	404.9	29.9	78.0	114,900
Wet ESP	54.55	0.010	152	566	679	744.5	16.6	104.9	154,500
Reheat ESP	54.55	0.010	152	566	679	263.5	10.5	41.8	61,600
Reheat FF	54.55	0.010	152	566	679	351.2	14.9	56.5	83,200
2022 Baseline (Scrubber)		0.022	334	1245		N/A	N/A	N/A	N/A

Table 3: Summary of Capital, O&M and Levelized Costs for Class 5 Estimate Method, EPA Emission Baseline

Summary of Particulate Emissions Control Costs from Colstrip									
PM-10 Control Alternative (Ranked by PM-10 Rate)	**PM Removal Efficiency** % (Note B)	**Emissions**				**Economic Impacts**			
		Emission Rate lb/MMBtu	Hourly Emission Lbs/Hr	Annual Emission Tons/yr	Emission Reduction Tons/yr	Installed Capital Cost in millions $	Annual O & M Cost in millions $	Total Annual Cost millions/yr	Average Control Cost $/ton
Upstream ESP	48.72	0.010	152	566	538	486.0	29.8	87.4	162,500
Upstream FF	48.72	0.010	152	566	538	404.9	29.9	78.0	145,000
Wet ESP	48.72	0.010	152	566	538	744.5	16.6	104.9	195,000
Reheat ESP	48.72	0.010	152	566	538	263.5	10.5	41.8	77,700
Reheat FF	48.72	0.010	152	566	538	351.2	14.9	56.5	105,000
2022 Baseline (Scrubber)		0.0195	296	1103		N/A	N/A	N/A	N/A

Table 4: Summary of Capital, O&M and Levelized Costs for EPA Estimate Method, 2022 Emission Baseline

Summary of Particulate Emissions Control Costs from Colstrip									
		Emissions				Economic Impacts			
PM-10 Control Alternative (Ranked by PM-10 Rate)	PM Removal Efficiency % (Note B)	Emission Rate lb/MMBtu	Hourly Emission Lbs/Hr	Annual Emission Tons/yr	Emission Reduction Tons/yr	Installed Capital Cost in millions $	Annual O & M Cost in millions $	Total Annual Cost millions/yr	Average Control Cost $/ton
Upstream ESP	54.55	0.010	152	566	679	406.1	29.8	78.0	114,900
Upstream FF	54.55	0.010	152	566	679	338.3	29.9	70.1	103,200
Wet ESP	54.55	0.010	152	566	679	622.2	16.6	90.4	133,100
Reheat ESP	54.55	0.010	152	566	679	220.2	10.5	36.6	53,900
Reheat FF	54.55	0.010	152	566	679	293.4	14.9	49.7	73,200
2022 Baseline (Scrubber)		0.022	334	1245		N/A	N/A	N/A	N/A

Table 5: Summary of Capital, O&M and Levelized Costs for EPA Estimate Method, EPA Emission Baseline

Summary of Particulate Emissions Control Costs from Colstrip									
PM-10 Control Alternative (Ranked by PM-10 Rate)	**PM Removal Efficiency** % (Note B)	**Emissions**				**Economic Impacts**			
		Emission Rate lb/MMBtu	Hourly Emission Lbs/Hr	Annual Emission Tons/yr	Emission Reduction Tons/yr	Installed Capital Cost in millions $	Annual O & M Cost in millions $	Total Annual Cost millions/yr	Average Control Cost $/ton
Upstream ESP	48.72	0.010	152	566	538	406.1	29.8	78.0	145,000
Upstream FF	48.72	0.010	152	566	538	338.3	29.9	70.1	130,300
Wet ESP	48.72	0.010	152	566	538	622.2	16.6	90.4	168,000
Reheat ESP	48.72	0.010	152	566	538	220.2	10.5	36.6	68,000
Reheat FF	48.72	0.010	152	566	538	293.4	14.9	49.7	92,400
2022 Baseline (Scrubber)		0.0195	296	1103		N/A	N/A	N/A	N/A

We appreciate the opportunity to assist in this evaluation. Should you have any questions or wish to schedule a follow-up meeting, please contact Doug Randall at (816) 822-3455.

Sincerely,

Burns & McDonnell Engineering Company, Inc.

Douglas Randall
Associate Controls Specialist

Exhibit 2

NorthWestern Comments

NorthWestern Energy
Delivering a Bright Future

June 23, 2023

Via Federal eRulemaking Portal [regulations.gov]
Via Email [benish.sarah@epa.gov]

Ms. Sarah Benish
Sector Policies and Programs Division
Office of Air Quality Planning and Standards
U.S. Environmental Protection Agency
Research Triangle Park, NC 27711

Re: NorthWestern Corporation Comments re: Proposal on National Emissions Standards for Hazardous Air Pollutants: Coal and Oil-Fired Electric Utility Steam Generating Units Review of the Residual Risk and Technology Review

Docket ID No. EPA–HQ–OAR–2018–0794

Dear Ms. Benish:

On behalf of NorthWestern Corporation d/b/a NorthWestern Energy ("NorthWestern"), I am commenting on the U.S. Environmental Protection Agency's ("EPA's") proposed changes to the National Emissions Standard for Hazardous Air Pollutants ("NESHAP") for the Coal- and Oil-fired Electric Utility Steam Electric Generating Units ("EGUs"), commonly known as the Mercury and Air Toxics Standard ("MATS"). The proposed changes were published in the *Federal Register* on April 24, 2023, at 88 Fed. Reg. 24,854 ("Proposed Rule"). As discussed herein, the Proposed Rule poses significant challenges for NorthWestern and its rate-paying customers in Montana, will likely have environmental and Environmental Justice impacts that are contrary to Administration policies, and is likely unlawful.

NorthWestern agrees with and incorporates by reference the concurrent comments submitted by Talen Montana, LLC ("Talen") as part owner and based on its knowledge as operator of Units 3 and 4 of the Colstrip Steam Electric Station ("Colstrip"). NorthWestern. NorthWestern endeavors to minimize duplication of the Talen comments.

These comments are organized into the following sections:

- Summary of Comments;
- NorthWestern's commitment to environmental and climate responsibility;
- NorthWestern's commitment to Environmental Justice;
- NorthWestern's energy portfolio and role in serving Montana electricity customers;

- Transmission limitations on the ability to import power;
- Inability to close Colstrip prior to 2035 without constructing replacement thermal baseload capacity;
- Costs of installing additional controls on Colstrip;
- Colstrip and NorthWestern portfolio scenarios;
- Cost and safety hazards of closing Colstrip prior to 2036 without constructing replacement thermal baseload capacity;
- Consequences of diverting capital from other beneficial projects to comply with the Proposed Rule
- Prejudice to NorthWestern of the Proposed Rule;
- Statutory and Administrative Procedure Act deficiencies with the Proposed Rule; and,
- Requests.

Each of these subjects is addressed below.

1. Summary of Comments

The Proposed Rule, if finalized in its current form, is deeply harmful to the residents of Montana and will work in contradiction to the President's environmental objectives in Executive Order 13990, and Executive Order 12898, as most recently amended by the President on April 23, 2023. This is a result of the specific history and current electrical generation and grid limitations of NorthWestern and Montana.

As EPA is aware, Colstrip is in full compliance with the current MATS standards, which EPA does not dispute meet the statutory objectives of the Clean Air Act. However, as EPA also acknowledges and Talen explains in detail, Colstrip cannot come into compliance with either of the candidate standards set forth the Proposed Rule without extensive supplementation of existing pollution controls – the venturi wet scrubbers currently in use cannot meet the proposed standards. As detailed by Talen, upgrading Colstrip to comply with the Proposed Rule is cost-prohibitive, resulting in at least $350,000,000 in capital costs, plus an additional $15 million annual operating costs. *See* Talen Comments, Attachment C. NorthWestern and residents of Montana would bear the majority of these costs. Colstrip is the only facility identified by EPA as facing this predicament.

In addition, if Colstrip is closed in the near term, NorthWestern cannot provide adequate and reliable electrical service for its Montana customers without new replacement baseload capacity. Colstrip currently plays an essential role in baseload capacity for NorthWestern, and there are no near-term feasible means to replace Colstrip's capacity with other existing NorthWestern capacity or market purchases from in-state or out-of-

state sources. Imported power is further constrained by significant transmission limitations.

NorthWestern has modeled and evaluated scenarios for closure of Colstrip in 2025, 2030, and 2035, and 2042 in its May 2023 Integrated Resource Plan. The 2025 and 2030 closure scenarios expose NorthWestern to extreme degrees of market risk, resulting high probabilities of ruinous market electricity purchases and grid instability.

If the Proposed Rule is finalized in its current form, NorthWestern will therefore be faced with an array of costly and environmentally unsound choices. Renewables are not a viable option because NorthWestern's portfolio is already renewable-heavy, and additional renewable capacity will not solve the problem of variable generation deficits NorthWestern currently experiences.

On the one hand, if NorthWestern participates in upgrades to Colstrip, it will either need to materially increase electricity rates for Montana customers, or redirect funding previously earmarked for other projects. Projects that may be abandoned to fund Colstrip upgrades include transmission improvements, planned upgrades to facilities that are in excess of maintenance requirements, or other non-required beneficial capital projects. The vast majority of these have direct environmental benefits, deferral of which would undermine or even fully negate the environmental benefits of the Proposed Rule.

Alternatively, the only baseload capacity that can conceivably be constructed within the statutory compliance deadlines is new natural gas generation capacity. Carbon-free baseload alternatives are either unproven, or require significantly longer development times. The net result would be a substantial investment in a new, large, long-lived fossil fuel based generation assets. This outcome would clearly contradict the objectives of E.O. 13990.

NorthWestern has been substantially and uniquely prejudiced by EPA's course of action. The 2020 Residual Risk Technology Review ("RTR") confirmed that Colstrip's pollution controls satisfy the requirements of the Clean Air Act, and there have been no significant technological or implementation advancements since the 2020 RTR that would change that conclusion. Had NorthWestern known that EPA would undertake a complete reversal of the conclusions of the 2020 RTR just three years later, NorthWestern could have factored compliance costs earlier and more robustly into NorthWestern's Integrated Resource Planning process.

The combination of prejudice to NorthWestern and the ratepayers of Montana, coupled with mis-application of the technology review provisions of Clean Air Act Section 112(d)(6), places EPA at significant risk of having the Proposed Rule declared as arbitrary and capricious and contrary to law.

Consequently, NorthWestern respectfully urges EPA to use its discretion under the Clean Air Act and E.O.s 13990 and 12898 to take the following actions:

(1). Withdraw the Proposed Rule, revisiting the subject closer to the eight year timeframe provided in Clean Air Act Section 112(d)(6), or earlier if and when actual technological advancements occurring since the 2020 RTR satisfy the conditions for revisitation of standards set forth in Section 112(d)(6);

(2). If the Proposed Rule is not withdrawn, create a source subcategory that exempts those facilities presently employing wet scrubber technology without ESP or fabric filter add-ons until the next RTR; and/or

(3). Create a retirement subcategory allowing units to continue to meet the existing 0.03 lb/MMBtu fPM standard so long as they opt-in to the retirement subcategory within 18 months after finalization of the rule, with a retirement date no later than December 31, 2035 (and where continued operation after 2035 would later be permitted if (i) the unit is essential to maintain regional grid reliability, as determined by the Western Regional Adequacy Program, Regional Transmission Organizations, Independent System Operators, North American Electric Reliability Corporation, or other similar system reliability authorities; or (ii) or if EPA determines that additional time is required to allow the unit to transition to renewable or clean energy generation).

The foregoing courses of action are the only options that comply with the statutory requirements of the Clean Air and Administrative Procedure Acts, and are consistent with the objectives of E.O.s 13990 and 12898.

2. NorthWestern's commitment to environmental and climate responsibility

NorthWestern is a strong proponent of environmental protection, consistent with its responsibilities to deliver reliable, cost-efficient electrical service to its customers. To that end, NorthWestern has a corporate objective to achieve net zero emissions by 2050 ("Net Zero 2050"). A copy is attached as Exhibit A. NorthWestern already has one of the highest percentages of carbon-free generation in the United States, and has significant additional carbon and other emissions-reducing projects in development. Although NorthWestern disagrees strongly with the Proposed Rule, this should not be confused with opposition to environmental protection or the objectives of E.O. 13990.

3. *NorthWestern's commitment to Environmental Justice*

NorthWestern shares the Administration's commitment to Environmental Justice. NorthWestern has extensive programs to support critically needed affordable and reliable energy to low income and tribal communities within NorthWestern's service area. It is not clear from the Proposed Rule and supporting documentation that EPA has fully considered the Environmental Justice consequences of the Proposed Rule, especially as related to Montana and the Environmental Justice communities in Montana. For example, 25% of NorthWestern's service base is low income, with approximately half of those below poverty standards. The costs of the Proposed Rule will fall in important ways on those who are least able to afford it, and as detailed further in Sections 4 and 5, the grid reliability dangers posed by Proposed Rule also threaten the most vulnerable in Montana. In addition to the essential services NorthWestern provides, Colstrip and the Rosebud Mine supplying Colstrip directly employ 82 people of tribal affiliation, or 14% of the facilities' total employment. Premature closure of Colstrip would devastate these families and the Colstrip community as a whole.

Consistent with the Administration's updates and revisions to Executive Order 12898 (Executive Order on Revitalizing Our Nation's Commitment to Environmental Justice, April 21, 2023), EPA must evaluate these Environmental Justice effects in comparison with the claimed health benefits of the Proposed Rule. This is an acute issue where the environmental benefits claimed from the rule are extremely incremental (from 99.6% fPM existing removal efficiency to 99.8% efficiency under the Proposed Rule), and start from a baseline level of performance that is highly protective of human health and in compliance with Clean Air Act objectives.

4. *NorthWestern's energy portfolio and role in serving Montana electricity customers*

NorthWestern provides energy and capacity to customers in Montana, South Dakota, and Nebraska. For transmission interconnection reasons explained later, Colstrip is principally relevant and important to electrical supply in Montana. NorthWestern provides electricity to customers in its service areas in Montana and also serves as a "Balancing Authority," which means that NorthWestern is responsible for ensuring that the supply of and demand for electricity within our Balancing Authority Area are in equilibrium or balanced.

The Montana Public Service Commission ("MPSC") oversees NorthWestern's resource planning activities and the recovery of costs of generation and power purchase agreements. At all times relevant to this matter, the MPSC had set forth the following objectives that Montana utilities should meet: (a) reliability; (b) affordability; (c) environmental responsibility; (d) optimality; and (e) transparency. *See* MCA 69-3-1202.

NorthWestern thus has legal obligations to reliably and affordably supply electricity to its customers in Montana and to do so cost-effectively while seeking to reduce adverse environmental impacts. In addition to those legal obligations, NorthWestern recognizes that as a practical matter its customers count on NorthWestern to provide the cost effective electricity used to power their homes and businesses and the critical infrastructure upon which they rely.

Under Montana law, NorthWestern, as a regulated public utility, is required to prepare and file a plan every 3 years for meeting the requirements of its customers in the most cost-effective manner consistent with its obligation to serve under the law. MCA § 69-3-1204(1)(a).

The plan must include:

a. an evaluation of the full range of cost-effective means for the public utility to meet the service requirements of its Montana customers, including conservation or similar improvements in the efficiency by which services are used and including demand-side management programs in accordance with 69-3-1209;
b. an annual electric demand and energy forecast developed pursuant to commission rules that includes energy and demand forecasts for each year within the planning period and historical data, as required by commission rule;
c. assessment of planning reserve margins and contingency plans for the acquisition of additional resources developed pursuant to commission rules;
d. an assessment of the need for additional resources and the utility's plan for acquiring resources;
e. the proposed process the utility intends to use to solicit bids for energy and capacity resources to be acquired through a competitive solicitation process in accordance with 69-3-1207; and
f. descriptions of at least two alternate scenarios that can be used to represent the costs and benefits from increasing amounts of renewable energy resources and demand-side management programs, based on rules developed by the commission.

Planning for reliable service requires NorthWestern to ensure that it has enough electricity generation resources to meet its customer demands every hour of the year, even with changing weather and demands. As a matter of physics, for the electric grid to operate reliably, the amount of energy generated ("generation") and the consumption of that energy ("load") must be equal or in balance. Generation and load must be in balance year-to-year, month-to-month, day-to-day, hour-by-hour, and minute-by minute for the electric grid to remain stable. Because of the long lead times needed to build or acquire new electrical generation or transmission assets or negotiate power purchase contracts,

NorthWestern, like other electric utilities, makes plans for the supply of electricity years in advance. This long-term planning is also required by law. In Montana, NorthWestern prepares formal, written plans that are filed with the MPSC. Attached as Exhibits B-1 and B-2 to these comments is a copy of Volume 1 of NorthWestern's 2019 Electricity Resource Procurement Plan ("ERPP"), which was filed at the MPSC in Docket No. N2018.11.78.[1] Attached as Exhibit C is the 2020 Supplement to the 2019 Plan. Attached as Exhibits D and E are the two volumes of NorthWestern's May 2023 Integrated Resource Plan ("2023 IRP").

NorthWestern began to serve customers in Montana when it purchased the transmission and distribution assets of the Montana Power Company in 2002. Initially, NorthWestern did not own any generation assets to serve Montana customers. This situation was not ideal as it required NorthWestern to purchase all the electricity needed to serve customers. These purchases were and continue to be from a market that experiences volatile pricing and increasing supply shortages.

Since then, NorthWestern has acquired various types of electricity supply resources. Most notably, in 2014 NorthWestern purchased a portfolio of hydroelectric facilities in Montana. NorthWestern has also made significant investments in wind power. NorthWestern currently owns approximately 1,271 megawatts ("MW") of generation capacity and has long-term contracts for another 680 MWs.

NorthWestern's generation portfolio now is a diverse mix of resources, the majority of which are renewable. The portfolio includes 497-MW of hydroelectric maximum delivered capacity, 455-MW of maximum delivered wind capacity, 222-MW of coal capacity, 202-MW of natural gas capacity, 87-MW of waste coal capacity, and 187-MW of solar capacity. The Company also has market capacity contracts for 460 MWs which have price or market exposure. In summary, NorthWestern's current portfolio has 202 MW of natural gas capacity, 309 MW of coal and waste coal based capacity, and 1,129 MW of renewable fueled generation.

The table below lists NorthWestern's existing owned generation facilities and contracted generation resources along with some additional resources that the Company expects to bring online, including the Yellowstone County Generating Station, which is currently under construction.

[1] Volume 2, which includes underlying hourly data among other material, is so voluminous that NorthWestern usually only provides it in electronic form. Given the size of Volume 2 and the number of additional files that would require submission, it is not provided with these comments. NorthWestern will certainly provide it if desired or needed for EPA's evaluation.

MT Portfolio Resources
Thompson Falls
Cochrane
Ryan
Rainbow
Holter
Morony
Black Eagle
Hauser
Mystic
Madison
Turnbull Hydro LLC
State of MT DNRC (Broadwater Dam)
Tiber Montana LLC
+ QF Hydro Resources
Basin Creek
DGGS 1 -3
Yellowstone County Generating Station (Laurel)
Colstrip 30% U4
Yellowstone Energy Limited Partnership (BGI) (QF)
Colstrip Energy Limited Partnership (QF)
Judith Gap Energy LLC
Spion Kop Wind
Two Dot Wind Farm
+QF Wind Resources
+QF Solar Resources
Clenera Apex I (QF)
Morgan Stanley (3 yr) On Peak Only, Q1, Q3, Q4 - expires 10/31/2023
Morgan Stanley (3 yr) ATC, Q1, Q3, Q4 - expires 10/31/2023
Powerex (3 yr) Contingency Reserves - expires 12/31/2023
Powerex (5 yr) - expires 12/31/2027
Heartland (10 yr) - (150 MW to 200 MW) - expires 12/31/2031

NorthWestern currently has over 200 percent more wind generation than its Colstrip generation. In terms of generation asset nameplate capacity, the two largest, by far, are hydroelectric assets and the fleet of wind farms, both of which are carbon free. NorthWestern's portfolio of solar generating facilities has also been increasing in recent years. At the same time, it is important to note the difference between "nameplate" and "accredited" capacity. Nameplate capacity refers to the maximum electrical generating output (in MW) that a generator can sustain over a specified period of time when not restricted by seasonal or other "deratings" (events that reduce effective output), as measured in accordance with the United States Department of Energy standards. In contrast, accredited capacity means the electrical rating given to generating equipment that meets the Utility's criteria for uniform rating of equipment. These criteria include but are not limited to reliability, availability, type of equipment and the degree of coordination between the Distributed Generation and the Utility. Wind and solar accredited capacities are much lower than their nameplate capacities, because of the seasonal and weather variability of those generation sources. Hydroelectric generation also has a gap between nameplate and accredited capacity, reflecting periods when generation is restricted by stream flows. All this is reflected in the table below:

Hydro Generation - Online		
Total	497	298
Thermal/Natural Gas Generation - Online		
Total	255	195
Thermal/Coal Generation - Online		
Total	309	288
Wind Generation - Online		
Total	455	59
Solar Generation - Online		
Total	97	1
Short Term Contracts - Max		
	460	460

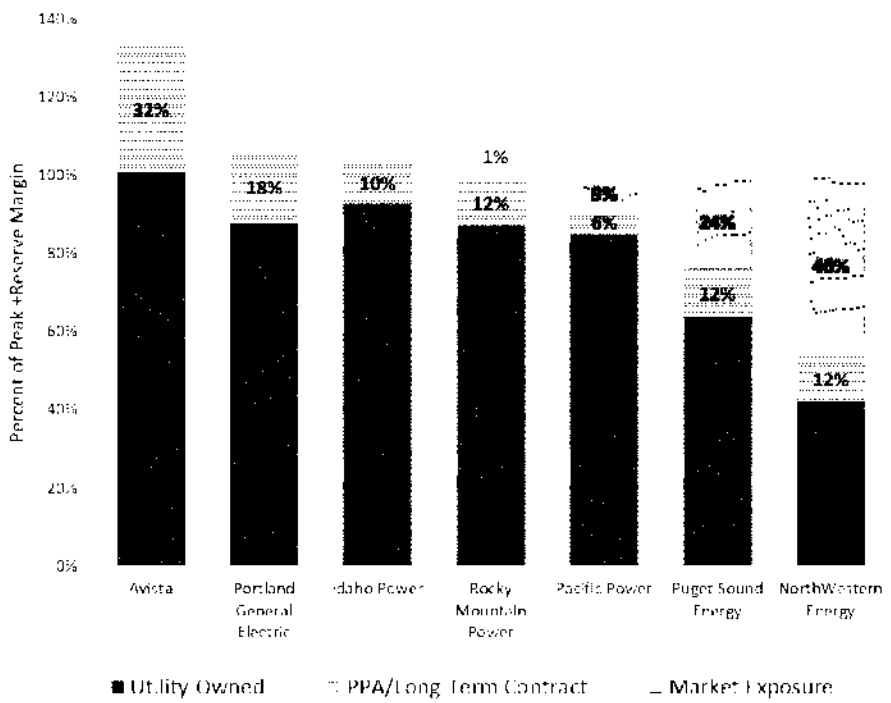
In fact, while news coverage of NorthWestern often discusses the coal or natural gas facilities, the proportion of NorthWestern's generation resources that are renewable compares highly favorable to other utilities. In 2022, 59% of NorthWestern's electric generation was from carbon-free resources, which compares to 40% of megawatt hours generated by the U.S. electric power industry as a whole.

Despite the significant improvement in NorthWestern's generation capacity, including acquisitions of hydroelectric plants and wind farms, NorthWestern's resource portfolio is not yet sufficient or "reliable", as defined by regional planning organizations.

In periods of peak loads, NorthWestern often does not have sufficient capacity, meaning that NorthWestern must make market purchases of electricity to meet customers' needs.

Periods of peak load are those times when customer demand for electricity is particularly high. This tends to occur during periods of extreme weather, during the coldest winter days (below 10 degrees Fahrenheit) when more electricity is used for heating purposes and during the hottest summer days (above 90 degrees Fahrenheit) when more electricity is used for cooling. The availability or unavailability of other resources can also be a significant factor. For example, the amount of rain during a season or snow during a preceding winter impacts the generation of our hydroelectric facilities. Similarly, there are periods when more or less wind power is generated. Unfortunately, critical weather in Montana typically occurs with high pressure, meaning wind generation more frequently than not generates very little power during these critical conditions. Those instances when there is both high demand for electricity and less available renewable generation can be particularly challenging from both a reliability and customer affordability perspective.

The chart below, which is drawn from NorthWestern's 2019 Electricity Supply Resource Procurement Plan filed at the MPSC, illustrates the difference between NorthWestern's available capacity and that of its regional peers.



As the chart shows, NorthWestern relies more heavily on market purchases to meet its electric needs during peak periods than any other utility in the Pacific Northwest. There are significant disadvantages to being reliant on market purchases to manage peak demand periods.

As an initial matter, prices for electricity tend to increase when there is greater demand. Typically, NorthWestern's periods of peak demand coincide with those of other utilities in the region. At the same time market prices are increasing during the critical weather events, especially winter, the available wind and solar generation frequently diminishes, sometimes to near zero. The same weather patterns that impact Montana also frequently impact other states in the region. As a result, the demand for electricity is high during such periods, which drives up the prices. Those higher prices increase our costs and ultimately lead to higher bills for our customers, which impacts their household and business finances and the broader Montana economy. Importantly the costs of electricity obtained through power purchase contracts are substantially passed directly through to consumers. NorthWestern's lower income and smaller business customers tend to be most sensitive to the impacts of increased electric costs.

In addition to pricing, there is also the question of availability. Simply put, it is not prudent to assume that there will always be sufficient out-of-state power that can be both purchased and transmitted to Montana. The limitations of the transmission system and how those impact NorthWestern's ability to bring electricity into Montana to serve customers are discussed in more detail in Section 5. This section further discusses the availability of electricity to purchase, setting aside the increasing uncertainty of whether it can be transmitted to Montana.

In recent years, several large power plants in Montana and adjacent states have closed. J.E. Corette, with a nameplate capacity of 163 megawatts (MWs), was closed in 2015. Colstrip Units 1 and 2, each with nameplate capacities of 307 MWs, ceased operation in early 2020. That same year, the Boardman plant in Oregon, 601 MWs, and Unit 1 of the Centralia plant in Washington, 730 MWs, both closed. Idaho Power ended its participation in Unit 1 of the Valmy facility, 254 MWs, in 2019 and the operations there completely halted in 2021.

In addition to those significant retirements that have already taken place, more retirements are anticipated in the near future. In particular, Unit 2 of the Centralia plant, 670 MWs, is scheduled to cease operation in 2025, as is North Valmy Unit 2, which is 289 MWs.

In summary, there is much less reliable electrical generation available in Montana and the Pacific Northwest (the market) than in the past, and the closures scheduled for 2025 are expected to result in the loss of an additional 959 MWs of nameplate capacity by the end of that year. Importantly, these losses of nameplate capacity are all for facilities for which

their accredited capacity is very close to their nameplate capacity. As a result, the regional portfolio is shifting away from high-accredited to low-accredited generation sources. A difficult situation is expected to get worse and grave reliability concerns are no longer just the province of states like California and Texas that have had well publicized blackouts.

Equally importantly in terms of timing and supply, 185 MW of NorthWestern's current market contract capacity will be expiring by mid-2024. Given the retirements of facilities throughout the region, NorthWestern does not have confidence it will be able to renew or replace these contracts when they expire, especially under as favorable of terms. To the extent any can be replaced, market conditions indicate that they will be at much higher costs, which will be passed directly on to customers.

Montana's decision to deregulate its electricity sector, and the concurrent decision by Montana Power Company to sell all of its electricity generation portfolio, coupled with subsequent plant closures, has placed NorthWestern in a critically tenuous position of not being able to reliably serve its customers' needs during periods of peak loads, such as hot summer and most critically, cold winter days. This is in spite of NorthWestern acquiring a substantial amount of generation since 2011, none of which has been carbon-emitting. In NorthWestern's 2017 and 2019 Electricity Supply Resource Plan (and in the 2020 supplement), NorthWestern identified significant deficiencies and risks to customers due to our portfolio's reliance on market purchases, much of which originates from out of state, plus a lack of reserve margin to reliably serve our customers. These Plans empirically and analytically set forth particular capacity vulnerabilities that need to be addressed in order to continue to provide reliable service to our customers. In particular, NorthWestern identified a need to have resources available to serve 20-hour, 10-hour, and 5-hour periods in the future when there will be capacity portfolio deficits.

Notably, NorthWestern at that time did not identify a need for new baseload capacity. As stated in the 2019 ERPP, "NorthWestern's resource portfolio generally generates enough energy to serve average load, but is significantly short both peaking and flexible capacity." A key reason that NorthWestern did not plan for new baseload capacity was that it had made substantial investments in Colstrip to comply with the 2012 MATS Rule and regional haze requirements. NorthWestern knew that Colstrip would be able to achieve Clean Air Act statutory and health-based standards over the medium-to-long term. NorthWestern had contemporaneous public assurances from EPA to that effect. And NorthWestern knew that there were no significant pollution control technology advancements in the offing that would change control performance. Consequently, the 2019 ERPP and 2020 Supplement focused investment on the identified peaking and flexible capacity needs, as well as improving transmission capabilities.

Based on those identified needs, NorthWestern issued a Request for Proposals (RFP) in January 2020. This RFP was explicitly for any type of generation that was able to provide

capacity for those three distinct shorter-duration categories. This RFP was conducted by an independent and respected third party. NorthWestern was not directly involved in the evaluation process. After receiving the identified short-list from the evaluator, NorthWestern in conjunction with the evaluator selected three proposals: the Yellowstone Generating Station to address the 20-hour need and a portion of the 10-hour capacity need, a 5-year power purchase agreement with Powerex Corp., the marketing partner of BC Hydro System, to address the remaining portion of the 10-hour duration need and part of the 5-hour need, and a contract with Beartooth Energy Storage, LLC for a 50 MW, 4-hour battery facility to be located near Billings for the remaining portion of the 5-hour duration need. No RFP was issued to upgrade or replace Colstrip capacity, because no need had been identified.

5. ***Transmission limitations on the ability to import power***

The United States electric grid has an Eastern Interconnection, a Western Interconnection, and a separate Texas interconnection, which each operate largely independently with limited transfers of power between them. NorthWestern's Montana electric transmission system is located in the Western Interconnection of the United States grid. NorthWestern also has an electric transmission system in South Dakota; however, that is in the Eastern Interconnection and there is no effective means to transfer electricity from NorthWestern's South Dakota generation sources to Montana. In addition, those generation sources are fully subscribed.

NorthWestern manages its transmission system in Montana as a Balancing Authority Area ("BAA") operator, with responsibility for ensuring that system supply and demand are in constant balance. To support the continuous flow of electricity, NorthWestern is also responsible to provide ancillary services such as scheduling, system control, and dispatch; regulation and frequency response; and contingency reserves. When demand and supply are not in balance, equipment damages, cascading outages, or blackouts can result. As a BAA operator, NorthWestern must meet and operate within the reliability standards established by NERC.

NorthWestern's Montana electric transmission system covers over 97,000 square miles. This integrated system includes about 7,000 miles of transmission lines. The system includes over 280 circuit segments, 79 transmission or transmission/distribution substations, and over 100,000 poles and towers. The transmission system integrates resources and loads through 500 kilovolt (kV), 230 kV, 161 kV, 115 kV, 100 kV, 69 kV, and 50 kV lines to deliver power to the various load centers dispersed throughout NorthWestern's service territory.

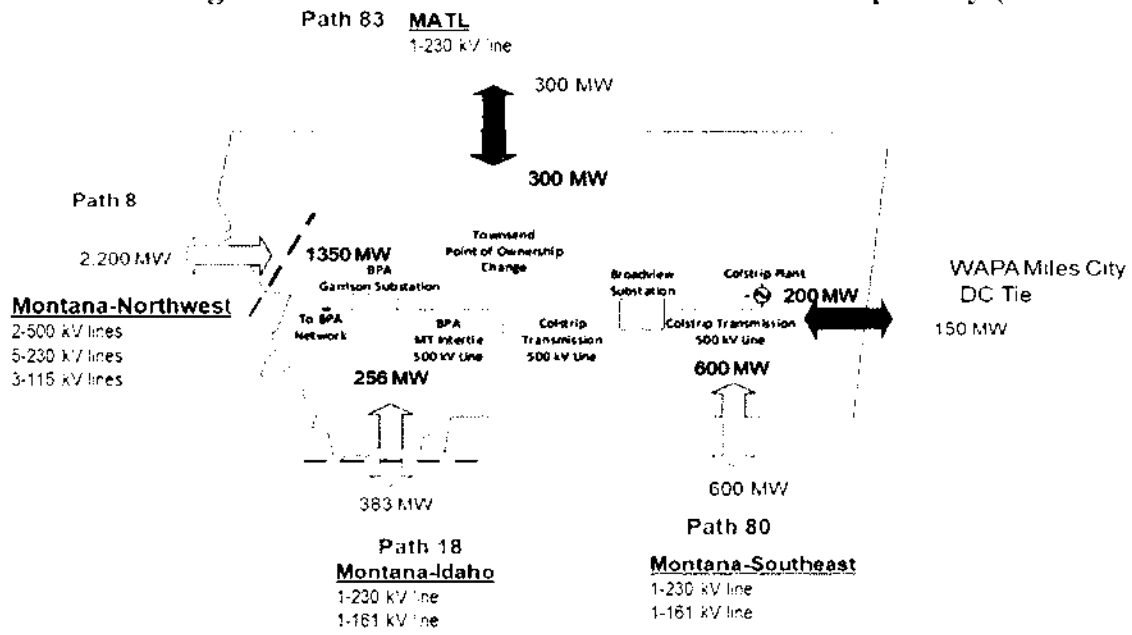
Montana was traditionally an exporter of power. However, following the 2015 closure of the J.E. Corette plant (163 MW) and the 2020 closure of Colstrip units 1 and 2 (614 MW), the NorthWestern BAA has transitioned from being a net exporter of energy to a

net importer. During the most critical periods, times of peak energy demand, NorthWestern now relies heavily on imports, and frequently on non-firm transmission, to meet customer needs. "Firm" transmission is transmission capacity reserved for the full duration of the transmission service agreement. In contrast, "non-firm" is transmission capacity that can be used only on an as-available basis when unreserved capacity is available on the transmission system. The existing NorthWestern transmission system was not designed to transmit imports, serving such a large portion of customer load.

NorthWestern's transmission system and its connections to utilities in other states were not designed to import significant additional amounts of electricity. While there are existing lines and interconnections, there is limited capacity available on those facilities and further complications and congestion outside of Montana, making it imprudent for NorthWestern to assume it can import additional power when needed. Redundancy in the reliable transmission of energy is also extremely important because an outage on one transmission line can cause overloads to another. Relying on transmission lines and interconnections to import the electricity needed to serve such a large portion of our Montana load inherently increases the risk of outages and the resulting failure to serve customers during times of greatest electricity demand.

NorthWestern's transmission system has interconnections to six major transmission utilities – Idaho Power Company, Avista Corporation ("Avista"), BPA, Western Area Power Administration ("WAPA"), PacifiCorp, and the Alberta Electric System Operator as noted in Figure 1 below. NorthWestern transfers power in and out of Montana through Western Electricity Coordinating Council ("WECC") rated "Paths", each consisting of transmission lines crossing Montana's borders. To the west and south are Paths 8, 18, and 80, and to the north is Path 83, on the Montana Alberta Tie Line ("MATL"), and these are shown in the figure below. Note MATL is not owned or operated by NorthWestern. Figure 1 shows the Total Transmission Capability amounts, or TTCs. However, TTC represents the total designed and approved transmission capacity, not the amount of additional available capacity above the capacity already in use.

Figure 1: WECC Paths and Total Transfer Capability (TTC in MW)



As can be seen, the largest single path to the Pacific Northwest and other Western Interconnection markets is Path 8, which consists of the interconnections with BPA and Avista. As the figure indicates, Path 8 is made up of multiple lines and has a significantly higher TTC than the other paths.

However, there is very little Available Transmission Capacity ("ATC"), which is the difference between the TTC and the amount of capacity already reserved by existing transmission commitments, that could be used to import additional electricity to NorthWestern's system via Path 8 for the foreseeable future. In short, Path 8 is a significant and convenient interstate transmission path, but its capacity has already largely been reserved.

Path 80, located in the southeastern portion of Montana, theoretically has more ATC. However, it is a very complex path that experiences significant congestion and curtailments due to reliability issues. Path 80 is greatly impacted by what is going on in other transmission owners' transmission systems outside of Montana. Path 80 is affected by loads and generation in Wyoming, Colorado, and Utah as well as other potential impacts. Moreover, Path 80 is far from the Pacific Northwest market, causing greater potential congestion if it is used to import power from that area. As one example of the problems with Path 80, during the significant cold weather of February 2021, there were curtailments of transmission on Path 80 at the worst possible time. Path 80 very commonly has non-firm transmission curtailed (and sometimes even firm transmission) as a result of congestion on the transmission system in Wyoming and further south. This

most commonly happens during peak events, but also during non-peak events. That is the reason NorthWestern currently has no remaining firm import ATC posted on Path 80.

Path 83 provides transmission capacity between Montana and Canada. Path 83 consists of a single 230 kV line – the Montana Alberta Tie Line, which is not owned by NorthWestern. Most of the activity on the Path is related to wind projects located in north central Montana, also not owned or controlled by NorthWestern. Additionally, Path 83 is a very complex path that routinely must be curtailed to manage generation and loads. This path also contributes significantly to our challenges and limitations across an internal path we refer to as "South of Great Falls". The South of Great Falls path frequently must be curtailed and has impacts on the Great Falls, Billings, Helena and Butte areas.

Path 18 has relatively smaller overall capacity and is highly utilized today with little import capacity remaining. As described in Paragraph 23 below, for several years ending in 2012 NorthWestern attempted to permit an upgrade to the transmission capacity of Path 18 through the proposed Mountain States Transmission Intertie ("MSTI"). Ultimately, that effort failed. Consequently, Path 18 offers little potential for increased imports at this time.

In summary, ATC is quite limited for import into the NorthWestern BAA. Figure 2 below is a snapshot as of February 23, 2023 of long-term firm ATC that is posted on NorthWestern's Open Access Same-time Information System ("OASIS") for each year displayed. The OASIS provides real-time, up-to-date information and access to transmission system capacity for all customers. Figure 2 clearly indicates that there is very little to zero firm ATC to import from any Path of import.

Figure 2: Import Available Transfer Capability (ATC in MW)

Yearly Firm ATC by Year (as of 2/23/2023)

			Yearly Firm ATC
Path 8	*BPA Import*	2023	**0**
		2024	**31**
		2025	**47**
	AVAT Import		
		2023	**196**
		2024	**162**
		2025	**162**
	BRDY Import		
Path 18		2023	**59**
		2024	**59**
		2025	**0**
	Jeff Import		
		2023	**72**
		2024	**72**
		2025	**72**
Path 80	*YTP/Crossover Import*		
		2023	**0**
		2024	**0**
		2025	**0**

Even when there is available capacity on a path, NorthWestern has to compete with other transmission customers/users. The operation of NorthWestern's transmission system is subject to regulation by FERC in accordance with NorthWestern's FERC-jurisdictional Open Access Transmission Tariff ("OATT"). As a result, NorthWestern is required to provide transmission service to several types of customers on a first come first serve basis, which means that there is competition for ATC among many potential users of the transmission system. NorthWestern's transmission system serves four types of customers – retail, network, interconnection, and point to point ("PTP"). In addition to NorthWestern's retail customers, our FERC customers include electric cooperatives, federal marketing agencies (e.g. BPA and WAPA), and "choice" customers, who are all customers that do not receive their electric supply service from NorthWestern. This means that there are many non-NorthWestern entities within the NorthWestern BAA that are competing for available transmission, constraining transmission of power at critical peak times when customers need that power the most. Critically, this transmission competition is becoming much greater as in-state generation shuts down. As noted above, transmission capacity is awarded on a first-come, first-served basis. Of critical importance is that NorthWestern's own "native" load does not receive any preference over other eligible customers. In addition, there are rules governing what is a valid transmission service request or network service designation. For example, long-term network transmission service designation requests must be tied to legitimate network resources with valid contracts for service in place. Figure 3 displays the current firm transmission imports that are reserved on a long-term basis by parties. Many of these reservations are not for service to NorthWestern's customers. This transmission capacity

is reserved under NorthWestern's FERC OATT, which includes point-to-point customer wheeling into and out of NorthWestern's system, and Network customers, including some reservations by NorthWestern, importing energy from outside of Montana and into NorthWestern's transmission system to serve load.

Figure 3: Long-term Firm Reservations by Customer Type

Long Term Firm Reservations from Import Interface Paths (as of 01/27/2023)				
	Path 8 Imports	Path 83 Imports	Path 80 Imports	
Network	690	225	37	
Point to Point	342	0	31	
Total	1032	225	68	1325

While NorthWestern faces challenges resulting from limited transmission capacity, it might seem the obvious solution would be to build new transmission lines. However, that is only a solution in theory; in reality, it is not currently a practical option. As an initial matter, increased transmission is only useful in addressing capacity constraints if it connects to a generation resource willing and able to sell capacity to NorthWestern, and as explained in Section 3, there is significant uncertainty on that point going forward given recent and planned power plant closures.

Even if an additional generation resource is located, attempting to build the transmission lines to that resource is a difficult, time-consuming, and expensive endeavor that might not succeed. NorthWestern would have to gain approval from the Montana Department of Environmental Quality ("DEQ") to permit, site, and construct new transmission infrastructure by obtaining a certificate of compliance under the Montana Major Facility Siting Act ("MFSA") and gain rights-of-way over the proposed transmission path. Securing easements across land owned privately or by state or federal agencies can be extremely challenging. Permitting approval would likely be required from other state or federal agencies as well. The transmission infrastructure would also have to be designed to satisfy regulatory requirements enforced by FERC, NERC, and WECC. The combination of all these factors means that actually obtaining authority to construct a transmission line would take several years, if it is achievable at all.

Increasing transmission capacity, if it could be accomplished, would require upgrades to not only NorthWestern's system, but potentially other transmission systems outside of Montana. Of course, work in other states would require satisfying the regulatory requirements in those jurisdictions. The need to cooperate with more than one utility and perform work in multiple jurisdictions makes transmission upgrades even more difficult as a solution.

As an example, in 2012, after spending four years and approximately $24 million, NorthWestern indefinitely postponed its attempts to secure permits for the proposed 500kV Mountain States Transmission Intertie ("MSTI"), which would have provided an additional connection outside of Montana. This transmission line would have extended from southwestern Montana to southcentral Idaho and would have been capable of transmitting approximately 1000 MW of power. The abandonment of the project was due to continued permitting issues including never-ending process, analysis and movement of goalposts, as well as difficulty in getting all agencies to timely act and cooperate to define a reasonable end to the permitting process. Although the Inflation Reduction Act has made available some resources for such projects, the regulatory environment in terms of approval timelines has not improved since 2012.

There are no presently proposed interstate transmission lines or upgrades that would facilitate added import capability into Montana. Given the MSTI experience, if a project was proposed tomorrow, it could require 7-10 years to design, permit, construct, and bring into operation, if that was even possible.

6. Costs of installing additional controls on Colstrip

The options and anticipated costs of installing additional controls on Colstrip to comply with the Proposed Rule are set forth in detail in Talen's comments, accompanied by a supporting analysis prepared by Burns & McDonnell. NorthWestern joins the Talen comments and will not reiterate them here. NorthWestern's comments assume capital costs of at least $350,000,000, and annualized costs of $57,000,000, based on the working assumption that Reheat Fabric Filter is the most viable technology Colstrip would deploy to comply with the Proposed Rule. ("Proposed Rule Costs").

7. Colstrip and NorthWestern portfolio scenarios

NorthWestern has not planned for the Proposed Rule or the Proposed Rule Costs. Because the Proposed Rule reflects a reversal or prior EPA analyses and conclusions, and is not based on new information, there was no reason for NorthWestern to anticipate the Proposed Rule or the Proposed Rule Costs in the 2019 ERPP or 2020 Supplement, and neither the Proposed Rule or the Proposed Rule Costs were factored into the recently completed 2023 IRP.[2]

As explained in Sections 4 and 5, Colstrip is central to NorthWestern's generation portfolio, and purchasing additional market capacity from existing generation sources to replace Colstrip's capacity carries high costs and risks from a generation resource or

[2] Although the 2023 IRP was released shortly after the publication of the Proposed Rule, the Proposed Rule was released far too close to the finalization of the 2023 IRP to be factored into the analyses and planning.

transmission perspective. Faced with hundreds of millions of dollars in unanticipated costs, NorthWestern therefore has three principal options: (a) close Colstrip in the immediate future and engage in an emergency program to construct additional baseload capacity; (b) install the controls required by the Proposed Rule and attempt to recoup the Proposed Rule Costs through rate increases; or (c) postpone or abandon existing planned capital projects to free up resources to address the unanticipated Proposed Rule Costs without raising rates. These scenarios are discussed in the following sections.

8. Cost and safety hazards of closing Colstrip prior to 2036 without constructing replacement thermal baseload capacity

Although the Proposed Rule came as a surprise to NorthWestern, NorthWestern closely examined Colstrip closure scenarios as part of the 2023 IRP process. This included scenarios involving closures in 2025, 2030, and 2035. The 2025 and 2030 closure scenarios resulted in materially higher total costs, amounting to $1.1 billion in higher costs (25% increase over the base case) for a 2025 closure, and $540 million higher costs (12.1% increase over the base case) for a 2035 closure. *See* 2023 IRP, Exhibit B-1, Section 8.9. Moreover, these scenarios rely on substantial purchases of power at market rates, in excess of $50 million each year commencing with Colstrip's closure. *Id.* As explained in Sections 4 and 5, there is substantial uncertainty whether such large market purchases can even be consistently executed and delivered, especially during peak load events. Consequently, the 2025 and 2035 closure scenarios are accompanied by worrisome grid stability and service interruption hazards.

These risks are sufficiently high that NorthWestern would need to closely examine embarking on an emergency program to construct replacement thermal capacity. On the timeframes contemplated by the Proposed Rule, the only thermal capacity that could feasibly implemented is natural gas fired capacity. The net effect would be to replace relatively short-lived (approx. 10-20 year life) coal-fired thermal capacity with new, long-lived (30+ year) natural gas capacity. Although natural gas has a lower carbon and MATS profile than coal, this tradeoff would clearly appear to be inconsistent with the long term objectives of E.O. 13990.

9. Rate consequences of the Proposed Rule Costs and impracticality of rate recovery

NorthWestern currently plans to invest over $2.4 billion in capital outlays over the next five years. Many of these investments are required by law. Others are intended to improve system reliability, better utilization of renewables, or other projects (e.g., wildfire mitigation) with demonstrable and significant environmental benefits.

Proposed Rule Costs would constitute significant increase in capital commitments, weighted toward the earlier part of the five years and could imperil NorthWestern's ability to make those critical investments.

Any rate increases to cover Proposed Rule Costs would be on top of other recent rate increases funding the existing capital and operational budgets. Presently pending before the MPSC is a 28% residential electricity rate settlement, driven in material part by NorthWestern's investments in carbon free and reduced-emissions projects. Proposed Rule Costs did not factor into the settlement. NorthWestern believes it is uncertain that the MPSC would approve cost recovery for such a large new increase on top of other recent increases, and may not approve any portion of it.

As a result, the most likely outcome of the Proposed Rule and Proposed Rule Costs would be to force NorthWestern to evaluate postponing or abandoning previously approved capital projects.

10. Consequences of diverting capital to comply with the Proposed Rule

As should be clear from the preceding discussion, it is unlikely that NorthWestern could feasibly comply with the Proposed Rule by either building replacement thermal capacity or by attempting to recoup the Proposed Rule Costs through rate increases, and early closure of Colstrip likely poses unacceptably high market and grid stability risks. This leaves a re-allocation of previously committed capital outlays as the most likely compliance scenario.

As discussed, a large fraction of the planned investments are focused on improving grid reliability, and upgrading existing renewables. Other projects (e.g. wildfire mitigation) have clear environmental benefits. NorthWestern had intended to perform a more detailed examination of potential capital program consequences of the Proposed Rule, had it been granted the requested extension of time to comment. Because that request was denied, NorthWestern can only hypothesize in more general terms.

The adverse net environmental consequences of capital reallocations from the subjects identified above should be obvious. The collective effect would be reduced utilization of renewables, slowing NorthWestern's progress toward its Net Zero 2050 objectives. Perversely, a very plausible scenario under the Proposed Rule, if implemented in its current form, would be to *extend* the life of Colstrip, and result in NorthWestern utilizing Colstrip *more heavily* than in the absence of the Proposed Rule. NorthWestern has not had the opportunity to fully calculate the emissions consequences, but there is a significant likelihood that, as applied to Colstrip, the Proposed Rule would have the effect of *increasing* net carbon and HAPS emissions over Colstrip's remaining life than if Colstrip is exempted from the Proposed Rule. Such a result would certainly be contrary to the objectives of E.O. 13990.

11. Prejudice to NorthWestern of the Proposed Rule

NorthWestern has been materially and uniquely prejudiced by the Proposed Rule. The 2023 RTR acknowledges that Colstrip will require far more extensive and expensive capital investments than any other facility subject to the Rule. RTR at 9. Indeed, the entire rationale for the Proposed Rule – that existing EGUs can attain additional emissions reductions at minimal cost – does not apply to Colstrip.

As revealed in the 2017 and 2019 ERPP's and 2020 ERPP supplement, NorthWestern did not plan for the Proposed Rule and Proposed Rule Costs, because it had no reason to anticipate them. As a result, NorthWestern made major capital commitments to improve integration of renewables, grid reliability, and transmission capacity. These all advance NorthWestern's progress toward Net Zero 2050. But these investments depended critically on the assumption that Colstrip would remain an essential component of NorthWestern's portfolio through approximately 2042, and that major new emissions controls to address mercury and HAPS would not be necessary given Colstrip's compliance with the performance objectives of the original MATS rule, the regional haze rule, and the statutory standards in the Clean Air Act. The Proposed Rule (as well as other regulatory initiatives detailed by Talen) would upend these assumptions.

NorthWestern also notes that the Proposed Rule, in combination with the other proposed rules, disincentivizes superior performance. As detailed by Talen, the venturi scrubbers control both sulfur dioxide and fPM. Colstrip has been a high performer in SO_2 emission reduction for years because of that system, but under the Proposed Rule Colstrip would be punished for having "wrong" system to control fPM, in comparison to other facilities.

No other utility bears anywhere close to the burden that NorthWestern would bear under the Proposed Rule. And, because Colstrip essentially serves only Montana, no other State would bear anywhere close to the burden that Montana electricity customers would bear.

12. Statutory and Administrative Procedure Act deficiencies with the Proposed Rule

The Proposed Rule is unlawful under Clean Air Act Section 112(d)(6). That Section provides that EPA must take into account "developments in practices, standards, and control technologies" in determining whether a revision in standards is necessary. EPA purports to satisfy this requirement by citing to performance data from 2017 to 2021, and opining that facilities have performed better and at lower costs than anticipated when the MATS Rule was promulgated in 2012. But this dataset is selective and misleading. All the performance and cost metrics EPA now relies on were known to EPA when it released the 2020 RTR. EPA has withdrawn its prior "Appropriate and Necessary" determination, but it has not withdrawn the 2020 RTR. As a result, the 2023 RTR is *not* based on "developments in practices, standards, and control technologies" since the prior

RTR, but rather only a *change in policy* regarding the *same* practices, standards, and control technologies.

Basing revised standards simply on a policy reversal is contrary to the text and structure of Section 112(d)(6), especially when coupled with the tight statutory compliance deadlines provided in Section 112. The Clean Air Act envisions that both EPA *and* the regulated community would be able to monitor evolving trends in emission control technologies and practices, such that regulated could see and plan for potential upgrades that might be needed on the horizon. But when EPA reverses course based on policy, not technological changes, regulated entities do not have similar advance notice when planning capital programs. This is contrary to the statute.

The Proposed Rule's statutory deficiencies are compounded by its proxy-on-proxy structure, where PM (a pollutant independently regulated under the NAAQS program) is used as a stand-in for HAPS. NorthWestern understands the technical rationale for focusing on PM rather than attempting to measure HAPS directly, but the indirectness of the regulation is problematic given the history of the Rule. Moreover, it will not be lost on a reviewing court that the Proposed Rule is a transparent attempt to indirectly regulate greenhouse gas emissions in the immediate wake of *West Virginia v. EPA*, 142 S.Ct. 2857 (2022). For that reason, and because of its severe impacts to Montana and the reliability of the Western Interconnection, there is a significant likelihood that a court will subject the Rule to scrutiny under the Major Questions Doctrine. It is doubtful that EPA's departures from the text and purposes of Section 112(d)(6) would survive such scrutiny.

Independently of statutory and constitutional infirmities, the Proposed Rule is also arbitrary and capricious under the Administrative Procedure Act. In addition to the reasons articulated by Talen, the Proposed Rule and 2023 RTR takes the same practices, standards, and control technologies as were examined in the 2020 RTR, and reaches a polar opposite conclusion. This is textbook arbitrariness. At a minimum, the fact that EPA has reversed course so completely in such a short timeframe likely deprives EPA of any judicial deference it might otherwise have enjoyed. Given the unprecedented methods deployed in the Proposed Rule to determine that the Rule would result in positive net benefits, there is a significant likelihood that the Proposed Rule, if finalized, would be invalidated under the APA.

13. Requests

As a result of the foregoing general deficiencies in the Proposed Rule and specific injuries to NorthWestern, NorthWestern respectfully requests the following actions. These are consistent with the concurrent requests by Talen.

(A). EPA should abandon the Proposed Rule until technological developments that warrant a new RTR have occurred

As explained above, the Proposed Rule is unlawful. As a result, and because of the significant prejudice and injury NorthWestern will suffer, EPA should withdraw the Proposed Rule until such time as a revised form of the Rule can be justified, if at all, by advancements in practices, processes, or control technologies, as envisioned by Section 112(d)(6).

(B). If rulemaking proceeds, EPA should create a subcategory exempting facilities with wet scrubbers only

In the event the Proposed Rule is finalized, at a minimum the Final Rule should create a subcategory for those facilities that employ wet scrubber control technologies without additional ESP or fabric filter controls, and exempt them from the Proposed Rule. The rationale of the Proposed Rule is that significant performance improvements can be obtained through minimal equipment upgrades and costs, and that is plainly not true of facilities that only employ wet scrubbers without additional controls. Therefore such facilities should be subject to subcategory treatment and exempted.

(C). If rulemaking proceeds, EPA should also create an opt-out option for facilities that decide, within one year of the publication of the Final Rule, to enforceably commit to closure by December 31, 2035.

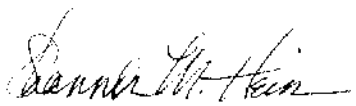
If the Final Rule does not create an exempt subcategory for facilities with wet scrubbers alone, EPA should create a retirement subcategory allowing units to continue to meet the existing 0.03 lb/MMBtu fPM standard so long as they opt-in to the retirement subcategory within 18 months after finalization of the rule, with a retirement date no later than December 31, 2035 (and where continued operation after 2035 would later be permitted if (i) the unit is essential to maintain regional grid reliability, as determined by the Western Regional Adequacy Program, Regional Transmission Organizations, Independent System Operators, North American Electric Reliability Corporation, or other similar system reliability authorities; or (ii) or if EPA determines that additional time is required to allow the unit to transition to renewable or clean energy generation). This would provide units another compliance option and needed flexibility.

This timeline is also necessary in NorthWestern's case because of the prejudice NorthWestern has experienced in the development of the Proposed Rule, and the long-lead time needed for closure and planning and construction of replacement baseload capacity. Such a timeline will also maximize the likelihood that replacement capacity will be carbon-free rather than fossil fuel-based. In its deliberations, EPA must consider net environmental and environmental justice consequences over all time scales, rather than only short term objectives. This is both consistent with the law and the objectives of Executive Orders 12898 (as updated) and13990.

Conclusion

NorthWestern is disappointed that the Proposed Rule in its current form does not achieve its intended objectives, and that NorthWestern was deprived of the opportunity to submit additional useful information by EPA's denial of NorthWestern's extension request. Nevertheless, NorthWestern's strong carbon-free portfolio performance and Net Zero 2050 commitments demonstrate that it shares many of the Administration's long term environmental objectives. NorthWestern is available to further discuss the consequences of the Proposed Rule and potential solutions to the problems it poses. If you have any questions regarding these comments, or would like to further engage on the subject, please contact me at 406-443-7969 or shannon.heim@northwestern.com.

Sincerely,



Shannon M. Heim
Vice President and General Counsel
NorthWestern Energy

Exhibit 3

Lebsack Declaration

Including:

- Attachment A: Select excerpts of Burns & McDonnell Study
- Attachment B: Declaration of Dale E. Lebsack, Jr. in the GHG Rule litigation
- Attachment C: Economic study by Dr. Patrick M. Barkey, Ph.D.

DECLARATION OF DALE E. LEBSACK, JR.
IN SUPPORT OF PETITIONERS' MOTION TO STAY FINAL RULE

I, Dale E. Lebsack, Jr. hereby declare and state under penalty of perjury that the following is true and correct to the best of my knowledge and is based on my personal knowledge or information available to me in the performance of my official duties.

INTRODUCTION

1. My name is Dale E. Lebsack, Jr., and my business address is 1725 Hughes Landing Boulevard, Suite 800, The Woodlands, Texas 77380. I am over the age of 18. I have personal knowledge of the subject matter and am competent to testify concerning the matters in this Declaration.

2. I currently work as President of Talen Montana, LLC ("Talen Montana") and as Chief Fossil Officer for Talen Energy Corporation ("Talen Energy"), its ultimate parent company. As President of Talen Montana, I am responsible for the day-to-day executive management of Talen Montana's business, properties, and operations.

3. I have worked for Talen Energy and its predecessor companies for over 19 years. Over that time, I have had roles of increasing responsibility in multiple aspects of fossil power generation, including asset management, plant operations, engineering, environmental, health and safety, and project development. This

Declaration is based on my personal knowledge as President of Talen Montana and Chief Fossil Officer of Talen Energy, and analyses conducted by my colleagues.

4. I am submitting this Declaration in support of Petitioners Talen Montana and NorthWestern Corporation d/b/a NorthWestern Energy's Joint Motion to Stay the U.S. Environmental Protection Agency's ("EPA" or "Agency") final rule titled "National Emission Standards for Hazardous Air Pollutants: Coal- and Oil-Fired Electric Utility Steam Generating Units Review of the Residual Risk and Technology Review," commonly referred to as the Mercury and Air Toxics Standards ("MATS"). 89 Fed. Reg. 38508 (May 7, 2024) ("MATS Final Rule").

5. I am familiar with Talen Montana's operations, including generation, regulatory compliance, workforce management, and electric markets in general. I also am familiar with the MATS Final Rule, and I am familiar with how the MATS Final Rule will affect Talen Montana. Additionally, I am familiar with EPA's greenhouse gas rule, 89 Fed. Reg. 39798 (May 9, 2024) ("GHG Rule"),[1] as described below.

6. Talen Montana has economic interests in coal-fired units that will be subject to the MATS Final Rule.

---

[1] *See* New Source Performance Standards for Greenhouse Gas Emissions From New, Modified, and Reconstructed Fossil Fuel-Fired Electric Generating Units; Emission Guidelines for Greenhouse Gas Emissions From Existing Fossil Fuel-Fired Electric Generating Units; and Repeal of the Affordable Clean Energy Rule, 89 Fed. Reg. 39798 (May 9, 2024).

7. Talen Montana is the operator of Units 3 and 4 at the Colstrip Steam Electric Station, commonly referred to as Colstrip Power Plant ("Colstrip"), in Rosebud County, Montana. Talen Montana also has a 15 percent economic interest in these units, which currently consist of two active coal-fired generating units capable of producing up to 1,480 net MW of electricity that have been operating for approximately 38 years.

8. Each of the units has approximately 740 MW of net generating capacity, and the adjacent Rosebud coal mine supplies Colstrip's low-sulfur subbituminous coal. Units 3 and 4 are the only remaining active units at Colstrip, as Units 1 and 2 recently retired in 2020. Units 3 and 4 have a useful life of at least another two decades, provided investments continue to be made for equipment maintenance and replacement as necessary.

9. Colstrip is one of the largest coal-fired electric generating facilities west of the Mississippi River, supplying electricity throughout Montana and the Pacific Northwest. Colstrip plays an integral role in maintaining operation of the NorthWestern Balancing Authority in Montana, especially during peak electricity demand events.

10. The MATS Final Rule sets forth aggressive compliance timelines for demonstration of compliance with EPA's new and more stringent filterable particulate matter ("fPM") emission limit—requiring that these upgrades be made at

Colstrip by July 8, 2027. As discussed below, compliance with the MATS Final Rule is anticipated to cost more than $350 million at Colstrip, with $15 million in additional annual operating costs.

Summary of Key Points

11. In this Declaration, I make the following points:

a. The MATS Final Rule requires Talen Montana and the Colstrip owners to make immediate decisions that will either lead to the installation of extremely costly pollution controls on Colstrip or a premature retirement. If the MATS Final Rule is not stayed, this irreversible decision will be made prior to the conclusion of this litigation. Massive costs for compliance with the MATS Final Rule will be expended unnecessarily if the MATS Final Rule is not upheld on appeal. Moreover, the consequences of early closure of Colstrip on Montana and its local economy are known, measurable, and severe.

b. Colstrip's six owners are split between two intrinsically different business models (i.e., utilities regulated by different state commissions, versus, in Talen Montana's case, a merchant generator), which impacts their business objectives, financial priorities, and motivations for evaluating whether to support installing mandatory but costly controls under the MATS Final Rule.

c. Each of Colstrip's six owners have differing regulatory landscapes and state policy considerations (i.e., owners situated in states that want

to minimize coal-fired power versus those that are not), which further impacts their unique priorities and considerations for deciding whether to install costly controls under the MATS Final Rule.

d. The differing positions among Colstrip's owners are significant, suggesting that compliance with the MATS Final Rule will be extremely contentious absent a stay, while a stay would allow for rational decision-making about Colstrip's future.

e. Absent a stay, installation of new emissions control systems will be extremely expensive—and potentially cost prohibitive—for Colstrip. Such high costs may lead to the premature retirement of Colstrip by the MATS Final Rule's compliance date of July 8, 2027, with a decision to retire made long before litigation over the rule is completed.

f. EPA's GHG Rule, if not overturned, will force closure of Colstrip by the end of 2031, significantly limiting the time to recoup investments to comply with the MATS Final Rule.

g. Absent a stay, it is almost certain that significant time and resources will be dedicated to addressing disputes over the expenditure of funds for compliance with the MATS Final Rule.

h. Absent a stay, compliance efforts with the MATS Final Rule would need to begin essentially immediately—extremely challenging given

Colstrip's unique ownership structure. Talen Montana has already begun the process of expending funds to study the compliance options and timelines, and millions of dollars will be required to continue engineering and design efforts later this year, ramping up further next year as construction would need to begin.

i. Per the above points, Talen Montana will directly experience material irreparable harm.

These points are discussed in further detail in the remainder of this Declaration.

TALEN MONTANA AND COLSTRIP OWNERSHIP

12. Talen Energy is an independent power producer that owns and operates approximately 10.7 gigawatts of power infrastructure in the United States. Talen Energy (through its subsidiaries) produces and sells electricity, capacity, and ancillary services into wholesale U.S. power markets, including PJM Interconnection, LLC ("PJM") and the Western Electricity Coordinating Council ("WECC"), with Talen Energy's generation fleet principally located in the Mid-Atlantic and Montana. Talen Energy's generation fleet includes wholly owned and partially owned assets that use nuclear, coal, oil, and natural gas as fuels.

13. Talen Montana is one of six owners, and is the operator, of Colstrip.

Each of Colstrip's six owners have differing business models, which impacts their priorities and considerations for deciding whether to install required costly controls under the MATS Final Rule and will complicate and lengthen the decision-making process.

14. Unlike traditional regulated utilities,[2] which have a process for recovering certain costs through electricity rates, Talen Montana is a "merchant power producer." Talen Montana sells power from Colstrip into the wholesale market.

15. Thus, Talen Montana has no "captive ratepayer." While regulated utilities have a set customer base, Talen Montana does not, as its wholesale customers have access to an open market. The market and its participants can always favor a different electricity producer if Talen Montana's power production costs are too high. Additionally, unlike regulated utilities that may be able to recover capital expenditures for new pollution controls through rates, Talen Montana cannot pass on such costs to its customers through rate adjustments.

16. Rather, Talen Montana is subject to market rates for its electricity and must rely on those market prices to pay for any new capital expenditures. Such prices may not reflect the additional costs incurred. The need for substantial upfront investment can put strains on financial resources and expose the company to risks.

---

[2] Utilities, such as investor-owned utilities or public utilities, operate under a highly-regulated framework where the utility company owns the generation and transmission necessary to serve its end-use customers and manages the system operations to serve its customers. These utilities are regulated by state utility commissions. Such regulation typically includes the setting of rates that are intended to allow the utility to recover a reasonable rate of return on its investments. Thus, a regulated utility may (or may not) be able to recover through rates the costs for installing facility upgrades (such as pollution control equipment under the MATS Final Rule), dependent on the approval of state regulators.

17. Market prices for electricity may be volatile and are driven by factors such as supply and demand, fuel costs, and weather conditions. When electricity prices are low, it is more challenging to recover the costs of new capital investments like pollution controls. Because the company must absorb the financial burden of these capital expenditures, with no certain ability to pass the costs onto consumers, this can erode or eliminate profit margins.

18. Additionally, given that market prices for electricity fluctuate and are difficult to predict into the future, this complicates Talen Montana's ability to manage for and recoup investments in pollution control equipment, which in turn makes it difficult to plan for long-term investments.

19. Thus, while Talen Montana must undertake an economic analysis of the risks of installing controls in light of predicted market sales of wholesale power in the period after installation of controls, the other owners must deal with their regulatory commissions to determine whether such costs would be permitted to be passed on to end users, and some owners may choose not to undertake that process at all. In sum, the different structure of the Colstrip owners means that there are different financial motivations, risks, and other considerations for deciding whether to install costly controls that will inevitably lead to delays in the decision-making process.

Each of Colstrip's six owners have differing ownership interests and state regulatory considerations, which further impacts their unique

priorities and considerations for deciding whether to install required costly controls under the MATS Final Rule.

20. As noted above, Talen Montana is one of six owners, and each of these owners have different ownership interests. Colstrip Units 3 and 4 are co-owned by Avista Corporation ("Avista"), Portland General Electric Company, Inc. ("PGE"), Puget Sound Energy, Inc. ("PSE"), PacifiCorp (collectively, the "PNW Owners"), NorthWestern Corporation ("NorthWestern"), and Talen Montana.

21. All owners other than Talen Montana are traditional utilities governed by a state commission. Some are subject to regulations in multiple states. For example, laws passed by Oregon and Washington apply to the PNW Owners.

a. Oregon passed a statute in 2016 that bars utilities from supplying coal-fired electricity to certain Oregon retail customers after January 1, 2030.[3] Washington followed suit in 2019 by passing a statute that will impose substantial penalties on utilities who provide coal-fired electricity to certain Washington retail customers after December 31, 2025.[4] With respect to the Washington statute, the PNW Owners serving retail customers in Washington remain free to use coal-fired electricity subject to the statutory penalties. Oregon and Washington's clean energy laws discussed above may limit or discourage the PNW Owners' ability to use

[3] Or. Rev. Stat. §§ 757.518 and .519.

[4] Wash. Rev. Code §§ 19.405.030(1)(a), (4) and 19.405.090(1)(a)(i).

Colstrip to serve customers in Washington and Oregon, with those laws becoming effective in 2026 in Washington and 2030 in Oregon.

b. Unlike the PNW Owners, Talen Montana and NorthWestern are not subject to these regulations promulgated by the applicable utility commissions in Oregon and Washington.

22. The Colstrip units are governed by a 1981 ownership agreement. Each Colstrip Owner's respective ownership interest in Colstrip is as follows:

Owner	Unit 3	Unit 4
Avista	15%	15%
NorthWestern	--	30%
PacifiCorp	10%	10%
PGE	20%	20%
PSE	25%	25%
Talen Montana	30%	--

NorthWestern has agreed to acquire Avista's share as of January 1, 2026.[5]

23. Each of the regulated utility owners will evaluate compliance with the MATS Final Rule differently, largely because of their separate state's commissions and stakeholders and regulatory frameworks, i.e., laws in those states regarding use of electricity from coal fired power plants. Some owners, like NorthWestern, must engage with their respective public utility commissions to determine what action would have the least impact on grid reliability and electricity costs to customers,

[5] *See* Declaration by John D. Hines ("NorthWestern Decl.") at ¶¶ 8, 37, 68.

including whether to install controls (which could require extended outages for installation), or whether to seek early retirement and instead seek replacement generation.[6]

24. From Talen Montana's perspective, however, there is no current planned retirement date for Colstrip. And as a merchant power generator (described above), Talen Montana is not subject to any regulation by a state commission. Talen Montana's position on compliance with the MATS Final Rule will largely be driven by economic factors.

The differing positions among Colstrip's six owners are deep-rooted, suggesting that compliance with the MATS Final Rule will be extremely contentious absent a stay, whereas a stay would allow for rational decision-making about Colstrip's future.

25. The divergent interests of certain PNW Owners, on the one hand, and NorthWestern and Talen Montana, on the other hand, have led to disputes regarding the future of Colstrip and the owners' ability to close (or not close) the plant under the ownership agreement.[7] According to one filing, underlying disputes between

[6] *See id.* ¶¶ 18–32 (explaining that the MATS Final Rule will materially increase electricity-delivery costs in Montana, and it is uncertain whether those will be recoverable in electrical rates, and that NorthWestern anticipates significant resistance from the Montana Public Service Commission to the MATS Final Rule-based rate increases "given the magnitude of the costs, the short useful life of the controls, and the EPA's own findings that additional controls are not necessary to protect human health").

[7] *See* Decl. of Ronald J. Roberts in supp. of PSE Mot. for Relief from Automatic Stay, at 20, *In re Talen Energy Supply, LLC et al.*, No. 22-90054 (Bankr. S.D. Tex.).

Talen Montana and the PNW Owners regarding how and when to retire the remaining Colstrip units "originated over a decade and a half ago."[8]

26. Colstrip's owners continue to have divergent constraints when it comes to long-term planning for Colstrip's future. In fact, this very issue—Colstrip's retirement—has been litigated in a years-long dispute that has resulted in litigation and arbitration, and has even resulted in legislation passed by the Montana legislature.[9] The owners have long had different priorities regarding Colstrip's future and long-term planning, suggesting that issues regarding MATS Final Rule compliance will be contentious.

27. In addition to the impacts of the MATS Final Rule in the context of its 15% economic interest in Colstrip, Talen Montana will be further impacted by disputes among the owners regarding the MATS Final Rule due to its role as Colstrip's operator. As Colstrip's operator, Talen Montana is the "agent for and on

[8] *See* Debtors' Opp'n to Mot., at 7, *In re Talen Energy Supply, LLC et al.*, No. 22-90054 (Bankr. S.D. Tex.).

[9] *See, e.g., See Portland Gen. Elec. Co. v. Northwestern Corp.*, No. 1:21-cv-0047-BLG-SPW-KLD (D. Mont.). Senate Bill 266 applied to Colstrip's owners and made it a violation of law to fail or refuse to fund its share of operating costs, or to bring about permanent closure of a generating facility without seeking and obtaining consent of all owners. S.B. 266, § 2(2)(a), (b), 67th Leg., Reg. Sess. (Mont. 2021). Senate Bill 265 mandated three arbitrators unless all parties agreed to a single arbitrator. S.B. 265, § 1, 67th Leg., Reg. Sess. (Mont. 2021).

behalf of the Owners" and must construct, operate, and maintain Colstrip in accordance with Prudent Utility Practice.[10]

28. Given the differing business models and competing state regulatory considerations among the owners, Talen Montana—as operator—finds itself stuck in the middle from an economic perspective because, however Talen Montana interprets its duty as operator in this matter, it is likely to antagonize one or more of its co-owners. Additionally, as Colstrip operator Talen Montana has no independent source of funding. Talen Montana has only what is advanced or recovered from the

[10] This is stated in Section 3(b) of the Colstrip Units 3& 4 Ownership and Operation Agreement ("O&O Agreement"). In O&O Agreement Section 1(r):

> "Prudent Utility Practice" at any particular time means either any of the practices, methods and acts engaged in or approved by a significant portion of the electrical utility industry prior thereto or any of the practices, methods or acts, which, in the exercise of reasonable judgment in the light of the facts known at the time the decision was made, could have been expected to accomplish the desired result at the lowest reasonable cost consistent with reliability, safety and expedition. Prudent Utility Practice shall apply not only to functional parts of the Project, but also to appropriate structures, landscaping, painting, signs, lighting, other facilities and public relations programs, including recreational facilities, and any other programs or facilities, reasonably designed to promote public enjoyment, understanding and acceptance of the Project. Prudent Utility Practice is not intended to be limited to the optimum practice, method or act, to the exclusion of all others, but rather to be a spectrum of possible practices, methods or acts. Prudent Utility Practice shall also include those practices, methods and acts that are required by applicable laws and final orders or regulations of regulatory agencies having jurisdiction.

other owners for operations, maintenance, and capital expenditures at Colstrip.[11] Hence, Talen Montana may bear the financial risk if a Colstrip owner chooses not to reimburse costs related to compliance with the MATS Final Rule.

29. The owners will always have disparate positions about installing costly controls to comply with the MATS Final Rule, which likely will lead to further contention between the owners if Talen Montana, NorthWestern, or others seek to install controls. Disputes between the owners have already begun to unfold over the costs of the preliminary analysis of possible compliance options.

30. Further disputes would at least be delayed and possibly rendered unnecessary if there is a stay of the rule.

31. Without a stay, existing disputes will almost certainly intensify and interfere with the ability to reach a timely consensus on the retirement of Units 3 and 4, burdening the companies' resources.

CONTROL REQUIREMENTS, IRRECOVERABLE COSTS, AND IMPLICATIONS

Absent a stay, installation of new emissions control systems will be extremely expensive—and potentially cost prohibitive—for Colstrip.

32. The MATS Final Rule may force Talen Montana to make a massive investment in new emissions control technologies that is difficult to justify even when considered without reference to other contemporaneous EPA rulemakings

[11] O&O Agreement Section 3(b), Articles 6 11.

(e.g., the GHG Rule). As noted above, the MATS Final Rule significantly tightens the surrogate fPM standard for demonstrating compliance with the emissions limits for non-mercury ("non-HG") metal hazardous air pollutants ("HAPs") from 0.03 lb/MMBtu to 0.010 lb/MMBtu, among other related requirements.

33. Colstrip cannot comply with the more stringent fPM limits in the MATS Final Rule with its current pollution control equipment. Colstrip must undertake a massive and complex construction project to install new controls—either fabric filters, known as baghouses, or electrostatic precipitators ("ESPs")—to come into compliance with the MATS Final Rule. Installation of these new emissions control systems will be extremely expensive and potentially cost prohibitive for Colstrip. If deemed cost prohibitive, the MATS Final Rule would require Colstrip to prematurely retire by the rule's compliance deadline of July 8, 2027, approximately three years from now. The decision to retire (or to install controls) would be made long before litigation over the MATS Final Rule is concluded.

34. Based on the latest information, the MATS Final Rule will require expenditures of over $350 million to install new fabric filters or ESPs, with the most likely option the installation of fabric filters between the plant's flue gas reheat system and the stack. In addition to the capital expenditure, the annual operation and maintenance cost is estimated to be approximately $15 million annually. *See*

Burns & McDonnell, *Colstrip Particulate Matter Control Cost Evaluation Final* (Apr. 2024) (select excerpt included as Attachment A to this Declaration). Talen Montana is continuing to work on cost estimates and preliminary engineering on the pollution control equipment necessary to comply with the MATS Final Rule.

Absent a stay, it is almost certain that significant time and resources will be dedicated to addressing disputes over the expenditure of funds for compliance with the MATS Final Rule.

35. It is anticipated that the project to install new baghouses would take 36–42 months (i.e., three years minimum) to complete. Given that timeline, preliminary investigation and engineering work must begin the summer of 2024 (following contracting for such work) with detailed engineering and design in the fall of 2024. If approved, on-site construction work, such as laying foundations, would begin in spring of 2025 but federal permitting hurdles, environmental reviews, and potential challenges (e.g., by environmental organizations) could cause project delays.

36. Work in the balance of 2024 is expected to cost millions, and by the end of the first quarter of 2025, material purchasing will begin and multiple contract awards will ramp up commitments and spending rapidly on a $350 million project.

37. Given the anticipated timeframe for engineering and construction, even if the project could begin in the fall of 2024, it will be a challenge to complete by the July 8, 2027 compliance deadline, and may still be tight for a compliance even

if granted a one-year deadline extension under the rule. Schedules continue to slip due to supply chain disruptions and material and labor shortages.

38. Given these aggressive time frames, the MATS Final Rule affords Talen Montana no time to wait before beginning efforts to comply with the rule. Absent a stay, Talen Montana must start immediately. Accordingly, the MATS Final Rule requires that Talen Montana and the other five Colstrip owners decide in a short timeframe whether to go down a path that will lead to the commitment of hundreds of millions of dollars on new pollution control equipment or a premature retirement.

39. Importantly, any decision to proceed with the project would most likely be made by the Colstrip owners acting through the Project Committee established in their ownership agreement. As noted above, disagreements between the owners about compliance expenses could lead to disputes under the ownership agreement or otherwise. Without a stay, significant time and resources will be devoted to these potential disputes. Moreover, given the tight compliance schedule noted above, Talen Montana, as Colstrip operator, and possibly others, could face the prospect of having to spend hundreds of millions of dollars in compliance costs with its ability to recover those costs from the other owners in dispute.

EPA's GHG Rule significantly limits the time to recoup investments to comply with the MATS Final Rule.

40. Talen Montana, as a merchant generator, must consider how much time is available to recoup the costs of the investment (i.e., how long can the unit operate after installation of controls to pay for those controls) when deciding whether to invest in additional pollution control equipment or to retire the units (equipment lifespan and recoupment time is also a relevant factor for regulated utilities).

41. While Colstrip has no set retirement date, EPA's concurrent finalization of the GHG Rule under Clean Air Act Section 111(d) raises the stakes for Talen Montana because it significantly limits the time to recoup investments required to comply with the MATS Final Rule.

42. Under the GHG Rule, Colstrip can only operate beyond December 31, 2031, if it co-fires with natural gas before 2030 or installs carbon capture and sequestration ("CCS") before 2032.

43. As I set forth in my declaration in support of a stay motion in the GHG Rule (included as Attachment B to this Declaration), Colstrip cannot install CCS before 2032 or co-fire natural gas before 2030. This means that to comply with the GHG Rule (if upheld on appeal), it must permanently cease operation by the end of 2031.

44. As a result, accounting for the interaction of the Final MATS Rule and the GHG Rule, Talen Montana would have only from July 8, 2027 (or later if controls take longer to install, which is certainly possible) through the end of 2031

to recoup its share of the massive costs involved in MATS Final Rule compliance. Again, as a merchant generator, Talen Montana has no method to recoup these costs aside from generating revenue through the sale of power on the wholesale market.

45. The annualized costs of those expenditures, when spread over only approximately four years of operation after installation (or even fewer, if the operational date of controls is later), are staggering. Assuming 4.5 years of operation after installation of controls, the annualized capital costs would be approximately $109 million/year with the same discount rate assumptions made by EPA; if controls are installed subject to a one-year extension, the annualized capital costs would be approximately $133 million/year.

46. Given the volatile nature of wholesale power prices, it is highly uncertain whether the revenues available to Talen Montana in that four-year period will be enough for it to recoup its costs. While wholesale power prices in the Pacific Northwest are robust at present, should they revert to levels experienced as recently as 2020, Talen Montana will struggle to generate a profit on its share of Colstrip even before the hundreds of millions of dollars in compliance-related capital expenditures and millions of dollars per year in additional operating costs. The level of annualized costs to comply with the MATS Final Rule may be cost prohibitive and lead to a premature retirement of Colstrip.

47. In addition to depending on wholesale power prices to remain robust during the four-year period, Talen Montana's ability to recoup its investment is dependent on Colstrip's ability to operate during that timeframe. The complex power generation equipment used at Colstrip units will need to be offline for maintenance from time-to-time. Should those maintenance outages extend beyond anticipated durations, or should they occur during periods of high prices, Talen Montana could miss out on the revenues necessary to recover its investment. The relatively short recovery period of only four years exacerbates this operational risk.

48. Additionally, the cost to achieve a small incremental improvement in fPM removed is enormous. Colstrip already achieves 99.6 percent reduction of fPM with its existing wet venturi scrubbers.[12] The MATS Final Rule would require

[12] Since Colstrip Units 3 and 4 began commercial operations in the mid-1980s, Colstrip has continuously improved its methods for controlling air pollution. Colstrip has typically been able to remain below the current MATS limit of 0.030 lb/MMBtu of fPM. Since 2018, Colstrip has hired consultants and engineers to explore ways to further enhance the efficiencies of the venturi wet scrubbers. This work has made the venturi wet scrubber emissions more stable. Additionally, Colstrip implemented additional measures to address combustion conditions to help ensure that combustion of the coal occurs in a manner that prevents the formation of small fly ash particles that are difficult to remove in the wet venturi scrubbers. Together, these and many other comprehensive efforts reflect upgrades available to be implemented to the Colstrip scrubber/combustion process to reduce fPM, which has enabled Colstrip since 2018 to achieve consistent compliance with the current 0.030 lb/MMBtu fPM limit with an adequate compliance margin. In 2022, based on stack tests, Colstrip's two units combined achieved approximately 0.022 lb/MMBTU fPM on an annual basis—well below EPA's limit prior to the promulgation of the MATS Final Rule.

Colstrip to install an additional level of fPM control, at a cost exceeding $350 million, to further reduce fPM control from 99.6 percent to approximately 99.8 percent.

49. Moreover, the interaction of the MATS Final Rule with the GHG Rule and appellate challenges to those rules injects significant regulatory uncertainty into Talen Montana's planning process. The interaction between these rules forces Talen Montana and its co-owners to make immediate and consequential decisions about Colstrip's future, all of which will have ramifications not just for Talen Montana, but for Colstrip, the State of Montana, its citizens, and beyond. This decisional uncertainty inflicts immediate significant harm on Talen Montana, especially given its role as Colstrip operator, and could be avoided with a stay of the Final MATS Rule.

50. With a stay in place, Talen Montana would be able to operate from a set understanding, instead of absolute uncertainty, leading to rational decision-making about Colstrip's future with Colstrip's other owners.

TALEN MONTANA'S IMMEDIATE, IRREPARABLE HARMS

Absent a stay, compliance efforts with the MATS Final Rule would need to begin essentially immediately, which would be extremely challenging given Colstrip's unique ownership structure.

51. Absent a judicial stay, Talen Montana would be immediately and irreparably harmed for at least two reasons. First, absent a stay, compliance efforts

with the MATS Final Rule would need to begin immediately. Indeed, Talen Montana has already begun the process of expending funds to study the compliance options and timelines, and millions of dollars will be required to continue engineering and design efforts later this year. Second, these compliance efforts would involve a significant ramp-up in resources (i.e., time, effort, and coordination) this year, leading to major construction activities beginning by Spring of 2025, all of which might prove unnecessary and unrecoverable if the MATS Final Rule is overturned on appeal.

52. These decisions have far-reaching implications on Colstrip, Talen Montana, and beyond.

53. Regardless of Talen Montana's own decision-making process, Talen Montana must coordinate with the other five Colstrip owners with disparate ownership interests. As described above, several of Colstrip's owners likely would not favor investments to comply with the MATS Final Rule; and disputes amongst the owners are likely in the near future absent a stay. As Colstrip operator, Talen Montana will not only be harmed by the costs of contesting the dispute among the owners, but could also face the prospect of having to pay significant costs for complying with the MATS Final Rule without any certainty that Talen Montana can recover those costs.

54. Additionally, litigating the MATS Final Rule in a normal course would likely take a minimum of two to three years. Talen Montana and the Colstrip owners must make immediate and consequential decisions about Colstrip's future, with ramifications for Talen Montana, Colstrip, the State of Montana, its citizens, and beyond. These decisions must be made in the face of significant uncertainty over the Final MATS Rule (and the GHG Rule) given ongoing litigation. As described above, this decision uncertainty inflicts immediate significant harm on Talen Montana. If the MATS Final Rule is not stayed, yet is ultimately reversed on appeal, Talen Montana will have suffered the irreversible harm of either closing the plant prematurely or spending its share of hundreds of millions of dollars on unnecessary controls, by the time the legality of the MATS Final Rule is determined.

The consequences of early closure of Colstrip on Montana and its local economy are severe.

55. Early closure of Colstrip would cause significant economic harms to the local area and Montana.

56. Colstrip is pivotal to Montana. Colstrip is a primary source of safe, reliable electricity for Montanans and provides significant economic benefits in the form of direct and indirect jobs, tax revenue, and economic development. The impact of the MATS Final Rule, should it result in the premature closure of Colstrip, will extend well beyond the plant, the Rosebud mine, and the local community.

Early closure would put Montana's electric reliability at risk and could negatively affect Montana's economy.

57. Aside from its role in providing affordable, reliable electricity, Colstrip makes significant economic contributions to the local, county, and state economy.

58. A 2024 study conducted by Dr. Patrick M. Barkey, Ph.D. on the potential economic implications of the MATS Final Rule for Montana's economy (included as Attachment C to this Declaration) found that, if Colstrip were to retire prematurely, in 2028 alone (the first full year of closure for the mine and Colstrip):

a. Montana would have more than 3,000 fewer year-round jobs.

b. Montana households would experience more than $240 million lost income (more than $203 million disposable, after-tax income).

c. Montana would lose over a billion dollars in economic output, generally defined as gross receipts of business and non-business organizations. Of note, this revenue loss is felt by every industry in the economy.

d. Montana would lose more than $102 million in State tax revenue.

59. The study's conclusions are corroborated by other key financial measures which I am familiar with.

60. Colstrip is a large part of Montana's tax base. Colstrip pays approximately $60 million in state, county, and local taxes annually, accounting for 90 percent of municipal and 75 percent of county tax revenue. Colstrip's owners

pay an average of $70 million per year in taxes just for the fuel component of Colstrip, which includes Federal and State Royalties and Severance Tax.

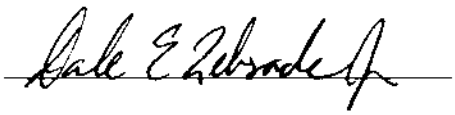
61. Colstrip's owners pay approximately $1.025 million per year directly to the Montana Department of Environmental Quality.

62. In short, Colstrip makes significant contributions to the State of Montana and is central to the State from an economic and social perspective.

CONCLUSION

63. For the reasons described above, Talen Montana is facing imminent and substantial harm if the MATS Final Rule is not stayed.

Executed on June 27, 2024,



Dale E. Lebsack, Jr.
President of Talen Montana, LLC
Chief Fossil Officer for
Talen Energy Corporation

Attachment A

to

Declaration of Dale E. Lebsack, Jr., President of Talen Montana, LLC and Chief Fossil Officer for Talen Energy Corporation

Select excerpts of Burns & McDonnell Study

CONFIDENTIAL

Colstrip Particulate Matter Control Cost Evaluation – Final

prepared for

Talen Montana
Colstrip, Montana

April 2024

Project No. 163860

prepared by

Burns & McDonnell

TABLE OF CONTENTS

Page No.

1.0 EXECUTIVE SUMMARY 1-1
1.1 Capital Cost Analysis 1-1
1.2 O&M Cost Analysis 1-3

2.0 INTRODUCTION 2-1
2.1 Colstrip Steam Electric Station 2-1
2.2 Cost Development 2-1
2.3 Limitations and qualifications 2-2

3.0 EMISSION REDUCTION TECHNOLOGY DESCRIPTION 3-1
3.1 Pulse-Jet Fabric Filter 3-1
3.1.1 Process Description 3-1
3.1.2 Pulse-Jet Fabric Filter Advantages 3-3
3.1.3 Pulse-Jet Fabric Filter Disadvantages 3-3
3.2 Dry Electrostatic Precipitator 3-4
3.2.1 Process Description 3-4
3.2.2 Electrostatic Precipitator Advantages 3-6
3.2.3 Electrostatic Precipitator Disadvantages 3-6

4.0 EMISSION GUARANTEES 4-1

5.0 COST EVALUATION 5-1
5.1 Capital Costs 5-1
5.1.1 General Estimate Basis 5-3
5.1.2 Discipline Information 5-3
5.2 Operation and Maintenance, Levelized Costs 5-7
5.2.1 O&M Cost Basis 5-7

6.0 SUMMARY 6-1
6.1 Summary 6-1
6.1.1 Balance of Plant Impact Analysis 6-1

APPENDIX A - DRAWINGS

APPENDIX B – VENDOR QUOTES

* * * * *

ED_021114A_00008608-00029

1.0 EXECUTIVE SUMMARY

Burns & McDonnell has been retained to assess the cost of two particulate control options located between the reheat system and the stack to meet the proposed Mercury and Air Toxics Standards (MATS) Rule. The current system is compliant with the existing filter particulate limit of 0.030 lb/MMBtu. The proposed MATS rule would reduce this emission rate to between 0.006 and 0.010 lb/MMBtu. These rates cannot be achieved with the existing control technology or with modifications to the existing control technology. The primary objective of this evaluation is to provide an Association for the Advancement of Cost Engineering (AACE) Class 4 capital cost estimate, and an Operations and Maintenance (O&M) estimate incorporating site specific factors such as considering the power source for the new control system.

Burns & McDonnell evaluated the application of an Electrostatic Precipitator (ESP), or a fabric filter installed after the reheat system but prior to the stack. These options and placement in the flue gas path were selected in the previous Burns & McDonnell evaluation comparing various control technologies and installation locations. The previous study was an AACE Class 5 estimate that is primarily used for comparing relative options. This evaluation has included Colstrip site specific factors to help separate the two leading control options.

1.1 CAPITAL COST ANALYSIS

Burns & McDonnell requested vendor budgetary cost estimates for the ESP and fabric filter. Burns & McDonnell also requested a budgetary cost estimate for the ash handling system. The remaining equipment was estimated either using recent pricing from other projects or internal estimating tools. The vendor estimate for the ESP and fabric filter are supply and install estimates. The remaining equipment was estimated using manhours estimated internally and Union labor rates from RS Means for Montana.

Using this information capital, and O&M costs were then developed for both control technologies. The Total Project Cost is based on the assumption the project will be executed on a multiple contract, lump sum construction bid approach. The total costs do not include Owner's costs such as taxes, allowance for funds during construction, fees, permitting and Owner's contingency. Table 1-1 provides a summary of the two unit total capital costs.

Table 1-1: Summary of Capital Costs for Units 3&4

CAPITAL COST ESTIMATE
TALEN MONTANA
COLSTRIP POWER STATION
FABRIC FILTER AND ESP
COLSTRIP, MT
BMcD #163860

Area / Discipline	REHEAT FABRIC FILTER	REHEAT ESP
Engineered Equipment	$102,894,000	$86,794,000
Civil, Structural & Architectural	$128,820,000	$260,179,000
Mechanical	$7,270,000	$34,888,000
Electrical & I&C	$9,596,000	$10,542,000
Total Direct Cost	**$248,580,000**	**$392,403,000**
Engineering, Start-up, Commercial	$34,065,000	$54,012,000
Escalation	$14,377,000	$27,520,000
Contingency	$59,404,000	$94,787,000
Construction Management	Not Included	Not Included
EPC Fee	Not Included	Not Included
Total Indirect Cost	**$107,846,000**	**$176,319,000**
Total Project Cost	**$356,426,000**	**$568,722,000**
Owner Cost - General, Taxes & Fees	Not Included	Not Included
Owner Cost - Owner Contingency	Not Included	Not Included
Total Project Cost Incl. Owner Cost	**$356,426,000**	**$568,722,000**

Rev.	Rev. Date
0	04/05/24

BURNS McDONNELL

V4.6

A percentage of the direct costs are included for Engineering, Start Up and Commercial costs. An overall project contingency, 20% of the direct and indirect costs, is included in the indirect costs. The Escalation is based on the project starting in the fall of 2024 and the second unit coming on line 42 months later. An annual escalation rate of four percent (4%) on engineered equipment, five percent (5%) on materials and four percent (4%) on labor and subcontracts has been included.

1.2 O&M COST ANALYSIS

Table 1-2 provides a summary of the two unit estimated operation and maintenance costs for each option.

Table 1-2: Summary of O&M Costs for Units 3&4

Reheat ESP	$19,820,000	$1,265,000	$21,085,000
Reheat fabric filter	$12,629,000	$2,157,000	$14,786,000

Table 1-3 provides a summary of all the capital and O&M costs plus the cost per ton of particulate removed. Items such as Owner's costs (performance bond, Owner's contingency, and taxes), permitting, funds during construction, are not included. The cost per ton of particulate removed is based on the annual levelized costs and tons of particulate removed from the average historical Colstrip emission rate. Total tons of material collected will likely exceed this amount as it is anticipated the particulate exiting the scrubbers will increase when the pressure drop across the scrubber is decreased to allow for the new control device.

Table 1-3: Particulate Control Cost Summary

Summary of Particulate Emissions Control Costs from Colstrip Units 3&4									
	PM	Emissions				Economic Impacts			
PM-10 Control Alternative (Ranked by PM-10 Rate)	Removal Efficiency %	Emission Rate lb/MMBtu	Hourly Emission Lbs/Hr	Annual Emission Tons/yr	Emission Reduction Tons/yr	Installed Capital Cost $1,000	Annual O & M Cost $1,000	Total Annual Cost $1000/yr	Average Control Cost $/ton
Reheat ESP	71.45	0.006	95	355	890	568,722	21,085	88,546	99,536
Reheat fabric filter	71.45	0.006	95	355	890	356,426	14,786	57,065	64,148
2022 Baseline (Scrubber)		0.0220	334	1245		N/A	N/A	N/A	N/A

Based on this evaluation the recommended MATS compliance approach for Colstrip Units 3 and 4 is the installation of fabric filters between the flue gas reheat system and the stack. The AACE Class 4 capital cost estimate for both units is a total of $356,426,000 (not including Owner's costs). The levelized annual operation and maintenance of the fabric filter option is $14,786,000 including the addition of a one full time equivalent staff member and 5-year bag replacement cycles. It is anticipated this project will take 36-42 months to complete depending on available outage windows. The anticipated tie in outages are 10 to 12 weeks for Unit 3 and 4 to 6 weeks for Unit 4.

* * * * *

2.0 INTRODUCTION

2.1 COLSTRIP STEAM ELECTRIC STATION

Talen Montana's operates the Colstrip Steam Electric Station in Colstrip, Montana. Units 3 and 4 are each 805 MW coal-fired steam electric generating units and were placed into service in 1984 and 1986, respectively. The units fire a low-sulfur PRB coal. The Colstrip units have particulate scrubbers installed for control of particulates and SO_2. Units 3 and 4 achieve a particulate matter emission rate of approximately 0.022 lb/mmBtu.

The EPA proposed updates to the MATS rule in May 2023. The current rule allows filterable particulate matter (fPM) emission rates of 0.030 lb/MMBtu as a surrogate for acceptable total non-mercury metal hazardous air pollutants (HAPS) emissions. The proposed MATS rule update could reduce this emission rate to as low as 0.006 lb/MMBtu.

A Phase 1 evaluation of several options to reduce fPM emissions at the facility to achieve compliance with the proposed updated MATS identified two compliance options for further evaluation. These options are installing an ESP or fabric filter downstream of the scrubbers and flue gas reheaters. This report presents the results of this further investigation including an AACE Class 4 cost estimate using budgetary quotations from major equipment suppliers. During the Phase 1 evaluation it was noted it is likely an electrical upgrade will be necessary as the plant cannot support the demand for a new ESP. This cost estimate has accounted specifically for this matter as well as other Colstrip specific factors.

2.2 COST DEVELOPMENT

Historically, a Class 4 study would utilize past project information and adapt that information to better fit the unique conditions at a specific site. However, over the last ten years the utility air pollution control market has seen a significant slowdown making past project data either limited or less relevant. To improve the accuracy of the cost estimate Burns & McDonnell contacted vendors that have remained active in the ash conveying and particulate control market either with utilities or at a scale akin to utilities. Southern Environmental Inc, and Industrial Accessories Company are the two companies Burns & McDonnell requested provide budgetary cost estimates for fabric filter. Southern Environmental Inc was also requested to provide a budgetary cost estimate for an ESP. UCC Environmental was contacted for budgetary pricing for the ash handling system.

ED_021114A_00008608-00033

The cost estimate addressed other equipment such as transformers, control cabinets, silos utilized cost information from more recent projects with these types of equipment. Commodity items such as steel, ductwork, foundations, earth work, etc. were included through quantities developed by Burns & McDonnell or cost factors based on Burns & McDonnell's experience on these types of projects.

2.3 LIMITATIONS AND QUALIFICATIONS

Estimates and projections prepared by Burns & McDonnell relating to schedules, performance, construction costs, and operating and maintenance costs are based on our experience, qualifications, and judgment as a professional consultant. Since Burns & McDonnell has no control over weather, cost and availability of labor, material and equipment, labor productivity, construction contractor's procedures and methods, unavoidable delays, construction contractor's method of determining prices, economic conditions, government regulations and laws (including interpretation thereof), competitive bidding and market conditions or other factors affecting such estimates or projections, Burns & McDonnell does not guarantee that actual rates, costs, performance, schedules, etc., will not vary from the estimates and projections prepared by Burns & McDonnell.

* * * * *

ED_021114A_00008608-00034

3.0 EMISSION REDUCTION TECHNOLOGY DESCRIPTION

The two technologies evaluated further are the fabric filter (baghouse) and the electrostatic precipitator. This section describes these two control technologies that can be retrofitted to Colstrip to comply with the proposed MATS particulate emissions regulations. Both of fPM reduction technologies that are commercially available. However, neither of these technologies have previously been located at a utility in reheated flue gas downstream of a wet particulate scrubber.

3.1 PULSE-JET FABRIC FILTER

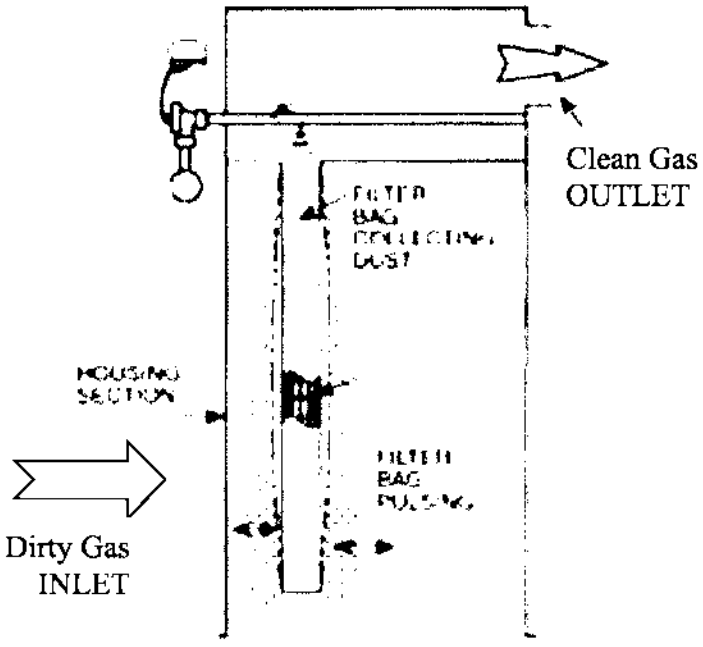
A pulse-jet fabric filter is an effective particulate matter control technology that uses a fabric material to filter out particulate matter from flue gas. The use of filters to remove unwanted items from a system has been around for many centuries. Within the last century, fabric filters have been popular options for particulate control in coal-fired power plants. The process is simple, which is one reason why they are so common. There are multiple types of fabric filters, based on the cleaning method. The method discussed in this section is based on pulse-jet cleaning.

3.1.1 Process Description

A process flow diagram of a typical pulse-jet fabric filter system is provided in Figure 3-1

ED_021114A_00008608-00035

Figure 3-1: Typical Pulse-Jet Fabric Filter Process Flow Diagram



Pulse-jet fabric filters use the simple process of forcing the flue gas, which contains small particles, through a felted fabric. This process causes the particles to collect on the fabric, usually bags, by sieving. The material of the filter bags is determined by the operating conditions, namely the temperature of the flue gas. Also, the size of the filter bags is dependent upon the gas flow based on an air-to-cloth ratio, to avoid too great of a pressure drop from dust cake buildup.

As the dust cake buildup develops on the filter bags, they require cleaning. For pulse-jet fabric filters, the flue gas flows from outside the felted bags to the inside of the bags, and then the clean gas exhausts at the top of the bags. Therefore, the particles are collected on the outside of the bags. A wire cage is inserted inside the bags to prevent the bags from collapsing during normal operation. The bags are cleaned intermittently by pulse-jet cleaning, which is a short burst of high-pressure air directed at the top of the bag, which establishes a shock wave that proceeds down the bag. The wave-like vibration of the bag causes the particulate buildup on the outside of the bag to fall off the bags and into hoppers. As bags are periodically cleaned, the remaining bags take on the extra demand so that the system can continue to operate while bags are being cleaned. This also maintains a generally constant pressure drop across the system. After passing through the filter bags, the flue gas leaves the fabric filter free of almost all particulate matter.

3.1.2 Pulse-Jet Fabric Filter Advantages

Pulse-jet fabric filters have many advantages in comparison to other particulate matter control technologies:

- Brief cleaning pulse: The flow of flue gas through the bag does not have to be stopped during cleaning because the cleaning pulse is very brief, 0.03 to 0.1 seconds in duration.
- Constant pressure-drop: As some of the bags are being cleaned in the system the remaining bags take on the extra demand. This, along with greater frequency of pulse-jet cleaning, results in a nearly constant pressure drop across the system during operation.
- No isolation needed: Unlike other fabric filters, they do not need extra compartments to maintain necessary filtration because this method does not require isolated compartments of bags.
- Allows for higher gas flow rates and higher dust loadings: Since the pulse-jet cleaning is a very intense and frequent method, these fabric filters can treat higher gas flow rates and higher dust loadings than other fabric filters.
- Allows for smaller fabric filters: Since the pulse-jet cleaning method allows for higher gas flow rates and higher dust loadings, combined with dust cake buildup not being needed for efficient removal – the fabric filters can be smaller than other types of fabric filters in the treatment of the same amount of dust and gas, making higher air-to-cloth ratios possible.
- Uninhibited by gas stream fluctuations: These fabric filters are relatively insensitive to fluctuations in the flue gas stream conditions, so that efficiency and pressure drop are relatively unaffected by these fluctuations.
- Simple operation: Process is based on simple filtration, allowing for a simple operation.
- Simple maintenance: They do not require the use of high voltage, like ESPs do, which allows for simpler maintenance activities.
- Low and high resistivity collection: Fabric filters are effective at collecting particulate matter with either low or high resistivity, while ESPs have a difficult time collecting high resistivity ash.
- Flexible installation: There are many options for fabric filter configurations, allowing it to work for almost any plant set-up.

3.1.3 Pulse-Jet Fabric Filter Disadvantages

There are also various disadvantages to implementing pulse-jet fabric filters as the particulate matter removal technology:

- Ineffective for acid gas removal: Since the operation of fabric filters is based on filtration of solids, they are not effective at removing acid gases because the acid gases and some particulate matter are too small.
- Limited operation temperatures: If the temperature exceeds 550°F special refractory mineral or metallic fabrics are needed, which are expensive.
- Combustible hazard: If the dust being collected is readily oxidized, then the fabric material can burn.
- Relatively high maintenance: Fabric filters have relatively high maintenance needs because of bag replacement and cleaning method. Pulse jet filter bags require replacement more frequently than reverse gas filter bags.
- Dry environment: They do not operate in moist environments. So, they are limited to dry flue gas environments only. If the flue gas does not have sufficient reheat the bags could become wetted and likely require replacement. The proposed design includes bypass duct/dampers to avoid exposing the bags to flue gas during startup periods.
- Pressure drop: Some pressure drop is required for its functionality, around 8 to 10 in. w.c., which increases the load for the ID fan.
- High gas velocity problems: If the gas velocity is very high, then the dust can be drawn from bag to bag instead of falling into the hoppers, which causes the cake layer on the bags to become too thick. To prevent this, additional compartments are required which increases the capital cost.

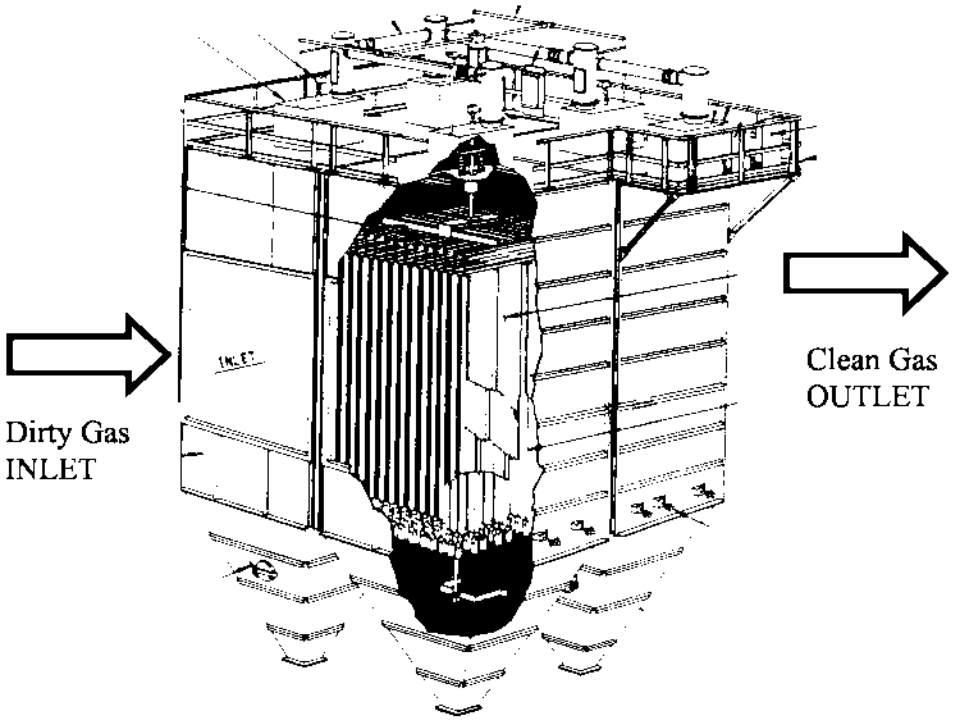
3.2 DRY ELECTROSTATIC PRECIPITATOR

An ESP is an effective particulate matter control technology that uses high voltage electric fields to collect particulate matter from flue gas. This technology is a well proven technology with decades of experience in utility applications. However, the nature of the particulate matter to be collected, specifically the electrical resistivity, can impair the operation of the ESP and the application of a dry ESP downstream of a scrubber on a coal fired boiler is unusual which could introduce unforeseen challenges.

3.2.1 Process Description

A process flow diagram of a typical ESP system is provided in Figure 3-3.

Figure 3-3: Typical Dry Electrostatic Precipitator Process Flow Diagram



ESPs offer an advantage of operating at a very low pressure drop across the system. The ESP is essentially a large box that slows the gas stream and uses an electrostatic attraction to collect the particulate. The ESP is arranged in a series of 'fields' which consist of negatively charged discharge electrodes and positively charged collection plates hanging in the gas stream. The discharge electrodes impart a negative charge to the particles in the gas stream. The negatively charged particles are then attracted to large positively charged plates. The particulate is collected on the plates and is periodically removed by "rapping" the plate. Most, but not all of the ash knocked off the plates will fall into the hoppers and will be removed by the ash handling system. Most of the particulate that is re-entrained in the gas stream during rapping is collected in subsequent sections of the ESP. Factors affecting the efficiency of the ESP include flue gas flow rate, resistivity of the ash, plate area, voltage and the number of fields.

ESPs are typically constructed of carbon steel and thus do not have significant corrosion resistance. In addition, the collection mechanism of the dry ESP requires dry particulate matter. If the collected materials were wet, the moisture would diffuse the induced charge and reduce the collection efficiency of the ESP. Also, wet materials would be difficult to dislodge from the collection plates, which would also

reduce collection efficiency. Therefore, dry ESPs are primarily filterable particulate collection systems intentionally operated under conditions that minimize condensation and collection of the resulting condensable particulate matter. Vendors indicate that guarantees for filterable emissions limits from an ESP are comparable to fabric filters.

3.2.2 Electrostatic Precipitator Advantages

An ESP is an efficient particulate matter removal device and has many advantages compared to other particulate matter control devices:

- Low pressure drop: An ESP only minimally hinders flue gas flow because of the lack of large obstructions in the flue gas resulting in a small pressure drop across the system.
- High removal efficiency: In a typical application they are capable of very high removal efficiencies of particulate matter removing between 99 and 99.9%.

3.2.3 Electrostatic Precipitator Disadvantages

There are also various disadvantages to an ESP compared to other particulate matter removal technologies:

- Very sensitive to gas flow: They are very sensitive to changes in flue gas stream conditions, so they are usually not suited for highly variable processes.
- Installation limitations: They are generally very large in order to obtain low gas velocities necessary for efficient removal, which causes problems when there is limited space for installation.
- Sophisticated maintenance requirement: They require relatively sophisticated maintenance personnel to operate and maintain because of the high voltages.
- Ozone production: During gas ionization, the negatively charged electrodes produce ozone.

* * * * *

4.0 EMISSION GUARANTEES

The typical location for either a dry ESP or fabric filter is immediately downstream of an air heater. This location is typical primarily due to the flue gas temperature in this location. The temperature after the air heater is much cooler than upstream but is still above the flue gas acid dew point (and well above the moisture dew point) during normal operation. The cooler temperature reduces the volume of the flue gas and thus the size/cost of the ESP and fabric filter but the temperature remains high enough to prevent liquid from condensing therefore protecting the ESP or fabric filter from liquid that could impact performance or reliability.

The application at the Colstrip facility is different from this typical configuration. The Colstrip units have a wet particulate scrubber that cools and saturates the flue gas while removing both particulate and sulfur dioxide. The existing system also includes a reheat system that warms the exiting flue gas and is designed to result in a dry flue gas. The proposed location for the new ESP or fabric filter is downstream of this reheat system and not in the typical location immediately downstream of the air heater. This location was selected in the previous study by Burns & McDonnell as the proposed location is a more cost-effective option. Due to the atypical nature of this design Burns & McDonnell made it a point to discuss this with the vendors to gain confidence the vendors would guarantee performance in this configuration.

In discussion with Southern Environmental Inc, they indicated that using either technology they are confident that both of the proposed MATS rates (0.010 or 0.006 lb/MMBtu) could be achieved, maintained, and guaranteed at the Colstrip facility. Preliminary discussions (not final) with Industrial Accessories Company indicated they are hesitant to commit to providing guarantees at Colstrip due to the fabric filter unusual application (gas path location).

Southern Environmental Inc is a long-term supplier of both ESP and fabric filter systems and has remained active in the large-scale market for these systems. Burns & McDonnell emphasized the importance of accurately stating if guarantees would be offered keeping in mind similar make right terms the Utility industry has historically required. Southern Environmental Inc acknowledged the point Burns & McDonnell was making and indicated they had considered that when stating the rates could be guaranteed.

* * * * *

ED_021114A_00008608-00041

5.0 COST EVALUATION

Included in this section of the report are the cost estimates for both control technologies evaluated for application at Colstrip. Both the capital cost and the O&M costs were estimated using vendor supplied budgetary cost estimates for the reheat fabric filter, reheat ESP, and ash handing systems. Burns & McDonnell in-house estimating software and tools were used to determine the supply and installation costs that were not otherwise supplied by vendors. Appendix B contains details from all the vendor quotations received.

5.1 CAPITAL COSTS

The Total Direct Costs (TDC) from Table 5-1 includes the capital costs plus balance of plant mechanical and electrical costs (i.e., ductwork, insulation, electrical upgrades, piping, etc.) and the cost for materials and labor required for installation. Total Project Cost in Table 5-1 includes the total direct costs plus indirect costs such as engineering, escalation, contingency, and other miscellaneous indirect costs. The Total Project Cost is based on the assumption the project will be executed on a multiple contract, lump sum construction bid approach. These costs do not include Owner's costs such as taxes, allowance for funds during construction, fees, permitting and Owner's contingency.

Additional details regarding what is included by the primary disciplines are outlined later in this section.

ED_021114A_00008608-00042

Table 5-1: Capital Cost Summary for Units 3&4

CAPITAL COST ESTIMATE
TALEN MONTANA
COLSTRIP POWER STATION
FABRIC FILTER AND ESP
COLSTRIP, MT
BMcD #163860

Area / Discipline	REHEAT FABRIC FILTER	REHEAT ESP
Engineered Equipment	$102,894,000	$86,794,000
Civil, Structural & Architectural	$128,820,000	$260,179,000
Mechanical	$7,270,000	$34,888,000
Electrical & I&C	$9,596,000	$10,542,000
Total Direct Cost	**$248,580,000**	**$392,403,000**
Engineering, Start-up, Commercial	$34,065,000	$54,012,000
Escalation	$14,377,000	$27,520,000
Contingency	$59,404,000	$94,787,000
Construction Management	Not Included	Not Included
EPC Fee	Not Included	Not Included
Total Indirect Cost	**$107,846,000**	**$176,319,000**
Total Project Cost	**$356,426,000**	**$568,722,000**
Owner Cost - General, Taxes & Fees	Not Included	Not Included
Owner Cost - Owner Contingency	Not Included	Not Included
Total Project Cost incl. Owner Cost	**$356,426,000**	**$568,722,000**

Rev.	Rev. Date
0	04/05/24

BURNS McDONNELL

V40

5.1.1 General Estimate Basis

A summary of the project cost estimate is included herein. The Project Cost Estimate is based on the site general arrangement (Appendix A) and multiple contract approach. Pricing for major equipment was obtained from equipment supplier budgetary quotes specific to this project. This includes equipment such as the ESP and fabric filter. Major electrical equipment was estimated using recent project costs for similar equipment. Minor equipment was estimated using recent project costs or in-house estimating methods. The majority of the materials have been estimated using current costs obtained from an in-house database or from recent, similar projects.

Union labor rates from RS Means for Montana were used to estimate the labor rate. The basis for the development of direct field hours is an in-house database, applying a working conditions factor unique to the Colstrip facility. The project is estimated assuming a 50-hour, 5 day work week during construction.

5.1.1.1 Indirect Costs

A percentage of the direct costs are included for Engineering, Start Up, and Commercial costs. An overall project contingency, 20% of the direct and indirect costs, is included in the indirect costs. The Escalation is based on the project starting in the fall of 2024 and the second unit coming on line 42 months later. An annual escalation rate of four percent (4%) on engineered equipment, five percent (5%) on materials and four percent (4%) on labor and subcontracts has been included.

5.1.1.2 Items Excluded from Estimated Costs

No Burns & McDonnell Construction Management has been included in the estimated costs. No construction facilities, parking, laydown, turnstiles, etc., have been included in the estimated costs. No Interest During Construction costs or financing fees are included in the estimate. No costs have been included for hazardous material remediation.

5.1.2 Discipline Information

The following are brief outlines of the information and scope of each discipline considered in developing the equipment cost estimate and quantities.

5.1.2.1 Electrical

For the ESP it was assumed the existing auxiliary electric system could not support the new electrical loading of the added ESP electrical loads. The ESP auxiliary electric systems are derived from the 115kV system east of the Unit 4 scrubber building with a new auxiliary transformer tapped from the existing

115kV line. A new relay panel for 115kV line and transformer protection in the existing unit 4 scrubber building was accounted for in the estimate basis. A new 4.16kV ESP switchgear was accounted for in the unit 4 ESP power distribution centers (PDC) to distribute power to 4.16kV/480V station service transformers for the unit 3 and 4 ESP units. Each unit then has local 480V switchgear, motor control centers (MCCs), panelboards, and local uninterruptable power supply (UPS)/direct current (DC) as required to support the ESP unit electrical loads.

For the fabric filter it was assumed the existing 3 and 4 scrubber auxiliary electric system has electrical loading capacity to support the new fabric filter electrical loading. New power feeds were accounted for from the scrubber units power distribution centers (PDC) to distribute power to 4.16kV/480V station service transformers for the unit 3 and 4 fabric filter units. It was assumed the existing scrubber 4.16kV switchgears had spare breakers that would need to be replaced or retrofitted due to relaying and arc flash requirements. For the new air compressors low voltage variable frequency drives (VFDs) would be required provided by the compressor vendor for motor starting. Each fabric filter unit PDC then has local 480V MCCs, panelboards, and local UPS/DC as required to support the fabric filter unit electrical loads.

For both fabric filter and ESP options the following estimate basis was used. That construction power would be available from the existing auxiliary power system. A local ground grid would be created for the ESP and fabric filter that would tie into the plant's existing ground grid. A spare 4.16kV/480V station service transformer was included. Unit 3 and 4 electrical systems were electrically separated at the 480V level and below. It was the plant has existing paging system, telecom, fire protection alarm systems that would be extended to the area. For estimating purposes the ESP or fabric filter vendor supplied all the wiring, raceway, lighting local from the ESP/fabric filter back to the PDCs.

5.1.2.2 Controls

For the ESP option, included in this rough estimate are the management, engineering, equipment, shipping, and field support costs to commission remote input / output (IO) cabinets into the existing distributed control system (DCS). This estimate assumes that existing DCS vendor on record is GE. This estimate includes the engineering and procurement of quantity four remote IO cabinets to be brought back into the existing DCS system. The four remote IO cabinets will contain a total of 845 system hardwired points (20% spares included) and datalink interface to supervisory system. Included in this estimate are spares and startup replacements that the field support may require while commissioning the system. estimate includes time for field support to power check, establish communication to existing system, and startup.

For the fabric filter option, included in this rough estimate are the management, engineering, equipment, shipping, and field support costs to commission remote IO cabinets into the existing DCS. This estimate assumes that existing DCS vendor on record is GE. This estimate includes the engineering and procurement of quantity four remote IO cabinets to be brought back into the existing DCS system. The four remote IO cabinets will contain a total of 825 system hardwired points (20% spares included). Included in this estimate are spares and startup replacements that the field support may require while commissioning the system. The estimate includes time for field support to power check, establish communication to existing system, and startup.

5.1.2.3 Structural

The conceptual design, layout, and material quantities for the ESP structure are developed per the plan and elevation views of the component provided within the vendor (SEI-Group) quote. The proposed structural layout plan and elevation views for the ESP structure are shown in drawings SKS003 and SKS004 respectively. The ESPs are located in the available space towards the South of the units. It is assumed that inlet branch lines are added to the existing flue duct at the elbows upstream of the stack for each unit at the existing elevations. The outlet from the ESP's would branch into the existing flue gas ducts just upstream of the reducers and prior to the main lines entering the stack.

The structural estimate includes the material quantities for the gas flue ductwork, duct support steel, ESP building steel, foundation concrete, and concrete reinforcement. The ESP building steel quantities are developed based on information regarding steel densities for a similar size plant. The ductwork quantities are developed based on the lengths calculated in the conceptual layout and the perimeter for the assumed duct cross section. The calculated surface area is then multiplied by an estimated weight per square footage value which is a proprietary metric developed based on experiential data from multiple past projects to develop the total tonnage of gas flue duct steel. The ductwork is assumed to be supported by support steel frames that are approximately 75' in height. The total length of the ductwork is multiplied by an estimated weight per cubic foot value which is a proprietary metric developed based on experiential data from multiple past projects to develop the total tonnage of support steel below the ductwork.
The foundation is assumed to be constructed using reinforced concrete spread footings on piles. The ESP building foundation is assumed to consist of spread footings on piles. Each spread footing consists of a pedestal and pile cap with five (5) piles per footing. The piles are estimated to be of 18" diameter concrete extending approximately 60' below grade. The foundation for the duct supports is estimated to be a 5'

pile cap supported by fifteen (15) concrete piles per support frame. The concrete piles for duct support steel are also estimated to be of 18" diameter concrete extending approximately 60' below grade.

The conceptual design, layout, and material quantities for the fabric filter are developed per the plan and elevation views of the component provided within the vendor (SEI-Group) quote. The proposed structural layout plan and elevation views for the fabric filter structure are shown in drawings SKS001 and SKS002 respectively. The fabric filter buildings are located in the available space towards the South of the units. It is assumed that inlet branch lines are added to the existing flue duct at the elbows upstream of the stack for each unit at the existing elevations. The outlet from the fabric filter structures would branch into the existing flue gas ducts just upstream of the reducers and prior to the main lines entering the stack.

The structural estimate includes the material quantities for the gas flue ductwork, duct support steel, steel, foundation concrete, and concrete reinforcement. The fabric filter building steel quantities are included in the vendor cost estimate and hence not included here. The ductwork quantities are developed based on the lengths calculated in the conceptual layout and the perimeter for the assumed duct cross section. The calculated surface area is then multiplied by an estimated weight per square footage value which is a proprietary metric developed based on experiential data from multiple past projects to develop the total tonnage of gas flue duct steel. The ductwork is assumed to be supported by support steel frames that are approximately 126' in height. The total length of the ductwork is multiplied by an estimated weight per cubic foot value which is a proprietary metric developed based on experiential data from multiple past projects to develop the total tonnage of support steel below the ductwork.

The foundation is assumed to be constructed using reinforced concrete spread footings on piles. The fabric filter building foundation is assumed to consist of spread footings on piles. Each spread footing consists of a pedestal and pile cap with five (5) piles per footing. The piles are estimated to be of 18" diameter concrete extending approximately 60' below grade. The foundation for the duct supports is estimated to be a 5' pile cap supported by fifteen (15) concrete piles per support frame. The concrete piles for duct support steel are also estimated to be of 18" diameter concrete extending approximately 60' below grade.

5.1.2.4 Mechanical

Both the ESP and fabric filter options include 2x100% air compressors per unit and a single receiver per unit. The size of the air compressors are much larger in the fabric filter option. Air piping has been

included to connect to all air users, and provide air connections around the perimeter of the top of the new equipment and between the rows of hoppers under the new equipment.

The ash handing system is a negative pressure conveying arrangement designed such that the ash from the hoppers will be conveyed in a single conveying line to a new common ash silo. At the ash silo there will be a single filter/separator on top of the silo with an 18" double gate valve. The filter separator will be operated intermittently and will be equipped with a vacuum breaker. Mechanical exhausters (2x100%), with automatic crossover valves, are included.

5.2 OPERATION AND MAINTENANCE, LEVELIZED COSTS

The O&M cost estimates for the various control technology options evaluated for Colstrip included in this study are summarized in Table 5-2.

Table 5-2: O&M Cost and Levelized Cost Summary

Summary of Particulate Emissions Control Costs from Colstrip for Units 3&4

PM-10 Control Alternative (Ranked by PM-10 Rate)	PM Removal Efficiency %	Emissions				Economic Impacts			
		Emission Rate lb/MMBtu	Hourly Emission Lbs/Hr	Annual Emission Tons/yr	Emission Reduction Tons/yr	Installed Capital Cost $1,000	Annual O & M Cost $1,000	Total Annual Cost $1000/yr	Average Control Cost $/ton
Reheat ESP	71.45	0.006	95	355	890	568,722	21,085	88,546	99,536
Reheat fabric filter	71.45	0.006	95	355	890	356,426	14,786	57,065	64,148
2022 Baseline (Scrubber)		0.0220	334	1245		N/A	N/A	N/A	N/A

5.2.1 O&M Cost Basis

O&M costs for the evaluated systems at Colstrip assuming the following parameters:

- Power cost of $45/MWh.
- Operating labor rate of $200,000 for one full time equivalent (FTE).
- Cost of Money 8.25%
- Levelization period, 15 years
- Waste disposal cost, $15/ton
- Unit 3 and 4 capacity factor of 85.0%
- Bag replacement every 5 years for the fabric filter.
- 5% of direct cost for average annual equipment maintenance

* * * * *

6.0 SUMMARY

6.1 SUMMARY

Burns & McDonnell has been retained to assess the cost of two particulate control options located between the reheat system and the stack to meet the proposed MATS Rule. The main objective of this evaluation is to provide an AACE Class 4 cost estimate incorporating site specific factors such as considering the power source for the new control system.

In Section 3, the two control technologies were described. In Part 4, the availability of Colstrip to have guarantees for the technologies was discussed. In Part 5, capital and O&M costs for the two options were estimated.

6.1.1 Balance of Plant Impact Analysis

The compliance plan selected will impact balance of plant equipment at Colstrip. Further detailed studies will be necessary to fully define the detailed scope of the project.

- An ash disposal study should be performed to determine the best method of ash disposal and placement of the ash handling equipment.
- A balance of plant utility interface study should be performed to determine the most cost effective approach on plant utilities such as instrument air, service air, etc.
- A draft system study should be conducted prior to execution of any retrofit technologies. This study would identify any ductwork that would need stiffening or replacement due to the changed pressure drop profile through the system.
- An electrical load study should be conducted to address the addition of the new air pollution control equipment to Colstrip that increases the power consumption at the plant. This study would confirm if the existing station transformers have the capacity to support the balance of plant (BOP) power needs and air compressors. It could also identify potential other, more cost effective, sources of power. For purposes of this study, it was assumed the ESP would be powered by a new transformer connected to the grid. The other systems would be powered from the existing MCC's in the scrubber building.

* * * * *

ED_021114A_00008608-00049

Attachment B

to

Declaration of Dale E. Lebsack, Jr., President of Talen Montana, LLC and Chief Fossil Officer for Talen Energy Corporation

Declaration of Dale E. Lebsack, Jr. in support of staying the GHG Rule

IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

ELECTRIC GENERATORS FOR A SENSIBLE TRANSITION, *Petitioner*, v. U.S. ENVIRONMENTAL PROTECTION AGENCY, *Respondent*.	Case No.: 24-1128

DECLARATION OF DALE E. LEBSACK, JR.

I, Dale E. Lebsack, Jr., declare as follows:

1. I currently work as Chief Fossil Officer for Talen Energy Corporation ("Talen"). I am over the age of 18 years, and I am competent to testify concerning the matters in this declaration. I have personal knowledge of the facts set forth in this declaration, and if called and sworn as a witness, could and would competently testify to them.

2. Petitioners Talen Generation, LLC and Talen Montana Holdings, LLC (the "Talen Entities") are wholly owned subsidiaries of Talen. Talen is an independent power producer that owns and operates approximately 10.7 gigawatts of power infrastructure in the United States. Talen produces and sells electricity, capacity, and ancillary services

into wholesale U.S. power markets, including PJM Interconnection, LLC ("PJM") and the Western Electricity Coordinating Council ("WECC"), with Talen's generation fleet principally located in the Mid-Atlantic and Montana. Talen's generation fleet includes wholly owned and partially owned assets that use nuclear, coal, oil, and natural gas as fuels.

3. In my current position as Chief Fossil Officer at Talen, I am responsible for asset management and operations for Talen's fossil generating assets in PJM, WECC, and ISO New England. In that capacity, I also serve as President of Talen Generation, LLC, which indirectly owns the fossil generating assets in PJM and is an affiliate of Talen. I have worked for Talen and its predecessor companies for over 19 years. Over that time, I have held roles of increasing responsibility in multiple aspects of fossil power generation, including asset management, plant operations, engineering, environmental, health and safety, and project development. I have directly managed merchant generating assets in ERCOT, PJM, ISO-NE, NYISO, WECC, and SERC. The plants that I managed have utilized a wide range of technologies, including coal, gas, oil, and biomass-fired boilers; combined cycle units of varying configurations; and simple cycle gas turbines of differing designs.

4. This declaration is submitted in support of the Petitioner's motion for stay of the U.S. Environmental Protection Agency's final rule entitled *New Source Performance Standards for Greenhouse Gas Emissions From New, Modified, and Reconstructed Fossil Fuel-Fired Electric Generating Units; Emission Guidelines for Greenhouse Gas Emissions from Existing Fossil Fuel-Fired Electric Generating Units;*

and Repeal of the Affordable Clean Energy Rule, 89 Fed. Reg. 39798 (May 9, 2024) (the "Final Rule" or "Rule"). I am familiar with the Talen Entities' operations, including generation, regulatory compliance, workforce management, and electric markets in general. I also am familiar with the Final Rule, and I am familiar with how the Final Rule will affect the Talen Entities.

5. Talen has ownership interests in coal-fired units that are projected to operate at relatively high capacity factors and will be subject to the Final Rule.

6. Talen is the operator of Units 3 and 4 at the Colstrip Steam Electric Station ("Colstrip") in Rosebud County, Montana. Talen also has a 15 percent ownership stake in these units, which currently consist of two active coal-fired generating units capable of producing up to 1,480 MW of electricity that have been operating for approximately 38 years. Each of the units has approximately 740 MW of generating capacity, and the adjacent Rosebud coal mine supplies Colstrip's low-sulfur subbituminous coal. Units 3 and 4 are the only remaining active units at Colstrip, as Units 1 and 2 recently retired in 2020. Units 3 and 4 have a useful life of at least another two decades.

7. Colstrip is one of the largest coal-fired electric generating facilities west of the Mississippi River, supplying electricity throughout Montana and the Pacific Northwest. Colstrip plays an integral role in maintaining operation of the NorthWestern Balancing Authority in Montana, especially during peak electricity demand events.

THE FINAL RULE

8. The Final Rule establishes, under Section 111(d) of the Clean Air Act, best systems of emission reduction ("BSERs") for existing coal-fired steam generating units

that States must use when setting CO_2 emissions limits for such units. 89 Fed. Reg. at 39,840. Under the provisions of the Rule, Colstrip Units 3 and 4 have three options: (1) retire by January 1, 2032; (2) meet an emission rate based on 40% natural gas co-firing by January 1, 2030, and retire by January 1, 2039; and (3) install and operate 90% efficient carbon capture and storage ("CCS") by January 1, 2032, which would allow the unit to operate after 2038. Based on Talen's assessment, the only compliance strategy available for Colstrip consists of shutting down the plant by January 1, 2032.

9. The CCS BSER established by the Final Rule for existing coal-fired steam units is not yet adequately demonstrated, is not achievable, and is not cost-effective. Further, EPA has established deadlines for incorporating this technology, or in the alternative gas co-firing, that are so unreasonable that they likely cannot be met—even if the technologies were adequately demonstrated and achievable. The end result is that owners and operators will have little choice but to retire such units prematurely.

IMPACT OF THE FINAL RULE ON COLSTRIP

10. The Rule requires major modifications to Colstrip Units 3 and 4 or premature retirement of the Units. Specifically, a decision must be made immediately between the three possible compliance choices (retire by 2032, co-fire gas by 2030, or install full CCS by 2032) in order to complete any retrofits in time for the Rule's compliance deadlines. Prematurely shutting down Colstrip would have significant economic impacts on Montana and beyond and raises serious concerns about grid reliability and transmission.

11. Feasibility and cost evaluations of each compliance option, not to mention financing, engineering, design and construction of the gas-cofiring and CCS options, require years of planning. Additionally, Colstrip is co-owned by six companies, including many utilities subject to PUC regulation in multiple states. The selection of a future compliance option must be agreed upon by a majority of ownership. After the evaluation of compliance options is complete, approval of an option will be difficult and take more time due to the plant's ownership structure.

12. If the CCS and gas co-firing compliance options are impossible or near impossible to meet the Rule's deadlines, or prove prohibitively expensive to undertake, especially in light of future uncertainty, the Rule requires retiring Colstrip Units 3 and 4 by January 1, 2032.

Feasibility and Cost Issues are Compounded by EPA's New MATS Rule

13. Furthermore, the compliance decision for the Rule is intertwined with the EPA's also recently-issued final rule entitled *National Emission Standards for Hazardous Air Pollutants: Coal- and Oil-Fired Electric Utility Steam Generating Units Review of the Residual Risk and Technology Review*, 89 Fed. Reg. 38,503 (May 7, 2024) ("MATS Rule").

14. For Colstrip to operate beyond 2027, under the MATS rule, additional costly filterable particulate matter ("fPM") controls must be installed, commissioned, and operable on Units 3 and 4 by July 8, 2027.

15. Colstrip would need to undertake a massive and complex construction project to install, test, and implement these new controls the costs of which are estimated to exceed $350 million.

16. If the only feasible compliance option for the Final Rule is found to be retirement, then the investment in fPM controls for just over four years (late 2027 to the end of 2032) would be even less justifiable than otherwise. Indeed, a return period of four years on a greater than $350 million investment in fPM controls would be extremely difficult to justify, thus likely requiring Colstrip to shut down by the MATS Rule's compliance deadline of July 2027.

CCS is Not Achievable at Colstrip

17. CCS is impracticable and infeasible at Colstrip. The Final Rule allows affected EGUs to remain in operation beyond 2038 only if they can achieve 90% capture of carbon using CCS by 2032. However, this is not possible at Colstrip for the following reasons.

18. The technology to reliably achieve 90% capture of CO_2 using CCS is not adequately demonstrated or readily available. As described above, CCS is an emerging technology that remains unreliable, as well as prohibitively expensive. And there is not enough time to undertake all of the evaluations and studies, design, engineering, and construction of a CCS system at Colstrip. Talen would not invest hundreds of millions of dollars in a technology that is at best uncertain to work and that, in fact, Talen believes will not work as EPA claims it would by the Rule's deadline.

19. Technological issues related to carbon capture are not the only reason Colstrip would be unable to rely on the CCS pathway to comply with the Final Rule. Even if 90% of CO_2 could be captured by 2032, it would need to be transported for storage and stored. Sequestration sites have not been adequately demonstrated in the vicinity of Colstrip and would require additional time, exploration, and significant cost to complete, in addition to the costs associated with transportation of the CO_2. Colstrip, located in eastern Montana, is not near to any developed CO_2 sequestration sites. It is not known whether the geological formations necessary for CO_2 sequestration exist in the vicinity of Colstrip, and additional drilling and exploration would be required to determine this. Further, no pipeline currently exists to carry captured CO_2 from Colstrip to a storage location.

20. In fact, a study referenced in the proposed Rule reports that the costs of transportation and storage for the purposes of CCS are much higher in Montana's Powder River Basin than in other states. CO_2 pipeline transportation and storage cost in 2018 was $22/tonne for the Powder River Basin. The other basins in the study were Illinois ($10/tonne), East Texas ($11/tonne) and Williston ($15/tonne).

21. On top of these prohibitive costs, there are a number of other challenges associated with evaluating, permitting, siting, designing, and constructing such a CO_2 pipeline. Permits and easements would need to be acquired. It is unlikely such a pipeline could be constructed and operational prior to the compliance date required by the Final Rule.

22. The provision allowing for a one-year extension in the compliance deadline where the delay is needed to complete installation of controls and where the company has taken all steps necessary to otherwise meet the deadline does not make a difference. It is equally unrealistic to expect CCS to be constructed and operational at Colstrip by January 1, 2032, as it is unrealistic to expect it by January 1, 2033.

23. For the reasons outlined above, CCS is not an option for Colstrip.

Gas Co-Firing is Not Achievable at Colstrip

24. As an alternative to CCS, the Final Rule allows affected coal-fired EGUs to remain in operation until January 1, 2039, if they begin co-firing with 40% gas by 2030.

25. A project to retrofit Colstrip to co-fire gas would be exceedingly complicated and expensive. According to preliminary evaluations, conversion of Units 3 and 4 to allow for co-firing of gas would cost in excess of $150 million.

26. In addition to the retrofitting, co-firing gas at Colstrip would require new infrastructure that does not exist. The closest gas transmission pipeline is over 100 miles away. Building such a pipeline would cost on the order of $200 million or more and is economically infeasible. In addition, there are a multitude of challenges and high-cost items, especially involving the need for easement acquisition and permitting for a pipeline estimated to be over 100 miles long.

27. Putting aside that gas co-firing at Colstrip is so costly that it is economically infeasible (*i.e.*, such a costly project would make the Colstrip plant financially unviable), it is also technically near impossible to execute by 2030. A 100-mile gas pipeline is a massive construction project that requires a long lead time for design,

permitting, siting, procurement, and construction. It is also the type of project that will engender protracted challenges. It is highly improbable such a project can be accomplished by the Final Rule's deadline.

28. The provision allowing for a one-year extension in the compliance deadline where the delay is needed to compete installation of controls and where the company has taken all steps necessary to otherwise meet the deadline does not make a difference. It is equally unrealistic to expect a 100-mile gas pipeline to be constructed for Colstrip by January 1, 2030, as it is unrealistic to expect it by January 1, 2031.

29. For the reasons outlined above, gas-co-firing is not an option for Colstrip.

Without a Stay, Talen will Suffer Immediate, Irreparable Harm

30. During the pendency of this litigation, the Talen Entities would sustain the following concrete, irreparable harms if a stay of the Final Rule is not granted:

a. The costs to immediately begin designing, constructing, and permitting a gas pipeline for the ability to co-fire gas at Colstrip and to retrofit the units to provide for co-firing with gas; or

b. The costs to retrofit Colstrip with CCS, to begin construction of a pipeline to transport CO_2 for sequestration, and to evaluate and develop an acceptable site for sequestration.

31. Talen personnel would immediately begin to dedicate substantial time, attention, and resources to tasks associated with evaluating, designing, and financing such projects, which would divert attention from other important duties.

32. Dollars spent on design, permitting, engineering, and other studies cannot be refunded once they are spent. The costs associated with implementing 40 percent natural gas co-firing or installing CCS to achieve 90 percent capture of CO_2 so that Colstrip can operate beyond 2032 are massive. Colstrip would need to spend significant time, resources, and investments to not only implement the technologies, but also to construct supporting infrastructure. When added to the costs associated with complying with the proposed requirements in other rulemakings that impact Colstrip, such as the 2024 MATS Rule, the investments required for Colstrip to operate beyond 2032 would cost many hundreds of millions of dollars. Such costs would likely render Colstrip financially unviable, given Colstrip's uncertain but limited future.

Premature Retirement is the Only Option for Colstrip

33. Given that the CCS and co-firing compliance options are nearly impossible to execute successfully by the Rule's deadlines, and given that the costs of these compliance options would be prohibitively expensive to undertake, especially in light of future uncertainty, the Rule requires retiring Colstrip Units 3 and 4 by January 1, 2032. As discussed above, moreover, the interplay between the Rule and the MATS Rule means that Colstrip would likely retire by July 2027.

34. This litigation is likely to take a minimum of 2 to 3 years. If the Rule is not stayed, Talen will have suffered irreparable harm by the time the legality of the rule is determined. Before we know whether the rule will be struck down, Talen would have to elect – within a year at the most – to shut down Colstrip, and it would have to actually shut down the plant by mid-2027.

35. A decision to retire Colstrip, especially if forced to be made quickly, will have irreversible impacts to the small community around the plant and the neighboring Rosebud Mine. The mine and the power plant are the only employers of any size within 50 miles and contribute immensely to the local economy and tax revenues.

36. In addition, the Talen Entities would face increased costs related to environmental remediation that is ongoing at Colstrip, pursuant to an Administrative Order on Consent between Talen and the Montana Department of Environmental Quality. The current groundwater remediation system reuses captured water at Units 3 and 4. If the Units are prematurely shut down, additional wastewater treatment systems would be needed, which would increase overall remediation costs by approximately $2.5 million per year during the period of the premature shutdown.

The Public will Suffer Irreparable Harm if Colstrip is Retired Prematurely

37. Further, Colstrip is vital to ensuring that Montanans have affordable and reliable electricity, especially during peak winter and summer months. Colstrip is one of Montana's most important energy assets, especially as demand for reliable baseload power in the western U.S. continues to grow.

38. The likely end result of the Final Rule on Colstrip is that its owners and operators, including the Talen Entities, will have little choice but to retire the units prematurely. Such decisions will change the makeup of the nation's electricity system and increase risks to electric and transmission system reliability.

39. Risks to electricity system reliability, driven in part by the early retirement of dispatchable, high-capacity factor thermal EGUs such as Colstrip, is a matter of

significant concern. WECC reports that current utility resource plans in the western interconnect "are not sufficient to meet future demand over each of the next 10 years," and that "starting in 2026, the number and magnitude of demand-at-risk hours increase by orders of magnitude."[1]

a. In statements made in comments on both the proposed MATS rule and the proposed version of this Rule in 2023, Northwestern Energy indicated that there will not be sufficient replacement power on the grid by 2027 if Colstrip must retire.

40. Colstrip Units 3 and 4 generated approximately 41 percent of the electricity generated in Montana in 2022 and represented 23 percent of total installed generating capacity. A decision to prematurely retire Colstrip, an important baseload generator serving at least five states, would cause significant reliability concerns. These concerns would apply well into the rest of the decade, even if the Rule is not stayed and is struck down by the courts at around the same time the plant would shut down.

Dale E. Lebsack, Jr.

Dated: May 24, 2024

[1] Western Electricity Coordinating Council, 2023 Western Assessment of Resource Adequacy (Nov. 2023), *available at* https://www.wecc.org/Administrative/2023%20Western%20Assessment%20of%20Resource%20Adequacy.pdf (Attachment A).

Attachment C

to

Declaration of Dale E. Lebsack, Jr., President of Talen Montana, LLC and Chief Fossil Officer for Talen Energy Corporation

Economic Study by Dr. Patrick M. Barkey, Ph.D.

The Economic Implications of MATS Rulemaking in Montana
Final Report

On April 25, 2024, the U.S. Environmental Protection Agency released a final rule significantly revising the Mercury Air and Toxics Standards (MATS) for coal-fired electric power plants. That rule would require substantial investment at the Colstrip Steam Electric Station (SES), Montana's largest electric generating facility located in Rosebud County in southeast Montana, to continue operation. Such an investment may not be technically or financially feasible for the facility. This would render the continued operation of the Colstrip SES beyond the date of July 8, 2027, when the applicable provisions of the new MATS go into effect, in doubt.

Should the MATS rulemaking result in the premature closure of the Colstrip SES, it would be a significant economic event. This was demonstrated by a 2018 study published by the University of Montana Bureau of Business and Economic Research (Bureau of Business and Economic Research, 2018), which found that an early closure of the coal-fired generator would have sizable impacts on jobs, incomes, tax revenue and population.

A key factor that contributed to the size and scope of the impacts identified in that study is the close relationship of the generating station to the adjacent Rosebud coal mine, owned and operated by Westmoreland. The Colstrip SES is a mine mouth plant, receiving its coal via a dedicated conveyor from the mine. With no rail access to ship its coal to the broader market, any circumstance that terminates electricity generation at the Colstrip SES would bring about the closure of the mine.

The purpose of this report is to bring those estimates of economic impacts up to date, using the most current operating information and conforming to the specific timetable of the MATS rulemaking. The research question addressed is: what would be the consequences for the Montana economy, in terms of jobs, income, spending, output and population, if the new MATS rulemaking brought about the closure of the Colstrip SES in mid-2027?

The basic approach of this research is to compare two futures for the state economy. The baseline projection is a status quo scenario where the generating station and the adjacent mine continue to operate as today. The alternative scenario is premature retirement of the two facilities, with production ceasing in mid-2027. In the alternative scenario, the economic flows ultimately supported by the production of electricity from the Colstrip SES, are removed from the economy, with important implications for those who receive those flow and spend again in the economy.

The difference between these two projections of the future of the Montana economy is the economic impact of the Colstrip SES closure. We produce these projections with an economic model that has been constructed and calibrated for this purpose, leased from Regional Economic Models, Inc. (REMI). The REMI model, described in more detail in Appendix B of this report, has been extensively documented and utilized in both peer-reviewed and other research studies. The model combines a detailed, 70-sector economic output model, a multi-equation econometric model and a demographic model to serve as a powerful tool to assess policies and events affecting the economy (Cassing & Giaratini, 1992).

About This Study

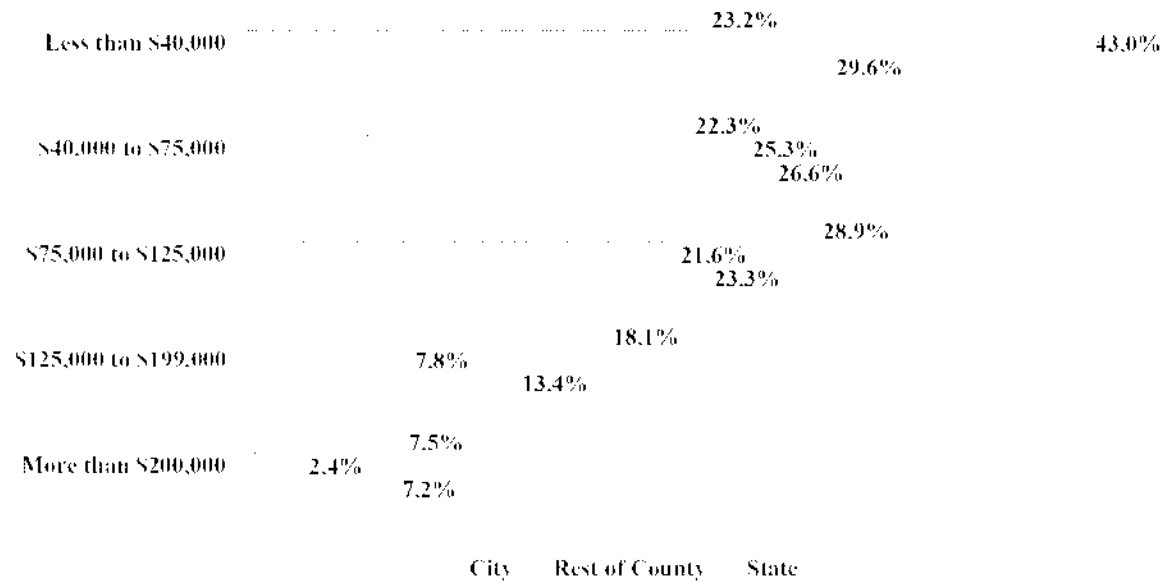
This study was produced by Patrick M. Barkey, Ph.D., who has been retained by Baker Botts and Baker & Hostetler LLP. The research was conducted in June of 2024. The study has benefited from operational and financial information on actual operations of both the Colstrip SES and the Rosebud Mine provided by the facilities themselves. All findings of this study, as well as any errors or omissions, are solely the responsibility of Dr. Barkey, who produced all the research findings in this report.

The Colstrip SES and the Rosebud Mine

The city of Colstrip in Rosebud County in southeast Montana is home to two of the largest and highest paying industrial facilities in the entire state the Colstrip SES and the Rosebud Mine. The economic prosperity that is enjoyed in the community today because of the presence of these major employers is evident from the earnings data from the American Community Survey conducted by the Census Bureau shown in Figure 1.

Figure 1

2022 Household Income



Compared to the state and especially to the remainder of Rosebud County, household income in the city of Colstrip is tilted to the upper side of the income distribution. Almost 29 percent of Colstrip households earn between $75,000 and $125,000 in annual income. All the earnings categories shown in the Figure above those amounts contain higher percentages of Colstrip households than elsewhere as well, which stands in stark contrast to most other communities in the eastern third of Montana.

Summary of Findings

The basic finding of this research is that the premature closure of the Colstrip SES (which also necessitates the closure of the adjacent Rosebud Mine) would be a significant setback for the economy of the state of Montana. Based on a comparison of economic activity that is projected under a status quo, no-closure scenario, the research shows that an economy where the closures take place is smaller by:

- 3,262 permanent, year-round jobs in the year 2028, the first full year of closure for the mine and the generating station. The lost jobs occur across a wide spectrum of industries and occupations.

- $240.3 million dollars in income received by households during the year 2028, due to the loss of jobs and people in the smaller state economy that results from the closure of the facilities. The loss of $203.4 million in disposable, after tax, income received by households in 2028 represents a considerable decline in spending power in local economies throughout the state.

- Over a billion dollars in economic output, generally defined as gross receipts of business and non-business organizations. The loss of revenue from sales is felt by every industry in the economy, from health care to retail sales.

- $102.8 million in selected tax and non-tax revenues to Montana state government in 2028, due not only to the reduction in the size of the overall economy, but also to the loss of specific tax revenue from coal and utility operations in the wake of closures at the Colstrip SES and the Rosebud Mine.

- 1,305 people in 2028, growing to more than 4,100 people in year 2040, who leave the state due to the loss of economic opportunity due to MATS rulemaking-induced closures in Colstrip.

Table 1

The Economic Implications of MATS Rulemaking in Montana
Impacts Summary

		Impacts by Year		
Category	Units	2028	2035	2040
Total Employment	Jobs	-3,262	-3,020	-2,890
Personal Income	$ Millions*	-240.3	-284.8	-310.0
Disposable Personal Income	$ Millions*	-203.4	-244.9	-268.5
Selected State Revenues	$ Millions*	-102.8	-120.4	-126.8
Output	$ Millions*	-1,011.4	-1,006.3	-1,016.8
Population	People	-1,305	-3,647	-4,106

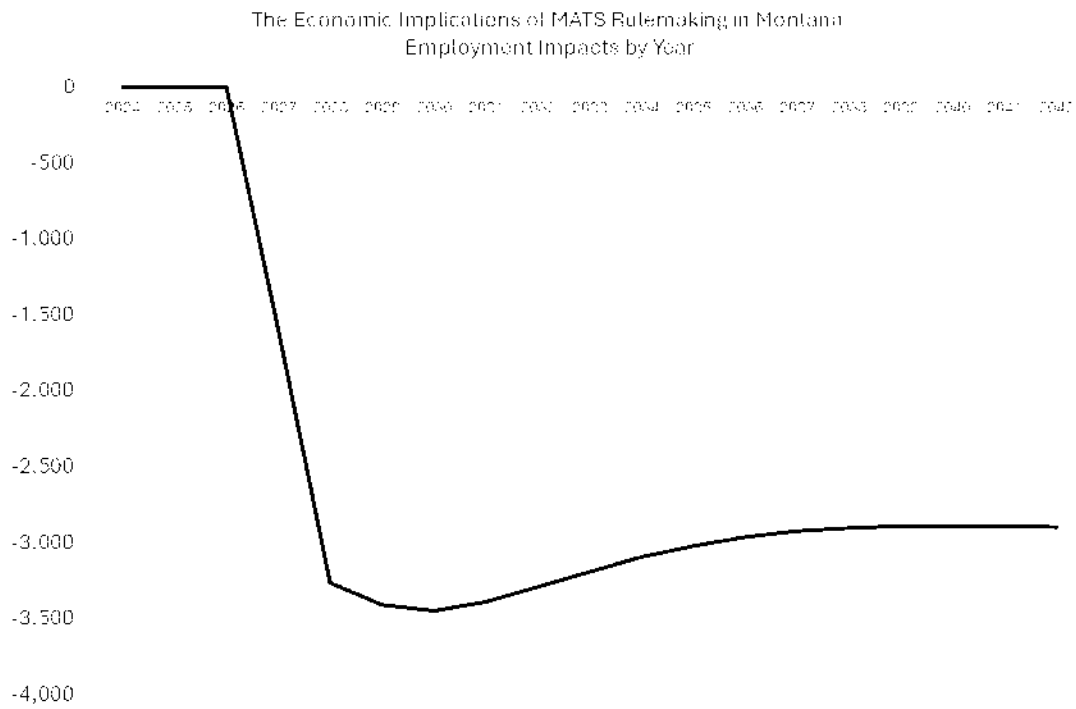
*All dollar amounts are inflation-corrected, expressed in terms of 2024 dollars

Each of these specific impacts represent the difference in economic activity between a status quo, no closure economy and the economy that is expected to emerge after the closure of the Colstrip SES and the Rosebud Mine.

As shown in Table 1, the impacts of MATS rulemaking are expected to evolve over time over the next 15 years. These changes over time are the product of several different forces. Productivity gains over time slightly reduce the expected employment losses but result in income losses that are larger. The out-migration of Montanans who leave for other states (or those who would move here except for the closures) rises over time, with deleterious effects on everything from income to tax revenues.

The evolution of these impacts is shown graphically in Figure 2 for employment impacts. With the closures assumed to take place at the midpoint of year 2027, the first year with ceased operations at the mine and the generation station is 2028. Employment impacts grow in absolute value beyond that year as industries like construction suffer from the oversupply of structures. The low point is the year 2030, when employment impacts are 3,486 jobs.

Figure 2



As is the case for most situations where jobs are created or lost in a regional economy, the number of jobs ultimately lost in the overall economy shown in Figure 2 exceeds the number of jobs eliminated at the mine and the generating station due to their closure. These knock-on effects in the overall economy occur as the lost revenue of those who previously received the employee and vendor spending of the facilities propagates through their own spending and employment. Nonetheless, the additional job losses that are expected to occur in the wake of MATS rulemaking-induced closures in Colstrip are large.

Three factors account for the magnitude of job losses that occur.

The first is the nature of the jobs at the mine and the generating station. These are capital-intensive, high value-added businesses that compensate their employees very well – average compensation at each facility is more than twice as high as the Montana average earnings per job.

Secondly, the production of coal and electricity involves a high fraction of inputs that are made in Montana. Thus, vendor spending of the facilities is more likely to be directed within the state, instead of being lost to the economy when purchases of goods and services are directed to suppliers located elsewhere.

Finally, there is the special tax treatment of production in natural resources in Montana, especially coal mining. Table 1 shows state revenue losses exceeding $100 million as a result of closures of the mine and generating station. These revenue losses result in a loss of government spending or possibly higher tax rates on the rest of the economy, which contribute to lower employment as well.

The impacts on the state economy that are caused by the MATS rulemaking-induced closure of the Colstrip SES and the adjacent Rosebud Mine that are summarized in Table 1 are sizable, yet they are likely to understate the losses that actually occur. This is because this analysis does not take into account

other factors and events that would occur in the wake of the loss of the state's largest producer of electricity. These include:

- The implications of the loss of property tax revenues to local governments
- The electricity rate implications of the stranded capital costs borne by the Montana investor-owned utility that is partial owner of the Colstrip SES
- The implications for pricing and reliability of electricity supply as Colstrip generation is lost
- The cost of building replacement generation

None of these factors are considered in the closure analysis presented here.

Detailed Findings

Further insights on how the overall decline in the state economy caused by the MATS rulemaking-induced closures of the Colstrip SES and the Rosebud Mine can be gleaned from an examination of the impacts in greater detail.

Tables 2-7 on the following pages report on impacts for employment by industry, personal income, compensation and earnings, economic output, selected state tax and non-tax revenues, and population, respectively.

The employment impacts in Table 2 clearly show how the losses in utility and mining employment associated directly with the closures in Colstrip propagate to the broader economy.

Table 2

The Economic Implications of MATS Rulemaking in Montana
Employment Impacts (Jobs)

	Impacts by Year		
Industry	2028	2035	2040
Construction	-592	-362	-254
Manufacturing	-44	-27	-23
Mining	-328	-323	-319
Utilities	-270	-266	-265
Retail Trade	-260	-242	-230
Transportation and Warehousing	-66	-52	-49
Professional and Technical Services	-171	-164	-160
Administrative and Waste Services	-163	-147	-141
Health Care and Social Assistance	-196	-174	-184
Arts, Entertainment, and Recreation	-49	-36	-37
Accommodation and Food Services	-169	-199	-212
Other Services, except Public Administration	-130	-115	-116
Other	-823	-913	-898
Total	-3,262	-3,020	-2,890

Personal income is the income received by households. The detail on the components of the impacts on personal income shown in Table 3 reveals that while most of the losses stem from declines in earnings related to job losses, there are also sizable impacts on non-labor source of income that results from the smaller post-closure economy.

Table 3

The Economic Implications of MATS Rulemaking in Montana
Personal Income Impacts (Millions of Dollars*)

Category		Impacts by Year 2028	2035	2040
Total Earnings by Place of Work		**275.4**	**274.8**	**273.2**
	Total Wage and Salary Disbursements	188.4	192.1	192.2
	Supplements to Wages and Salaries	49.6	58.3	60.5
	Employer contributions for employee pension and insurance funds	31.6	37.2	38.6
	Employer contributions for government social insurance	17.9	21.1	21.9
	Proprietors' income with inventory valuation and capital consumption adjustments	37.4	24.4	20.5
Less:				
	Contributions for government social insurance	37.1	39.9	40.2
	Employee and self employed contributions for government social insurance	19.1	18.8	18.4
	Employer contributions for government social insurance	17.9	21.1	21.9
Plus:				
	Adjustment for residence	0.7	0.7	0.6
	Gross In	0.1	0.3	0.3
	Gross Out	-0.6	-0.4	-0.4
Equals	**Net earnings by place of residence**	**-237.6**	**-234.2**	**-232.3**
Plus				
	Property Income	-7.9	-31.4	-42.6
	Dividends	-3.4	-13.7	-18.7
	Interest	-2.9	-11.5	-15.3
	Rent	-1.5	-6.3	-8.6
	Personal Current Transfer Receipts	-8.1	-19.1	-35.2
Equals:	**Personal Income**	**-240.3**	**-284.8**	**-310.0**
Less:				
	Personal Current Taxes	36.8	40.0	41.5
Equals:	**Disposable Personal Income**	**203.4**	**244.9**	**268.5**

*All dollar amounts are inflation corrected, expressed in terms of 2024 dollars.

The additional detail on wages, compensation and earnings impacts shown in Table 4 show how income losses are borne by both wage and salary workers as well as business proprietors. The average earnings for the total of all jobs lost, as shown in the table, far exceeds the average earnings of jobs overall in Montana.

Table 4

The Economic Implications of MATS Rulemaking in Montana
Earnings and Compensation Impacts (Millions of Dollars*)

Category	Units	Impacts by Year 2028	2035	2040
Wages and Salaries	$ Millions	-$188.4	-$192.1	-$192.2
Compensation	$ Millions	-$238.0	-$250.4	-$252.7
Earnings	$ Millions	-$275.4	-$274.8	-$273.2
Earnings per Job, Lost Jobs	$ Dollars	$84,425	$91,017	$94,520

*All dollar amounts are inflation-corrected, expressed in terms of 2024 dollars.

Economic output is defined as gross receipts of business and non-business organizations, with the exception of retail and wholesale trade, where markup is used. The output impacts in Table 5 show how the revenues of Montana industries are significantly affected by closures occurring in Colstrip. Including the lost revenues of the mine and generating station, these exceed $1 billion.

Table 5

The Economic Implications of MATS Rulemaking in Montana
Output Impacts (Millions of Dollars*)

Industry	Impacts by Year 2028	2035	2040
Construction	-95.7	-64.6	-48.1
Manufacturing	-30.5	-18.0	-15.7
Utilities	-310.9	-324.7	-335.9
Mining	-258.5	-254.4	-252.4
Retail Trade	-31.2	-35.8	-39.3
Transportation and Warehousing	-16.9	-14.1	-14.4
Professional and Technical Services	-28.9	-32.4	-34.6
Administrative and Waste Services	-18.6	-19.7	-20.7
Health Care and Social Assistance	-29.5	-31.0	-35.8
Arts, Entertainment, and Recreation	-4.4	-3.6	-3.8
Accommodation and Food Services	-16.5	-20.6	-23.2
Other Services, except Public Administration	-9.8	-9.8	-10.4
Other Private	-94.4	-88.4	-92.1
Government	-65.5	-89.2	-90.4
TOTAL	-$1,011.4	-$1,006.3	-$1,016.8

*All dollar amounts are inflation-corrected, expressed in terms of 2024 dollars.

The smaller economy that results from the MATS rulemaking-induced closures in Colstrip yields a lower revenue base for the state. Revenues are also affected by the loss of production taxes at the Rosebud Mine and the Colstrip SES, which are categorized as selected sales taxes shown in Table 6. Not all revenue sources shown in the table are general fund revenues subject to the discretion of the legislature. Taken as a whole, they exceed $100 million per year.

Table 6

The Economic Implications of MATS Rulemaking in Montana
Selected State Revenue Impacts (Millions of Dollars*)

	Impacts by Year		
Category	2028	2035	2040
Intergovernmental Revenue	-5.3	-14.9	-16.8
Selective Sales Tax	-46.9	-47.3	-47.5
License Taxes	-1.1	-1.3	-1.4
Individual Income Tax	-10.7	-11.6	-12.0
Corporate Income Tax	-3.4	-3.4	-3.4
Other Taxes	-2.6	-3.0	-3.3
Current Charges	-3.5	-4.1	-4.5
Miscellaneous General Revenue	-2.8	-3.3	-3.6
Utility Revenue	-0.3	-0.3	-0.4
Liquor Store Revenue	-0.7	-0.8	-0.8
Insurance Trust Revenue	-25.6	-30.3	-33.0
Total	**-$102.8**	**-$120.4**	**-$126.8**

*All dollar amounts are inflation-corrected, expressed in terms of 2024 dollars.

An important factor in all of these detailed impacts is the change in population that is expected to occur due to the closures in Colstrip. This is not a prediction of overall population decline, but a population level that is lower than what would have occurred if the closures did not take place. As shown in Table 7, the population impacts increase substantially over time, and are dominated by those of working age and their children.

Table 7

The Economic Implications of MATS Rulemaking in Montana
Population Impacts (People)

	Impacts by Year		
Age Cohort	2028	2035	2040
Ages 0-14	-318	-923	-1,014
Ages 15-24	-279	-452	-507
Ages 25-64	707	2,192	2,421
Ages 65+	2	81	164
Total	1,305	3,647	4,106

Conclusion

This report has summarized and documented the findings of an analysis of the economic implications of the MATS rulemaking in Montana. Specifically, it addresses how the MATS rulemaking-induced closure of the Colstrip Steam Electric Station (SES) in Rosebud County in southeast Montana due to the physical or economic infeasibility of meeting the reduced mercury emission threshold in the new final MATS rule would affect the economy of the state. The potential for economic harm from the rulemaking is made greater due to the tight coupling between the Colstrip SES and the immediately adjacent Rosebud Mine that serves the generation station with its coal supply via conveyor belt. This is because without substantial new development in rail infrastructure, the continued production of coal with the closure of the generating station would be impossible and its closure would occur as well.

The basic finding of this study is that implementation of the new MATS standard would be a significant negative event for the Montana economy. The loss of the high-paying jobs at the two facilities, and the cessation of the significant vendor spending and tax revenues associated with their operation, would ultimately precipitate a loss of 3,262 jobs in 2028, the first full year of closure after the new standards take effect. This impact represents the difference between what employment in the state would have been in a no-closure scenario and the post-closure job total. This employment impact grows to 3,446 jobs in 2030.

Other dimensions of economic vitality are presented in this report. All underscore the overall conclusion that a Montana economy that is required to meet the final rule of the U.S. Environmental Protection Agency's MATS regulation is smaller, less prosperous, and less populous than would occur if the current rules remained in effect.

References

Bureau of Business and Economic Research. (2018). *The Economic Impact of the Early Retirement of Colstrip Units 3 and 4*. Montana Chamber Foundation.

Cassing, S., & Giaratini, F. (1992). An evaluation of the REMI model for the south coast air quality management district. *Environment and Planning*, 1549-1564.

Appendix A

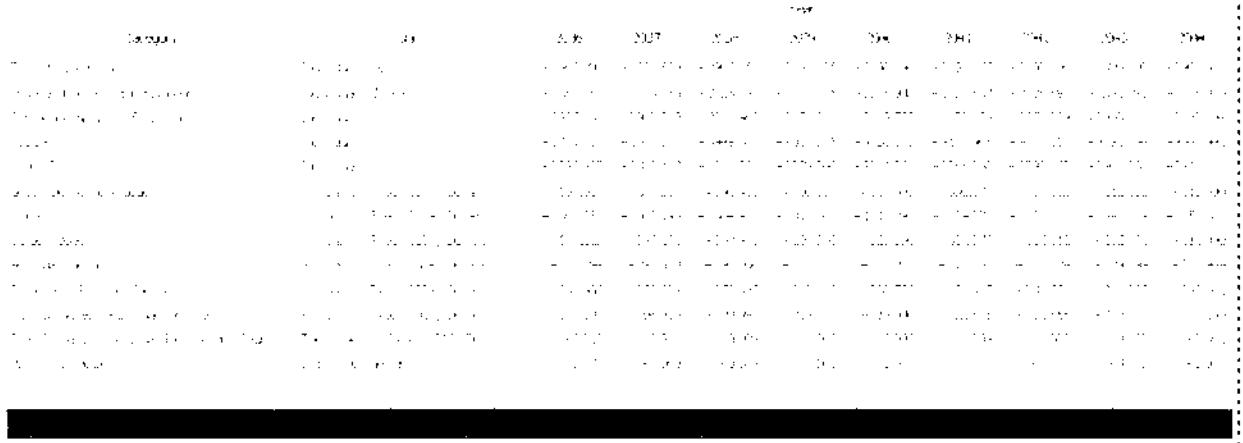
REMI Model Output

MATS rulemaking impacts - Economic Summary

		Year								
Category	Units	2027	2028	2029	2030	2031	2032	2033	2034	2035
[redacted]										

Comparison Type: Montana - Forecast: Differences - Comparison Forecast: MATS rulemaking impacts

MATS rulemaking impacts - Economic Summary

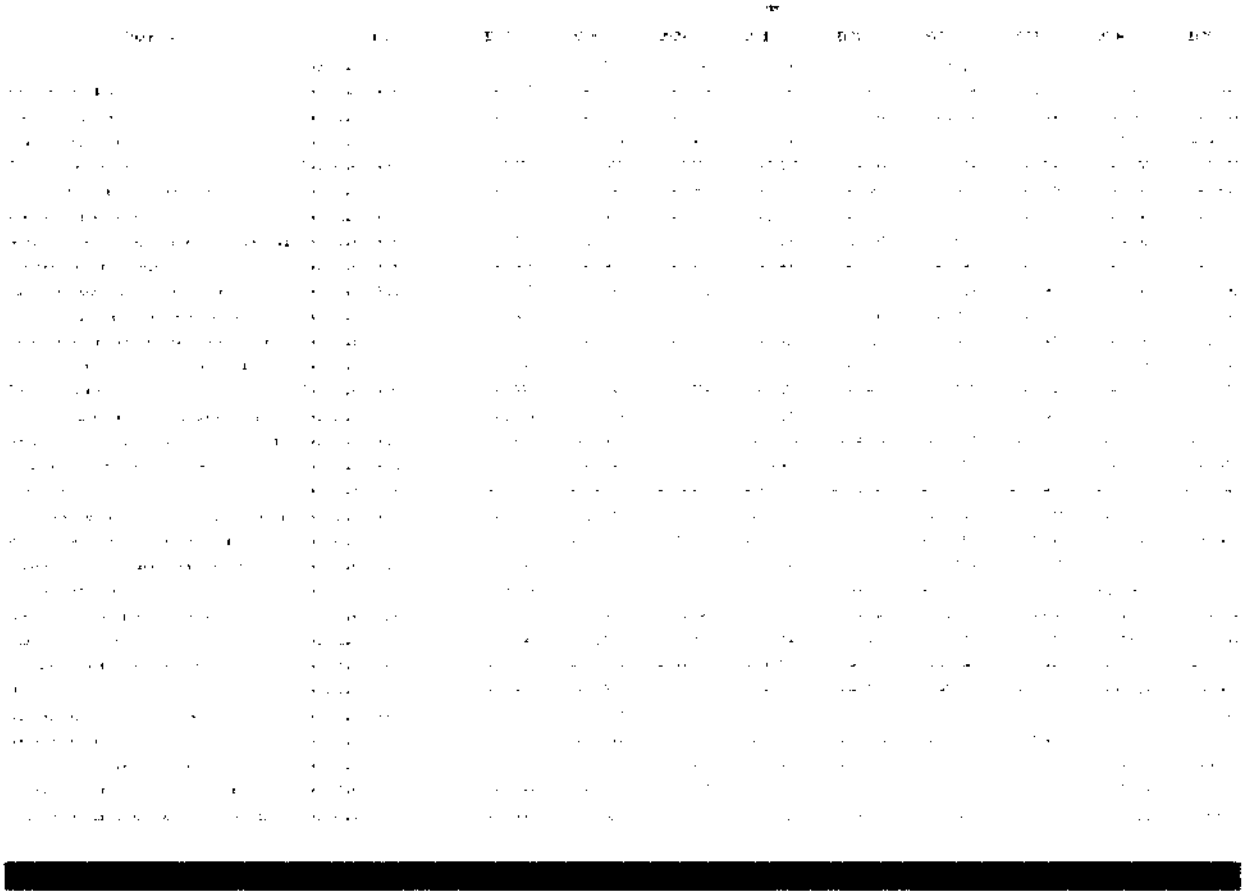


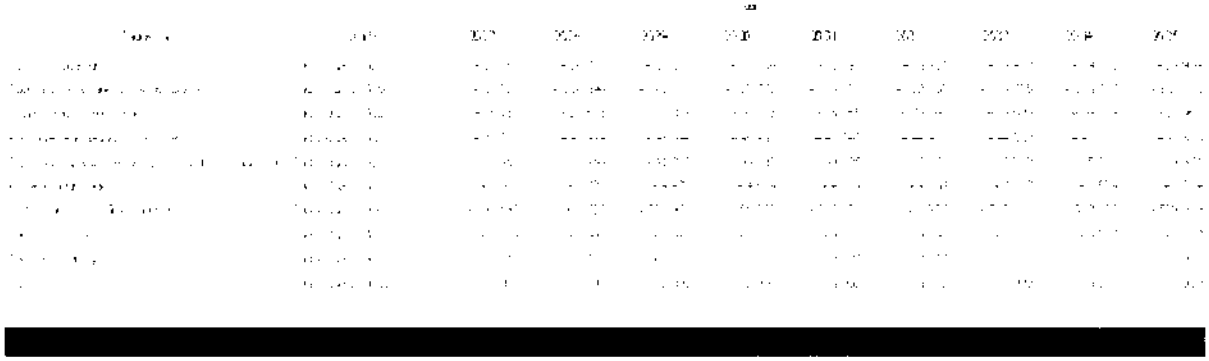
Comparison Type: Montana - Forecast: Differences - Comparison Forecast: MATS rulemaking impacts

MATS rulemaking impacts - Industry Profile

All Industries	Total Industry Dollars	+1594.041	+3261.849	+3410.891	+3446.125	+3389.968	+3293.942	+3190.278	+3095.574	+3019.622

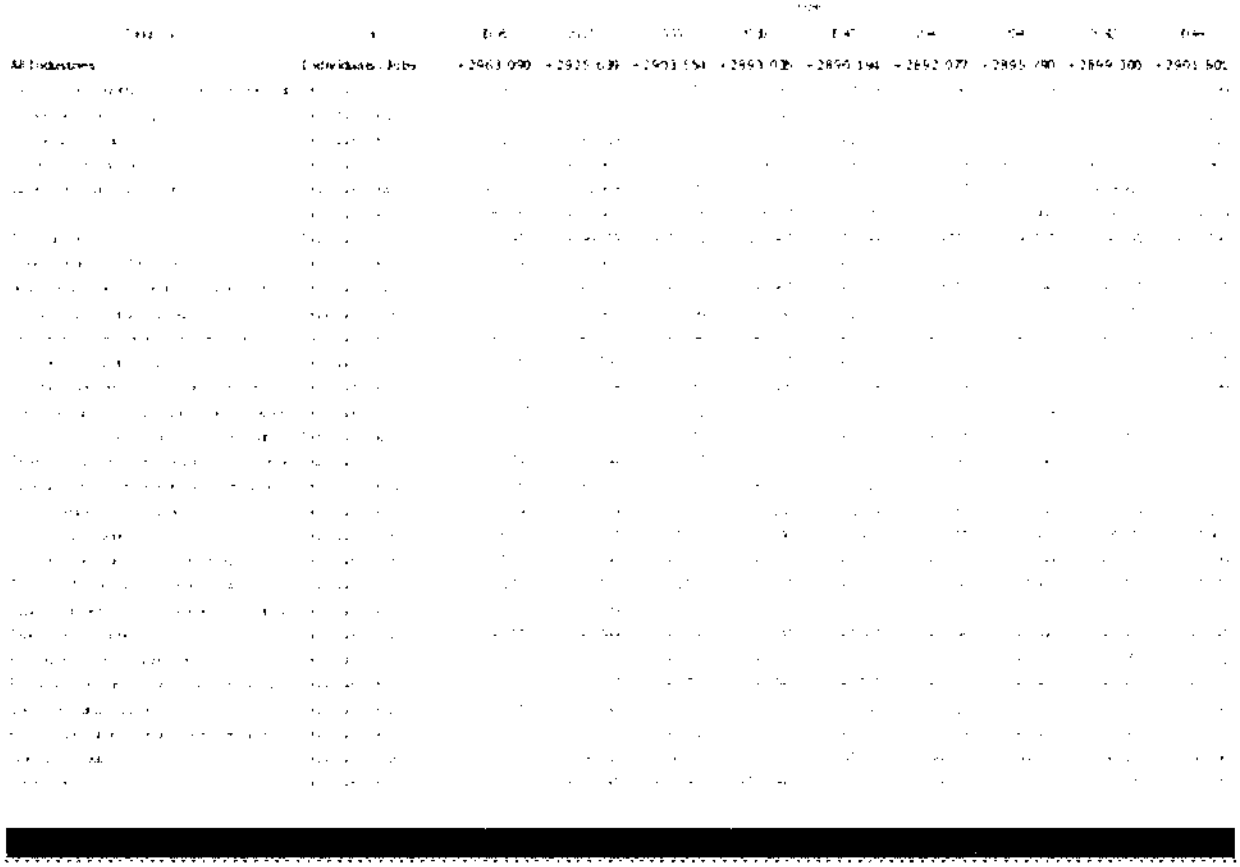
[redacted]

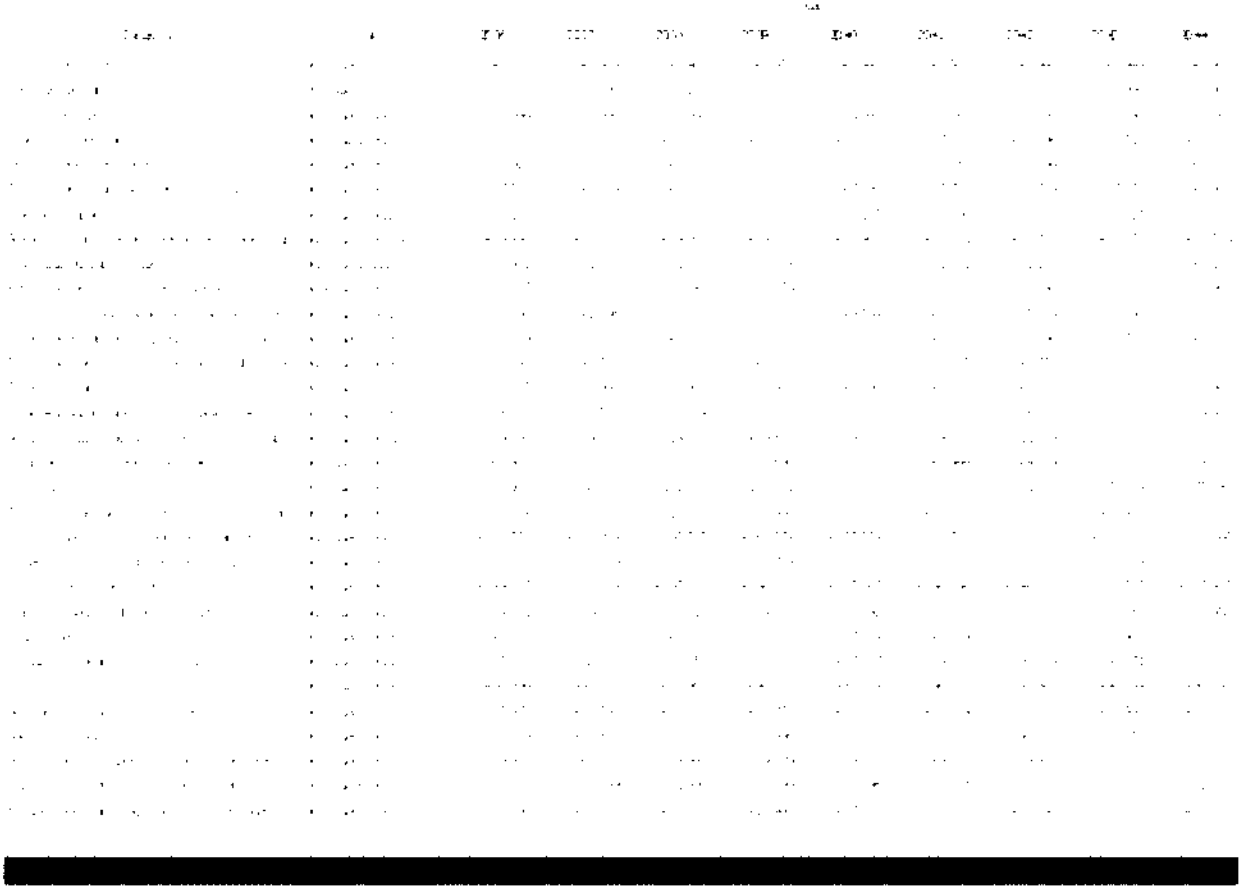


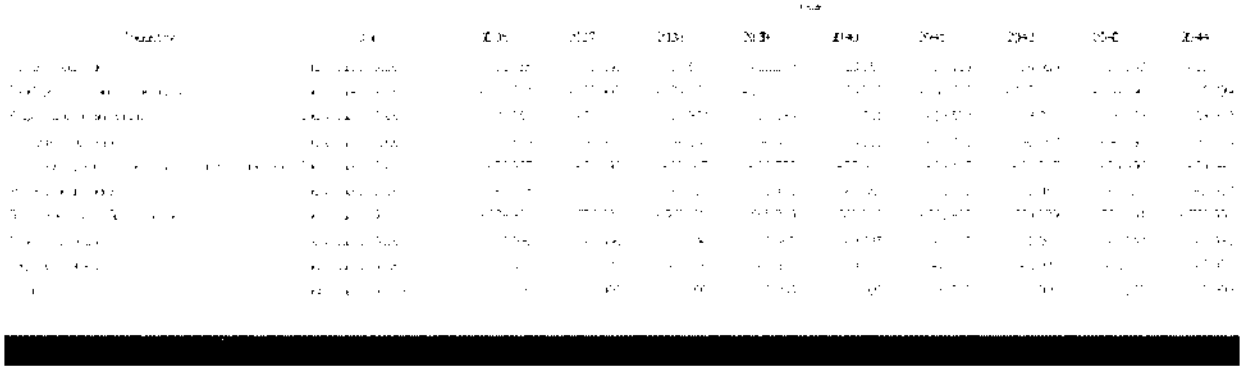


Category: Montana - Comparison Type: Employment - Forecast: Differences - Comparison Forecast: MATS rulemaking impacts

MATS rulemaking impacts - Industry Profile

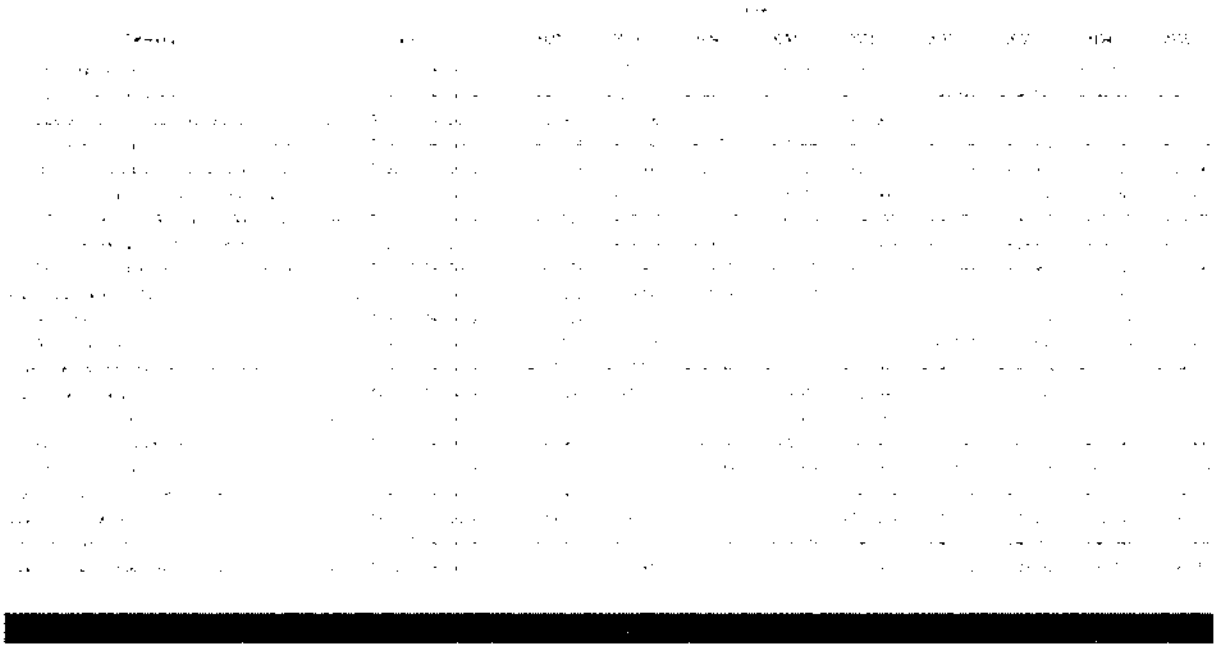






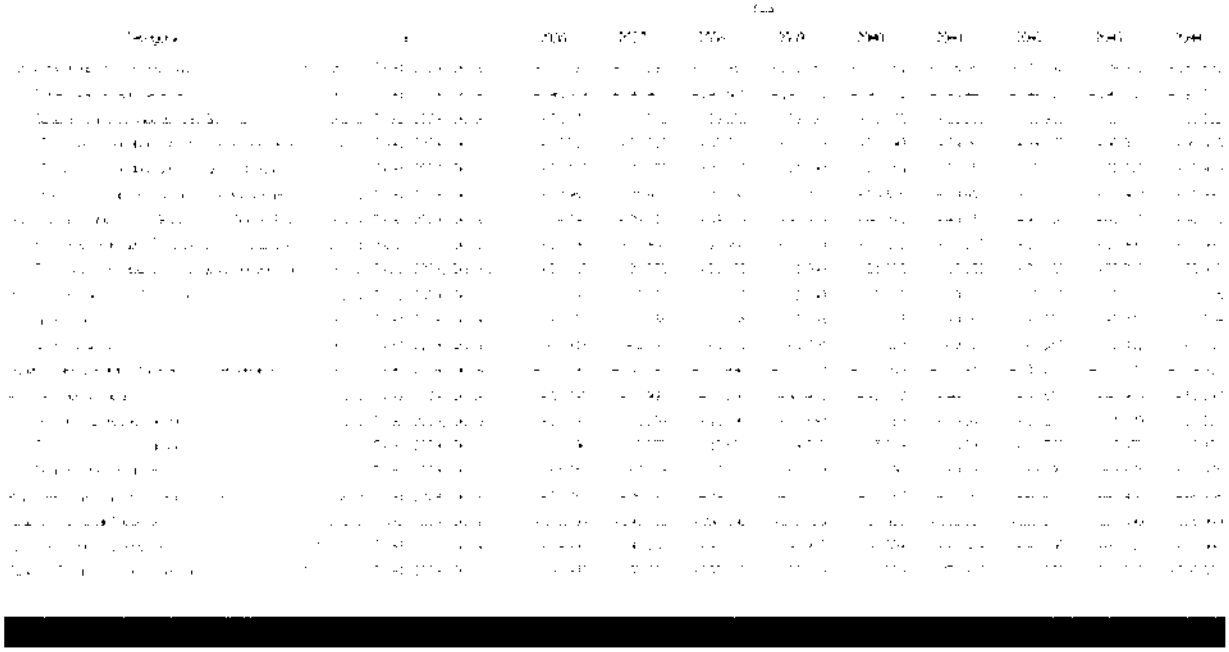
Category: Montana - Comparison Type: Employment - Forecast: Differences - Comparison Forecast: MATS rulemaking impacts

MATS rulemaking impacts - Income Profile

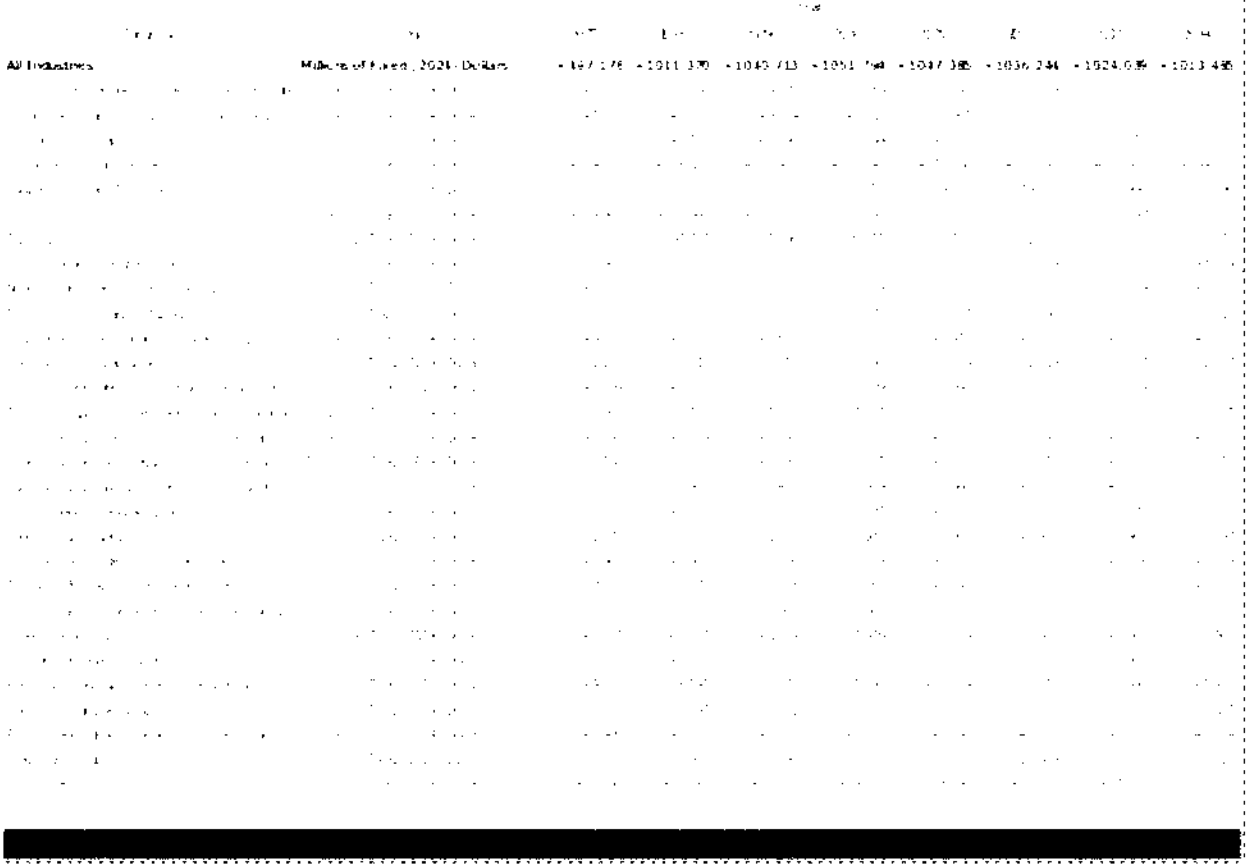


Comparison Type: Montana - Forecast: Differences - Comparison Forecast: MATS rulemaking impacts

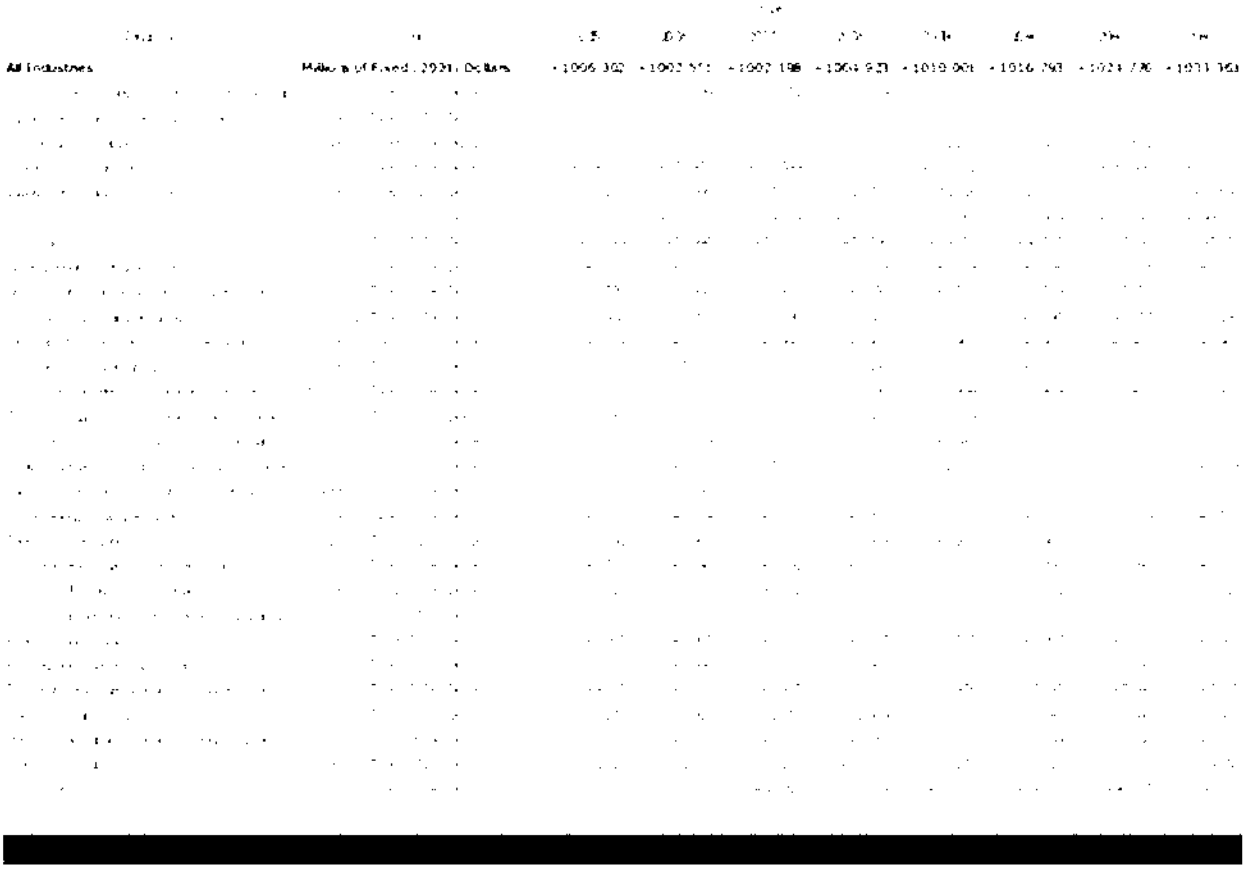
MATS rulemaking impacts - Income Profile



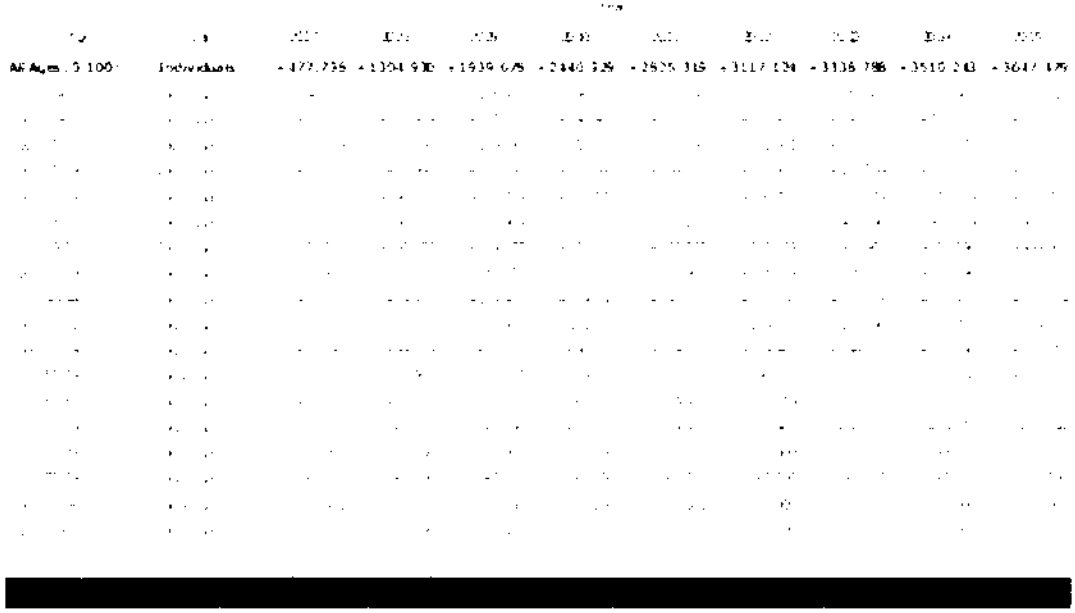
MATS rulemaking impacts - Output



MATS rulemaking impacts - Output

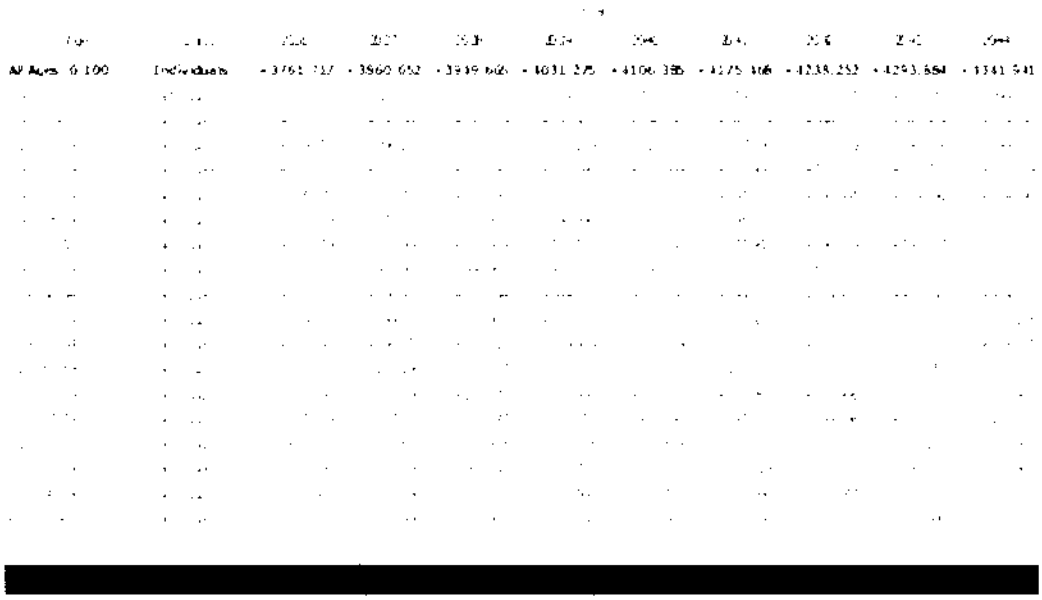


MATS rulemaking impacts - By Age



Category: Montana - Race: Population - Gender: All Races - Comparison Type: Total - Forecast: Differences - Comparison Forecast: MATS rulemaking impacts

MATS rulemaking impacts - By Age



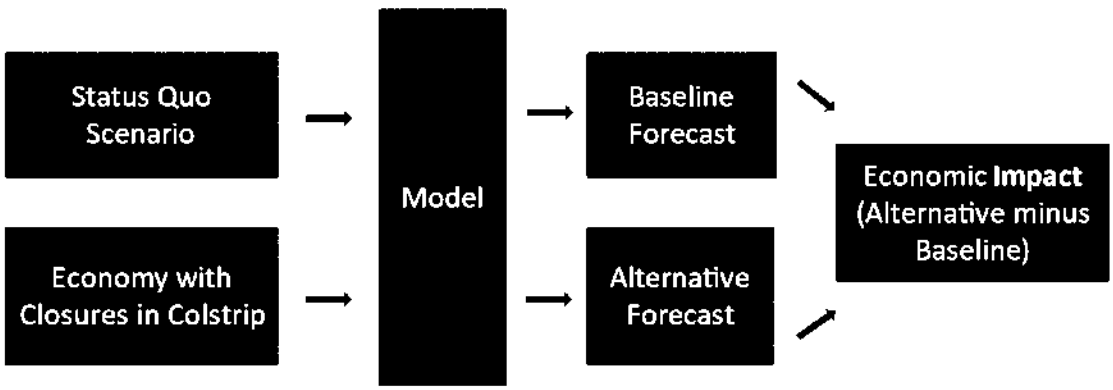
Category: Montana - Race: Population - Gender: All Races - Comparison Type: Total - Forecast: Differences - Comparison Forecast: MATS rulemaking impacts

Appendix B
Description of the REMI Model

The REMI Modeling Methodology

The basic approach of using the REMI model to produce the results for this study is illustrated in Figure B.3, below. The analysis started with a baseline projection for the Montana economy, where the Colstrip SES and Rosebud Mine are present. Next, the analysis employed the REMI model a second time, simulating an alternative scenario where the two facilities are closed and their associated economic activity are absent from the Montana economy.

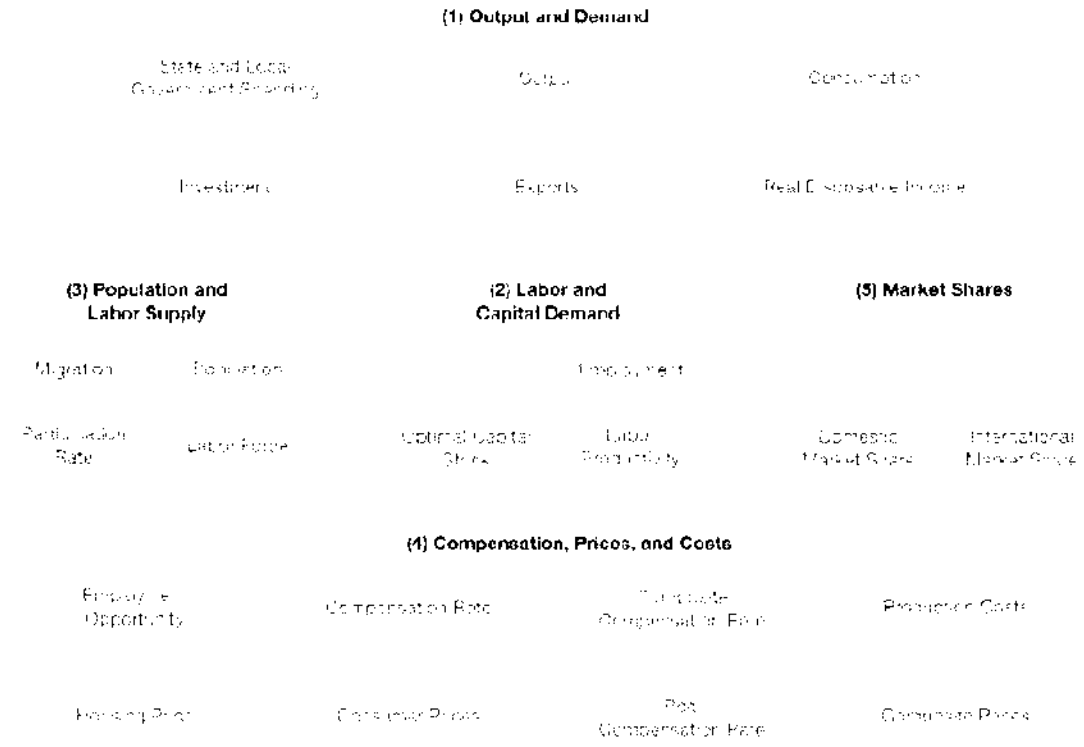
Figure B.3. Policy Analysis Using the REMI Model



The difference between the two economic projections represents the economic impact of MATS-induced rulemaking in Montana.

The REMI model utilizes historical data on production, prices, trade flows, migration, and technological advances to calibrate the relationship between five basic blocks of the state economy: 1) Output and Demand; 2) Labor and Capital Demand; 3) Population and Labor Supply; 4) Compensation, Prices and Costs; and 5) Market Shares. These linkages are shown in Figure B.4, below.

Figure B.4. Schematic Model of REMI Linkages



The differences in production, labor demand, and intermediate demand associated with the closure of the Colstrip SES and the Rosebud Mine impact these blocks, causing them to react to the changes and adjust to a new equilibrium. This new equilibrium constitutes the alternative scenario referred to above the closure of the facilities.

The underlying philosophy of the REMI model is that regions throughout the country compete for investments, jobs, and people. When events occur in one region, they set off a chain reaction of events across the country that causes dollars to flow toward better investment and production opportunities, followed over time by workers and households toward better employment opportunities and higher wages.

The REMI model consists of an 70-sector input/output matrix that models the technological inter-dependence of production sectors of the economy, as well as extensive trade and capital flow data. Together, these components enable the estimates of the shares of each sector's demand that can be met by local production. Simplified illustrations of the schematic model in Figure B.4 are provided on the following pages, in figures B.3 through B.7.

Figure B.5. Output Linkages

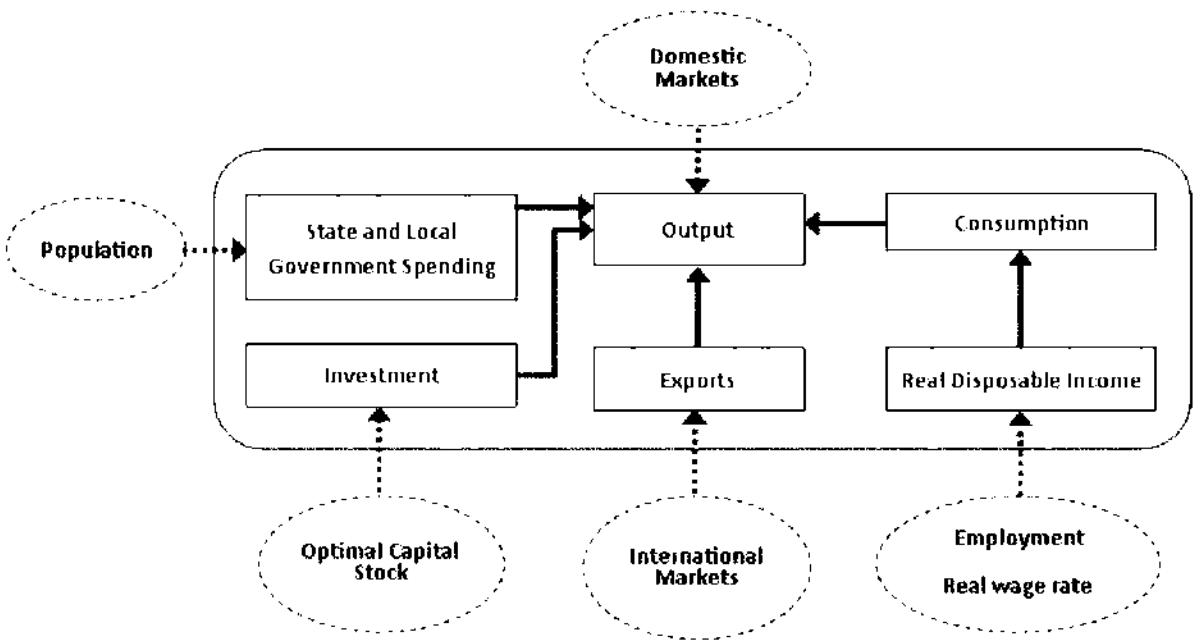


Figure B.6. Labor and Capital Demand Linkages

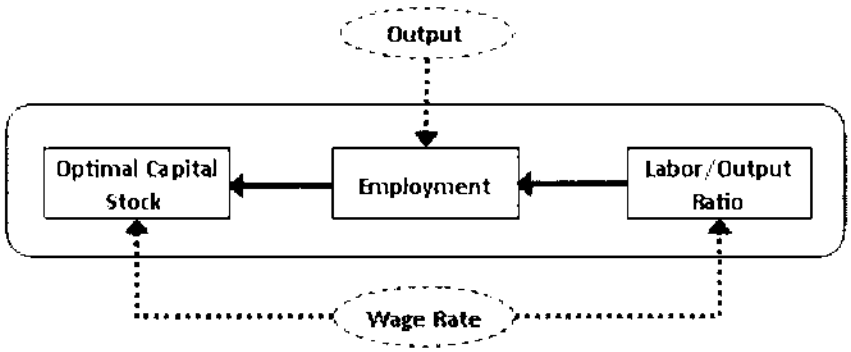


Figure B.7. Demographic Linkages

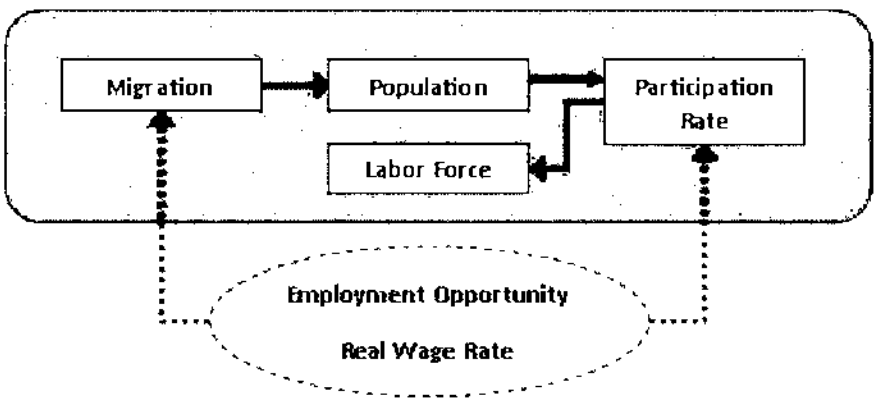


Figure B.8. Wages, Prices and Production Costs Linkages

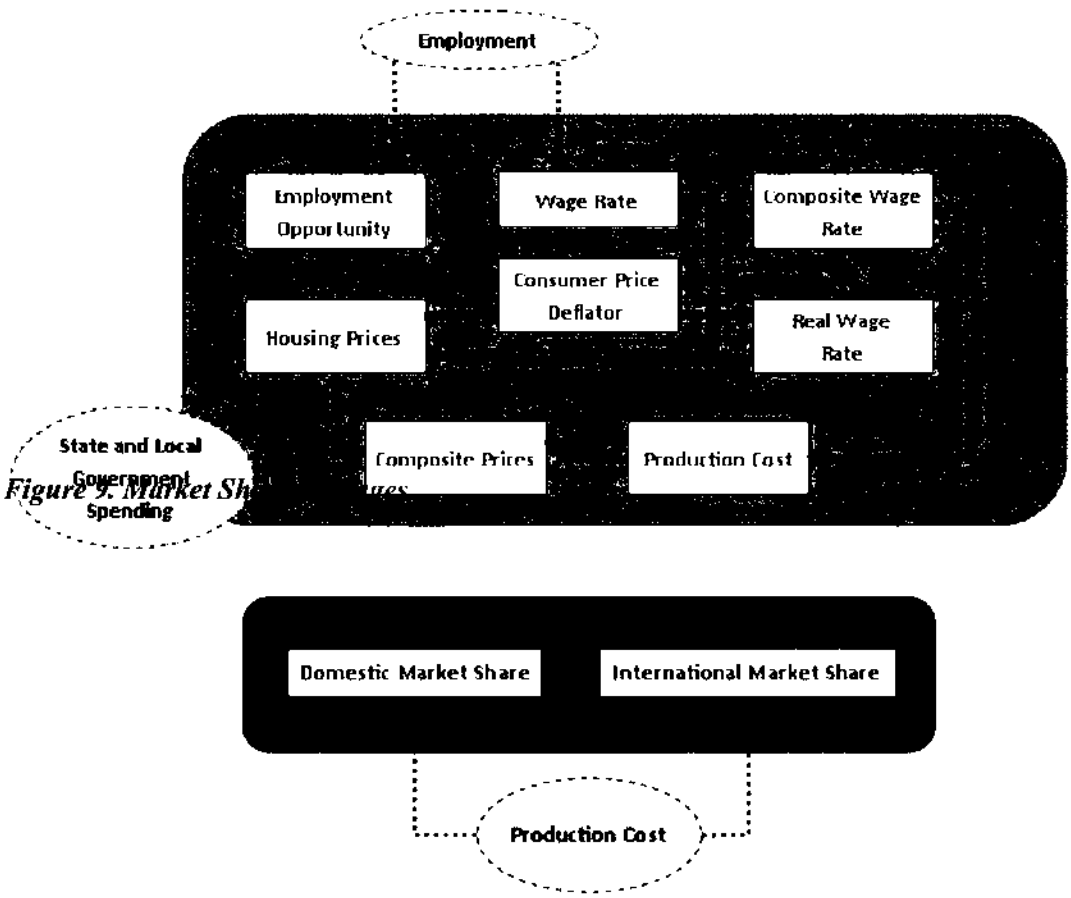


Figure 9. Market Sh

As powerful and flexible as this tool is, the output it provides is only as good as the inputs provided. The majority of the work for this study was to carefully craft the inputs used to construct a scenario for the economy that faithfully represents all of the events, income flows, and the direct and indirect activity that would occur in the event that the Colstrip SES and the Rosebud Mine were closed in mid-2027.

Exhibit 4

Hines Declaration

("Exhibits" referenced in the Declaration have been excluded)

Declaration of John D. Hines
In Support of Petitioners' Motion to Stay Final Rule

I, John D. Hines, having been duly sworn and upon my oath, hereby declare and state as follows:

1. My name is John D. Hines and I am NorthWestern Corporation d/b/a NorthWestern Energy's ("NorthWestern") Vice President – Supply, Environment and Montana Government Affairs. I have been the executive responsible for NorthWestern's energy supply since 2011 and have worked in the energy industry since 1989.

2. I am over the age of 18 and I make this Declaration based on my personal knowledge.

3. As NorthWestern's Vice President Supply, Environment and Montana Government Affairs, I am responsible for ensuring that NorthWestern has the power generation resources required to meet the electrical power needs of its customers reliably, affordably, and safely in a sustainable manner consistent with all applicable laws and regulations. As part of my responsibilities, I oversee NorthWestern's resource planning function and the development of NorthWestern's Electric Supply Resource Procurement Plans as required by Montana law and operations of our generation fleet and a marketing function that buys and sells electricity depending on the status of the portfolio. I am also responsible for lands management, permitting, and environmental compliance, as well as NorthWestern's governmental affairs in Montana.

4. On June 23, 2023, NorthWestern provided comments to the United States Environmental Protection Agency ("EPA") on the Proposal on National Emissions Standards for Hazardous Air Pollutants: Coal and Oil-Fired Electric Utility Steam Generating Units Review of the Residual Risk and Technology Review, published in the *Federal Register* on April 24, 2023, at 88 Fed. Reg. 24,854 ("Proposed MATS2 Rule" (referred to as "MATS2" because it is a

revision to the original MATS Rule promulgated in 2012). I assisted in the development of these comments ("NorthWestern MATS2 Comments")). A copy of the NorthWestern MATS2 Comments is attached as Exhibit A.

5. On August 8, 2023, NorthWestern also provided comments on the New Source Performance Standards for Greenhouse Gas Emissions From New, Modified, and Reconstructed Fossil Fuel-Fired Electric Generating Units; Emission Guidelines for Greenhouse Gas Emissions From Existing Fossil Fuel-Fired Electric Generating Units; and Repeal of the Affordable Clean Energy Rule. The proposal was published in the *Federal Register* at 88 Fed. Reg. 33,240 (May 23, 2023). I assisted in the development of these comments ("NorthWestern GHG Rule Comments"). A copy of the NorthWestern GHG Rule Comments is attached as Exhibit B (omitting exhibits that are duplicative of the exhibits to the NorthWestern MATS2 Comments).

6. On December 20, 2023, NorthWestern also provided comments on the Initial Regulatory Flexibility Analysis ("IRFA") on reliability concerns arising from EPA's proposed New Source Performance Standards for Greenhouse Gas Emissions From New, Modified, and Reconstructed Fossil Fuel-Fired Electric Generating Units; Emission Guidelines for Greenhouse Gas Emissions From Existing Fossil Fuel-Fired Electric Generating Units ("EGUs"); and Repeal of the Affordable Clean Energy Rule. The rule proposal was published in the *Federal Register* at 88 Fed. Reg. 33,240 (May 23, 2023) ("Proposed Rule"), and the solicitation for supplemental comments on the IRFA was published in the *Federal Register* at 88 Fed. Reg. 80,662 (Nov. 20, 2023) ("NorthWestern Supplemental Reliability Comments"). I assisted in the development of the NorthWestern Supplemental Reliability Comments, and I also provided a declaration in support of the comments. A copy of the NorthWestern Supplemental Reliability Comments is attached as Exhibit C (again omitting exhibits duplicative of those in Exhibits A and B).

7. For this Declaration, I reiterate the primary points from the earlier comments and provide additional updated facts. I have also evaluated the changes from the Proposed MATS2 Rule to the final rule announced on April 25, 2024 and published in the Federal Register on May 7, 2024, "National Emission Standards for Hazardous Air Pollutants: Coal- and Oil-Fired Electric Utility Steam Generating Units Review of the Residual Risk and Technology Review" 89 Fed. Reg. 38,508 (May 7, 2024) ("MATS2 Rule"). The MATS2 Rule is a complex regulation that NorthWestern continues to evaluate.

8. Nevertheless, there are certain conclusions that can be drawn at present regarding the impacts of the MATS2 Rule on NorthWestern, its customers, and the rate paying citizens of Montana. My comments here focus principally on the implications of the MATS2 Rule on the future of NorthWestern's ownership share in the Colstrip Steam Electric Station, located in Colstrip, Montana ("Colstrip") and thus the potential effects on our portfolio. Presently NorthWestern owns 222 MW and starting in 2026 it will acquire an additional 222 MW for a total of 444 MW of capacity in Colstrip Units 3 & 4. Colstrip Units 3 & 4 are coal-fired electric generating units ("EGUs"), and other than small waste-coal units not relevant to the MATS2 Rule, the only coal-fired EGUs in NorthWestern's Montana electric generation portfolio.

9. In this Declaration, I make the following points:

a. NorthWestern has analyzed various potential closure dates for Colstrip through its public Integrated Resource Planning ("IRP") process. Prior to the finalization of the GHG Rule and MATS2 Rule, NorthWestern had planned for reliance on Colstrip through 2042. Finalization of the GHG and MATS2 Rules creates two additional closure scenarios: July 8, 2027 (when compliance with the MATS2 Rule is required, unless the State grants a one year extension), and January 1,

2032 (when, under the GHG Rule, existing coal-fired EGUs must close if they have not installed carbon dioxide capture, utilization, and storage ("CCUS")).

b. Installation of additional controls at Colstrip to meet the 0.010 lb/MMbtu filtered particulate matter ("fPM") standard in the MATS2 Rule would require extremely large capital investments and annual operating costs, neither of which are cost-effective under the 2032 Colstrip closure scenario. The additional costs associated with the GHG Rule are so large that NorthWestern cannot envision operating Colstrip beyond January 1, 2032, in the event the GHG Rule is not vacated.

c. Because the additional MATS2 controls are substantial and not cost-effective, it is not clear that NorthWestern can obtain rate recovery approval from the Montana Public Service Commission ("MPSC") for the costs.

d. If NorthWestern cannot obtain rate recovery, NorthWestern will directly experience material irreparable harm.

e. Even if NorthWestern can obtain rate recovery, the costs will result in material increases in electricity rates for Montana ratepayers, to no environmental or incremental power benefit.

f. Because of these uncertainties and risks, NorthWestern is seeking advance rate recovery approval for MATS2 Rule compliance costs from the MPSC, but NorthWestern will not know the outcome of that proceeding before binding commitments must be made to meet the applicable compliance deadline.

g. NorthWestern cannot develop replacement electrical generation or transmission capacity for Colstrip under either the 2027 or 2032 closure scenarios.

h. Closure of Colstrip under either the 2027 or 2032 closure scenarios will materially impair Montana electrical grid reliability and our ability to reliably serve our customers.

i. EPA has not articulated an identifiable path to extend Colstrip's life beyond January 1, 2032. EPA has misinterpreted the various legal and administrative authorities it claims could provide relief from the MATS and/or GHG Rules, absent a stay of both Rules.

These points are discussed in further detail in the remainder of this Declaration.

Colstrip lifespan and closure scenario in the absence of the MATS2 Rule

10. Colstrip Units 3 & 4 have been in operation since 1984 and 1986, respectively. Although the Units have been well maintained and are capable of years of continued operations, they are in the latter stages of their operational life, which factors into the economic justification for major capital investments. NorthWestern in its current Montana resource planning has forecasted Units 3 & 4 would cease operation in 2042.

11. This forecast was significantly influenced by several factors. First, replacement capacity has long planning, permitting, and construction times. Second, there are promising developing alternatives to baseload fossil fuel energy sources, but these require additional time to mature. Third, and critically in relation to the MATS2 Rule, EPA found as recently as 2020 that further controls on Hazardous Air Pollutants were not warranted to protect human health, and there had been no developments that would warrant further controls. Consequently, NorthWestern could reasonably focus on improving and integrating its renewables portfolio and investing in similar infrastructure needs without the immediate need to replace Colstrip's capacity or budget for major additional pollution controls.

12. In fact, in early 2023 (prior to announcement of the Proposed GHG and MATS2 Rules), NorthWestern and Avista Corporation ("Avista") entered into an agreement whereby NorthWestern will acquire Avista's 222 MW combined shares of Colstrip Units 3 & 4 ("Avista Agreement"). NorthWestern determined that acquisition of additional Colstrip capacity was needed to address ongoing reliability and supply needs, for the reasons detailed later in this Declaration.

Extent of compliance Investments and cost-effectiveness of the MATS 2 Rule

13. In its NorthWestern MATS2 Comments, NorthWestern joined Talen Montana, LLC's ("Talen") contemporaneous comments that compliance with the 0.010 lb/MMbtu standard would require the installation of a new baghouse, in the most likely configuration (Reheat Fabric Filter) at an estimated cost of $350 million in capital and $15 million in annual operational/maintenance costs, annualizing to $57 million per year under an assumed 15 year operational life. This contrasts with EPA's original estimate of $38 million/year. I have seen no meaningful rebuttal of Talen's cost estimates from EPA.

14. NorthWestern and Talen further commented that the combination of the MATS2 Rule and GHG Rule would, given today's technology, force early closure of Colstrip. Assuming that Colstrip obtains the one-year compliance extension allowed for in the final MATS2 Rule, which can only be granted if reasonable progress is being made on installing the emission controls, Colstrip would need to come into compliance by July 8, 2028. Further, under the final GHG Rule, Colstrip would need to come into compliance with the GHG Rule's CCUS requirements or close by December 31, 2031. Consequently, if Colstrip closes by December 31, 2031, then the costs of the MATS Rule would be amortized over less than 3.5 years, rather than the 15 assumed by EPA. Even accounting for the reduced years of operational and maintenance

expenses, annualized costs would soar to approximately $120 million under Talen's cost estimates.

15. NorthWestern cannot envision a scenario in which it could operate Colstrip beyond December 31, 2031, if the GHG Rule is not vacated. As stated in NorthWestern's GHG Rule Comments, CCUS is not sufficiently demonstrated to provide confidence that the required GHG control rates could be reliably achieved, and even if they were, the costs of compliance would be astronomical in relation to Colstrip's remaining useful life. In addition, even if NorthWestern were to propose implementing CCUS to extend the life of Colstrip beyond 2031, there is a high likelihood the MPSC would conclude the investment would be imprudent and deny cost recovery. For these reasons, in this Declaration I principally examine and contrast various MATS2 implementation scenarios through 2031.

16. Under the applicable Ownership and Operation Agreement for Colstrip Units 3 & 4 and the Avista Agreement, NorthWestern would bear 30% of the MATS2 compliance costs. Using Talen's cost estimates, this translates to $36 million in new annualized costs for NorthWestern alone for the short period the fPM controls would be in use.

17. As explained in Talen's comments on the MATS2 Rule, the MATS2 Rule would result in extraordinary costs per ton of $92,000/ton for fPM removal for a Reheat Fabric Filter operating from EPA's 0.0195 lb/MMbtu performance baseline. Per-ton compliance costs would more than double with a 2031 closure date. I further note that Montana has more stringent mercury emission standards than the MATS2 Rule, and Colstrip already complies with the Montana mercury standard. Consequently, the MATS2 Rule will provide no material benefit with regard to Colstrip's mercury emissions.

The MATS2 Rule will materially increase electricity-delivery costs in Montana, and it is uncertain whether those will be recoverable in electrical rates

18. As a regulated utility, NorthWestern can only charge electricity rates to customers approved by the MPSC, after the completion of statutory and administrative processes. Mont. Code Ann. § 69-3-101; *see also id.* § 69-3-302; Admin. R. Mont. 38.5.101, *et seq.* The MPSC supervises, regulates, and controls public utilities, including NorthWestern. Mont. Code Ann § 69-3-102.

19. The processing of a proposal to increase electricity rates is referred to as a "rate case" or "rate review." Under general utility regulation law and ratemaking principles, any utility capital investment or facility must be used and useful to the rate paying public before a regulatory commission may permit a utility to recover costs through customer rates for the investment. Further, any cost or investment must be determined by the regulatory authority to be prudently incurred before cost recovery is authorized. With some limited exceptions for common recurring costs, such as supply costs or property tax adjustments, NorthWestern must apply to the MPSC in a formal rate review to recover any costs already incurred. NorthWestern often experiences what is known as "regulatory lag," where the company cannot timely recover costs for important investments made which serve customers and help provide safe, reliable, and affordable energy. This delay happens between rate cases, which are expensive and extremely resource consumptive to undertake. In recent years, NorthWestern has experienced harm from regulatory lag and has argued and demonstrated to the MPSC that the company's creditworthiness is impacted by delays in cost recovery.

20. NorthWestern began scoping its last rate case in 2021 and filed the case in in August 2022, based on investments made up through 2021. *See* MPSC Docket No. 2022.07.078 ("2022 Rate Case"). There were more than 600 docket entries in the administrative record over the course of the 2022 Rate Case, including thousands of discovery requests, a deposition, a six-

day-long evidentiary hearing, motions for summary judgment, an on-site audit, motions for reconsideration after the MPSC's decision, and additional proceedings. The Commission issued its order on reconsideration in the 2022 Rate Case in early 2024.

21. At the conclusion of the 2022 Rate Case, the MPSC approved a 28% increase in residential electricity rates. NorthWestern is relatively small utility, with a Montana electric customer base of approximately 400,000. Tens of millions of dollars in new capital and operating costs has a material effect on Montana electricity rates. A substantial annualized increase in compliance costs attributed to the MATS2 Rule would be presented to the MPSC to be added to rates. Importantly, to the extent that NorthWestern needs to purchase additional electricity from other Colstrip owners during periods of high demand, the MATS2 Rule costs would be reflected in their market rates as well.

22. Even assuming NorthWestern would close Colstrip by December 31, 2031 to avoid the exorbitant costs associated with the GHG Rule, NorthWestern is facing other substantial electricity-related costs through 2031. These include continued investments in much-needed transmission to accommodate increased renewable generation, wildfire mitigation initiatives, and rate recovery for other ongoing capital and operational projects. During this period, it is reasonably foreseeable that other rate increases will be needed to cover other electricity-related costs. In that context, MATS2 Rule implementation costs would be punitive to ratepayers, especially those of lesser means.

23. Conversely, if the MPSC denies rate recovery for MATS2 Rule compliance costs, $120· million in non-recoverable costs, with the capital component incurred over the next four years, would have a material impact on NorthWestern's financial viability.

24. NorthWestern is commencing a new rate case in July, 2024. Because of the high consequences of the MATS2 Rule, NorthWestern will be asking the MPSC for an accounting mechanism to address MATS2 Rule compliance costs. Given required statutory and administrative processes and prior experience, it is not plausible that this proceeding will be completed prior to the date by which binding commitments are necessary to install the required controls in time to meet the 2027 or 2028 compliance deadlines. The decision points and timelines associated with fPM control contracting and installation are discussed in more detail in the declaration of Dale Lebsack. NorthWestern and its rate paying customers therefore face financially significant uncertainty no matter how the MPSC ultimately rules. If the MPSC allows rate recovery, then the rate paying public will face substantial electric rate increases. If the MPSC does not, then NorthWestern could be financially devastated. And NorthWestern cannot know the answer before the investment decisions must be made.

Electric grid reliability consequences of closure of Colstrip by the end of 2031 or earlier

25. One option to avoid the preceding conundrum would be to simply close Colstrip by the MATS2 Rule July 2027 compliance date. But closure of Colstrip prior to the mid-2030s, and especially by mid-2027, would create other types of potentially catastrophic and irreparable risks and harms.

26. NorthWestern addressed the electrical grid reliability implications of early closure of Colstrip in its NorthWestern MATS2 Comments, its NorthWestern GHG Rule Comments, and its NorthWestern Supplemental Reliability Comments.

27. In simplest form, when Colstrip is closed its generating capacity must be replaced. Capacity can be replaced in one of two principal ways: (1) new generation facilities can be built, or (2) electricity can be purchased from third-parties in the electricity market. Existing Montana

sources of market electricity purchases are either fully utilized, or equally affected by the MATS2 Rule (in the case of the shares of Colstrip Units 3 & 4 that are not owned by NorthWestern). The following paragraphs discuss NorthWestern's portfolio and its ability, or the lack thereof, to replace Colstrip's capacity with new generation or increased transmission from other sources.

28. NorthWestern and its South Dakota affiliate supply electrical energy and capacity to customers in Montana, including Yellowstone National Park and South Dakota. This Declaration focuses on Montana. As explained in the accompanying prior Declaration of Michael Cashell, NorthWestern's Vice President – Transmission (the content of which was included in the NorthWestern MATS2 Comments and submitted again in declaration form as Exhibit B to the NorthWestern Supplemental Reliability Comments), generation sources in Montana and the Dakotas are located in different Interconnection Regions, and electricity cannot readily be transmitted between the two Regions. NorthWestern provides electricity to customers in its Montana service area and also serves as the "Balancing Authority" in that part of Montana, which means that NorthWestern is responsible for ensuring that the supply of and demand for electricity within its Balancing Authority Area are constantly in equilibrium or "balanced."[1]

29. The MPSC has set forth the following objectives that Montana utilities should meet: (a) reliability; (b) affordability; (c) environmental responsibility; (d) optimality; and (e) transparency.

[1] In its South Dakota service area, NorthWestern participates in the Southwest Power Pool ("SPP"), which is a Regional Transmission Organization serving as a single Balancing Authority for interconnected electric utilities in 14 states. In 2015, NorthWestern ceded functional control of its South Dakota transmission facilities, and SPP is now responsible for operating the grid.

30. NorthWestern thus has legal obligations to reliably and affordably supply electricity to our customers in Montana and to do so cost-effectively while seeking to reduce adverse environmental impacts. In addition to those legal obligations, NorthWestern recognizes that as a practical matter its customers count on NorthWestern to provide the cost effective electricity used to power their homes and businesses and the critical infrastructure upon which they rely.

31. Under Montana law, NorthWestern, as a regulated public utility, is required to prepare and file a plan every three years for meeting the requirements of its customers in the most cost-effective manner consistent with its obligation to serve under the law. Mont. Code Ann. § 69-3-1204(1)(a).

32. The plan must include:

a. an evaluation of the full range of cost-effective means for the public utility to meet the service requirements of its Montana customers, including conservation or similar improvements in the efficiency by which services are used and including demand-side management programs in accordance with 69-3-1209;

b. an annual electric demand and energy forecast developed pursuant to commission rules that includes energy and demand forecasts for each year within the planning period and historical data, as required by commission rule;

c. assessment of planning reserve margins and contingency plans for the acquisition of additional resources developed pursuant to commission rules;

d. an assessment of the need for additional resources and the utility's plan for acquiring resources;

e. the proposed process the utility intends to use to solicit bids for energy and capacity resources to be acquired through a competitive solicitation process in accordance with 69-3-1207; and

f. descriptions of at least two alternate scenarios that can be used to represent the costs and benefits from increasing amounts of renewable energy resources and demand-side management programs, based on rules developed by the commission.

33. Planning for reliable service requires NorthWestern to ensure that it has enough electricity generation resources to meet its customer demands every hour of the year, even with changing weather, generation output and demands. As a matter of physics, for the electric grid to operate reliably, the amount of energy generated ("generation") and the consumption of that energy ("load") must be equal or in balance. Generation and load must be in balance year-to-year, month-to-month, day-to-day, hour-by-hour, and minute-by minute for the electric grid to remain stable. Because of the long lead times needed to build or acquire new electrical generation or transmission assets or negotiate power purchase contracts, NorthWestern, like other electric utilities, makes plans for our supply of electricity years in advance. This long-term IRP is also required by law. In Montana, NorthWestern prepares formal, written plans that are filed with the MPSC. *See* NorthWestern MATS2 Comments, Exhibit D (NorthWestern May 2023 Integrated Resource Plan).

34. NorthWestern began to serve customers in Montana when it purchased transmission and distribution assets of the former Montana Power Company in 2002. Initially, NorthWestern did not own any generation assets to serve Montana customers. This situation was not ideal and was risky to customers as it required NorthWestern to purchase from the market all

the electricity needed to serve customers. These purchases were and continue to be from a market that reflects growing risk to customers and that has increasingly volatile pricing and potential supply shortages. These purchases also rely upon adequate transmission to move the electricity from the place of purchase to NorthWestern's transmission and distribution systems. Availability of such transmission presents yet another risk to greater reliance on market purchases.

35. Since 2002, NorthWestern has acquired various types of electricity supply resources, including its interests in Colstrip. Notably, in 2014 NorthWestern purchased a portfolio of hydroelectric facilities in Montana. NorthWestern has also made significant investments in wind power. NorthWestern has more wind owned and under contract than its existing share of generation from Colstrip and the share it is contracted to acquire from Avista. NorthWestern currently owns approximately 882 MW of generation capacity, has under construction or agreements in process for another 392 MW, and has long-term contracts for another 764 MW.

36. NorthWestern's current generation portfolio is a diverse and balanced mix of resources necessary to be reliable, the majority of which are renewable. The portfolio includes 497-MW of hydroelectric maximum delivered capacity, 455-MW of maximum delivered wind capacity, 222-MW of coal capacity at Colstrip, 202-MW of natural gas capacity, 92.5-MW of waste coal capacity (which under PURPA we are required to purchase), and 177-MW of solar capacity. The Company also has market capacity contracts for 410 MWs which have significant price or market exposure. In summary, NorthWestern's current portfolio has 202 MW of natural gas capacity, 315 MW of coal and waste coal based capacity, and 1,128 MW of renewable fueled

generation. As noted, under the Avista Agreement, NorthWestern is also scheduled to acquire ownership of another 222-MW of capacity at Colstrip commencing in 2026.

37. The table below lists NorthWestern's existing owned generation facilities and contracted generation resources along with some additional resources that the Company expects to bring online, including the Yellowstone County Generating Station ("YCGS") that is nearing full operational status and is expected to reliably serve NorthWestern's customers beginning July 1, 2024

MT Portfolio Resources
Thompson Falls
Cochrane
Ryan
Rainbow
Holter
Morony
Black Eagle
Hauser
Mystic
Madison
Turnbull Hydro LLC
State of MT DNRC (Broadwater Dam)
Tiber Montana LLC
+ QF Hydro Resources
Basin Creek
DGGS 1 -3
Yellowstone County Generating Station (Laurel)
Colstrip 30% U4
Yellowstone Energy Limited Partnership (BGI) (QF)
Colstrip Energy Limited Partnership (QF)
Judith Gap Energy LLC
Spion Kop Wind
Two Dot Wind Farm
+QF Wind Resources

+QF Solar Resources
Powerex (3 yr) Contingency Reserves (60 MW) - expires 12/31/2024
Powerex (5 yr) (100 MW) - expires 12/31/2027
Heartland (10 yr) - (150 MW) - expires 12/31/2032

38. NorthWestern currently has over 200 percent more wind generation than Colstrip generation. In terms of generation asset nameplate capacity, its two largest, by far, are hydroelectric assets and the fleet of wind farms, both of which are carbon free. NorthWestern's portfolio of solar generating facilities has also been increasing in recent years. At the same time, it is critical to note the difference between "nameplate" and "accredited" capacity. Nameplate capacity refers to the maximum electrical generating output (in MW) that a generator can sustain over a specified period of time when not restricted by seasonal or other "deratings" (events that reduce effective output), as measured in accordance with the United States Department of Energy standards. In contrast, accredited capacity means the electrical rating given to generating equipment that meets the Utility's criteria for uniform rating of equipment. These criteria include but are not limited to reliability, availability, type of equipment and the degree of coordination between the Distributed Generation and the Utility. Wind and solar accredited capacities are much lower than their nameplate capacities, because of the seasonal and weather variability of those generation sources. Hydroelectric generation also has a gap between nameplate and accredited capacity, reflecting periods when generation is restricted by stream flows. All this is reflected in the table below:

Hydro Generation - Online

Total	497	341
Thermal/Natural Gas Generation - Online		
Total	202	195
Thermal/Coal Generation - Online		
Total	315	309
Wind Generation - Online		
Total	455	109
Solar Generation - Online		
Total	177	11
Short Term Contracts - Max		
	410	410

39. NorthWestern's proportion of generation resources that are renewable compares highly favorable to other utilities. In 2021, 56% of NorthWestern's electric generation was from carbon-free resources, which compares to about 42% generated by the U.S. electric power industry as a whole.

40. Despite the significant improvement in NorthWestern's generation capacity, including acquisitions of hydroelectric plants and wind farms, NorthWestern's resource portfolio of owned resources and long-term contracts is not yet sufficient or "reliable," as defined by regional planning organizations, including the Western Regional Adequacy Program ("WRAP"), of which NorthWestern is a founding member.

41. In periods of peak loads, NorthWestern often does not have sufficient capacity, meaning that NorthWestern must make market purchases of capacity and energy to meet customers' needs.

42. Periods of peak load are those times when customers' demand for electricity is particularly high. This tends to occur during periods of extreme weather, during the coldest winter days (below 10 degrees Fahrenheit) when more electricity is used for heating purposes and during the hottest summer days (above 90 degrees Fahrenheit) when more electricity is used

for cooling. The availability or unavailability of other resources can also be a significant factor. For example, the amount of rain during a season or snow during a preceding winter impacts the generation of our hydroelectric facilities. Similarly, there are periods when more or less wind power is generated. Unfortunately, in Montana this extreme weather typically occurs with high pressure systems, meaning our wind generates very little to zero power during these critical conditions. Those instances when there is both high demand for electricity, due to the extreme temperatures, and less available renewable generation can be particularly challenging from both a reliability and customer affordability perspective. Thus, NorthWestern is forced to rely on a market that has significant price volatility, as a reflection of the scarcity of on-demand generation. There is also increasing concern regarding the scarcity of firm transmission during these extreme weather events.

43. There are significant disadvantages to being reliant on market purchases to manage peak demand periods, especially considering the declining availability of capacity resources in the region.

44. As an initial matter, prices for electricity tend to increase when there is greater demand. Typically, NorthWestern's periods of high demand coincide with those of other utilities in the region. At the same time market prices are increasing during the critical weather events, especially winter, the available wind and solar generation frequently diminishes, sometimes to near zero. The same weather patterns that impact Montana also frequently impact other states in the region. As a result, the demand for electricity is high during such periods, which drives up the prices. Those higher prices increase our costs and ultimately lead to higher bills for customers, which impacts their household and business finances and the broader Montana economy. Importantly, the costs of electricity obtained through power purchase contracts are

substantially passed directly through to consumers. NorthWestern's lower income and smaller business customers tend to be most sensitive to the impacts of increased electric costs.

45. In addition to pricing, there is also the question of availability. Simply put, it is not prudent to assume that there will always be sufficient out-of-state power that can be both purchased and transmitted to Montana. In his Declaration, Michael Cashell discusses the limitations of the transmission system and how those impact NorthWestern's ability to bring electricity into Montana to serve NorthWestern's customers.

46. In brief, Mr. Cashell explains that there is insufficient existing transmission capacity to replace Colstrip's capacity through increased importation of electricity. It is also not plausible to permit and construct significant additional transmission capacity, much less enough to replace lost capacity at Colstrip, prior to the mid-2030's. This was a major driver of the Avista Agreement providing NorthWestern with more reliable, highly-accredited electricity during the bridge period between now and when other sources of electricity to replace Colstrip will be reasonably available.

47. For my part, I will discuss that availability of electricity to purchase, setting aside the increasing uncertainty of whether it can be transmitted to Montana.

48. In recent years, several large power plants in Montana and adjacent states have closed. J.E. Corette, with a 163-MW nameplate capacity, was closed in 2015. Colstrip Units 1 and 2, each with nameplate capacities of 307 MWs, ceased operation in early 2020. That same year, the Boardman plant in Oregon, 601 MWs, and Unit 1 of the Centralia plant in Washington, 730 MWs, both closed. Idaho Power ended its participation in Unit 1 of the Valmy facility, 254 MWs, in 2019 and the operations there completely halted in 2021.

49. In addition to those significant retirements that have already taken place, more retirements are anticipated in the near future. In particular, Unit 2 of the Centralia plant, 670 MWs, is scheduled to cease operation in 2025, as is North Valmy Unit 2, which is 289 MWs.

50. The retirement of these necessary on-demand generation is occurring at the same time forecasters are predicting a significant increase in demand driven in part by electric vehicles and artificial intelligence development.

51. In addition, several existing dams in the Pacific Northwest are being considered for removal, constraining the future availability of hydroelectric resources.

52. In summary, there is much less reliable electrical generation available in Montana and the Pacific Northwest (the market) than in the past, and the closures scheduled for 2025 are expected to result in the loss of an additional 959 MWs of nameplate capacity by the end of that year. Importantly these losses of nameplate capacity are all for facilities for which their accredited capacity is very close to their nameplate capacity. As a result, the regional portfolio is shifting away from high-accredited to low-accredited generation sources. A difficult situation is expected to get worse and grave reliability concerns are no longer just the province of states like California and Texas that have had well publicized blackouts. A recent article by a former Federal Energy Regulatory Commissioner noted that this reliability concern has spread to over two-thirds of the Country. Given these circumstances, Colstrip is a critically important facility for NorthWestern and its Montana customers.

53. Equally importantly in terms of timing and supply, 100 MW of NorthWestern's current market contract capacity will be expiring in the near future. Given the retirements of facilities throughout the region, it cannot be assured that NorthWestern will be able to renew or replace these contracts when they expire, especially under as favorable of terms. To the extent

any can be replaced, market conditions indicate that they will be at much higher costs, which will be passed directly on to our customers.

54. As noted above, NorthWestern engages in long-term electricity supply planning.

55. These historical and upcoming developments have left NorthWestern in a critically tenuous position of potentially not being able to reliably serve its customers' needs during periods of peak loads, such as hot summer and most critically, cold winter days. Reliance upon market purchases is becoming increasingly risky in terms of reliability and affordability and is expensive and uncertain, especially during critical weather events that absent resource sufficiency, places lives at risk. This is in spite of NorthWestern acquiring a substantial amount of generation since 2011.

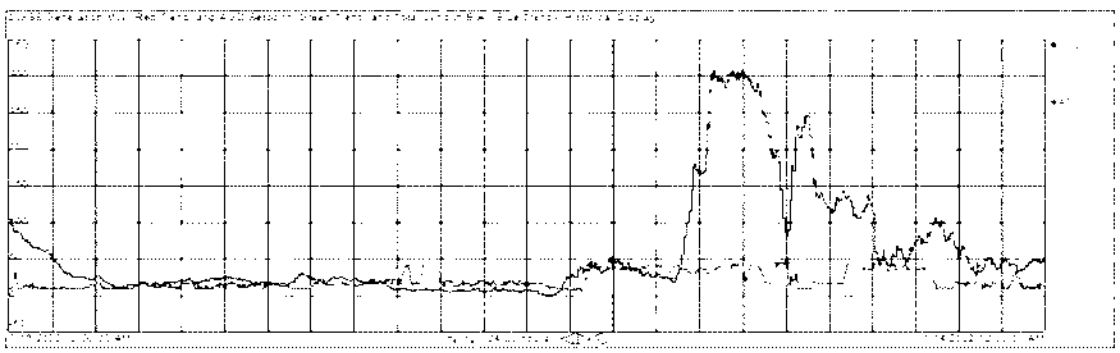
56. Based on those identified needs, NorthWestern issued a Request for Proposals (RFP) in 2020. This RFP was explicitly for **any** type of generation that was able to provide capacity for those three distinct duration categories. This RFP was conducted by an independent and respected third party. NorthWestern was not directly involved in the evaluation process. The Yellowstone County Generating Station – a natural gas fired facility, was selected as providing the best combination of attributes to supplement NorthWestern's portfolio.

57. Wind and solar have some positive attributes as sources of electricity. They do not have fuel costs, do not create emissions, and their capital costs have declined over the past decade (though current inflationary trends and supply chain issues are having large cost and availability impacts, as in other areas of the economy). However, like any other type of electric generation, they also have downsides. In terms of reliably serving our customers, one important disadvantage of intermittent generation renewables is that the amount of electricity they generate varies significantly based on the weather. This is reflected by the previously discussed large

difference between their nameplate and accredited capacities – values determined outside of NorthWestern by regional planning agencies.

58. Battery storage (4 hour duration) is also a tool utilities, especially in the Southwest, are using. This resource works well for helping address daily 4 *hours* of peak demand. Montana's system has a 4 *day* problem wherein the storage would only work for 4/96ths hours. To replicate how storage operates in state like California, NorthWestern would to have 24 times the quantity of storage to serve these events, which is cost prohibitive.

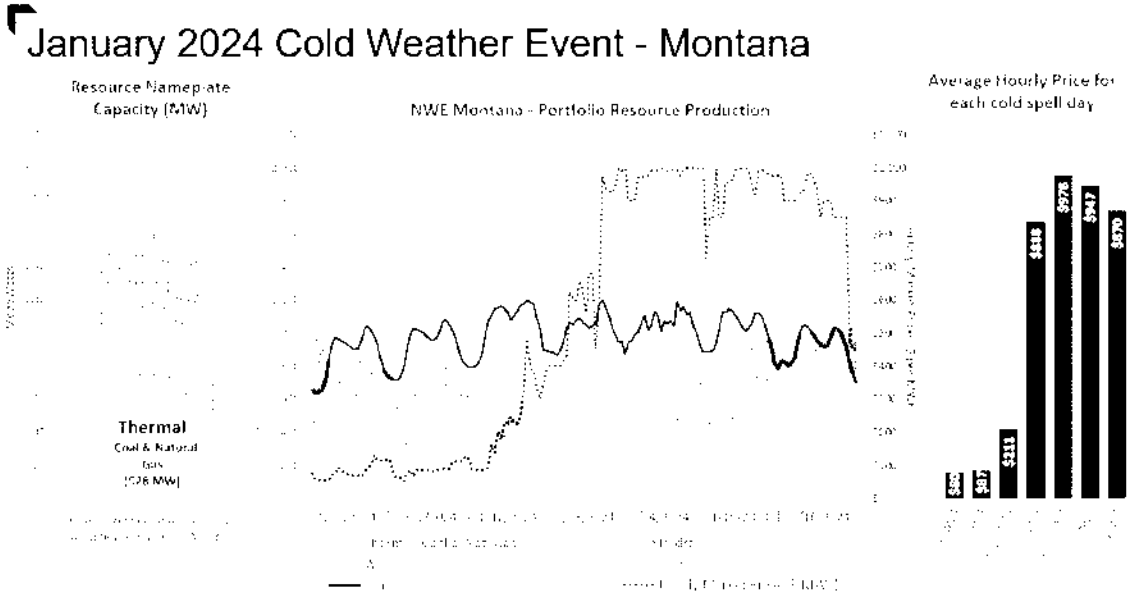
59. To illustrate that point, I have included two charts below. The first chart shows the amount of electricity generation, in MW, over a 24-hour period on July 13, 2022 from (1) all the wind generation resources within the NorthWestern Balancing Authority, which is depicted in blue, and (2) the generation from NorthWestern's Dave Gates Generating Station, depicted in red. The y-axis, with the values in ascending order on the left side, represents MWs of generation. The x-axis represents hours of the day.



60. Focusing on the wind, the chart shows that after about 2:00 am there was little to no electricity from wind generation on the system until the afternoon. Then, following a slight increase in the early afternoon, wind generation jumped from less than 50 MWs to more than 300 MWs between 3:30 and 4:30 pm. It then declined to less than 100 MWs at 5pm before ramping up again once more between 6:00 and 7:00 pm and then declining. As this example

shows, the amount of electricity generated by wind facilities can quickly and significantly change. NorthWestern, however, must continue to balance at all times the electricity demands of customers with the amount of electricity supplied. This balancing is imperative; deviations between generation and customer demand of relatively tiny percentages for even a small amount of time (seconds to minutes) will lead to system instability, customer equipment damage, and blackouts.

61. During the Winter of 2023-2024, thermal generation, especially Colstrip, played a key role in helping provide reliable and affordable service. The variable cost of operating Colstrip was about $23/MWh. Unfortunately, NorthWestern's customers were subject to extreme market prices from NorthWestern's market contracts. As an example, market contracts cost our customers up to $900/MWh. NorthWestern purchased about $40 million of power during this 6 day critical weather period, which had wind and solar underperforming, even less than their accredited capacity.



Once again during the recent cold spell (1/10/24 to 1/16/24), energy prices surged when wind and solar weren't providing capacity. And once again, NorthWestern had to be dependent on the market to meet customer needs, with the average price of a megawatt hour over $900 for the last 4 days (13th-16th) of the cold spell.

62. As of December 8, 2023 future prices for heavy load electricity for the months of July, August and September, 2024 are trading at $130, $180, and $136 per MWh respectively. Further contracted prices have ranged from $200 to $900 per MWh during recent peak events. The actual cost for purchasing electricity in December 2022 was around $250 per MWh; for the three highest load days (December 21-23), the actual purchase cost averaged about $440/MWh. To provide a simplified illustration of the impact of such a potential difference in cost to serve customers, consider a hypothetical three-day event during which NorthWestern's share of Colstrip would produce about 15,000 MWh. If the difference between the market price and the variable cost of Colstrip is $400/MWh, the cost of market purchases for the three day period would be about $6 million more than the cost of generation ($400 x 15,000 MWh = $6 million). Such extra costs of a contracted capacity resource would be passed on to customers.

63. My statements in the preceding paragraphs assume that a capacity contract is even available. However, I stress again that this may not be the case given the recent and planned

closures of multiple plants in neighboring states. I also do not believe that transmission would be available even if we located a source from which we could purchase capacity (especially with the closure of Colstrip), which Michael Cashell addresses in his Declaration.

64. As undesirable as it would be for NorthWestern to have to purchase capacity on the market as an alternative to Colstrip, the scenario in which we are not able to obtain needed capacity (and/or are not able to obtain transmission for such capacity) is much worse. Under this scenario, the possibility of rolling blackouts during periods of extreme weather becomes more likely. The rolling blackouts in California during the summer of 2020 and the multi-day blackout in much of Texas during February, 2021 show that utility systems in the United States can experience significant and damaging capacity shortfalls. During the cold snaps in the winters of 2022-23 and 2023-24, the Montana electrical grid was stressed to the maximum. A significant transmission or supply generation resource failure would have likely led to being unable to serve customers.

65. Equally importantly to the raw amount of electricity available, Colstrip plays a critical voltage-maintenance function. Closure would therefore require major investments in voltage maintenance, independently of the concerns about market electricity availability and transmission capacity. These concerns are discussed in more detail at page 59 of the 2023 IRP.

66. If NorthWestern is not allowed to obtain the capacity it needs, customers and communities could also suffer from blackouts. Blackouts cause serious property damage, business disruption, and even death. It is estimated that approximately 250 people died in Texas as a direct consequence of the 2021 power disruptions. This was when temperatures were in the teens. This past January our Montana service territory experienced temperatures as low as -45°F in our towns. Rural areas likely experienced even colder temperatures.

67. Customers rely on electricity to power their health care and other personal devices, cool their homes, heat some homes (often our lower-income customers living in mobile homes and apartments with electric baseboard heating), and power important infrastructure, including gas pumps. Natural gas appliances also rely on electricity for ignition and, in the case of forced air furnaces, fans.

68. Even when customers have generators, as some critical infrastructure customers do, there is a limit to how much fuel is stored on site at each individual location. These factors all contribute to a significant environmental justice component to reliable electrical supply.

69. NorthWestern also cannot realistically construct 444 MW of new capacity in Montana to replace our current and future (starting in 2026) interest in Colstrip by the MATS2 compliance date of July 2027. This arises from both timing and regulatory constraints. From a timing perspective, it takes several years to bring new generation on-line. As illustrated by YCGS – the most recent significant generation project – the YCGS development process commenced in 2019 and YCGS is only now coming on-line. 444 MW of capacity would be more than double YCGS and correspondingly more difficult to construct and permit.

70. Additional renewables would not reliably replace Colstrip, because of the associated intermittency issues. Additional coal capacity is infeasible for the same reasons as will result in result in shutdown of Colstrip by the end of 2031 under the GHG Rule. And additional natural gas capacity is problematic, both because of the CCUS requirements on new natural capacity under the GHG Rule, and because there is insufficient natural gas supply and pipeline capacity in Montana to bring hundreds of additional MW on line by the end of 2031, much less mid-2028.

71. NorthWestern is seriously examining using a small nuclear facility as a long-term facility to replace Colstrip, but no such facility presently has been constructed or can realistically be constructed and operational prior to the mid-to-late 2030s, at the earliest.

72. For the foregoing reasons, Colstrip's capacity cannot reasonably and timely be replaced prior to the mid-2030's. Closure of Colstrip before then would create significant grid reliability risks in Montana.

EPA's Responses to NorthWestern's Comments on the MATS2 Proposed Rule were incorrect or non-responsive.

73. NorthWestern made all the reliability-oriented points discussed in Paragraphs 23-71 in its NorthWestern MATS2 Comments. EPA very briefly responded to these concerns on pages 52-53 of EPA's "Summary of Responses to Comments and Reponses on Proposed Rule." (EPA-HQ-OAR-2018-0794-6922). The entirety of EPA's response is the following:

> Regarding comments about the impact of closing Colstrip on reliable electrical service, facilities may request an additional time extension through the Department of Energy under the Federal Power Act section 202(c), which are made on a case-by-case basis based on a substantial need for grid reliability. In addition, as other commenters have noted, NorthWestern Energy has recently joined the Western Resource Adequacy Program ("WRAP"), a regional reliability planning and compliance program in the West.

74. Turning first to EPA's observation that NorthWestern has joined WRAP, this is a correct statement, as discussed in detail in NorthWestern's 2023 IRP at Section 3.4. NorthWestern is a founding member of WRAP, and as the IRP states: "One of the program objectives is to leverage the geographic diversity benefits of the larger region to enhance planning and operations during times of peak energy demand. The ability of WRAP participants to pool and share resources during tight operating conditions is expected to lead to increased reliability and potential savings opportunities." A condition of a utility's ability to even participate in WRAP is a portfolio that can already meet WRAP's reliability criteria. WRAP has

never and in fact specifically excludes the function of serving as a capacity market alternative. It is only intended to provide economic efficiency. None of this changes the fact that NorthWestern is transmission-and-capacity constrained, as is the Western Interconnection. Indeed, NorthWestern's ability to comply with its WRAP commitments is premised on continued operation of Colstrip at least through the mid-2030's. Participation in WRAP does not alter or mitigate any of the consequences of early closure of Colstrip or the cost-effectiveness of compliance with the MATS2 Rule.

75. This leaves EPA's invocation of Federal Power Act section 202(c) ("FPA Section 202(c)"). EPA raised this supposed avenue for a compliance extension to NorthWestern during discussions following the close of the comment period, during the pendency of the Proposed Rule. NorthWestern has reviewed historic examples of the use of Section 202(c), and none are in any way comparable to the compliance issues facing Colstrip and NorthWestern. In all but one historical example, FPA Section 202(c) orders were granted to temporarily waive existing capacity limits or operation of *existing* installed pollution controls. The single historical counter-example dates from twenty years ago, and only provided an emergency exemption for a few months. FPA Section 202(c) has never been used to provide a significant extension to EPA-imposed deadlines on the installation of pollution controls in the first instance. Moreover, in this context an extension that does not take NorthWestern all the way to the GHG Rule end-of-2031 retirement deadline (and thereby allow NorthWestern to avoid installation of the fPM controls altogether) would not result in any significant cost savings, and indeed would make the MATS2 Rule even less cost-effective than it already is. Further errors in the EPA invocation of FPA Section 202(c) authority are addressed by counsel.

I declare under penalty of perjury pursuant to 28 U.S.C. § 1746 that the foregoing is true and correct.

DATED this 27th day of June, 2024.

By: s/ John D. Hines
John D. Hines

From: Brennan Zaunbrecher
To: AirAction
Subject: Presidential Exemption: Clean Air Act NSR and NNSR Requirements: Thunderhead Reeves County, TX Data Center Power Project
Date: Friday, March 28, 2025 3:45:50 PM

Caution: This email originated from outside EPA, please exercise additional caution when deciding whether to open attachments or click on provided links.

To Whom It May Concern:

Thunderhead Energy Solutions LLC requests a two-year Presidential exemption from certain Clean Air Act requirements for our 5,000MW behind-the-meter natural gas power facility supporting critical data center infrastructure in Reeves County, TX.

- Emissions standards subject to exemption request: New Source Review (NSR) permitting requirements, Non-attainment New Source Review (NNSR) requirements, Title V Operating Permit timeline requirements, and New Source Performance Standards (NSPS) for Stationary Combustion Turbines (40 CFR Part 60, Subpart KKKK)
- Facility: Thunderhead Data Center Power Project utilizing Solar Turbines (Caterpillar) Titan-130 industrial gas turbines with EnergyLink SCR technology (Best Available Control Technology, "BACT") for emissions reduction
- Duration: Two-year exemption to allow expedited construction and operation
- Justification: Current permitting timelines create critical delays and/or outright roadblocks for essential digital infrastructure. Despite employing advanced emissions control technology, the standard permitting process would prevent timely deployment of urgently needed computing capacity and ultimately limit the operable electric generation capacity via NOx, CO, VOC, particulate matter, sulfuric acid, and sulfur dioxide emissions limitations. There is no commercial technology to completely eliminate NOx, CO, VOC, particulate matter, sulfuric acid, or sulfur dioxide emissions from gas-fired EGUs.
- National security relevance: The facility will support enterprise cloud and AI computing infrastructure essential to U.S. national security interests, including classified government workloads and critical AI development. Current grid constraints in Reeves County, TX prevent timely utility-scale power deployment, while our behind-the-meter natural gas solution can deliver 5,000MW in 36-48 months, significantly accelerating national security-related computing capacity.

This bridge natural gas solution represents the only viable path to rapidly deploy the power capacity required for next-generation computing infrastructure critical to maintaining U.S. technological leadership. We respectfully request this time-limited exemption to expedite deployment while maintaining substantial emissions controls through our SCR implementation.

Sincerely,

Brennan Zaunbrecher
Founder
Thunderhead Energy Solutions LLC

From:	Brennan Zaunbrecher
To:	AirAction
Subject:	Presidential Exemption: Clear Air Act NSR and NNSR Requirements: Thunderhead Sumner Co Data Center Power Project
Date:	Friday, March 28, 2025 3:47:45 PM

Caution: This email originated from outside EPA, please exercise additional caution when deciding whether to open attachments or click on provided links.

To Whom It May Concern:

Thunderhead Energy Solutions LLC requests a two-year Presidential exemption from certain Clean Air Act requirements for our 500MW behind-the-meter natural gas power facility supporting critical data center infrastructure in Sumner County, TN.

- Emissions standards subject to exemption request: New Source Review (NSR) permitting requirements, Non-attainment New Source Review (NNSR) requirements, Title V Operating Permit timeline requirements, and New Source Performance Standards (NSPS) for Stationary Combustion Turbines (40 CFR Part 60, Subpart KKKK)
- Facility: Thunderhead Data Center Power Project utilizing Solar Turbines (Caterpillar) Titan-130 industrial gas turbines with EnergyLink SCR technology (Best Available Control Technology, "BACT") for emissions reduction
- Duration: Two-year exemption to allow expedited construction and operation
- Justification: Current permitting timelines create critical delays and/or outright roadblocks for essential digital infrastructure. Despite employing advanced emissions control technology, the standard permitting process would prevent timely deployment of urgently needed computing capacity and ultimately limit the operable electric generation capacity via NOx, CO, VOC, particulate matter, sulfuric acid, and sulfur dioxide emissions limitations. There is no commercial technology to completely eliminate NOx, CO, VOC, particulate matter, sulfuric acid, or sulfur dioxide emissions from gas-fired EGUs.
- National security relevance: The facility will support enterprise cloud and AI computing infrastructure essential to U.S. national security interests, including classified government workloads and critical AI development. Current grid constraints in Sumner County, TN prevent timely utility-scale power deployment, while our behind-the-meter natural gas solution can deliver 500MW in 18-24 months, significantly accelerating national security-related computing capacity.

This bridge natural gas solution represents the only viable path to rapidly deploy the power capacity required for next-generation computing infrastructure critical to maintaining U.S. technological leadership. We respectfully request this time-limited exemption to expedite deployment while maintaining substantial emissions controls through our SCR implementation.

Sincerely,

Brennan Zaunbrecher
Founder
Thunderhead Energy Solutions LLC

Docusign Envelope ID: 90D112FF-DF53-4144-A19C-6262182BEA61

Sunflower
ELECTRIC POWER CORP

March 28, 2025 Email

Clean Air Act Section 112 Presidential Exemption Information
United States Environmental Protection Agency (USEPA)
1200 Pennsylvania Avenue, N.W.
Washington, DC 20460
Email: airaction@epa.gov

RE: Presidential Exemption: National Emission Standards for Hazardous Air Pollutants: Coal – and Oil-Fired Electric Utility Steam Generating Units Review of the Residual Risk and Technology Review: Holcomb Station

To whom it may concern,

Sunflower Electric Power Corporation – Holcomb Station (Sunflower) is respectfully requesting a two-year exemption from compliance with the 0.010 lb/mmBtu filterable Particulate Matter (fPM) emission limitation of the "National Emission Standards for Hazardous Air Pollutants: Coal- and Oil-Fired Electric Utility Steam Generating Units Review of the Residual Risk and Technology Review" (MATS RTR) that was codified in the Federal Register on May 7, 2024. Compliance with the revised fPM standard of the MATS RTR may only be demonstrated by using PM continuous emissions monitoring systems (PM CEMS) and includes all periods of operation except for hours meeting a very limited definition of startup and shutdown based on load generated. The current deadline for meeting this new standard and demonstrating compliance using PM CEMS is July 6, 2027.

Sunflower currently complies with the existing 0.030 lb/mmBtu fPM standard by conducting periodic performance testing. The performance testing is conducted at maximum load conditions and does not reflect the full range of operational variability of the unit and control device. Sunflower has no basis for determining how operational variability may impact compliance with the revised standard and requires additional time to assess the impact of operational variability on its ability to achieve continuous compliance and sufficient compliance margin with the revised limitation. Sunflower also requires additional time to select, procure, install, and determine the reliability of PM CEMS.

Due to the large number of sources subject to the reduced standard and additional monitoring requirements, the availability of PM CEMS equipment and associated labor for installation and testing is extremely limited. While EPA has not identified specific circumstances that would support a finding that technology is unavailable, the Agency's prior related actions suggest that this finding should be treated liberally, based on a variety of circumstances related to supply chain issues and reliability challenges. For example, a 2025 Presidential Memorandum directed the EPA Administrator to consider "shortages of labor, parts, control technology supply, supply-

Docusign Envelope ID: 90D112FF-DF53-4144-A19C-6262182BEA61

chain disruption, or other factors out of the facility's control" as grounds supporting an exemption.

Furthermore, in establishing the revised fPM standard, EPA failed to consider the accuracy limitations of the measurement techniques used as the basis of the revised standard. EPA relied upon a combination of performance test data (as discussed above) as well as existing PM CEMS data. Existing PM CEMS were subject to an allowable measurement error tolerance of ±25% of the current standard of 0.030 lb/mmBtu. In other words, EPA relied on monitoring systems with an allowable measurement error of approximately ±0.0075 lb/mmBtu to establish the revised limitation of 0.010 lb/mmBtu. Sunflower requires additional time to determine if any commercially available PM CEMS can reliably measure emissions at the level of the revised standard.

The reliability of the nation's energy grid is critical to the national security interests of the United States. In establishing the revised standard, EPA failed to consider normal fluctuations in unit operations that are necessary to support the reliability of the nation's energy grid, to support future growth in demand, and to maintain fuel flexibility. Sites subject to this standard, such as Sunflower, must commit to $2.3 million in capital investments to meet the 2027 standard or cease operation by that date, all while being faced with the regulatory uncertainty of other regulatory actions which are also being reconsidered by your Administration.

Sincerely,

Signed by:
Emily Vsetecka
9074B851CAAC492...

Emily Vsetecka, P.E.
Manager, Environmental and Laboratory Services

From:	Jerry Purvis
To:	AirAction
Cc:	Tony Campbell; Don Mosier; David Samford
Subject:	East KY Power Cooperative - Presidential Exemption Request for Consideration under MATs RTR Rule, 89 Fed. 38508
Date:	Friday, March 28, 2025 3:56:30 PM
Attachments:	Letter EKPC to EPA Adm Zeldin_03282025.pdf

Caution: This email originated from outside EPA, please exercise additional caution when deciding whether to open attachments or click on provided links.

Dear Administrator Zeldin:

East Kentucky Power Cooperative (EKPC) respectfully requests a Presidential Exemption under the Clean Air Act (CAA) from the compliance with the revised standards and requirements finalized in the above referenced MATs RTR rule. EKPC seeks an exemption for a two-year period from the current compliance date of July 6, 2027(as calculated, July 6, 2029) for Spurlock Station and Cooper Station, with the potential of a further extension should the reconsideration of the MATs RTR require EPA additional time. For more, please see the officially signed letter attached above formally requesting your consideration.

Should you have any questions or concerns, please contact Don Mosier, EVP & Chief Operating Officer at 859.744.4812 or myself at 859.745.9244 office. Thank you.

Sincerely,

Jerry Purvis, Vice President
Environmental Affairs
East Kentucky Power Cooperative
4775 Lexington Road | P.O. Box 707
Winchester, KY 40392 0707
859.745 9244

is RIGHT The Reason I Go Home Tonight

Privileged and / or Confidential Notice: this electronic mail transmission is for the use of the named individual or entity to which it is directed and may contain information that is privileged and / or confidential. It is not to be transmitted to or received by anyone other than the named individual and address. Please do not copy or forward to any unauthorized persons. If you have received this in error, please delete it from your system without copying or forwarding and notify sender by email or calling EKPC at 859.744.4812. Thank you.

EAST KENTUCKY POWER COOPERATIVE

4775 Lexington Road
P O Box 707
Winchester, Kentucky 40392
www.ekpc.coop
A Touchstone Energy Cooperative

Via email at airaction@epa.gov

Honorable Lee M. Zeldin
Office of the Administrator (1101A)
United States Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460

RE: Presidential Exemption: *National Emission Standards for Hazardous Air Pollutants: Coal- and Oil-Fired Electric Utility Steam Generating Units Review of the Residual Risk and Technology Review (MATS RTR)*, 89 Fed. 38508 (May 7, 2024):
H.L. Spurlock Station, Maysville, Kentucky
J.S. Cooper Station, Burnside, Kentucky

Dear Administrator Zeldin:

East Kentucky Power Cooperative (EKPC) respectfully requests a Presidential Exemption under Clean Air Act (CAA) from compliance with the revised standards and requirements finalized in the above-referenced MATS RTR rule. EKPC seeks an exemption for a two-year period from the current compliance date of July 6, 2027 (as calculated, July 6, 2029) for the Spurlock Station (Spurlock) and Cooper Station (Cooper), with the potential for a further extension should the reconsideration of the MATS RTR require EPA additional time.

I. Executive Summary.

EKPC seeks an exemption from compliance with the MATS RTR emissions standards for the Spurlock and Cooper Stations, which combust bituminous coal. EKPC seeks an exemption for a two-year period from the current compliance date, extending to July 6, 2029. EKPC supports its request with information regarding the following:

- Filterable particulate matter (fPM) control technology is not available to meet the new fPM limitation for Spurlock Units 3 and 4. For these circulating fluidized bed (CFB) units, the units' control technologies cannot reliably meet the new limit without jeopardizing unit availability.
- PM continuous emissions monitors (PM CEMS) are not reliable at low levels of PM, which would be required to accurately measure for compliance. The lack of reliable monitoring further compounds technology availability on or after the compliance date.

EKPC is the owner and operator of the units at Spurlock and Cooper Stations. The signatory is the Executive Vice President and Chief Operating Officer of EKPC with authority to bind the cooperative.

II. Introduction.

EKPC actively participated in the MATS RTR rulemaking process, consistently raising substantial concerns regarding the technological feasibility, compressed time frames, flawed underpinnings, and the resulting impacts on grid reliability and national security. EKPC respectfully presents the reasons for the

President's consideration that favor him granting a Section 112(i)(4) exemption from compliance with the MATS RTR for Spurlock and Cooper in Kentucky.

A. About EKPC Power Cooperative

EKPC is a not-for-profit cooperative corporation owned, operated, and governed by its members which use the energy and services EKPC provides. The Owner-Member cooperatives to which EKPC provides energy supply 520,000 homes, farms, and businesses across 87 counties in Kentucky. EKPC's purpose is to generate electricity and transmit it to 16 Owner-Member cooperatives that distribute it to retail, end use consumers. EKPC provides wholesale energy and services to sixteen distribution cooperatives through baseload units, peaking units, hydroelectric power, solar, and landfill gas-to-energy units, transmitting electric power across rural Kentucky via more than 2,900 miles of transmission lines.

EKPC is the voice for a substantial number of end users of electricity in its service territory who live in substantial poverty. These communities place a high value on affordable energy costs. EKPC's service territory includes rural areas with some of the lowest economic demographics in the United States. In these areas, families are literally faced with a regular choice between food, electricity and medicine. Of the eastern Kentucky counties that EKPC's owner-member cooperatives serve, 40 counties experience persistent poverty, as reported by the United States Department of Agriculture (USDA).

East Kentucky is a member of PJM Interconnection (PJM). PJM is a regional transmission organization (RTO) that coordinates the movement of wholesale electricity in 13 states and the District of Columbia. East Kentucky is a member of the National Rural Electric Cooperative Association (NRECA). NRECA represents the interests of rural electric cooperatives across the country.

B. Spurlock and Cooper Stations

Spurlock Station is located near Maysville, Kentucky on the Ohio River. It is EKPC's flagship plant, owned and operated by the cooperative. The electric generating units (EGUs) at the facility are:

- Spurlock Unit 1 – is a wall-fired unit (344 MW)[1] that combusts bituminous coal. Unit 1 has cold side ESP, WFGD, Wet ESP, SCR and low-NOx burners to control PM, SO2, SO3 / H2SO4 mist, hazardous air pollutants (HAPs) and NOx respectively, installed on or before April 2009.
- Spurlock Unit 2 – is a tangential-fired unit (555 MW) that combusts bituminous coal. Unit 2 has a hot side ESP, WFGD, Wet ESP, SCR, low-NOx burners, and over-fire air to control PM, SO2, SO3 / H2SO4 mist, HAPs and NOx, respectively, installed on or before October 2008.
- Spurlock Unit 3 – is a coal-fired CFB unit (305 MW), which is designed to emit less NOx in the combustion process. Unit 3 has a SNCR to control NOx, a dry FGD to control SO2/SO3, and a filter fabric baghouse to control PM and HAPs.
- Spurlock Unit 4 – is a CFB unit (315 MW), which is designed to emit less NOx in the combustion process. Unit 4 has a SNCR to control NOx, a dry FGD to control SO2/SO3 and a filter fabric baghouse to control PM and HAPs.

Cooper Station is located near Burnside, Kentucky adjacent to Lake Cumberland. Cooper Station is a critical asset due to its location in rural, south-central Kentucky. Cooper Station serves a transmission-constrained area. The closest natural gas pipeline is currently almost 40 miles from Cooper Station. The EGUs at the facility are:

[1] Spurlock Unit MW values are taken from the Consent Decree in *United States v. EKPC*, No. 04-34-KSF (E.D. Ky). MW values are provided for descriptive reference only and are only generally reflective of unit capabilities.

- Cooper Unit 1 – is a wall-fired unit (124 MW)[2] that combusts bituminous coal. Unit 1 has low-NOx burners. It is tied into the Unit 2 dry FGD and pulse jet fabric filter to control SO2, HAPs and PM and shares a common stack with Cooper Unit 2.
- Cooper Unit 2 – is a wall-fired unit (240 MW) that combusts bituminous coal. Unit 2 has a SCR and low-NOx burners, dry FGD and filter fabric baghouse to control PM, HAPs and SO2/SO3. It shares a common stack with Cooper Unit 1.

C. MATS RTR and Presidential Exemption Section 112(i)(4)

1. The MATS RTR

EPA promulgated MATS under CAA Section 112 which regulates HAP emissions. Congress defines EPA's scope of review for the RTR under the CAA in Sections 112(d)(6) and 112(f)(2). CAA Section 112(d)(6) defines the technology review for air toxics standards such as MATS as follows:

> The Administrator shall review, and revise as necessary (taking into account developments in practices, processes, and control technologies), emission standards promulgated under this section no less often than every 8 years.[3]

EPA originally finalized the RTR for MATS on May 22, 2020 (the 2020 MATS RTR).[4] In that rulemaking, EPA determined that the residual risks from coal-fired and oil-fired EGUs were acceptable and did not identify any new technologies to control HAPs for these units. EPA finalized the RTR without any changes to emissions standards or work practices.

When President Biden took office, he directed EPA to reconsider the 2020 MATS RTR. On May 7, 2024, EPA published the final MATS RTR. The MATS RTR lowers the fPM emission standard from 0.030 lb/MMBtu to 0.010 lb/MMBtu. The Rule also tightens the standard for emissions of mercury from lignite-fired EGUs from 4.0 lb/TBtu to 1.2 lb/TBtu. The MATS RTR also requires that existing coal-fired EGUs use PM CEMS to demonstrate compliance with the fPM emission standard, eliminating the stack testing option. The low emitting EGU (LEE) status option for fPM, total non-Hg HAP metals, and individual non-Hg HAP metals for coal-fired and solid-oil derived fuel-fired EGUs has also been removed.

EKPC strongly supports EPA's decision to reconsider the MATS RTR for the reasons identified in our comments in the MATS RTR docket. The 2020 MATS RTR analysis should have been affirmed.

2. The Presidential Exemption

CAA 112(i) sets a schedule for compliance. In Section 112(i)(4), Congress provided the President with executive discretion to exempt a stationary source from compliance with standards and limitations provided under Section 112.

> The President may exempt any stationary source from compliance with any standard or limitation under this section for a period of not more than 2 years if the President determines that the technology to implement such standard is not available and that it is in the national security interests of the United States to do so. An exemption under this paragraph may be extended for 1 or more additional

---

[2] Cooper Unit MW values are taken from the Consent Decree in *United States v. EKPC*, No. 04-34-KSF (ED Ky). MW values are provided for descriptive reference only and are only generally reflective of unit capabilities.
[3] 42 U.S.C. § 7412(d)(d).
[4] 85 Fed. Reg. 31286 (May 22, 2020).

periods, each period not to exceed 2 years. The President shall report to Congress with respect to each exemption (or extension thereof) made under this paragraph.

The President's discretion may be exercised upon satisfying a showing that (1) the technology is not available for implementing the standard, and (2) the national security interests of the United States warrant the President's exercise of the discretion.

On March 12, 2025, EPA released a fact sheet[5] regarding the MATS RTR as part of "Powering the Great American Comeback" (the Fact Sheet). The Fact Sheet recognizes the regulatory uncertainty for coal plants, including those in Kentucky. It offers the opportunity for "any source interested in a Presidential exemption, should provide their recommendations to EPA by March 31, 2025." This letter responds to EPA's invitation.

III. EKPC Requests Presidential Consideration to Exempt Spurlock and Cooper Stations from Compliance with the Revised MATS RTR Standards.

A. The Technology to Implement the revised MATS RTR Filterable Particulate Matter (fPM) Standard is Not Available by the July 6, 2027 Compliance Date (Spurlock Units 3 and 4).

Spurlock 3 and 4 are similar CFB units, equipped with baghouses. CFBs are designed to emit less NOx and SO_2 in the combustion process through a unique, efficient fluidized bed. While Spurlock Unit 4 is a better fPM performer, Spurlock Unit 3 is not presently capable of meeting the new fPM Limitation of 0.010 lb/mmBtu on a sustained basis. For Unit 3, no data exists to confirm that compliance can in fact be achieved. EKPC has devised a strategy to the improve fPM removal performance of the Spurlock Unit 3 baghouse. It requires the expenditure of upgrades to modify the baghouse design.

The baghouses for both units are older, 2005-vintage vintage controls and were not designed to consistently achieve fPM levels with sufficient margin to assure compliance with the new fPM Limitation. Short of replacing the baghouses with a completely new design, the CFBs cannot maintain the new fPM limitation on a consistent basis with the same level of availability. Therefore, the technology is not available.

Since the Unit 3 and 4 baghouses are undersized to achieve the fPM Limitation, they must operate flawlessly to attain compliance. In EKPC's experience with baghouse operation at CFB units, the baghouses will certainly fail, despite best engineering and maintenance practices, due to the lack of any margin to meet the aggressively low new fPM Limitation. EKPC must then take the unit offline. Forced outages will increase, resulting in potential penalties and exposure to market volatility in the PJM market. Lower fPM emission limitations, in general, put environmental control equipment under more stress in the summer and winter on peak days. Since the limit for fPM was reduced substantially (67%), there is little to no margin for error.

To put the effect of the Final Rule in context, a single hole the size of a human pinky finger in a single fabric filter bag within the baghouse can cause an exceedance of the new standard and, thereby, force the unit offline. It is simply unreasonable to assume that a baghouse will perform seamlessly under every operating condition in every period of the year. Therefore, even after an upgrade to the Unit 3 baghouse, the fPM limitation is likely to cause EKPC to take down or derate the unit. If this occurs on peak demand days (when PJM is calling for all available generators to produce power), PJM penalizes operator for forced outages by requiring payment market prices for power during periods when power purchases are the most expensive. Based on past pricing, EKPC estimates the penalty and damages caused by one forced outage event on Spurlock Unit 3 could easily exceed $35 million per day. For a non-profit cooperative such as EKPC, an entire year's worth of margins could be wiped out in a single weekend of extreme weather.

[5] https://www.epa.gov/system/files/documents/2025-03/fact-sheet-reconsideration-of-mercury-and-air-toxics-standards.pdf

Cost of Spurlock Unit 3 Seven Day Outage

PJM Market Pricing Conditions	Cost of Replacement Power for Unit 3	Lost Capacity Payment	PJM PAI Non-Performance Penalty	Total
Winter Average Cost	$1,640,785	$232,066	0	$1,872,851
Summer Average Cost	$1,600,361	$232,066	0	$1,832,427
Winter High Cost	$3,371,164	$232,066	0	$3,503,230
Winter Storm Event	$13,203,225	$232,066	$17,595,000	$31,030,291

Note 1: Winter Average Cost is based on replacement power at an average day-ahead price for January 2023
Note 2: Winter High Cost is based on replacement power at an average 168 highest hours of real-time LMP in January 2024
Note 3: Winter Storm Event is based on replacement power at an average 168 highest hours of real-time LMP in December 2022 around and including Winter Storm Elliott
Note 4: All prices include 7-days of power
Note 5: PJM Performance Assessment Interval (PAI) Non-Performance Penalty is assessed during a reliability event due to certain triggering events identified in the PJM Tariff, such as during a manual load shed event. The cost calculation assumes a 23 Hour PAI event.

The table above illustrates that for an unplanned forced outage in PJM, EKPC could experience up to a $31,030,291 dollar penalty for not dispatching as a result of a hole in the baghouse the size of a pinky finger. These costs show that the extraordinarily low fPM limitation causes very real, tangible cost at a moment when power is needed the most. Indeed, this analysis assumes that replacement power is even available for purchase from the PJM market during a Final Rule-induced forced outage.

EKPC, as a non-profit electric cooperative, has limited financial resources to risk PJM penalties of this magnitude. These costs will place upward pressure on rates for rural customers and impact EKPC's ability to supply affordable, reliable energy to customers. For these reasons, the technology to comply with the new fPM limitation on a long-term and consistent basis for Unit 3 and 4 is not presently available and will not be available by July 6, 2027.

B. Particulate Matter Continuous Emissions Monitoring Systems (PM CEMS) are not technologically able to assure compliance with revised MATS RTR fPM requirements with a sufficient level of accuracy.

EKPC currently complies with MATS using PM CEMS to assure compliance with the presently-effective, substantially higher PM emissions limit of 0.030 lb/mmBtu. While PM CEMS can measure PM at higher levels with greater accuracy, CEMS are not a technology that is available due to unreliable data measurement and correlation challenges at low PM levels.

The accuracy of PM CEMS at low PM emissions levels is not proven. A fundamental problem with PM CEMS is that they do not directly measure PM emissions. In other words, the instrument does not measure the mass of PM and the volume of flue gas from which that mass of PM was sampled. Instead, commercially available PM CEMS measure some property (i.e., light scatter or beta attenuation) that must be correlated to actual stack PM measurements.[6] At lower emissions levels, PM CEMS have not been demonstrated to have the sensitivity needed to accurately account for lower emissions levels. Technological feasibility has not been proven.[7]

In addition, PM CEMS correlation testing will be lengthy, easy to fail and expensive to correlate to the new MATS RTR requirements. Correlation of the EKPC CEMS to these requirements will necessitate extensive testing in 2026. EKPC must bring a third-party testing company on-site to assist. We anticipate a contractor backlog considering the massive demand for CEMS devices to be

[6] The EPA statement at 88 Fed. Reg. at 24,872, that a beta gauge "detector measures the amount of radiation emitted by the sample" is categorically incorrect and illustrative of several uninformed statements (e.g., cost estimates) about PM CEMS in the preamble to the proposed rule.
[7] *See* RLR Consulting, LLC, "Technical Comments on EPA's Proposed Rule: Mercury and Air Toxics Standards Risks and Technology Review – PM CEMS," June 16, 2023 (RLR Report).

correlated industry-wide. This correlation testing project money will be expended next year unless this exemption is granted because CEMS must be prepared to serve as the compliance measure for all 6 units by July 2027.[8]

In summary, PM CEMS technology is not available to demonstrate compliance at the low levels required by the new fPM limit. CEMS correlation at low PM levels also poses significant challenges. If a unit fails the correlation test, then its monitoring instrument is out of compliance, and the unit cannot operate.

C. National Security Interests of the United States Strongly Support Granting the Exemption for Spurlock and Cooper Stations.

Executive Order 14156 (E.O. 14156) declares a national energy emergency. That E.O. recognizes that an affordable supply of energy is essential to the national defense. However, the MATS RTR stands at odds with the E.O. in general and as to the national security in the Kentucky region.

The reliability of grid in Kentucky is in a tenuous place. Multiple unit retirements in a short time frame compound the problem, without sufficient replacement generation. The North American Electric Reliability Corporation (NERC) reports that the PJM has an "elevated risk." Specifically, "The risk occurs on days where temperatures
are very low across the entire PJM area, which results in high loads. While normal resource performance can meet these demand forecasts, resource performance from thermal resources on very cold days has historically been below normal due to freezing and fuel supply issues. Furthermore, solar resources are not likely to contribute during some of the coldest hours, resulting in very low total electricity supply and thus projections of load loss."[9] Summer load-loss is also possible and most likely to occur during wide-area heat events that coincide with low wind and low solar output or very high outage and derates in the thermal generation.[10]

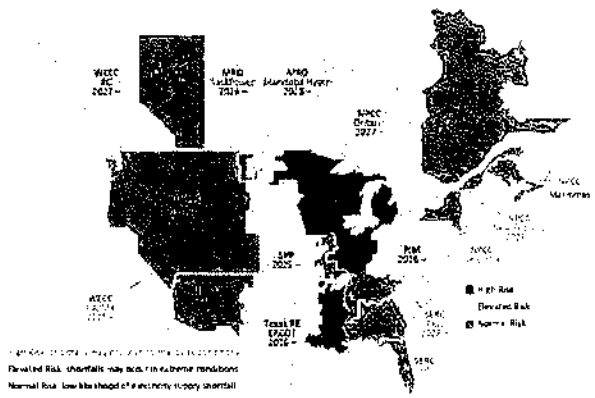


Figure 1: Risk Area Summary 2025–2029

Recent testimony before Congress of PJM's President & CEO, Manu Asthana, further underscores the fragility of the grid in the PJM region. Mr. Asthana submitted testimony before the House Committee on Energy & Commerce, Subcommittee on Energy on March 25, 2025 that highlights the record winter demand while also supporting neighbor systems in the east.[11] PJM notes recent trends that show an increased adequacy risk in PJM's region and many parts of the country. These trends are due to the increased electricity demand from electrification, the pace of retirements "due to state and federal policies" exceeding construction of new generation; and the time needed for

[8] *See* RLR Report.
[9] *Id.* at 6.
[10] *Id.* at 16.
[11] Asthana Testimony, House Committee on Energy & Commerce, Subcommittee on Energy (Mar. 25, 2025) at 3, https://d1dth6e84htgma.cloudfront.net/03_25_2025_ENG_Testimony_Asthana_dcac17e12c.pdf

interconnection, which has improved.[12] PJM calls for owners that have announced retirements to reconsider to support resource adequacy.[13]

Consistent with PJM's demand projections, Kentucky utilities are predicting increasing demand.[14] Consequently, reductions in unit availability and forced outages are critical events to avoid. The interruption of power delivery from a grid failure causes damage to public health. Affordable and consistent power allows medical providers to provide essential services to the elderly, infirm, and to vulnerable individuals with chronic health conditions. Evidence from grid failures during Winter Storm Elliott in the PJM region documents health impacts and morbidity caused by those events.[15]

As to the national defense[16] reliable power is crucial to sustain the following functions:

- Power military bases
- Power emergency services to enable quick responses to emergencies, such as acts of war, weather catastrophes, and cybersecurity threats
- Power essential government functions that prevent threats to the country
- Allow fast deployment of military resources
- Power manufacturing facilities that make military weapons, vehicles, vessels, and aircraft infrastructure.

The Department of Defense runs global military operations from domestic bases. Operations require a resilient and dependable power supply for mission readiness. Back home, on-base generation and microgrids are necessary to support the thousands of military workers working and living on- and off-base, including the goods and services that support those communities.[17] Power outages destabilize the military defense.

Kentucky has three active military installations, including prominent Fort Knox – one of the largest military installations in the country. Kentucky's military bases[18] are:

- **Blue Grass Army Depot (BGAD)** is located in Richmond, Kentucky on 14,494 acres of mostly open fields with some wooded areas. The Depot provides industrial services support, ammunition maintenance, Air Force bomb thermal arc coating, ultrasonic testing for mortar ammunition, logistics support and is a training site for military personnel.
- **Fort Campbell** is one of the most well-known military bases in the U.S. Fort Campbell is the home of the 101st Airborne Division (Air Assault). It is located squarely on the dividing line between Kentucky and Tennessee.
- **Fort Knox** is one of the largest military installations in the United States, covering over 156 square miles. Fort Knox is a United States Army facility located in northern Kentucky, covering three counties with a population of more than 12,000. Though officially under Army command, the United States Marine Corps shares sections of the base for training areas. Fort Knox is well known within both military and civilian sectors for being the home of the United States Bullion Repository, the Army Human Resources Command and the Army Cadet Command. Within the military community, Fort Knox is recognized worldwide as the home of the M1 Abrams Tank crewman training program.[19]

---

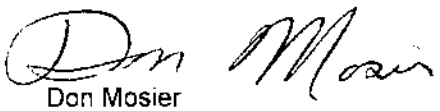
[12] *Id.* at 4-5.
[13] *Id.* at 10.
[14] https://www.lanereport.com/177888/2024/12/utilities-power-up/; https://kentuckylantern.com/2024/07/09/driving-surge-in-demand-for-power-data-centers-eye-kentucky/
[15] *See, e.g.*, Hanchey, "Mortality Surveillance During Winter Storm Uri, United States – 2021," Disaster Med Public Health Prep (Dec. 2023), https://pubmed.ncbi.nlm.nih.gov/37974501/; Sharma, "Winter Storm Elliott death toll climbs to 56 as thousands still without power in -40 temperatures," Yahoo News (Dec. 26. 2022), https://www.yahoo.com/news/winter-storm-elliot-power-outages-154557710.html.
[16] *See* https://www.utilitydive.com/news/aging-grid-threatens-national-security-reliability-cyber-threat-transmission/705362/
[17] https://acore.org/wp-content/uploads/2021/10/MGI_National_Security_Transmission_Factsheet.pdf
[18] https://www.milbases.com/kentucky
[19] https://militarybases.com/kentucky/fort-knox/

These three prominent army bases are crucial to the nation's security interests. Reliable power delivery to these installations is essential. Thus, maintaining a healthy grid in Kentucky will ensure that the national security is preserved in the Commonwealth and the country.

IV. Conclusion.

EKPC appreciates the opportunity to present the reasons why the Spurlock and Cooper Stations should be exempt from MATS RTR compliance requirements for a two-year period. We respectfully request your consideration and are happy to answer any questions.

Respectfully,



Don Mosier
Executive VP & COO

SCHUYLKILL ENERGY RESOURCES

120 Yatesville Road
PO Box 112
Shenandoah, PA 17976
Phone: (570) 462-2822
Fax: (570) 462-3224

March 28, 2025

Mr. Lee Zeldin, Administrator
US Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, DC 20460
Mail Code 1101A
Via Email: airaction@epa.gov

Subject: Presidential Exemption: National Emissions Standards for Hazardous Air Pollutants: Coal- and Oil-Fired Electric Utility Steam Generating Units Review of the Residual Risk and Technology Review (89 FR 38508; May 7, 2024) ("MATS Rule"): SCHUYLKILL ENERGY RES/ ST. NICHOLAS COGEN PROJ

Dear Administrator Zeldin:

Schuylkill Energy Resources, Inc. ("SER") is requesting a Presidential Exemption to the MATS Rule as set forth herein. In accordance with President Trump's offer to consider an exemption request on the pending changes to the MATs rule, SER is providing information for your evaluation in granting an exemption and providing additional time for us to meet these requirements.

Rule related to the request

"National Emission Standards for Hazardous Air Pollutants: Coal- and Oil-Fired Electric Utility Steam Generating Units Review of the Residual Risk and Technology Review" (89 FR 38508; May 7, 2024) (MATS Rule)

40 CFR Part 63 Subpart UUUUU – Effective Date July 6, 2027

Emission standards subject to the request

- 0.01 Lb/MMBtu of filterable particulate matter (PM) per million BTU heat input

ED_021114A_00008617-00001

Limitations subject to the request

- General requirement to use a PM CEMs or HAP metals CEMS
- Prohibition of using the LEE option for filterable PM or non-mercury HAP metals.

Facility and Affected Sources

Requesting Facility: Schuylkill Energy Resources, Inc.'s St. Nicholas Cogeneration Project, PFID: 467540; ORIS ID: 54634

Affected Sources: CU 031, CFB Boiler

Length of compliance period being requested: Delayed compliance until July 6, 2029

Background of SER

SER is a 100-megawatt (net 80-megawatt) anthracite waste coal-fired Independent Power Production (IPP) facility located in Mahanoy Township, Schuylkill County. SER uses anthracite waste coal, known as culm, from existing abandoned waste coal banks to generate energy. SER is a base-load power generation facility.

SER is part of the small waste coal to energy power generation industry. SER converts culm into reliable source of electricity, while simultaneously improving land, air, and water quality by remediating waste coal banks, thereby reducing acid mine drainage as well as GHG and pollutant emissions, fugitive dust, and physical hazards. SER works in close conjunction with the Pennsylvania Department of Environmental Protection ("PADEP") in its reclamation efforts and uses PADEP-certified Beneficial-Use ash to restore many acres of abandoned mine lands, and ultimately revegetating them and further supporting regional air and water quality.

SER's Facility is unlike most other solid fuel fired generators in that it consumes an anthracite waste coal material, also referred to as culm, of a low Btu value and high ash content; up to 80% by weight. Other than being used as fuel for the Facility and similar facilities in the waste coal to energy industry, these culm banks have little to no value and/or use. SER successfully complied with the limitations originally enforceable under the MATS rule, but not without a great deal of effort, cost, and time. SER currently maintains PM Low Emitting EGU (LEE) status, despite a flue gas that is laden with six-to-ten times the particulate load of a traditional solid fuel unit. To further reduce the MATS Rule limitations by 66% would be unreasonable and not technically or financially feasible. Further, beyond being technically impractical, it would likely be impossible to achieve this dramatic reduction in such a short timeframe, as would be simultaneously commissioning a PM CEMS at this new, likely unachievable, lower PM level.

ED_021114A_00008617-00002

Justification for Exemption

Technology

The three issues are interrelated regarding the standard, the technology to implement it, and the option to use existing compliance methods for low emitting EGU's (LEE Units). As a first point of information, the pending 0.01 lb/MMBtu limit is likely technically feasible under the current compliance demonstration methods of a periodic Method 5 Performance Test, which consists of approximately 3-hours of testing as frequently as once per calendar quarter, or in the case of LEE units, once LEE status is demonstrated, once every 36 months. Ongoing compliance is demonstrated by opacity monitors in the stack.

The ability to meet an emission standard is based on the numerical limit of that standard, the reliability of the test method for that standard, and the frequency of the testing. In the case at hand the requirement to use a PM CEMs introduces a significant question of technical feasibility to meet the more restrictive standard on a continuous basis. PM CEMS do not measure PM directly but use methods such as light scatter or beta attenuation to estimate the PM concentration. Many of these device's outputs are adversely affected by particle size, density, and shape changes. The output of the PM CEMS must be correlated to the particulate concentration in the stack by using the currently approved test Method (Method 5) and developing correlation curves to convert the PM CEMS output to an estimated concentration. Of all of EPA's specifications for continuous emission monitors, PS-11, the performance specification for these instruments, is the only one that uses correlation methods to derive an estimated emission concentration.

The issue of varying particle size, density, and shape changes, which affect the correlation on many types of PM CEMS, could have a great impact on coal-fired power plants burning waste coal, such as is the case with this request. Coal-refuse fired power plants combust a fuel supply that has great variation in fuel chemistry as different waste coal piles are reclaimed and used for fuel. This is a far different situation than in the case of conventional virgin coal-fired power plants which use a much more consistent fuel supply. PM CEMs have not been demonstrated to be technically feasible at these extremely low emissions levels, nor is there currently any calibration method available that can accurately verify continuous measurements of fPM at levels as low as 0.01 lb/MMBtu; thus neither the technical feasibility of using these monitors, nor the ability to demonstrate compliance employing them with the lower standard on a continuous basis have been established as technical matters, to date.

Furthermore, there are no technically feasible add-on control devices that can be employed on these units, beyond those currently in use, that could provide additional controls to further reduce emissions should the new requirements for monitoring show an inability to comply with the reduced emission standard based on the new monitoring requirements.

ED_021114A_00008617-00003

Most importantly, based on EPA's own analysis, the reduced PM standard was not implemented for any reasons of health impact or risk[1], but simply because EPA determined, in the Residual Risk and Technology Review, (incorrectly we believe, at least as to the sources burning coal refuse), that the lower standard was promulgated to reflect "the control levels currently achieved by the vast majority of regulated units."[2]

As to the removal of the option to qualify as a LEE unit, the pending change to the regulation imposes a significant financial burden on the cleanest of the coal-fired units, removing an option for less frequent testing after showing that the emissions are significantly less than the current standard.

National Security Interests of the United States

As President Trump has expressed on many occasions, reliable and cost-effective energy is in the national security interest of the United States. The entire United States is facing an unprecedented surge in energy demand, driven by the rapid expansion of data centers supporting artificial intelligence, widespread electrification of vehicles and heating systems, as well as demand from the new manufacturing industries that this Administration is promoting. At the same time, the energy landscape is undergoing a major transition, with many thermal and dispatchable generation units retiring while new capacity additions are largely dominated by intermittent renewable resources such as solar and wind projects, as well as short-term storage solutions based on battery storage systems.

PJM, the ISO in which this facility operates, has expressed concerns about the increasing load and decreasing generation in its region. PJM predicts that 40 GW of its existing supply, largely, thermal based generation will retire by 2030. The PJM Long Term Growth Forecast expects loads to increase by over 55 GW by 2035. Finally, PJM's reliability study assumes a major contribution from offshore wind projects in New Jersey, an uncertain resource given the public's opposition to these projects.

The Trump Administration recognizes the urgent need for a balanced, reliable, and affordable power grid, as well as the need to rein in regulations that are not needed to protect public health. Granting of an extension for this facility will provide financial relief to allow a full evaluation of the technical and financial feasibility of the benefits and costs of the more restrictive regulations and allow our plant to continue to provide a dispatchable generation resource for the security of the United States and give us, and PJM more time to plan for the continued operation of this critical resource and continue to provide a stable energy supply for the PJM grid. The PJM-RTO is already warning of serious impending Capacity shortfalls (as are other RTOs), and actions like the implementation of MATS RTR will serve to further

---

[1] National Emission Standards for Hazardous Air Pollutants: Coal- and Oil-Fired Electric Utility Steam Generating Units Review of the Residual Risk and Technology Review, 89 Federal Register 38508.

[2] National Emission Standards for Hazardous Air Pollutants: Coal- and Oil-Fired Electric Utility Steam Generating Units Review of the Residual Risk and Technology Review, 89 Federal Register 38510

ED_021114A_00008617-00004

accelerate the problem. Pervasive capacity shortfalls throughout the United States would have obvious and tremendous national security ramifications.

Granting the requested Presidential Exemptions to SER, and other generators like it, would be in the best national security interests of the United States for a number of reasons, including a secure, reliable power grid, the ability to power the growth of our domestic economy, and unique to our industry, the improvement of land, water, and air while protecting natural resources necessary for sustaining our population. Above and beyond that, our industry is heavily-involved in REE/REM research and analysis with NETL/DOE/Academia. We have worked on a variety of projects exploring the viability of a variety of feedstocks which could all be candidates for decreasing our reliance on foreign-sourced REE/REM.

Therefore, it is in the United States' national security interests to ensure the viability and continuity of base load power generation facilities, like SER, in order to provide reliable and constant power to our industries and communities.

SER appreciates the opportunity to make this request; if there are any questions or additional information required, please contact me at ABrush@calm2energy.com.

Thank you for your consideration of our request for Presidential Exemption from the MATS Rule.

Sincerely,

Alexander Brush
General Manager

ED_021114A_00008617-00005

Ri-Corp. Development, Inc.
Gilberton Power Company

81 Eleanor Avenue, Frackville, PA 17931 **(570) 874-4456**

March 28, 2025

Mr. Lee Zeldin, Administrator
US Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, DC 20460
Mail Code 1101A
Via Email: airaction@epa.gov

Subject: Presidential Exemption: National Emissions Standards for Hazardous Air Pollutants: Coal- and Oil-Fired Electric Utility Steam Generating Units Review of the Residual Risk and Technology Review (89 FR 38508; May 7, 2024) ("MATS Rule"): RI-CORP. DEVELOPMENT, INC d/b/a GILBERTON POWER CO / JOHN B. RICH MEM POWER STA

Dear Administrator Zeldin:

Ri-Corp. Development, Inc. d/b/a Gilberton Power Company ("GPC") is requesting a Presidential Exemption to the MATS Rules as set forth in this letter. In accordance with President Trump's offer to consider an exemption request on the pending changes to the MATs rule, GPC is providing information for your evaluation in granting an exemption and providing additional time for us to meet these requirements.

Rule related to the request

"National Emission Standards for Hazardous Air Pollutants: Coal- and Oil-Fired Electric Utility Steam Generating Units Review of the Residual Risk and Technology Review" (89 FR 38508; May 7, 2024) (MATS Rule)

40 CFR Part 63 Subpart UUUUU – Effective Date July 6, 2027

Emission standards subject to the request

- 0.01 Lb/MMBtu of filterable particulate matter (PM) per million BTU heat input

ED_021114A_00008618-00001

Limitations subject to the request

- General requirement to use a PM CEMs or HAP metals CEMS
- Prohibition of using the LEE option for filterable PM or non-mercury HAP metals.

Facility and Affected Sources

Requesting Facility: Ri-Corp. Development, Inc. d/b/a Gilberton Power Company's John B. Rich Memorial Power Station, PFID: 494374; ORIS ID: 10113

Affected Sources: CU 031, CFB Boiler 1 & CU 032, CFB Boiler 2

Length of compliance period being requested: Delayed compliance until July 6, 2029

Background of GPC

GPC is an 88-megawatt (net 80-megawatt) anthracite waste coal-fired Cogeneration (CHP) facility located in West Mahanoy Township, Schuylkill County. GPC uses anthracite waste coal, known as culm, from existing abandoned waste coal banks to generate energy. GPC is a base-load power generation facility.

GPC is part of the small waste coal to energy power generation industry. GPC converts culm into reliable source of electricity, while simultaneously improving land, air, and water quality by remediating waste coal banks, thereby reducing acid mine drainage as well as GHG and pollutant emissions, fugitive dust, and physical hazards. GPC & affiliated subcontractors work in close conjunction with the Pennsylvania Department of Environmental Protection (PADEP) in its reclamation efforts, and uses PADEP-certified Beneficial-Use ash to restore many acres of abandoned mine lands, and ultimately revegetating them and further supporting regional air and water quality.

GPC's Facility is unlike most other solid fuel fired generators in that it consumes an anthracite waste coal material, also referred to asculm, of a low Btu value and high ash content; up to 65% by weight. Other than being used as fuel for the Facility and similar facilities in the waste coal to energy industry, these culm banks have little to no value and/or use. GPC successfully complied with the limitations originally enforceable under the MATS rule, but not without a great deal of effort, cost, and time. GPC currently maintains PM Compliant status, despite a flue gas that is laden with four-to-eight times the particulate load of a traditional solid fuel unit. To further reduce the MATS Rule limitations by 66% would be unreasonable and not technically or financially feasible. Further, beyond being technically impractical, it would likely be impossible to achieve this dramatic reduction in such a short timeframe, as would be simultaneously commissioning a PM CEMS at this new, likely unachievable, lower PM level.

Justification for Exemption

Technology

The three issues are interrelated regarding the standard, the technology to implement it, and the option to use existing compliance methods for low emitting EGU's (LEE Units). As a first point of information, the pending 0.01 lb/MMBtu limit is likely technically feasible under the current compliance demonstration methods of a periodic Method 5 Performance Test, which consists of approximately 3-hours of testing as frequently as once per calendar quarter, or in the case of LEE units, once LEE status is demonstrated, once every 36 months. Ongoing compliance is demonstrated by opacity monitors in the stack.

The ability to meet an emission standard is based on the numerical limit of that standard, the reliability of the test method for that standard, and the frequency of the testing. In the case at hand the requirement to use a PM CEMs introduces a significant question of technical feasibility to meet the more restrictive standard on a continuous basis. PM CEMS do not measure PM directly but use methods such as light scatter or beta attenuation to estimate the PM concentration. Many of these device's outputs are adversely affected by particle size, density, and shape changes. The output of the PM CEMS must be correlated to the particulate concentration in the stack by using the currently approved test Method (Method 5) and developing correlation curves to convert the PM CEMS output to an estimated concentration. Of all of EPA's specifications for continuous emission monitors, PS-11, the performance specification for these instruments, is the only one that uses correlation methods to derive an estimated emission concentration.

The issue of varying particle size, density, and shape changes, which affect the correlation on many types of PM CEMS, could have a great impact on coal-fired power plants burning waste coal, such as is the case with this request. Coal-refuse fired power plants combust a fuel supply that has great variation in fuel chemistry as different waste coal piles are reclaimed and used for fuel. This is a far different situation than in the case of conventional virgin coal-fired power plants which use a much more consistent fuel supply. PM CEMs have not been demonstrated to be technically feasible at these extremely low emissions levels, nor is there currently any calibration method available that can accurately verify continuous measurements of fPM at levels as low as 0.01 lb/MMBtu; thus neither the technical feasibility of using these monitors, nor the ability to demonstrate compliance employing them with the lower standard on a continuous basis have been established as technical matters, to date.

Furthermore, there are no technically feasible add-on control devices that can be employed on these units, beyond those currently in use, that could provide additional controls to further reduce emissions should the new requirements for monitoring show an inability to comply with the reduced emission standard based on the new monitoring requirements.

Most importantly, based on EPA's own analysis, the reduced PM standard was not implemented for any reasons of health impact or risk[1], but simply because EPA determined, in the Residual Risk and Technology Review, (incorrectly we believe, at least as to the sources burning coal refuse), that the lower standard was promulgated to reflect "the control levels currently achieved by the vast majority of regulated units."[2]

As to the removal of the option to qualify as a LEE unit, the pending change to the regulation imposes a significant financial burden on the cleanest of the coal-fired units, removing an option for less frequent testing after showing that the emissions are significantly less than the current standard.

National Security Interests of the United States

As President Trump has expressed on many occasions, reliable and cost-effective energy is in the national security interest of the United States. The entire United States is facing an unprecedented surge in energy demand, driven by the rapid expansion of data centers supporting artificial intelligence, widespread electrification of vehicles and heating systems, as well as demand from the new manufacturing industries that this Administration is promoting. At the same time, the energy landscape is undergoing a major transition, with many thermal and dispatchable generation units retiring while new capacity additions are largely dominated by intermittent renewable resources such as solar and wind projects, as well as short-term storage solutions based on battery storage systems.

PJM, the ISO in which this facility operates, has expressed concerns about the increasing load and decreasing generation in its region. PJM predicts that 40 GW of its existing supply, largely, thermal based generation will retire by 2030. The PJM Long Term Growth Forecast expects loads to increase by over 55 GW by 2035. Finally, PJM's reliability study assumes a major contribution from offshore wind projects in New Jersey, an uncertain resource given the public's opposition to these projects.

The Trump Administration recognizes the urgent need for a balanced, reliable, and affordable power grid, as well as the need to rein in regulations that are not needed to protect public health. Granting of an extension for this facility will provide financial relief to allow a full evaluation of the technical and financial feasibility of the benefits and costs of the more restrictive regulations and allow our plant to continue to provide a dispatchable generation resource for the security of the United States and give us, and PJM more time to plan for the continued operation of this critical resource and continue to provide a stable energy supply for the PJM grid. The PJM-RTO is already warning of serious impending Capacity shortfalls (as are other RTOs), and actions like the implementation of MATS RTR will serve to further

[1] National Emission Standards for Hazardous Air Pollutants: Coal- and Oil-Fired Electric Utility Steam Generating Units Review of the Residual Risk and Technology Review, 89 Federal Register 38508.

[2] National Emission Standards for Hazardous Air Pollutants: Coal- and Oil-Fired Electric Utility Steam Generating Units Review of the Residual Risk and Technology Review, 89 Federal Register 38510

ED_021114A_00008618-00004

accelerate the problem. Pervasive capacity shortfalls throughout the United States would have obvious and tremendous national security ramifications.

Granting the requested Presidential Exemptions to GPC, and other generators like it, would be in the best national security interests of the United States for a number of reasons, including a secure, reliable power grid, the ability to power the growth of our domestic economy, and unique to our industry, the improvement of land, water, and air while protecting natural resources necessary for sustaining our population. Above and beyond that, our industry is heavily-involved in REE/REM research and analysis with NETL/DOE/Academia. We have worked on a variety of projects exploring the viability of a variety of feedstocks which could all be candidates for decreasing our reliance on foreign-sourced REE/REM.

Therefore, it is in the United States' national security interests to ensure the viability and continuity of base load power generation facilities, like GPC, in order to provide reliable and constant power to our industries and communities.

GPC appreciates the opportunity to make this request and thank you for your consideration of this request. If there are any questions or additional information required, please contact me at ABrush@cuJm2energy.com.

Sincerely,

Alexander Brush
General Manager

ED_021114A_00008618-00005

BY ELECTRONIC MAIL

March 28, 2025

airaction@epa.gov
Office of Air and Radiation
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue N.W.
Washington, DC 20460

RE: Presidential Exemption: *National Emission Standards for Hazardous Air Pollutants: Coal- and Oil-Fired Electric Utility Steam Generating Units Review of the Residual Risk and Technology Review* (89 Fed. Reg. 38,508 (May 7, 2024)): Mt. Storm Power Station, Grant County, West Virginia

Dear Madam or Sir:

Virginia Electric and Power Company dba Dominion Energy Virginia ("Dominion") respectfully submits this request for a Presidential Exemption for **two years** under Section 112(i)(4) of the Clean Air Act for the **Mt. Storm Power Station**, in Grant County, West Virginia. Specifically, Dominion requests this exemption from the **revised filterable particulate matter ("fPM") standard under the Mercury and Air Toxics Standards ("MATS")**, which is the regulation setting forth national hazardous air pollutant standards ("NESHAPs") for coal- and oil-fired electric utility steam generating units ("EGUs") under Section 112 of the Clean Air Act. The MATS fPM standard, which is a surrogate for non-mercury metal Hazardous Air Pollutants ("HAPs"), was revised down by two-thirds (from 0.030 lb/MMBtu to 0.010 lb/MMBtu) in a Risk and Technology Review ("RTR") rulemaking undertaken last year.[1]

The Mt. Storm Power Station ("Mt. Storm") is a coal-fired power plant in Grant County, West Virginia. The Station consists principally of three coal-fired Electric Generating Units ("EGUs"), with a total generation capacity of about 1,600 MW. Each of the three units is equipped with flue gas desulfurization ("FGD") equipment for reducing sulfur dioxide ("SO_2") emissions by more

[1] *National Emission Standards for Hazardous Air Pollutants: Coal- and Oil-Fired Electric Utility Steam Generating Units Review of the Residual Risk and Technology Review*, 89 Fed. Reg. 38,508 (May 7, 2024) ("2024 MATS RTR Rule"). MATS is codified at 40 C.F.R. Part 63, Subpart UUUUU. The RTR rule was challenged in court, *North Dakota v. EPA*, No. 24-1119 (D.C. Cir.), and is being reconsidered by EPA. *See* Mercury and Air Toxics Standards (MATS): Powering the Great American Comeback Fact Sheet.

than 95%; low-NOx burners and selective catalytic reduction ("SCR") equipment to reduce nitrogen oxide ("NO_x") by over 85%; and electrostatic precipitators ("ESP") to reduce particulate matter emissions by more than 99%. The plant meets or exceeds all applicable emission limitations under the Clean Air Act, including the currently applicable fPM and other hazardous air pollutant NESHAPs under MATS.

As explained in more detail below, Mt. Storm is unable to meet the revised NESHAP for fPM without major control equipment upgrades and/or other substantial modifications of the EGUs at the plant. Such upgrades and actions are not available by the 2024 MATS RTR Rule compliance deadline of July 6, 2027. If the 2024 MATS RTR Rule remains in place, the only option for Mt. Storm is to shut down temporarily, if not permanently. Even a temporary shutdown would span several years to complete the construction of equipment necessary to meet the revised fPM standard or convert the plant to natural gas firing. Shutting down Mt. Storm, even temporarily for a period of years, is not in the national security interest of the United States. For these reasons, we request a two-year Presidential Exemption, as provided in Section 112(i)(4) of the Clean air Act.

I. A Presidential Exemption for Mt. Storm is in the National Security Interests of the United States.

The President of the United States has issued several Executive Orders making unmistakably clear that preserving the nation's electric generating capacity is in the national security interest of the United States. Most notably, the President has issued the following executive orders:

- Executive Order 14156 "Declaring a National Energy Emergency": This Executive Order explains, "[a]n affordable and reliable domestic supply of energy is a fundamental requirement for the national and economic security of any nation." The Executive Order defines "generation" as including "the use of energy to produce electricity." In short, this Executive Order specifically identifies the preservation and expansion of the generation capacity of the nation, including coal-fired generation, as vital for the national security of the United States.

- Executive Order 14154 "Unleashing American Energy": This Executive Order explains, "It is … in the national interest to unleash America's affordable and reliable energy and natural resources." In directing all federal agencies to review their actions, the Executive Order requires "particular attention to … coal," among other energy resources.

- Executive Order 14213 – "Establishing the National Energy Dominance Council": This Executive Order establishes a National Energy Dominance Council, the principal charge of which is to expand, not limit, the nation's production of energy.

ED_021114A_00008619-00002

- Executive Order 14179 "Removing Barriers to American Leadership in Artificial Intelligence": This executive order provides that "[i]t is the policy of the United States to sustain and enhance America's global [Artificial Intelligence ("AI")] dominance in order to promote human flourishing, economic competitiveness, and national security." Although this order is not explicitly about energy resources, it is closely tied to them. AI systems require a substantial amount of electric power – indeed, the rapid development of artificial intelligence is largely driving ever increasing demand for electric power all over the United States not seen in decades.

The continued operation of Mt. Storm falls squarely within the objectives of the Executive Orders listed above and, therefore, is in the national security interests of the United States. Mt. Storm's location is critical for a major transmission line that supports the Pennsylvania-New Jersey-Maryland Interconnection, LLC ("PJM"), the Regional Transmission Organization ("RTO") that coordinates the movement of wholesale electricity in all or parts of 13 states and the District of Columbia—primarily in the mid-Atlantic and eastern part of the Midwest.

In January 2025, Dominion not only surpassed its previous winter peak, but also exceeded the all-time peak set in July 2024. January 2025 set new records for peak demand, with 7 of the 10 highest winter peak days and accounting for 5 of the top 10 all-time peak days, including both summer and winter peaks. These record-breaking numbers highlight the significant demand for electricity during extreme seasonal conditions and reinforce the need for system reliability and capacity planning. If Mt. Storm is forced to shut down prematurely as a result of the revised MATS, even for a few years while it completes the construction of expensive control equipment despite the existing rule providing an ample margin for safety[2] or while replacement generation or transmission lines are constructed, it will have significant consequences for the reliability and stability of the electric grid in Dominion's service territory and for swaths of the PJM region. Moreover, reliable generation from Mt. Storm is critical for operations at more than 75 federal installations directly related to security operations, including the Department of Defense, Army, Navy, and Homeland Security facilities across the Commonwealth of Virginia. Finally, reliability provided by Mt. Storm is critical to the infrastructure necessary to achieve the AI and national security objectives of the Administration.

A Presidential Exemption under Section 112(i)(4) from the revised fPM standard of the 2024 MATS RTR rule for the Mt. Storm Power Station is in the national security interest of the United States.

---

[2] EPA acknowledges that, at least after MATS was implemented, emissions of hazardous air pollutants from power plants are at a level that "provide[s] an ample margin of safety to protect public health … and … prevent[s] … any adverse environmental effect." 42 U.S.C. § 7412(f)(2)(A). Indeed, EPA in both the 2020 MATS RTR rulemaking (under the first Trump Administration) and the 2024 MATS RTR rulemaking reconsidering the previous rule found that the residual risk from the hazardous air pollutants of every coal-fired EGU is less than 1 in one million," the level at which the statute supports delisting the entire source category of coal-fired generation. *See* 2020 MATS RTR Rule, 85 Fed. Reg., 31,286 (May 22, 2020), *reaffirmed in* 2024 MATS RTR Rule, 89 Fed. Reg. 38,508 (May 7, 2024).

ED_021114A_00008619-00003

II. The Technology Necessary to Meet the Revised fPM Standard in the 2024 MATS RTR Rule Is Not Available for Mt. Storm by the July 2027 Compliance Deadline.

A. Installing the Control Equipment Necessary to Meet the Revised fPM Standard at Mt. Storm by the Rule's Compliance Deadline Is Not Feasible and May Be Economically Unavailable.

The Mt. Storm coal-fired EGUs cannot meet the revised fPM standard without new emission controls. Based on Dominion's evaluation of control options to date, if the Mt. Storm coal-fired EGUs are to continue operating past the 2024 MATS RTR Rule compliance deadline, Dominion would have to design, procure, and construct baghouses and new scrubbers for these units. Each of these types of control equipment (baghouses and scrubbers) are major construction projects that are not only very expensive, but they would also take several years to design, procure, and construct.

Based on a preliminary assessment, controls construction could not be completed for more than two years after the July 6, 2027, compliance deadline for the 2024 MATS RTR Rule. Based on this fact alone, the emission control technology that Mt. Storm will need to comply with the revised fPM standard of the 2024 MATS RTR Rule is not available by the rule's compliance date.

Installing baghouses and scrubbers requires significant capital investment. At this time, Dominion estimates the cost for all three Mt. Storm units to exceed $1.5 billion. Putting aside the considerations of such a capital expenditure for Dominion's ratepayers and the PJM region, such a high price tag necessitates consideration of whether it would be economically rational to incur that cost, as opposed to taking other action. Such other action might include, for example, shutting down the plant permanently (and replacing the power, by constructing a new plant) or converting the Mt. Storm Power Station to natural gas instead of coal firing. In other words, the technology that would be needed to meet the revised fPM standard may be economically unavailable.

B. Converting Mt. Storm to Combust Natural Gas Instead of Coal Is Not Feasible by the Rule's Compliance Deadline.

In evaluating compliance obligations under the 2024 MATS RTR Rule, to account for the possibility that the installation of baghouses and new scrubbers may prove economically irrational, Dominion has explored the possibility of converting the Mt. Storm coal-fired EGUs to natural gas-fired EGUS, which would then exempt Mt. Storm from MATS altogether. A potential coal-to-natural-gas conversion would require, in addition to modifying the boilers, the construction of a natural gas pipeline which cannot be completed by the July 2027 compliance deadline. Indeed, based on evaluations to date, conversion of Mt. Storm to natural gas firing cannot be completed before about 2030.

In short, this option, which involves converting the Mt. Storm coal-fired EGUs to natural gas-fired EGUs, is not available by the compliance deadline of the 2024 MATS RTR Rule.[3]

C. There Are No Technically Available Means for Demonstrating Compliance with the 2024 MATS RTR Rule.

In the 2024 MATS RTR Rule, EPA proposed not only to lower the fPM standard by two-thirds to a very low limit of 0.010 lb/MMBtu, but also to require all coal-fired EGUs to use particulate matter continuous emissions monitoring systems (PM CEMS) equipment to demonstrate compliance. Under the existing standard of 0.030 lb/MMBtu, PM CEMS are optional and some EGUs have opted into using them for MATS compliance, including Mt. Storm but they are not required. The current fPM standard is high enough that there is an acceptably small margin of error when using PM CEMS for compliance. Dominion is an early adopter of PM CEMS; our lengthy experience demonstrates that PM CEMS can be successfully used for accurate PM emission measurements (when the standard is high enough to allow it), but also that these are difficult instruments to operate and maintain and that these instruments are currently operating at the very edge of their capability for accuracy.

For those reasons, many industry commenters filed comments on the rulemaking, including from technical experts, explaining that PM CEMS do not directly measure the amount of fPM particles in the flue gas and instead are indirect measurements that require correlation to function properly. The revised MATS fPM standard is extremely low, and PM CEMS equipment is already operating at the very edge of its capability for a limit that is three times higher. As a result, it will be extremely difficult, if not impossible, to properly correlate PM CEMS, making the technology practically unusable. EPA rejected those comments in the final rule and forged ahead with the revised fPM standard and the requirement to use PM CEMS technology to demonstrate compliance.

Notwithstanding EPA's decision in the final 2024 Rule, Dominion's experience, internal experts, and experts for the industry at large all agree: PM CEMS are not an available technology to demonstrate compliance with a standard as low as 0.010 lb/MMBtu standard for fPM. For this reason also, "the technology to implement [the revised fPM] standard is not available." *See* 42 U.S.C. § 7412(i)(4).

* * *

For the reasons set forth above, Dominion respectfully requests that the President issue a Presidential Exemption for **two years** under Section 112(i)(4) of the Clean Air Act for the fPM standard promulgated under the 2024 MATS RTR Rule for the **Mt. Storm Power Station**, specifically Units, 1, 2 and 3, in Grant County, West Virginia. "[T]he technology to implement such standard is not available and … it is in the national security interests of the United States to do so." 42 U.S.C. § 7412(i)(4).

---

[3] To the extent a permanent shutdown of Mt. Storm could be considered a compliance option, it would take even more time than the gas conversion option to construct replacement generation.

ED_021114A_00008619-00005

Respectfully submitted,

Cedric F. Green

Cedric F. Green
Senior Vice President, Power Generation

From: Colter Lund
To: AirAction
Subject: Presidential Exemption: 40 CFR 60 Subparts IIII and JJJJ and 40 CFR 63 Subparts ZZZZ: Novva Data Centers
Date: Friday, March 28, 2025 4:44:53 PM
Attachments: image001.png

Caution: This email originated from outside EPA, please exercise additional caution when deciding whether to open attachments or click on provided links.

To Whom it May Concern:

Novva Data Centers is currently constructing a 300 MW artificial intelligence (AI) data center in West Jordan, UT. Novva has signed a qualified AI hyper-scaler as a tenant for this facility, which will be ready for the tenant to move in and operate by June 2025. Unfortunately, the local utility power provider (Rocky Mountain Power) has proven incapable of supplying the full amount of necessary power requirements until at least 2031 with no guaranteed delivery date. Novva has searched for and found additional power production, but again Rocky Mountain Power has been unwilling or incapable of transmitting the power to Novva's site. Novva has also designed, obtained an air permit, and a building permit for its own natural gas-fired power plant to provide 200 MW of primary power for the facility. However, the first of 4 phases of Novva's power plant will not be completed until December 2025 and all 4 phases will not be complete until January of 2027. This request is being submitted for a 2-year exemption to the Clean Air Act standards under 42 U.S. Code Section 7412 (i)(4) and Section 112(i)(4) of the Clean Air Act to allow Novva to install 96 diesel-fired generators with SCR as BACT to provide 288 MW of backup power for Novva's AI data halls until its natural gas-fired power plant is complete.

Emissions Standards

Novva Data Centers' West Jordan Campus is subject to 40 CFR 60 Subparts IIII and JJJJ as well as 40 CFR 63 Subpart ZZZZ for its diesel-fired and natural-gas fired generators. Currently, Novva has an approved air permit from the Utah Division of Air Quality (attached here). This permit defines the total number of generator units Novva may install and operate at its West Jordan, Utah campus. Under this air permit, Novva is limited to installing and operating 17 MTU 1500, 1 CAT C15, 11 Kohler KD 2500, 4 Cummins 2000, 2 MTU 2000, and 2 MTU 1750 diesel-fired emergency generators. This permit limits Novva to 72 Jenbacher JGS 620 natural gas-fired generators for primary power. Additionally, the diesel-fired emergency generators must not be operated for more than 42 hour per rolling 12-month period during non-emergency situations and there is no limit to their run time during emergencies.

The approved air permit requires that the diesel-fired generator emissions be as follows:

- MTU 1500: 3.33 lb/hr NOx

- CAT C15: 0.83 lb/hr NOx
- Kohler KD 2500: 6.67 lb/hr NOx
- Cummins 2000: 3.41 lb/hr NOx
- MTU 2000: 3.63 lb/hr NOx
- MTU 1750: 3.38 lb/hr NOx

Additionally, the emissions from the natural-gas fired generators must be as follows:

- NOx: 0.0152 g/bhp-hr (0.15 lb/hr)
- CO: 0.065 g/bhp-hr (0.63 lb/hr)
- VOC: 0.0155 g/bhp-hr (0.15 lb/hr)

All generators, both diesel- and natural gas-fired, will be equipped with SCR systems as BACT capable of controlling to the aforementioned requirements. This implementation and level of control has established new benchmarks for BACT standards across the state of Utah concerning stationary internal combustion emission sources. Currently, Novva is working to expand its existing air permit to a major source permit.

Unavailable Technology

As indicated above, this site has already implemented the highest level of BACT, leaving no additional margin for improvement in control technology for the existing emission sources. Novva's emissions requirements, as dictated by its air permit, do not allow for any additional diesel-fired generator emissions. Currently, technology capable of controlling emissions to the levels necessary to allow Novva to implement the additional diesel-fired generators is not available. For Novva to be able to install any additional diesel-fired generators, the associated control technologies would have to be so effective that each additional generator would effectively have zero (0) emissions. Currently, a control technology this effective is not available.

National Security Interests of the United States

Granting Novva an exemption is in the national security interests of the United States because with the implementation of the additional diesel-fired generators, Novva's West Jordan Campus data center will be the world's largest artificial intelligence (AI) data center cluster. According the U.S. Department of State, "Artificial Intelligence technologies are at the center of an unfolding global technology revolution that could affect the well-being and security of

people everywhere. The United States is working to ensure AI technologies are developed responsibly and used as a force for good, helping to make Americans and people around the world safer, more secure and more prosperous. By working with partners across the globe to build digital solidarity, mitigate risks, and ensure responsible, inclusive, and rights-respecting AI innovation, we can tackle some of the world's most pressing challenges — like addressing food security, environmental challenges, and global health risks — in new and unparalleled ways." By granting Novva's exemption, the United States makes a significant step forward to "tackl[ing] some of the world's most pressing challenges."

Again, we ask that you provide this exemption to assist in ensuring the United States' AI supremacy. Thank you for your consideration.

Best,

Colter Lund
[redacted]
[redacted]



NOVVA

March 28, 2025

Honorable Lee Zeldin
Office of the Administrator (1101A)
United States Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460
airaction@epa.gov

Re: Request for Presidential Exemption Pursuant to CAA Section 112(i)(4) for EPA's Final Rule Amending the National Emission Standards for Hazardous Air Pollutants For Coal- and Oil-Fired Electric Utility Steam Generating Units.

Dear Administrator Zeldin:

Pursuant to the Clean Air Act ("CAA") Section 112(i)(4), 42 U.S.C. § 7412(i)(4), Basin Electric Power Cooperative ("Basin Electric") respectfully requests two-year Presidential Exemptions from compliance with the standards under the Environmental Protection Agency's ("EPA") final rule amending the National Emission Standards for Hazardous Air Pollutants ("NESHAP") for coal- and oil-fired electric utility steam generating units—the Mercury and Air Toxics Standards ("MATS"), 89 Fed. Reg. 38,508 (May 7, 2024) ("2024 MATS Rule"). Basin Electric is a not-for-profit power generation and transmission cooperative, operating in nine states and serving 3 million consumers.

EPA published the 2024 MATS Rule on May 7, 2024. The 2024 MATS Rule imposed the following strict amendments to the MATS:

1. Lowering the filterable particulate matter ("fPM") emission limit from 0.030 lb/MMBtu to 0.010 lb/MMBtu for existing coal-fired electric generating units ("EGUs");
2. Requiring coal- and oil-fired EGUs to demonstrate compliance with the fPM standard using particulate matter continuous emissions monitoring ("PM CEMS"); and
3. Lowering the mercury emission standard from 4.0 lb/TBtu to 1.2 lb/TBtu for existing lignite-fired EGUs.[1]

The 2024 MATS Rule established July 8, 2027 as the deadline to demonstrate compliance with these requirements.

As both industry groups and EPA have recognized, these regulatory amendments impose burdensome requirements on power plants across the country — including the coal-fired EGUs that Basin Electric operates—as well as the nation's energy grid systems.

[1] *National Emission Standards for Hazardous Air Pollutants: Coal- and Oil-Fired Electric Utility Steam Generating Units Review of the Residual Risk and Technology Review*, 89 Fed. Reg. 38,508, 38,510 (May 7, 2024).

Under CAA Section 112(i)(4), the President of the United States is authorized to grant up to two-year exemptions from compliance obligations for any NESHAP if the President determines that "the technology to implement such standard is not available and that it is in the national security interests of the United States to do so." 42 U.S.C.S. § 7412(i)(4). On March 12, 2025, EPA announced reconsideration of the MATS Rule and requested feedback from affected sources on why technology is unavailable and why it is in the national security interests of the United States to provide an exemption to the MATS Rule.[2] Subsequent correspondence from EPA formally solicited requests for Presidential Exemptions under CAA Section 112(i)(4) by March 28, 2025.

Basin Electric hereby requests Presidential Exemptions from all requirements of the 2024 MATS Rule for the following affected EGUs that Basin Electric owns and operates:

- Leland Olds Station Units 1 and 2;
- Laramie River Station Units 1, 2, and 3;
- Antelope Valley Station Units 1 and 2; and
- Dry Fork Station Unit 1.

These EGUs provide significant electrical power to four different electricity grid systems: the Southwest Power Pool, Midwest Independent System Operator, Northwest Power Pool, and Western Area Power Administration's Rocky Mountain Region. In total, the affected EGUs produce 3,665 megawatts ("MW") of electricity:

- Leland Olds Station: 660 MW
- Laramie River Station: 1700 MW
- Antelope Valley Station: 900 MW
- Dry Fork Station: 405 MW

We understand that the "Class of '85 Regulatory Response Group" will be submitting a letter to Administrator Zeldin on March 31, 2025, which will recommend exemptions from the 2024 MATS Rule for affected facilities. The Class of '85 is a voluntary, ad hoc coalition of over 40 electric generating companies from across the country that have been actively involved in the development of CAA regulations for 35 years. Basin Electric adopts the findings of the forthcoming Class of '85 Letter. For the reasons discussed at length in the Class of '85 Letter and explained herein, Presidential Exemptions are necessary for Basin Electric's affected facilities

[2] EPA, *Fact Sheet – Reconsideration of Mercury and Air Toxics Standards* (Mar. 12, 2025), https://www.epa.gov/system/files/documents/2025-03/fact-sheet-reconsideration-of-mercury-and-air-toxics-standards.pdf.

ED_021114A_00008622-00002

because (I) granting the exemptions will protect vital national security interests; and (II) the technology necessary to implement the 2024 MATS is not "available."

I. Granting Presidential Exemptions for Basin Electric's Affected EGUs Will Protect America's National Security Interests.

As President Trump recognized in his January 20, 2025 Executive Order "Declaring a National Energy Emergency," "our Nation's inadequate energy supply and infrastructure" is an "[a]ctive threat to the American people."[3] The Executive Order further emphasizes that an "affordable and reliable domestic supply of energy is a fundamental requirement for the national and economic security of any nation" and highlights the need to "protect the United States's economic and national security and military preparedness by ensuring that an abundant supply of reliable energy is readily accessible in every State and territory of the Nation."[4]

Achieving compliance with the stringent standards under the 2024 MATS Rule at Basin Electric's affected EGUs will exacerbate the National Energy Emergency and generate significant national security risks. If Basin Electric's affected EGUs do not receive Presidential Exemptions, they may be forced to significantly curtail operational capacity because the technology necessary to comply with these requirements is not available and not feasible to implement by the 2027 deadline, as discussed further below. Such curtailments would result in the removal of up to 3,665 MW from the electricity grids that these EGUs serve, at a time when the supply of electricity is already inadequate and demand is only increasing. Additionally, as the Class of '85 Letter will further highlight, the short compliance deadline prevents Basin Electric and other electricity producers from constructing sources to replace such significant losses of electricity production.

This will directly threaten the reliability of these electricity grids. Not only will there be significantly less electric power available on such grids, but the loss of this power will also cause serious transmission issues. As Basin Electric's affected EGUs currently provide essential voltage support and inertia to local and regional sections of the electricity grids that they serve, curtailment of their operations will risk voltage collapse in these areas. To protect these areas, significant investment to upgrade the existing transmission infrastructure and to potentially construct new transmission lines and facilities will be necessary. As a result, compliance with the 2024 MATS will inflate the already high energy costs for the rural Americans that depend upon the electricity that Basin Electric provides.[5]

Indeed, regional transmission organizations and independent system operators have already issued warnings about the adequacy of generation resources to meet peak demand situations. For instance, in a February 2024 report, the Midcontinent Independent System Operator ("MISO") emphasized that "[w]idespread retirements of dispatchable resources, lower reserve

[3] Executive Order 14156, *Declaring a National Energy Emergency*, 90 Fed. Reg. 8,433 (Jan. 29, 2025).
[4] *Id.*
[5] *Id.* at 4.

ED_021114A_00008622-00003

margins, more frequent and severe weather events and increased reliance on weather-dependent renewables and emergency-only resources have altered the region's historic risk profile, creating risks in non-summer months that rarely posed challenges in the past."[6]

Granting two-year Presidential Exemptions for Basin Electric's affected EGUs will protect America's national security interests by preventing these threats to the electricity grids that our nation depends upon. The Presidential Exemptions will also be consistent with President Trump's Executive Order "Declaring a National Energy Emergency."

II. The Technology Necessary to Implement the 2024 MATS is Not "Available."

Based on EPA's broad approach to evaluating whether "technology to implement [the] standard is not available." as established by previous administrative actions, the technology necessary for Basin Electric to implement the 2024 MATS is not "available." A January 16, 2025 memorandum from former President Biden directed the EPA Administrator to consider "shortages of labor, parts, control technology supply, supply-chain disruption, or other factors out of the facility's control" as grounds for supporting an exemption.[7] Other administrations have adopted a similarly holistic approach to assessing requests for compliance exemptions by considering, among other factors, whether "generation from the retiring unit was needed to maintain reliability while other units install emission controls" and whether "transmission upgrades were needed in order to maintain electric reliability after the unit retired but could not be completed within 3 years."[8]

Under EPA's holistic approach, the technology necessary to implement the 2024 MATS requirements at issue at not "available" because (1) existing PM CEMS technology is not capable of measuring fPM emissions at the level required, (2) the necessary studies, procurement, and construction of the technology necessary to comply with the new standards cannot be completed by the 2027 implementation deadline, and (3) the 2024 MATS Rule will risk availability of Basin Electric's EGUs and cause significant reliability challenges.

---

[6] *MISO's Response to the Reliability Imperative*, MISO (Feb. 2024), https://cdn.misoenergy.org/2024%20Reliability%20Imperative%20report%20Feb.%2021%20Final504018.pdf?v=20240221104216.

[7] *Memorandum on the Orderly Implementation of the Air Toxics Standards for Ethylene Oxide Commercial Sterilizers*, Section 2(b)(i) (Jan. 16, 2025).

[8] 77 Fed. Reg. 9,340, 9,410 (Feb. 16, 2012).

ED_021114A_00008622-00004

1. ***Existing PM CEMS technology is not capable of measuring fPM emissions at the level required by the 2024 MATS Rule.***

As highlighted in the forthcoming Class of '85 Letter, EPA acknowledged that PM CEMS presents technical challenges that impact the feasibility of compliance by the 2027 deadline. Indeed, in the Rule, EPA stated that "measuring very low and non-normal high fPM emissions can be challenging" using PM CEMS.[9] Though other continuous monitoring methods to directly measure non-mercury hazardous air pollutant metals are being developed, they are not currently available on the market.[10] Because the technology necessary for compliance with this requirement is not yet available, two-year Presidential Exemptions from the use of PM CEMS at Basin Electric's affected EGUs are necessary.

2. ***The necessary studies, procurement, and construction of the technology necessary to comply with the new standards cannot be completed by the 2027 implementation deadline.***

Basin Electric is currently working with its consultants to study whether upgrades to the emission control systems currently installed at the affected EGUs are necessary to comply with the fPM standard as well as the mercury emission standard for lignite-fired EGUs under the 2024 MATS Rule. Consistent with the discussion of this issue in the Class of '85 Letter, continuous compliance with the fPM standard is not possible with the emission controls currently installed at Basin Electric's EGUs. To identify necessary upgrades, Basin Electric is conducting comprehensive emissions testing at its affected EGUs.

Once the studies are complete, Basin Electric's consultants will need additional time to analyze the data and identify the necessary upgrades. This process has two possible outcomes—to comply with the new fPM standard, Basin Electric will need to either completely rebuild its hydrostatic precipitators with new parts or install baghouses. Under either scenario, upgrading the emission control systems by the 2027 deadline will have direct impacts on Basin Electric's ability to reliably operate its EGUs.

After identifying the upgrades, Basin Electric will have to navigate a protracted procurement process for the necessary parts and equipment, which can take up to a year. The timeline is then further complicated by the need to construct the upgrades during EGU outages, which are systematically planned by Basin Electric and approved by electricity grids operators years in advance to prevent grid disruptions. For Leland Olds Station Unit 1 and Laramie River Station Unit 1, the next available outage window for such construction will be in 2027. For Leland

---

[9] *See* EPA, *Summary of Public Comments and Responses on Proposed Rule*, 58 (Apr. 2024), https://www.regulations.gov/document/EPA-HQ-OAR-2018-0794-6922.

[10] *Id.* (citing EPRI, *Demonstration of Sorbent Traps for Continuous Measurement of Metal Hazards Air Pollutants (HAPS)* (Oct. 2024), https://msites.epri.com/spn/research/056617/demonstration-of-sorbent-traps-for-continuous-measurement-of-metal-hazards-air-pollutants-haps).

ED_021114A_00008622-00005

Olds Station Unit 2 and Laramie River Station Unit 2, the next available planned outages will not occur until 2028 and 2029, respectively. These planned outages are strictly controlled by grid management entities and require approval to adjust. This could be a serious issue if the installation of baghouses is necessary. Indeed, at the Leland Olds Station, the footprint for installation of a new baghouse simply does not exist, while Laramie River Station Unit 2 sits in the middle of two other units. In either case, Basin Electric would have to gut the current precipitators and rework entire systems in an unreasonably short period of time in order to comply with the standard.

Finally, completing any upgrades may be impacted by potential parts and labor shortages. While Basin Electric cannot predict at this time whether such shortages will occur, shortages certainly may be likely to occur if EGUs around the country are required to install similar technology at the same time to comply with the 2024 MATS Rule. Based on the steps that Basin Electric must take to study, procure, and construct necessary emission control technology, compliance with the 2027 implementation deadline is simply infeasible for Basin Electric's affected EGUs.

Under previously established EPA policy, such "shortages of labor, parts, control technology supply, supply-chain disruption, or other factors out of the facility's control" are an appropriate basis for granting exemptions from NESHAP requirements. Based on this policy, the timeline needed to modify Basin Electric's affected EGUs provides an additional basis to conclude that the technology necessary to comply with the fPM standard under the 2024 MATS Rule is not "available."

3. *The 2024 MATS Rule is likely to result in operational restrictions and cause significant reliability challenges.*

EPA's 2024 MATS Rule requires coal-fired EGUs to meet the stringent new standards in three years or to commit to retirement.[11] Basin Electric's affected EGUs will risk operational constraints based on the unavailability of necessary PM CEMS technology and the infeasibility of the 2027 deadline. As a result, Basin Electric will be forced to significantly curtail operation of the EGUs which will harm the transmission infrastructure and threaten the reliability of the electricity grids that they serve, as discussed above.

EPA has previously found that circumstances where (1) generation from impacted units is needed to maintain reliability and (2) transmission upgrades are necessary but cannot be timely completed can provide reasonable bases for granting a one-year compliance extension of the MATS.[12] As explained in the Class of '85 Letter, there is significant overlap between the availability of a one-year compliance extension and circumstances supporting a two-year Presidential Exemption. Under CAA Section 112(i)(3)(B), a one-year extension is available if it is "necessary for the installation of controls." A Presidential Exemption under CAA Section 112(i)(4)

[11] 89 Fed. Reg. at 38,519.
[12] 77 Fed. Reg. at 9,410.

ED_021114A_00008622-00006

can similarly be granted based on the unavailability of technology, which may relate to supply-chain shortages and other installation challenges that would also fall within the scope of Section 112(i)(3)(B). Thus, the fact that the generation from Basin Electric's affected EGUs is necessary to maintain grid reliability provides an appropriate basis for concluding that the necessary technology is not "available."

****

Based on the significant national security risks and technological challenges described above, Basin Electric respectfully requests the President to grant two-year Presidential Exemptions under CAA Section 112(i)(4) from all of the requirements of the 2024 MATS Rule for its affected EGUs. Should you require any additional information or documentation to support this request, please contact Troy Tweeten.

Sincerely,

Troy Tweeten

Troy Tweeten
Sr. VP of Generation
Basin Electric Power Cooperative
Office: 701-557-5787 Cell: 307.689.1056

ED_021114A_00008622-00007

Presidential Exemptions Request(34509923.2) (003)

Final Audit Report 2025-03-28

Created:	2025-03-28
By:	Deb Hausauer (debh@bepc.com)
Status:	Signed
Transaction ID:	CBJCHBCAABAAqG60EsA2YGl3ZzDLvibdbV6uSilH011G

"Presidential Exemptions Request(34509923.2) (003)" History

Document created by Deb Hausauer (debh@bepc.com)
2025-03-28 - 8:37:26 PM GMT- IP address: 216.235.161.1

Document emailed to Troy Tweeten (ttweeten@bepc.com) for signature
2025-03-28 - 8:38:06 PM GMT

Email viewed by Troy Tweeten (ttweeten@bepc.com)
2025-03-28 - 8:43:19 PM GMT- IP address: 216.235.161.3

Document e-signed by Troy Tweeten (ttweeten@bepc.com)
Signature Date: 2025-03-28 - 8:44:04 PM GMT - Time Source: server- IP address: 216.235.161.3

Agreement completed.
2025-03-28 - 8:44:04 PM GMT

TENNESSEE VALLEY AUTHORITY

400 West Summit Hill Drive, Knoxville, Tennessee 37902-1401

March 28, 2025

Electronic Submittal (airaction@epa.gov)

Dear Sir or Madam:

TENNESSEE VALLEY AUTHORITY'S (TVA) INTEREST IN OBTAINING PRESIDENTIAL EXEMPTION FROM U.S. ENVIRONMENTAL PROTECTION AGENCY'S (EPA) RULE, NATIONAL EMISSION STANDARDS FOR HAZARDOUS AIR POLLUTANTS: COAL- AND OIL-FIRED ELECTRIC UTILITY STEAM GENERATING UNITS REVIEW OF RESIDUAL RISK AND TECHNOLOGY REVIEW – For TVA's CUMBERLAND FOSSIL PLANT.

TVA appreciates the opportunity to submit this request under Section 112(i)(4) of the Clean Air Act for a Presidential Exemption from the National Emission Standards for Hazardous Air Pollutants (NESHAPS): Coal- and Oil- Fired Electric Steam Generating Units Review of Residual Risk and Technology Review Final Rule (89 FR 38508 (May 7, 2024)). This request is specific to TVA's Cumberland Fossil Plant located at 815 Cumberland City Road, Cumberland City, TN 37050.

TVA is a non-profit corporate agency of the United States that provides wholesale power to 153 independent local power companies and 61 directly served large industries and federal facilities. TVA receives no taxpayer funding, deriving virtually all its revenues from sales of electricity. As part of its regional resource development mission, TVA operates the nation's largest public power system, providing electricity to approximately 10 million people in an 80,000 square mile area comprised of most of Tennessee and parts of Alabama, Georgia, Kentucky, Mississippi, North Carolina and Virginia. The energy resources that TVA relies on to serve the public are diverse and include nuclear plants, natural gas plants, hydroelectric plants, coal-fired power plants.

TVA's Cumberland Fossil plant has a gross capacity of 2,678 MW. The plant was commissioned in 1968 with two identical coal-fired units. This facility is currently equipped with the state-of-the-art air pollution controls. The ability for TVA to navigate future asset strategy and utilize the current transmission infrastructure is critical to grid reliability. The timing of regulatory deadlines plays a role in the ability to effectively retire and replace aging coal-fired units to accommodate load growth. The timely replacement of the coal units with natural gas units is critical for preserving grid reliability.

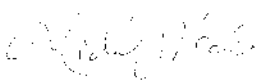
TVA submitted public comments to EPA in June 2022 during the rulemaking, discussing underestimation of the costs of compliance and potential implementation problems in utilizing PM CEMS. (TVA's comments are attached to this letter as Attachment 1.) In Section 3.5.2.2 of the Regulatory Impact Analysis, EPA compared the CEMS costs to the costs of quarterly testing. The costs listed for CEMS do not include costs for the annual Relative Response Audit (RRA) or the 3-year (minimum) Relative Correlation Audit (RCA) required when utilizing PM CEMS as a compliance indicator. Cumberland currently demonstrates compliance with the

current standard with quarterly testing and will have to install the required PM CEMs by July 8, 2027.

TVA is requesting an exemption from the requirement to install and operate CEMs on the coal-fired units prior to the end of 2028. The technology to implement PM CEMs to eliminate quarterly stack testing is problematic at a fPM standard of 0.01 lb /MMBTU. (The Revised MATS rule no longer provides sources the flexibility to demonstrate compliance using either PM CEMS or quarterly testing but instead requires the use of PM CEMS to demonstrate compliance with the new standard of 0.01 lb/MMBTU.) This low level of the standard provides such a limited data range to generate a certification curve that it would be difficult to establish a valid correlation of the PM CEMS. Without a valid correlation, the data generated from the CEMS would not be reliable for use in assessing compliance. While it is true that MATS already requires PM CEMS for new coal-fired EGUs, there have been no coal-fired EGUs constructed since MATS was promulgated in 2012 and that requirement is merely theoretical. Moreover, the cost of operating PM CEMS is much higher than EPA's estimates, let alone the fact that the expenditure on installing CEMS would be wasteful as the coal-fired units would be replaced by natural gas-fired units at the end of 2028. An extension from the requirement to install and operate CEMS on the retiring coal-fired units would facilitate the transition from coal to gas in a timely and efficient manner without endangering grid reliability. Further, TVA's operation of the Cumberland Fossil Plant is essential to national security until replacement with natural gas-fired generation is commercially operational as TVA provides wholesale electricity directly to federal facilities integral to national security. The higher cost of operating CEMS and the unavailability of CEMS technology to measure fPM with any reliability poses an undue burden on the continued operation of domestic energy and TVA rate payers. The Executive Order, *Unleashing American Energy*, seeks to remove burdens posed on the development of domestic energy by requiring agencies to reconsider existing regulations such as the 2024 MATS rule.

If you have questions, please contact me at mjmcall@tva.gov.

Sincerely,



Michael McCall
VP, Environment
Tennessee Valley Authority

Enclosure

Attachment 1

Tennessee Valley Authority's (TVA) comments on the U.S. Environmental Protection Agency's (EPA) Proposal for National Emission Standards for Hazardous Air Pollutants: Coal- and Oil-Fired Electric Utility Steam Generating Units Review of the Residual Risk and Technology Review

I. TVA recommends that EPA follow the principle used in recently promulgated regulations, such as the Effluent Limitation Guidelines, to include a subcategory for "EGU's Permanently Ceasing Coal Combustion by 2028." Those EGUs for which the owner or operator commits to retire the unit by a certain threshold date would be grouped in this subcategory. Any EGU that falls in this subcategory should be exempt from installing PM CEMS until the time the EGU is retired or withdrawn from the Subcategory. If withdrawn from the Permanent Cessation Subcategory, the EGU shall become subject to the revised MATS limits and the requirement to install PM CEMS.

   A. For units that fall in the Permanent Cessation Subcategory, compliance with the standard should be demonstrated through quarterly PM emissions testing through the last full operating quarter prior to unit retirement.
   B. In Section 3.5.2.2 of the Regulatory Impact Analysis, EPA has compared the CEMS costs to the costs of quarterly testing. However, the costs listed for CEMS do not include costs for the annual Relative Response Audit (RRA) or the 3-year (minimum) Relative Correlation Audit (RCA) required when utilizing PM CEMS as a compliance indicator. The inclusion of these costs would demonstrate a considerable increase in the cost of PM CEMS. As explained in PGEN's comments, the 10-year cost of PM CEMS is much higher than EPA's estimates. This higher cost further supports not requiring units that fall in the Permanent Cessation category to install CEMS prior to their imminent retirement.

II. As a general matter, EPA's proposal to eliminate quarterly stack testing is problematic, especially if the fPM standard is reduced to a level of 0.01 lb /MMBTU. This level of the proposed standard provides such a limited data range that it would be difficult to establish a valid correlation of the PM CEMS. (See PGen Comments, Section III.A.) While it is true that MATS already requires PM CEMS for new coal-fired EGUs, there have been no coal-fired EGUs constructed since MATS was promulgated in 2012 and that requirement is merely theoretical. Moreover, the cost of operating PM CEMS is much higher than EPA's estimates (See PGen Comments, Section III.B.). There are some utilities that have installed PM CEMS for other reasons such as requirements in NSR consent decrees to monitor PM emissions. TVA, therefore, recommends that the proposal continue to provide sources the choice of determining compliance with the PM Standards either through quarterly testing or use of CEMS.
   A. TVA notes that the Title V permits for certain facilities have certified PM CEMS that monitor PM on a much shorter basis than the averaging time for MATS limits, e.g., 24-hour averages or 3-hour averages. While conducting PS-11 or RCA, regulatory agencies do not permit exceedance of the applicable thresholds

even for testing purposes. This should be considered while setting revised filterable particulate matter and other emission limits in this rulemaking.

III. EPA proposes a reduction in the current fPM standard from 0.03 lb/MMBtu to 0.01 lb/MMBtu while soliciting comment in the proposal to reduce the standard down to 0.006 lb/MMBtu. However, EPA concedes in the 2020 RTR and in the proposed rule that there are no new practices, processes and control technologies for this source category. EGU HAP emissions continue to decline further, absent any revisions of the MATS standards, due to regulatory and economic pressures leading to coal-fired EGU retirements. TVA, for example, has retired 60 percent of its coal fleet and is evaluating the retirement of the balance of the fleet by 2035. Because of the continuing downward trend in HAP emissions from coal-fired EGUs, revising the standards merely to accelerate this trend slightly is not necessary, given the potential for adverse effects on reliability resulting from early retirements.

IV. The analysis used to determine a reduction in the standard was comprised of limited data and not representative of all operating quarters of available data. The capability for a source to retain the lower standard when assuming all factors such as fuel variations, operating conditions, ambient conditions, load, and various other conditions is not represented in EPA's analysis. Further, EPA's proposed revision of the fPM standard is not cost-effective. EPA's cost data analysis under-predicted the capital required for ESP "rebuild" and failed to recognize the need for a design and operating margin.

A. Regulatory scrutiny under future regulations such as the Interstate Transport Rules and Regional Haze SIPS may result in installation of DSI or SDA technologies to reduce SO_2 emissions. The installation of these technologies will likely increase the inlet particulate loading to the baghouses (more hydrated lime and reaction byproducts expected to increase inlet loading anywhere from 100% to 800%) placing such units at risk of not being able to meet the fPM standard of 0.01 lb/MMBTU.

V. EPA should reevaluate its rationale for revising the Hg standard for lignite EGUs because the level of Hg reduction is not feasible in commercial systems. EPA's analysis ignores the variability of Hg content in lignite and the role of SO_3 that compromises sorbent performance and effectiveness.

VI. EPA correctly concluded that the Hg standard for non-lignite fired EGUs should not be revised. Likewise, TVA agrees with EPA that no revisions are necessary for other HAP standards, such as Organic HAPs and Acid Gases.

TENNESSEE VALLEY AUTHORITY

400 West Summit Hill Drive, Knoxville, Tennessee 37902-1401

March 28, 2025

Electronic Submittal (airaction@epa.gov)

Dear Sir or Madam:

TENNESSEE VALLEY AUTHORITY'S (TVA) INTEREST IN OBTAINING PRESIDENTIAL EXEMPTION FROM U.S. ENVIRONMENTAL PROTECTION AGENCY'S (EPA) RULE, NATIONAL EMISSION STANDARDS FOR HAZARDOUS AIR POLLUTANTS: COAL- AND OIL-FIRED ELECTRIC UTILITY STEAM GENERATING UNITS REVIEW OF RESIDUAL RISK AND TECHNOLOGY REVIEW – FOR TVA's GALLATIN FOSSIL PLANT, SHAWNEE FOSSIL PLANT, AND KINGSTON FOSSIL PLANT.

TVA appreciates the opportunity to submit this request under Section 112(i)(4) of the Clean Air Act for a Presidential Exemption from the National Emission Standards for Hazardous Air Pollutants (NESHAPS): Coal- and Oil- Fired Electric Steam Generating Units Review of Residual Risk and Technology Review Final Rule (89 FR 38508 (May 7, 2024)). This request is specific to TVA's Gallatin Fossil Plant at 1499 Steam Plant Rd, Gallatin, Tennessee, TVA's Shawnee Fossil Plant at 7900 Metropolis Lake Rd, West Paducah, Kentucky, and TVA's Kingston Fossil Plant at 714 Swan Road, Harriman, Tennessee.

TVA is a non-profit corporate agency of the United States that provides wholesale power to 153 independent local power companies and 61 directly served large industries and federal facilities and installations. TVA receives no taxpayer funding, deriving virtually all its revenues from sales of electricity. As part of its regional resource development mission, TVA operates the nation's largest public power system, providing electricity to approximately 10 million people in an 80,000 square mile area comprised of most of Tennessee and parts of Alabama, Georgia, Kentucky, Mississippi, North Carolina and Virginia. The energy resources that TVA relies on to serve the public are diverse and include nuclear plants, natural gas plants, hydroelectric plants, coal-fired power plants.

TVA's Gallatin plant has four turbogenerating units each with a capacity of 240-260MW with enough capacity to power 571,000 homes. TVA's Shawnee Fossil Plant has 9 units and a maximum capacity of more than 1,100 MW, enough to power more than 640,000 homes. TVA's Kingston plant has nine units and a maximum capacity of more than 1500 MW, enough to power 817,830 homes.

TVA submitted public comments to EPA in June 2022 during the rulemaking, discussing underestimation of the costs of compliance and potential implementation problems in utilizing PM CEMS. (TVA's comments are attached to this letter as Attachment 1.) In Section 3.5.2.2 of the Regulatory Impact Analysis, EPA compared the CEMS costs to the costs of quarterly testing. The costs listed for PM CEMS do not include costs for the annual Relative Response Audit (RRA) or the 3-year (minimum) Relative Correlation Audit (RCA) required when utilizing PM CEMS as a compliance indicator. Gallatin and Shawnee currently demonstrate compliance

with the current standard with quarterly testing and will have to install/and/or certify the required PM CEMs by July 8, 2027. Kingston demonstrates compliance with the use of CEMS with the existing standard of 0.03 lb/MMBTU. The technology to implement PM CEMs to eliminate quarterly stack testing is problematic at the new fPM standard of 0.01 lb /MMBTU in the Revised MATS rule finalized in July 2024. (The Revised MATS rule no longer provides sources the flexibility to demonstrate compliance using either CEMS or quarterly testing, but instead requires the use of CEMS to demonstrate compliance with the new standard of 0.01 lb/MMBTU.) This low level of the standard provides such a limited data range for certification that it would be difficult to establish a valid correlation of the PM CEMS. Without a valid correlation, the data generated from the CEMS would not be reliable for use in assessing compliance. While it is true that MATS already requires PM CEMS for new coal-fired EGUs, there have been no coal-fired EGUs constructed since MATS was promulgated in 2012 and that requirement is merely theoretical. Moreover, the cost of operating PM CEMS is much higher than EPA's estimates; and at Gallatin and Shawnee, substantial expenditures would be incurred by TVA to modify the existing bag filters to meet the new standard of 0.01 lb/MMBTU. Further, TVA's operation of the Gallatin and Shawnee Fossil Plants into the 2030s is essential to national security. TVA provides wholesale electricity directly to federal facilities integral to national security. The higher cost of operating CEMS at all of TVA's existing coal-fired plants, the unavailability of CEMS technology to measure fPM with any reliability, and the substantial expenditures that would be incurred, pose an undue burden on the development of domestic energy and TVA rate payers. The Executive Order, *Unleashing American Energy*, seeks to remove burdens posed on the development of domestic energy by requiring agencies to reconsider existing regulations such as the 2024 MATS rule.

If you have questions, please contact me at mjmcall@tva.gov.

Sincerely,



Michael McCall
VP, Environment
Tennessee Valley Authority

Enclosure

Attachment 1

Tennessee Valley Authority's (TVA) comments on the U.S. Environmental Protection Agency's (EPA) Proposal for National Emission Standards for Hazardous Air Pollutants: Coal- and Oil-Fired Electric Utility Steam Generating Units Review of the Residual Risk and Technology Review

I. TVA recommends that EPA follow the principle used in recently-promulgated regulations, such as the Effluent Limitation Guidelines, to include a subcategory for "EGU's Permanently Ceasing Coal Combustion by 2028." Those EGUs for which the owner or operator commits to retire the unit by a certain threshold date would be grouped in this subcategory. Any EGU that falls in this subcategory should be exempt from installing PM CEMS until the time the EGU is retired or withdrawn from the Subcategory. If withdrawn from the Permanent Cessation Subcategory, the EGU shall become subject to the revised MATS limits and the requirement to install PM CEMS.

   A. For units that fall in the Permanent Cessation Subcategory, compliance with the standard should be demonstrated through quarterly PM emissions testing through the last full operating quarter prior to unit retirement.
   B. In Section 3.5.2.2 of the Regulatory Impact Analysis, EPA has compared the CEMS costs to the costs of quarterly testing. However, the costs listed for CEMS do not include costs for the annual Relative Response Audit (RRA) or the 3-year (minimum) Relative Correlation Audit (RCA) required when utilizing PM CEMS as a compliance indicator. The inclusion of these costs would demonstrate a considerable increase in the cost of PM CEMS. As explained in PGEN's comments, the 10-year cost of PM CEMS is much higher than EPA's estimates. This higher cost further supports not requiring units that fall in the Permanent Cessation category to install CEMS prior to their imminent retirement.

II. As a general matter, EPA's proposal to eliminate quarterly stack testing is problematic, especially if the fPM standard is reduced to a level of 0.01 lb /MMBTU. This level of the proposed standard provides such a limited data range that it would be difficult to establish a valid correlation of the PM CEMS. (See PGen Comments, Section III.A.) While it is true that MATS already requires PM CEMS for new coal-fired EGUs, there have been no coal-fired EGUs constructed since MATS was promulgated in 2012 and that requirement is merely theoretical. Moreover, the cost of operating PM CEMS is much higher than EPA's estimates (See PGen Comments, Section III.B.). There are some utilities that have installed PM CEMS for other reasons such as requirements in NSR consent decrees to monitor PM emissions. TVA, therefore, recommends that the proposal continue to provide sources the choice of determining compliance with the PM Standards either through quarterly testing or use of CEMS.
   A. TVA notes that the Title V permits for certain facilities have certified PM CEMS that monitor PM on a much shorter basis than the averaging time for MATS limits, e.g., 24-hour averages or 3-hour averages. While conducting PS-11 or

RCA, regulatory agencies do not permit exceedance of the applicable thresholds even for testing purposes. This should be considered while setting revised filterable particulate matter and other emission limits in this rulemaking.

III. EPA proposes a reduction in the current fPM standard from 0.03 lb/MMBtu to 0.01 lb/MMBtu while soliciting comment in the proposal to reduce the standard down to 0.006 lb/MMBtu. However, EPA concedes in the 2020 RTR and in the proposed rule that there are no new practices, processes and control technologies for this source category. EGU HAP emissions continue to decline further, absent any revisions of the MATS standards, due to regulatory and economic pressures leading to coal-fired EGU retirements. TVA, for example, has retired 60 percent of its coal fleet and is evaluating the retirement of the balance of the fleet by 2035. Because of the continuing downward trend in HAP emissions from coal-fired EGUs, revising the standards merely to accelerate this trend slightly is not necessary, given the potential for adverse effects on reliability resulting from early retirements.

IV. The analysis used to determine a reduction in the standard was comprised of limited data and not representative of all operating quarters of available data. The capability for a source to retain the lower standard when assuming all factors such as fuel variations, operating conditions, ambient conditions, load, and various other conditions is not represented in EPA's analysis. Further, EPA's proposed revision of the fPM standard is not cost-effective. EPA's cost data analysis under-predicted the capital required for ESP "rebuild" and failed to recognize the need for a design and operating margin.

A. Regulatory scrutiny under future regulations such as the Interstate Transport Rules and Regional Haze SIPS may result in installation of DSI or SDA technologies to reduce SO_2 emissions. The installation of these technologies will likely increase the inlet particulate loading to the baghouses (more hydrated lime and reaction byproducts expected to increase inlet loading anywhere from 100% to 800%) placing such units at risk of not being able to meet the fPM standard of 0.01 lb/MMBTU.

V. EPA should reevaluate its rationale for revising the Hg standard for lignite EGUs because the level of Hg reduction is not feasible in commercial systems. EPA's analysis ignores the variability of Hg content in lignite and the role of SO_3 that compromises sorbent performance and effectiveness.

VI. EPA correctly concluded that the Hg standard for non-lignite fired EGUs should not be revised. Likewise, TVA agrees with EPA that no revisions are necessary for other HAP standards, such as Organic HAPs and Acid Gases.

American Bituminous Power Partners, L.P.
Grant Town Power Plant
228 ABPP Drive, P.O. Box 159
Grant Town, West Virginia 26574
Telephone: (304) 278-7449
Fax: (304) 278-7437

March 28, 2024
ABP.009.EHS

Mr. Lee Zeldin, Administrator
US Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, DC 20460
Mail Code 1101A
airaction@epa.gov

Reference: American Bituminous Power Partners, L.P.
Grant Town Power Plant
Presidential Exemption: National Emissions Standards for Hazardous Air Pollutants: Coal- and Oil-Fired Electric Utility Steam Generating Units Review of the Residual Risk and Technology Review (89 FR 38508; May 7, 2024) (MATS Rule)

Dear Administrator Zeldin;

In accordance with President Trump's offer to consider an exemption request on the pending changes to the MATs rule, we are providing information for your evaluation in granting an exemption and providing additional time for us to meet these requirements.

Rule related to the request

40 CFR Part 63 Subpart UUUUU – Effective Date July 6, 2027

Emission standards subject to the request

- 0.01 Lb/MMBtu of filterable particulate matter (PM) per million BTU heat input

Limitations subject to the request

- General requirement to use a PM CEMs or HAP metals CEMS
- Prohibition of using the LEE option for filterable PM or non-mercury HAP metals.

Facility and Affected Sources

Requesting Facility: Grant Town Power Plant

Affected Sources: Source 1S – Boiler #1A, 2S Boiler #1B

Length of compliance period being requested: Delayed compliance until July 6, 2029

Justification for Exemption

Technology

The three issues are interrelated regarding the standard, the technology to implement it, and the option to use existing compliance methods for low emitting EGU's (LEE Units). As a first point of information, the pending 0.01 lb/MMBtu limit is likely technically feasible under the current compliance demonstration methods of a periodic Method 5 Performance Test, which consists of approximately 3-hours of testing as frequently as once per calendar quarter, or in the case of LEE units, once LEE status is demonstrated, once every 36 months. Ongoing compliance is demonstrated by opacity monitors in the stack.

The ability to meet an emission standard is based on the numerical limit of that standard, the reliability of the test method for that standard, and the frequency of the testing. In the case at hand the requirement to use a PM CEMs introduces a significant question of technical feasibility to meet the more restrictive standard on a continuous basis. PM CEMS do not measure PM directly but use methods such as light scatter or beta attenuation to estimate the PM concentration. Many of these device's outputs are adversely affected by particle size, density, and shape changes. The output of the PM CEMS must be correlated to the particulate concentration in the stack by using the currently approved test Method (Method 5) and developing correlation curves to convert the PM CEMS output to an estimated concentration. Of all of EPA's specifications for continuous emission monitors, PS-11, the performance specification for these instruments, is the only one that uses correlation methods to derive an estimated emission concentration.

The issue of varying particle size, density, and shape changes, which affect the correlation on many types of PM CEMS, could have a great impact on coal-fired power plants burning waste coal, such as is the case with this request. Coal-refuse fired power plants combust a fuel supply that has great variation in fuel chemistry as different waste coal piles are reclaimed and used for fuel. This is a far different situation than in the case of conventional virgin coal-fired power plants which use a much more consistent fuel supply. PM CEMs have not been demonstrated to be technically feasible on coal-refuse power plants and thus the technical feasibility of using these monitors nor the ability to meet the lower standard on a continuous basis with these types of monitors has been established to date as a technical matter.

Furthermore, there are no technically feasible add-on control devices that can be employed on these units, beyond those currently in use, that could provide additional controls to further reduce emissions should the new requirements for monitoring show an inability to comply with the reduced emission standard based on the new monitoring requirements.

Most importantly, based on EPA's own analysis, the reduced PM standard was not implemented for any reasons of health impact or risk[1], but simply because EPA determined, in the Residual Risk and Technology Review, (incorrectly we believe, at least as to the sources burning coal refuse), that the lower standard was promulgated to reflect "the control levels currently achieved by the vast majority of regulated units."[2]

[1] National Emission Standards for Hazardous Air Pollutants: Coal- and Oil-Fired Electric Utility Steam Generating Units Review of the Residual Risk and Technology Review, 89 Federal Register 38508.

As to the removal of the option to qualify as a LEE unit, the pending change to the regulation imposes a significant financial burden on the cleanest of the coal-fired units, removing an option for less frequent testing after showing that the emissions are one-third or less of the current standard.

National Security Interests of the United States

As President Trump has expressed on many occasions, reliable and cost-effective energy is in the national security interest of the United States. The entire United States is facing an unprecedented surge in energy demand, driven by the rapid expansion of data centers supporting artificial intelligence, widespread electrification of vehicles and heating systems, as well as demand from the new manufacturing industries that this Administration is promoting. At the same time, the energy landscape is undergoing a major transition, with many thermal and dispatchable generation units retiring while new capacity additions are largely dominated by intermittent renewable resources such as solar and wind projects, as well as short-term storage solutions based on battery storage systems.

PJM, the ISO in which this facility operates, has expressed concerns about the increasing load and decreasing generation in its region. PJM predicts that 40 GW of its existing supply, largely, thermal based generation will retire by 2030. The PJM Long Term Growth Forecast expects loads to increase by over 55 GW by 2035. Finally, PJM's reliability study assumes a major contribution from offshore wind projects in New Jersey, an uncertain resource given the public's opposition to these projects.

The Trump Administration recognizes the urgent need for a balanced, reliable, and affordable power grid, as well as the need to rein in regulations that are not needed to protect public health. Granting of an extension for this facility will provide financial relief to allow a full evaluation of the technical and financial feasibility of the benefits and costs of the more restrictive regulations and allow our plant to continue to provide a dispatchable generation resource for the security of the United States and give us, and PJM more time to plan for the continued operation of this critical resource and continue to provide a stable energy supply for the PJM grid.

Thank you for your consideration in this matter.

Should you have any question, please contact me at 304-278-6113 office, 304-290-9268 mobile or email at sfriend@ambitwv.com.

Sincerely,

Steve Friend

Steve Friend
Plant Manager

cc: EPA Correspondence File
chrono

Minnkota Power COOPERATIVE
A Touchstone Energy® Cooperative

5301 32nd Ave S
Grand Forks, ND 58201-3312
Phone 701.795.4000
www.minnkota.com

March 28, 2025

Administrator Lee Zeldin
Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, DC 20460

Sent via email at airaction@epa.gov

RE: Presidential Exemption: *National Emission Standards for Hazardous Air Pollutants: Coal- and Oil-Fired Electric Utility Steam Generating Units Review of the Residual Risk and Technology Review (MATS RTR)*, 89 Fed. 38508 (May 7, 2024):
Milton R. Young Station, Center, North Dakota

Dear Administrator Zeldin:

Minnkota Power Cooperative, Inc. (Minnkota) respectfully requests a Presidential Exemption under Clean Air Act from compliance with the revised standards and requirements finalized in the above-referenced MATS RTR rule. Minnkota seeks an exemption for a two-year period from the current compliance date of July 6, 2027 (as calculated, July 6, 2029) for the Milton R. Young Station (Young Station) Unit 1 and Unit 2, with the potential for a further extension should the reconsideration of the MATS RTR require EPA additional time.

I. Executive Summary.

Minnkota seeks an exemption from compliance with the MATS RTR emissions standards for the Young Station, Units 1 and 2. Minnkota seeks an exemption for a two-year period from the current compliance date of July 6, 2027. Minnkota supports its request with information regarding the following:

- The mercury technology is not available to implement the emission limitation of 1.2 lb/TBtu at the Young Station. It is entirely uncertain whether this emission limitation can be achieved. Mercury testing results presented in this exemption recommendation letter support this conclusion.
- The filterable particulate matter (fPM) control technology is not available at the Young Station to meet the new fPM limitation. The timelines for control upgrades extend beyond the current compliance dates.
- PM continuous emissions monitors (PM CEMS) are not reliable at low levels of PM, which would be required to accurately measure for compliance. The lack of reliable monitoring further compounds technology availability.

This letter is signed by Robert McLennan, a President and CEO of Minnkota and General Manager of Square Butte Electric Cooperative, and Shannon Mikula, Environmental Manager and Authorized

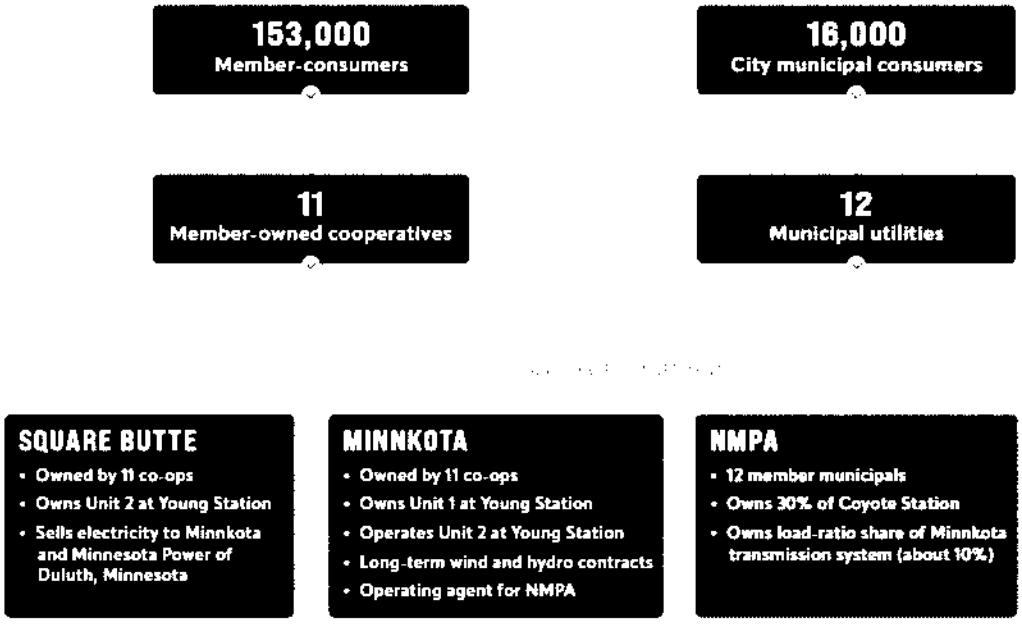
Representative of Milton R. Young Station. Minnkota owns Unit 1 and is the operator for both Units 1 and 2 at Young Station.

I. Introduction.

Minnkota actively participated in the MATS RTR rulemaking process, consistently raising substantial concerns regarding the technological feasibility, compressed time frames, flawed underpinnings, and the resulting impacts on grid reliability and national security. Minnkota respectfully presents the reasons for the President's consideration that favor him granting a Section 112(i)(4) exemption from compliance with the MATS RTR for the Young Station in North Dakota.

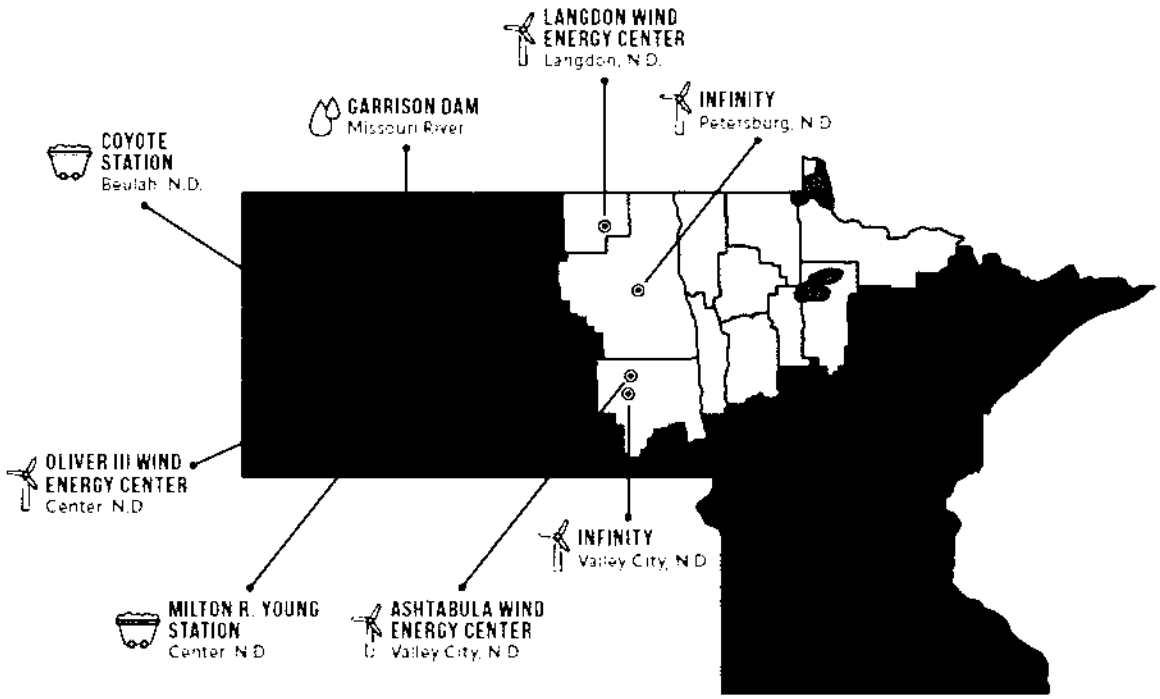
A. About Minnkota Power Cooperative

Minnkota Power Cooperative is a not-for-profit electric generation and transmission cooperative headquartered in Grand Forks, North Dakota. Minnkota provides wholesale electric energy to 11 member-owner distribution cooperatives located in eastern North Dakota and northwestern Minnesota. These member-owner distribution cooperatives serve nearly 153,000 consumer accounts in a 34,000 square-mile area, including many of the region's homes, farms, schools and businesses. Minnkota has key energy partners in Northern Municipal Power Agency (NMPA) and Square Butte Electric Cooperative that provide strategic collaboration and support. NMPA supplies electric needs of 12 associated municipals that serve more than 16,000 consumer accounts in the same geographic footprint as the Minnkota member-owners. Square Butte owns Unit 2 at the Young Station, a two-unit lignite coal-based power plant located near Center, North Dakota, and is governed by the Minnkota member cooperatives.



Minnkota has a diverse electric generation portfolio that includes coal resources (nameplate 58%), wind (nameplate 33%), hydro (nameplate 7%) and other (nameplate 2%). The Young Station plays a significant role in the generation portfolio as a baseload asset it is the backbone of the joint system. Electricity generated

by Minnkota is distributed through the Midcontinent Independent System Operator (MISO) regional transmission organization (RTO). MISO "operates the transmission system and centrally dispatched market" in fifteen states ranging from Canada down to the Gulf Coast. Across those states, it serves more than 42 million customers.[1] Minnkota and its system partners (Northern Municipal Power Agency and Square Butte Cooperative) have the capability of generating 1,425 MWs, which may be provided to MISO for scheduling and reliability purposes. Over half of the electricity generated by Minnkota is dispatchable power from coal sources, meaning it is available on demand, unlike power from wind and solar resources, which do not have on-demand capabilities. Dispatchable power is critical for MISO because MISO has small reserve margins, which is the amount of power needed to ensure demand is met and avoid failure of the grid. The Young Station plays a significant role in the generation portfolio as a baseload asset it is the backbone of the joint system.



Additionally, Minnkota is a member of the Lignite Energy Council (LEC), a regional lignite industry coalition in North Dakota—an $18 billion industry critical to the economy of the Upper Midwest. The members of LEC include mining companies, those that use lignite to generate electricity, synthetic natural gas, and other valuable byproducts, and businesses that provide goods and services to the lignite industry.

B. Milton R. Young Station

Minnkota is the operator and a partial owner of the Young Station, a two-unit, cyclone lignite coal-fired power plant located near the town of Center, North Dakota.

[1] FERC, MISO, https://www.ferc.gov/industries-data/electric/electric-power-markets/miso.

Unit 1 (257 MWg) commenced commercial operation in 1970, and Unit 2 (477 MWg) commenced operation in 1977. Both units employ Babcock and Wilcox cyclone boilers, and both boilers fire North Dakota lignite supplied from BNI Coal, Ltd's Center Mine, located in close proximity to the Young Station.

Each unit is equipped with Advanced Separated Over Fire Air (ASOFA) and Selective Non-Catalytic Reduction (SNCR) for NOx control. Each unit is equipped with Wet Flue Gas Desulfurization (WFGD) for SO2 control. Each unit employs an Electrostatic Precipitator (ESP) for particulate control. Each unit employs halide injection and activated carbon injection for the control of mercury.

Currently, Minnkota uses the same mercury control strategies for both Units and has maintained compliance with the standards. Although Minnkota uses the same control devices for the Units, operation and emissions output differs based on a number of factors. The Units vary in capacity and control device design. Unit 2 has a different ductwork configuration between the air heater and the electrostatic precipitator than Unit 1. Unit 1 has shorter ductwork. Length of ducting effects the amount of residence time for the flue gas to be exposed to powdered activated carbon (PAC), a longer duct provides more time for oxidized mercury to be adsorbed by the PAC, resulting in greater ability to limit mercury emissions.

C. MATS RTR and Presidential Exemption Section 112(i)(4)

1. Clean Air Act 112(d)(6) and revised MATS RTR

EPA promulgated MATS under Clean Air Act (CAA) Section 112 which regulates hazardous air pollutant (HAP) emissions. Congress defines EPA's scope of review for the RTR under the CAA in Sections 112(d)(6) and 112(f)(2). CAA Section 112(d)(6) defines the technology review for air toxics standards such as MATS as follows:

> The Administrator shall review, and revise as necessary (taking into account developments in practices, processes, and control technologies), emission standards promulgated under this section no less often than every 8 years.[2]

CAA Section 112 does not require EPA to recalculate the maximum achievable control technology (MACT) floor from the original standard.[3] The statutory language, "review, and revise as necessary" does not impose that type of analysis.[4] Rather, the review process is more limited and defined by statute as the one-time residual risk review and the octennial technology review. In addition, costs are implied as a component of the RTR analysis.[5]

In addition, Section 112(f)(2) states, in part, "if standards promulgated pursuant to subsection (d) and applicable to a category or subcategory of sources emitting a pollutant (or pollutants) classified as a known, probable or possible human carcinogen do not reduce lifetime excess cancer risks to the individual most

---

[2] 42 U.S.C. § 7412(d)(d).
[3] *NRDC v. EPA*, 529 F.3d 1077, 1083 (D.C. 2008) (*NRDC*).
[4] *Id.*
[5] *Association of Battery Recyclers Inc. v. EPA*, 716 F.3d 667, 673 (D.C. Cir. 2013).

exposed to emissions from a source in the category or subcategory to less than one in one million, the Administrator shall promulgate standards under this subsection for such category." Taken together, these two provisions are known as the RTR. EPA released the MATS RTR under the statutory authority of these sections.

EPA originally finalized the RTR for MATS on May 22, 2020 (the 2020 MATS RTR).[6] In that rulemaking, EPA determined that the residual risks from coal-fired and oil-fired EGUs were acceptable and did not identify any new technologies to control HAPs for these units. EPA finalized the RTR without any changes to emissions standards or work practices.

When President Biden took office, he directed EPA to reconsider the 2020 MATS RTR. EPA embarked on a new rulemaking in response, resulting in the MATS RTR. On May 7, 2024, EPA published the final MATS RTR. The MATS RTR lowers the fPM emission standard from 0.030 lb/MMBtu to 0.010 lb/MMBtu. The Rule also tightens the standard for emissions of mercury from lignite-fired EGUs from 4.0 lb/TBtu to 1.2 lb/TBtu. The MATS RTR also requires that existing coal-fired EGUs use PM CEMS to demonstrate compliance with the fPM emission standard, eliminating the stack testing option. The low emitting EGU (LEE) status option for fPM, total non-Hg HAP metals, and individual non-Hg HAP metals for coal-fired and solid-oil derived fuel-fired EGUs has also been removed.

The RTR requires EPA to consider "developments in practices, processes, and control technologies." With respect to fPM, EPA concluded that there are "no new practices, processes, or control technologies for non-Hg HAP."[7] This finding should have signaled the end of EPA's statutory inquiry for fPM. With respect to the mercury standard for lignite coal-fired units, EPA concluded that lignite plants must remove less than 90% of mercury in the flue gas to meet the new limit and are able to achieve this.[8] The MATS RTR reverses course from the 2012 MATS mercury requirements for lignite combusting units. The 2012 rule set an emissions limitation for low rank virgin coal that allows for variations in coal quality. The 2012 MATS mercury emission limitation provides lignite power plants enough leeway to account for high mercury batches of coal, recognizing that mercury emissions are higher from coal with lower heat values.[9]

Minnkota strongly supports EPA's decision to reconsider the MATS RTR for these reasons and others identified in our comments in the MATS RTR docket. There were no developments, so the 2020 MATS RTR analysis should have been affirmed.

2. The Presidential Exemption

CAA 112(i) sets a schedule for compliance. In Section 112(i)(4), Congress provided the President with executive discretion to exempt a stationary source from compliance with standards and limitations provided under Section 112.

---

[6] 85 Fed. Reg. 31286 (May 22, 2020).
[7] Proposed Rule at 24868.
[8] 89 Fed. Reg. 38547 (May 7, 2024).
[9] 77 Fed. Reg. 9304, 9388 (Feb. 16, 2012).

> The President may exempt any stationary source from compliance with any standard or limitation under this section for a period of not more than 2 years if the President determines that the technology to implement such standard is not available and that it is in the national security interests of the United States to do so. An exemption under this paragraph may be extended for 1 or more additional periods, each period not to exceed 2 years. The President shall report to Congress with respect to each exemption (or extension thereof) made under this paragraph.

The President's discretion may be exercised upon satisfying a showing that (1) the technology is not available for implementing the standard, and (2) the national security interests of the United States warrant the President's exercise of the discretion.

On March 12, 2025, EPA released a fact sheet[10] regarding the MATS RTR as part of "Powering the Great American Comeback" (the Fact Sheet). The Fact Sheet recognizes the regulatory uncertainty for coal plants, including those in North Dakota. It offers the opportunity for "any source interested in a Presidential exemption, should provide their recommendations to EPA by March 31, 2025." This letter responds to this invitation.

III. Minnkota Requests Presidential Consideration to Exempt the Young Station from Compliance with the Revised MATS RTR Standards.

A. The Technology to Implement the MATS RTR Mercury Standard is Not Available.

The revised MATS RTR mercury standard is not demonstrably achievable. Existing mercury control technology has not been shown to meet the new 1.2 lb/TBtu limit. Minnkota presents the information about lignite as a unique fuel and then presents the reasons why technology to implement the new standards is not available.

Lignite Coal

It is well-known and consistent with Minnkota's experience that lignite deposits vary in quality, including fuel combustion performance and mineral content. Relevant but ignored by EPA in the MATS RTR, mercury content in the lignite varies significantly. This means that different areas within the mine yield lignite in varying quality content (including mercury) on a day-to-day basis. Minnkota is adept at pivoting operations at Units 1 and 2 to accommodate for the changing lignite quality to assure compliance with MATS mercury limitations. However, a compliance margin is critical.

Prior to the revised MATS RTR, the mercury emission limitation provided lignite power plants enough leeway to account for high mercury batches of coal, recognizing that mercury emissions are higher from coal with lower heat values.[11] Further, to address daily and weekly emissions fluctuations, a 30-day rolling averaging period is essential in addition to maintaining a higher mercury emission rate for this subcategory of fuel.

---

[10] https://www.epa.gov/system/files/documents/2025-03/fact-sheet-reconsideration-of-mercury-and-air-toxics-standards.pdf

[11] 77 Fed. Reg. 9304, 9388 (Feb. 16, 2012).

Current Technology and the New Mercury Limitation

The MATS RTR mercury limit is technically justified by the conclusion that brominated powdered activated carbon (PAC) improves mercury removal to make compliance available to lignite plants. EPA cited a 2010 trade article to support this proposition in the MATS RTR, which it used in its original MATS analysis.[12] EPA uses the ACI Fuel 2010 Article to support its proposition that a performance standard greater than 90% mercury removal can be achieved by lignite units. The Article presents a chart that compiles mercury removal test results from Department of Energy (DOE) mercury control systems. The scatterplot presents a variety of results under different conditions and equipment configurations. The ACI Fuel 2010 Article dataset contains only one lignite datapoint, which is a unit equipped with a fabric filter. Fabric filters aid in mercury removal because of increasing resonance time and temperature differential. Given the limited dataset, lack of testing data, and lack of ESP-equipped units like the Young Station Units, the ACI Fuel 2010 Article does not support the conclusion that a performance standard of 90% mercury removal can be achieved across the lignite industry, particularly with respect to lignite-fired units that are not equipped with a fabric filter. Minnkota is unaware of any verified testing or evidence that demonstrates that lignite units equipped with ESP can meet the New Mercury Limitation of 1.2 lb/TBtu.

Minnkota also has no existing data or other evidence that the Young Station's mercury control system can achieve 1.2 lb/TBtu simply by adding more PAC. So, Minnkota embarked on a testing project. The Young Station purchased brominated PAC for the purpose of determining if that product could achieve improved mercury removal as compared to non-brominated PAC. Minnkota selected Unit 1 for this trial because its mercury emissions baseline rate was higher than Unit 2. As shown below, the Unit 1 average mercury emissions rate was higher when injecting brominated PAC as compared with non-brominated PAC. This confirms that the technology EPA chose (brominated PAC) was not effective in removing more mercury and thus attaining the emissions standard.[13]

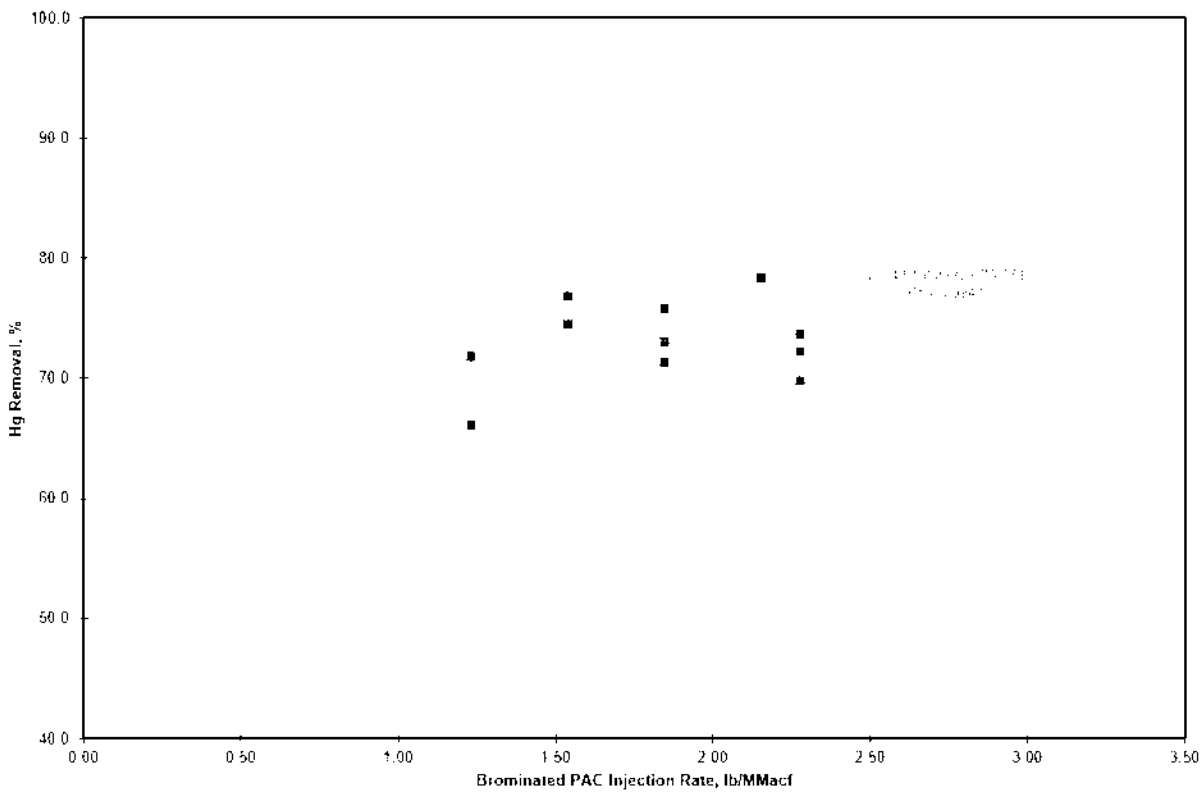
MRY Unit	**Average Hourly Hg Emissions Value Achieved at Full Load (Sorbent Trap) Brominated PAC**	**Average Hourly Hg Emissions Value Achieved at Full Load (Sorbent Trap) Non-Brominated PAC**
Unit 1	2.57	2.17

[12] Sjostrom, "Activated carbon injection for mercury control: Overview," Fuel Vol. 89, Issue 6 at 1320-22 (June 2010) (ACI Fuel 2010 Article). The ACI Fuel 2010 Article was cited in the beyond-the-floor memorandum, Kevin Culligan, SPPD/OAQPS to EPA-HQ-OAR-2009-0234, "Emission Reduction Costs for Beyond-the-floor Mercury Rate for Existing Units Designed to Burn Low Rank Virgin Coal" (Dec. 16, 2011) (Beyond-the-Floor Memorandum), for the proposition that a performance standard greater than 90% mercury removal can be achieved by lignite units.

[13] Minnkota's feasibility testing confirmed that its existing mercury control equipment cannot meet the mercury limit of 1.2 lb/TBtu. Sargent & Lundy, *Mercury Testing Results for the MATS Residual Risk and Technology Review*, at 3-5 (May 22, 2024), Attachment A ("At the current injection capabilities of the existing system (i.e. requiring minimal modifications/retrofit of the existing equipment), BPAC cannot be applied to reduce Hg emissions to 1.2 lb/TBtu.").

Further, Minnkota has no information or data supporting the conclusion that Unit 1 or Unit 2 can achieve the New Mercury Limitation on a 30-day rolling basis while operating at full load. The short-term testing data suggest that even a longer-term averaging period would not result in compliance. The technology that EPA used to set the limitations of the revised MATS RTR cannot feasibly control emissions on Unit 1 and Unit 2 to meet the reduced limit, because the Young Station does not have the technology available for compliance with the revised MATS RTR limitations.

Minnkota further tested Unit 1 by adding more PAC than the Unit's system is capable of injecting by renting portable equipment. However, the results show that even injecting more PAC will not achieve the new mercury limit. The plotted curve shown in the figure shows a leveling off such that increasing the amount of sorbent results in diminishing improvement in Hg control. The projected curve based on the test campaign results shows this leveling off taking place somewhere less than 80% capture." The plotted trend line, based on the test values, is far below EPA's conclusion that injection of brominated PAC at the rate of 3.0 lb/MMacf will result in a 90% removal rate and in line with the ACI Fuel 2010 Article. Consequently, increasing the amount of brominated PAC is not an adequate control strategy to achieve the New Mercury Limitation. The scatterplot from Minnkota's Study is presented below.



Compliance with MATS RTR places Minnkota in an urgent and untenable position, given the impending compliance date. Noncompliance with the Clean Air Act is not an option. Therefore, prior to making a shutdown decision regarding critical assets, Minnkota must undertake more study and testing to determine what mercury emission rate the Young Station units can achieve with the technology available. That would require significant additional investment in testing along with installation of new equipment. We estimate this amount will exceed approximately $600,000.00. Minnkota must also spend money on design and installation

of new mercury technologies if any such feasible technology is identified. We estimate this amount to cost the cooperative a minimum of $5,000,000 in capital expenditures. Minnkota asks for this exemption to avoid these expenditures while EPA reconsiders the MATS RTR.

B. The Technology to Implement the revised MATS RTR Filterable Particulate Matter (fPM) Standard is Not Available by the July 6, 2027 Compliance Date.

1. PM technology improvements are needed and are not available by the compliance date.

Young Station Unit 1 and Unit 2 operate ESPs for fPM control. The Unit controls are unable to consistently perform on a long-term basis to assure compliance with the emissions limit. Minnkota opted to examine the upgrade options in a study focused on Unit 2. A lengthy ESP upgrade may achieve the New fPM limitation with adequate margin. However, this is not certain. Minnkota conducted a MATS 2023 Study that finds that vendors would have to complete a more detailed qualitative study and baseline testing to determine whether an ESP rebuild can achieve a low enough fPM rate based on ESP inlet and outlet emissions. Otherwise, a baghouse would be required. Minnkota would need 48 months (4 years) to convert to baghouse technology.[14] The project dollars to undertake either project are substantial, a range of $246,812,000 to $38,452,000, depending on whether a baghouse is required.[15]

The ESP upgrades could take up to 36 months to complete. With 26 units in the country, all likely needing some form of technology upgrade for the new fPM limitation of 0.010 lb/mmBtu. *Id.* Since there are only 4 vendors in the United States available to modify and license ESP technology, it is likely that the 36-month estimate will be further protracted due to the dearth of contractors available to perform the work.

Therefore, on this basis alone the technology to comply with the new fPM limitation is not presently available at MRY and will not be available by July 6, 2027.

2. Particulate Matter Continuous Emissions Monitoring Systems (PM CEMS) are not technologically able to assure compliance with revised MATS RTR fPM requirements with a sufficient level of accuracy.

The MATS RTR compliance demonstration method requires the use of Particulate Matter Continuous Emissions Monitoring Systems (PM CEMS). While the Young Station has PM CEMS already installed, many units will have additional supply chain constraints for installation. But more importantly, the accuracy of PM CEMS is questionable at best at the emissions levels that must be measured to determine compliance with the lower fPM emissions limit.

A material technological issue is that the commercially available PM CEMS do not provide a direct measure of PM emissions, which means that the instrument measures the mass of PM and the volume of flue gas from which that mass of PM was sampled. Rather, commercially available PM CEMS measure some

[14] S&L, Particulate & Mercury Control Technology Evaluation & Risk Assessment for Proposed MATS Rule, June 23, 2023, Attachment B, at Table 2-2.
[15] McClennan Declaration, Table B.

property (i.e., light scatter or beta attenuation) that must be correlated to actual stack PM measurements.[16] But at lower emissions levels, PM CEMS have not been demonstrated to have the sensitivity needed to accurately account for lower emissions levels. Technological feasibility has not been proven.

In addition, PM CEMS correlation testing will be lengthy and expensive to correlate to the new emissions standard. These monies must be spent prior to the compliance date to ensure the instrument is prepared to serve as the compliance measure by July 2027.[17]

EPA's requirement of PM CEMS measurement in combination with the EPA correlation standard method and the revised MATS RTR fPM limit result in technology that is not available. The technology is not available to demonstrate compliance at the low levels required by the new fPM limit. The technological limitations of PM CEMS to accurately measure fPM at the low levels required by the MATS RTR when required to perform performance correlation standards results in probable failure to obtain meaningful correlations over a limited data range. If a unit fails the correlation test, then its monitoring instrument is out of compliance, and the unit cannot operate with noncompliant monitoring instruments.

B. National Security Interests of the United States Strongly Support Granting the Exemption for the Young Station.

Executive Order 14156 (E.O. 14156) declares a national energy emergency. That E.O. properly ties an affordable supply of energy to the national defense. As to North Dakota, the MATS RTR impacts the state even more profoundly than other areas of the country. Lignite coal powers the majority of the electric power generated and consumed in North Dakota. For this reason, the rule has more intense impacts on North Dakota than other areas of the country. It affects the ability of the North Dakota utilities to maintain adequate generation resources and sustain national security efforts. In turn, the regional economy will be harmed by an unstable grid, affecting countless businesses, families, military operations, and productivity.

The root of the MATS RTR's impacts arise from the changes that most North Dakota lignite plants must undertake to comply with the Rule. Units must retire if they cannot meet the new mercury or fPM limitations that will go into effect in 2027. Multiple environmental regulations that EPA promulgated last year directly and profoundly impact generation resources in North Dakota. The MATS RTR is part of the cumulative reliability and cost impacts on coal-fired generation.

Without adequate generation, the grid is in jeopardy within the region North Dakota is a primary exporter. Multiple unit retirements, without sufficient replacement generation, in a short time frame compound the problem. The North American Electric Reliability Corporation (NERC) estimates continued future shortfalls in North Dakota.[18] NERC reports with respect to the MISO region: "Resource additions are

---

[16] The EPA statement at 88 Fed. Reg. at 24,872, that a beta gauge "detector measures the amount of radiation emitted by the sample" is categorically incorrect and illustrative of several uninformed statements (e.g., cost estimates) about PM CEMS in the preamble to the proposed rule.

[17] *See* RLR Consulting, LLC, "Technical Comments on EPA's Proposed Rule: Mercury and Air Toxics Standards Risks and Technology Review – PM CEMS," June 16, 2023 (RLR Report), Attachment C.

[18] NERC, 2024 Long-term Reliability Assessment, Dec. 2024, https://www.nerc.com/pa/RAPA/ra/Reliability%20Assessments%20DL/NERC_Long%20Term%20Reliability%20Assessment_2024.pdf

not keeping up with generator retirements and demand growth. Reserve margins fall below Reference Margin Levels (RML) in winter and summer."[19] North Dakota's region of MISO is already in a tenuous, overburdened portion of the grid.

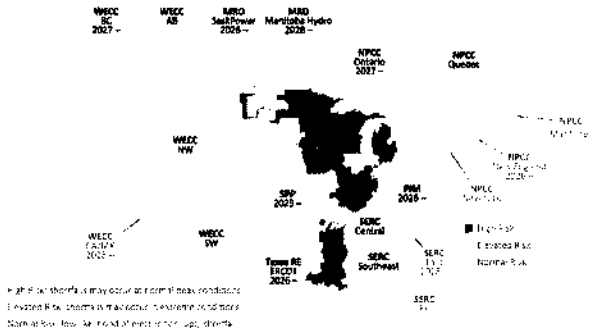


Figure 1: Risk Area Summary 2025–2029

Dramatic repercussions will flow from the loss of North Dakota generation units due to the MATS RTR. This topic was studied during the MATS RTR rulemaking by the North Dakota Transmission Authority (NDTA). NDTA reports a loss of tax revenue and a decrease in economic activity for the region if units must shut down. Retirements not only economically impact local communities, jobs, and industries, but put more strain on existing resources to provide reliable and affordable energy.

The interruption of power delivery from a grid failure will cause damage to public health. North Dakotans rely on electricity to heat their homes during the extreme winter temperatures typical of the long winter season. Affordable and consistent power allows for medical providers to provide essential services to the elderly, infirm, and to vulnerable individuals with chronic health conditions. Evidence from grid failures in other areas of the country in winter storms Uri and Elliott show the documented health impacts and morbidity caused by those events.[20]

Reliable energy is essential to the national defense[21] in the following ways:

- Power military bases
- Power emergency services to enable quick responses to emergencies, such as acts of war, weather catastrophes, and cybersecurity threats
- Power essential government functions that prevent threats to the country
- Allow fast deployment of military resources
- Power manufacturing facilities that make military weapons, vehicles, vessels, and aircraft infrastructure.

---

[19] *Id.* at 6.

[20] *See, e.g.*, Hanchey, "Mortality Surveillance During Winter Storm Uri, United States – 2021," Disaster Med Public Health Prep (Dec. 2023), https://pubmed.ncbi.nlm.nih.gov/37974501/; Sharma, "Winter Storm Elliott death toll climbs to 56 as thousands still without power in -40 temperatures," Yahoo News (Dec. 26, 2022), https://www.yahoo.com/news/winter-storm-elliot-power-outages-154557710.html.

[21] *See* https://www.utilitydive.com/news/aging-grid-threatens-national-security-reliability-cyber-threat-transmission/705362/

Indeed, the Department of Defense runs global military operations from domestic bases. Operations require a resilient and dependable power supply for mission readiness. Back home, on-base generation and microgrids are necessary to support the thousands of military workers working and living on- and off-base, including the goods and services that support those communities.[22] Power outages destabilize the military defense.

Specifically, North Dakota has three active military installations, critical to the U.S. military mission. North Dakota's military presence is deeply rooted in its strategic location on the Great Plains, making it a key part of national defense since the 1800s. Over the years, the state has hosted numerous forts and installations, supporting military operations ranging from westward expansion to modern nuclear deterrence.[23]

North Dakota's military bases are:

- Camp Grafton-- is a training site for the North Dakota National Guard, providing instruction for military personnel in engineering, logistics, and maneuver operations.
- Grand Forks Air Force Base—is the home to the 319th Air Refueling Wing, which operates KC-135 Stratotankers—providing vital aerial refueling to U.S. and allied aircraft worldwide.
- Minot Air Force Base—is a cornerstone of nuclear deterrence and is a key location for both strategic bombers and intercontinental ballistic missiles.

It serves the national security interests to ensure that these bases have reliable power delivery. Thus, maintaining a healthy grid in ND will ensure that the national security is preserved in Minnkota's service territory.

IV. Conclusion.

Minnkota appreciates the opportunity to present the reasons why the Young Station should be exempt from MATS RTR compliance requirements for a two-year period. We respectfully request your consideration and are happy to answer any questions.

Respectfully submitted,

Robert L. McLennan
President & CEO-*Minnkota Power Cooperative,Inc.*
General Manager-*Square Butte Electric Cooperative*

Shannon R. Mikula
Environmental Manager, Project Counsel-*Designated Representative Milton R. Young Station*

[22] https://acore.org/wp-content/uploads/2021/10/MGI_National_Security_Transmission_Factsheet.pdf
[23] https://www.veteranpcs.com/blog/what-military-bases-are-in-north-dakota

ATTACHMENT A

Minnkota Power COOPERATIVE

A Touchstone Energy® Cooperative

Minnkota Power Cooperative, Inc.
Milton R. Young Station Units 1 and 2

Mercury Testing Results for the MATS Residual Risk and Technology Review

Rev. 2 *

May 22, 2024

Project No.: A14559.013

S&L Nuclear QA Program Applicable:

☐ Yes

☒ No

55 East Monroe Street
Chicago, IL 60603-5780 USA
312-269-2000
www.sargentlundy.com

Sargent & Lundy

* Revision 2 corrects the report date exclusively, which was a typographical error in Revision 1.

1. INTRODUCTION

1.1. PURPOSE

Sargent & Lundy (S&L) was retained by Minnkota Power Cooperative, Inc. (Minnkota) tosupport the evaluation of mercury (Hg) emissions reductions in response to the pre-published rule to amend the National Emission Standards for Hazardous Air Pollutants (NESHAP) for Coal -and Oil-Fired Electric Utility Steam Generating Units (EGUs), commonly known as Mercury and Air Toxics Standards (MATS) published on April 24, 2023 that would require additional Hg emissions reductions on the Milton R. Young (MRY) Station Units 1 and 2. As part of this evaluation, S&L assisted Minnkota in the coordination ofa Hg control test campaign to determine if it is feasible to achieve incremental Hg emission reduction on a lignite-fired unit without a fabric filter that is sufficient to meet a 1.2 lb/TBtu Hg emission rate on a continuous basis.

1.2. FACILITY BACKGROUND

The MRY station is located approximately seven (7) miles southeast of Center, North Dakota or forty (40) miles northwest of Bismarck, North Dakota on ND Highway 25 at 3401 24th Street SW, Center, North Dakota 58530. MRY station provides energy to the Midcontinent Independent System Operator (MISO) system. MRY station consists of two (2) units. Both MRY units are lignite-fired Babcock and Wilcox (B&W) cyclone boilers. Both boilers fire North Dakota lignite coal supplied fromBNI Coal, Ltd.'s Center Mine located in close proximity to the plant. The MRY Unit 1 single wall cyclone boiler (Caroline type, radiant natural circulation) was placed into service in 1970 and has a typical output capacity rating of 257 MWg (gross). The MRY Unit 2 opposed wall cyclone boiler (Carolina type, radiant pump assisted natural circulation) was placed into service in 1977 and has a typical output capacity rating of 470 MWg (gross). Both units utilize selective non-catalytic reduction (SNCR) and separated overfire air (SOFA) systems for NOx control,fuel additive (or halide) injection system and non-halogenated (or non-brominated) powdered activated carbon (PAC) for Hg control,dry electrostatic precipitators (ESP) for PM emissions control, and wet flue gas desulfurization (WFGD) systems for sulfur dioxide (SO_2) control.

1.2.1.Current Hg Control System Specifications

The existing Hg control system is designed to control Hg emissions below 4.0 lb/TBtu using a combination of M-Prove halide injection and non-halogenated PAC. The M-Prove is directly applied on the coal belt prior to reaching coal silos, whereas the non-halogenated PAC is injected into the duct downstream of the air pre heater (APH). Additional information on the design of the existing fuel additive and PAC injection systems for MRY Units 1 and 2 are summarized below:

- MRY Common Non-brominated PAC Storage Silo:
  - PAC Utilized: Cabot DARCO® Hg-H non-halogenated PAC
  - Single storage silo with three (3) outlet cones or discharge connections. Each cone is connected to a feeder train (A, B, and C).
  - Feeder Train A is dedicated to MRY Unit 1
  - Feeder Trains B and C are dedicated to MRY Unit 2
  - Storage Volume: 4,200 cu.ft. (Nominal)
  - Capacity: 105,000 lbs. (based on PAC density of 25 lbs/cu.ft.)

- Storage duration: Approximately 18 days based on silo capacity of 105,000 lbs. and total combined PAC consumption rate of 244 lb/hr (MRY Unit 1 at 86 lb/hr and MRY Unit 2 at 158 lb/hr)

- MRY Unit 1 (257 MWg)
  - Fuel Additive: ARQ (formerly ADA) M-Prove
    - Average M-Prove application rate: 6.0 ppm
    - Maximum M-Prove dosage pump rate: 18.0 ppm
  - Non-brominated PAC Injection:
    - Maximum Train A PAC injection at 100% feeder rate: 1.43 lb/min (approximately 86 lb/hr or 1.06 lb/MMacf)
    - Transport piping limited to 192 lb/hr (2.37 lb/MMacf) to avoid pluggage issues
    - PAC injected into flue gas using eight (8) lances located across the APH outlet duct.
    - The lance depths vary from 18" – 54" to provide even distribution of PAC into the flue gas stream

- MRY Unit 2 (470 MWg)
  - Fuel Additive: ARQ (formerly ADA) M-Prove
    - Average M-Prove application rate: 8.0 ppm
    - Maximum M-Prove dosage pump rate: 18.0 ppm
  - Non-brominated PAC Injection:
    - Maximum Train B and C PAC injection at 100% feeder rate: 2.64 lb/min (approximately 158 lb/hr or 1.12 lb/MMacf)
    - PAC injected into flue gas using eight (8) lances located across each of the North and South APH outlet ducts for a total of sixteen (16) lances.
    - The lance depths vary from 15" – 78" to provide even distribution of PAC into the flue gas stream

2. TEST CAMPAIGN SUMMARY

The MRY Units 1 and 2 test campaign was completed in phases to control testing variables and to accommodate vendor availability, and scheduled outages. Testing included:

- November 23, 2023 to November 24, 2023: Maximizing MRY Unit 1 capabilities of the existing M-Prove fuel additive system and non-halogenated PAC injection (at 100% feeder rate) to evaluate if the current system can meet 1.2 lb/TBtu.

- December 19, 2023 to December 20, 2023: Maximizing MRY Unit 2 capabilities of the existing M-Prove fuel additive system and non-halogenated PAC injection (at 100% feeder rate) to evaluate if the current system can meet 1.2 lb/TBtu.

- March 19, 2024 to March 23, 2024: Utilizing a rental bulk bag unloading (BBU) system provided by Motus Group tied into the existing MRY Unit 1 PAC conveying lines and injection lances to inject brominated PAC (or BPAC), ARQ's FastPAC Platinum®, at varied injection rates ranging from 100 lb/hr (or 1.23 lb/MMacf) to a maximum of 185 lb/hr (2.28 lb/MMacf) to stay below the transport piping pluggage limit. The majority of this testing also included maximizing MRY Unit 1 capabilities of the existing M-Prove fuel additive system; however, test runs on March 22 and March 23 included BPAC injection with no fuel additive usage. Individual coal samples were taken and analyzed by a 3^{d} party lab for determination of inlet Hg coal content.

- March 28, 2024 to April 1, 2024: Individual coal samples were taken and analyzed by a 3^{d} party lab for determination of inlet Hg coal content.

This testing was not able to be completed during the proposed rule's short comment periodbf only 60 days. Due to timing of boiler cleaning outages, time required to develop a test protocol and schedule, and coordination with multiple vendors, rental equipment availability, various site activities, and unplanned unit upsets/outages, a much longer duration was needed.

2.1. INCREMENTAL HG REMOVAL TEST RESULTS

The Hg emissions achievable based on maximizing current design capabilities using non-brominated PAC and M-Prove without any modifications is summarized below for both MRY Units 1 and 2.

Table 2-1 — MRY Units 1 and 2 Existing System Capabilities

Parameter	Units	MRY Unit 1 18 ppm M-Prove and 100% Non-brominated PAC	MRY Unit 2 18 ppm M-Prove and 100% Non-brominated PAC
Unit Load during testing	MWg	242	469
PAC Injection Rate	lb/MMacf	1.06	1.12
Avg. Sorbent Trap Hg Emissions	lb/TBtu	2.17	1.61

Based on maximizing injection capabilities of the existing systems (without any modifications), the test results show that MRY Unit 1 and MRY Unit 2 cannot achieve the proposed MATS limit of 1.2 lb/TBtu.

ED_021114A_00008629-00017

2.2. BROMINATED PAC PERFORMANCE

The proposed rule assumes a 90% Hg removal efficiency is feasible from all lignite units, even those equipped with an ESP.

- In the Beyond-the-Floor memo (Docket ID No. EPA-HQ-OAR-2009-0234), it states that "[g]reater than 90 percent control can be achieved at lignite-fired units at a 2.0 lb/MMacf injection rate for units with installed fabric filter and using treated (*i.e.*, brominated) activated carbon or at an injection rate of 3.0 lb/MMacf for units using treated activated carbon with installed ESPs."

- According to the proposed MATS rule, EPA reiterates that "[i]n the beyond-the-floor analysis in the final MATS rule, we noted that the results from various demonstration projects suggest that greater than 90 percent Hg control can be achieved at lignite-fired units using brominated activated carbon sorbent at an injection rate of 2.0 lb/MMacf for units with installed FFs for PM control and at an injection rate of 3.0 lb/MMacf for units with installed ESPs for PM control."

The Final Rule relies on the same assumption. In EPA's 2024 Technology Mem orandum, EPA finds, "In the beyond-the-floor analysis in the final MATS rule, we noted that the results from various demonstration projects suggest that greater than 90 percent Hg control can be achieved at lignite fired units using brominated activated carbon sorbent at an injection rate of 2.0 lb/MMacf for units with installed fabric Filters for PM control and at an injection rate of 3.0 lb/MMacf for units with installed ESPs for PM control. . . all units (in 2022) would have needed to control their Hg emissions to less than 95 percent to meet an emission standard of 1.2 lb/TBtu. Based on this, we expect that the units could meet the proposed, more stringent, emission standard of 1.2 lb/TBtu by utilizing brominated activated carbon at the injection rates suggested in the beyond-the-floor memorandum from the final MATS rule."

During the MRY Unit 1 March testing, MRY secured a temporary rental injection skid . The materials of construction of the existing PAC silo (common to MRY Units 1 and 2) is not currently compatible to store halogenated PAC. The silo would require an internal coating to prevent corrosion (but could otherwise be reused). The temporary rental injection skid avoided corrosion to the existing silo, but also allowed for decoupling MRY Unit 1 from the common PAC storage silo to prevent interfering with MRY Unit 2 Hg control operation.

To achieve a dosage rate of 3.0 lb/ MMacf, an injection rate of 245 lb/hr would be required which would exceed the existing MRY Unit 1 Train A PAC injection/transport system limit of 192 lb/hr (2.37 lb/MMacf). The maximum BPAC injection rate tested was limited to 185 lb/hr (2.28 lb/MMacf) to avoid line pluggage.

The Hg emissions reductions achievable based on maximizing the use of BPAC (without any fuel additives) supplied via a temporary rental injection system tied into the existing transport piping/lances is summarized below for MRY Unit 1. A higher PAC injection rate was not possible due to maximum capability of the existing transport piping while preventing pluggage.

Table 2-2 — MRY Unit 1 Existing System Capabilities using Brominated PAC

Parameter	Units	MRY Unit 1 185 lb/hr BPAC
Unit Load during testing	MWg	257.1
PAC Injection Rate	lb/MMacf	2.28
Avg. Sorbent Trap Hg Emissions	lb/TBtu	2.57

At the current injection capabilities of the existing system (i.e. requiring minimal modifications/retrofit of the existing equipment), BPAC cannot be applied to reduce Hg emissions to 1.2 lb/TBtu.

2.3. MRY MERCURY REMOVAL EFFICIENCY

2.3.1. Lignite Coal Mercury Content

To calculate an overall mercury removal efficiency needed to control to 1.2 lb/TBtu, the coal Hg inlet must be defined.

- EPA reported the "Hg Inlet" level based on the ma ximum Hg content of the range of feedstock coals that the EPA assumes is available to each of the plants in the Integrated Planning Model (IPM).
  - With respect to MRY, EPA reported "Hg inlet":
    - MRY Units 1 and 2: 7.81 lb/TBtu

- According to the proposed rule, EPA estimated the 2021 Hg inlet concentration from actual 2021 fuel usage and 2021 Hg emissions reported to the EPA. However, based on the 2024 Technical Memo, EPA updated the information based on 2022 information.
  - With respect to MRY, EPA "Estimated Hg inlet" content documented in 2023 and 2024 Technical Memo is summarized in the table below:

Table 2-3 — EPA Estimated North Dakota Lignite Coal Hg Inlet

Parameter	Units	2023 Technical Memo (Estimated 2021 Hg Inlet)	2024 Technical Memo (Estimated 2022 Hg Inlet)
MRY Unit 1	lb/TBtu	7.78	9.70
MRY Unit 2	lb/TBtu	7.79	9.70

- However, recent test information and other resources for the North Dakota lignite fired at MRY has indicated that significantly higher inlet Hg is experienced at MRY:
  - Within the BNI Coal, Ltd.'s Center Mine, the Kinneman Creek (KC) and Hagel (HA) beds are targeted for the coal supply for MRY. Based on the 2021 BNI coal data (constructed from Carlson reports), the avg. coal Hg content is approximately 16 lb/TBtu for KC and 15 lb/TBtu for HA.
  - The variability of the projected lignite coal quality received from the Center Mine from 2025 through 2036 is shown in the following table.

ED_021114A_00008629-00019

Table 2-4 — Forecasted 2025 – 2036 Center Mine Ultimate Coal Analyses (As-Received)

Fuel Parameter	Units	Average	Minimum	Maximum
Mercury Content	ppm	0.091	0.053	0.184
Higher Heating Value (HHV)	Btu/lb	6,625	6,489	6,739
Estimated Hg Emission	lb/TBtu	8.41	4.79	17.42

- Industry experience has shown that lignite coal deposits vary significantly in quality, including fuel combustion performance, mineral content, and Hg content, resulting in a coal that can change on a day-to-day basis depending on the coal seam being mined at the time. This variability was demonstrated by the range of coal analyses from MRY Unit 1 recent short-term testing in 2024 (average = 10.1 lb/TBtu, with individual results ranging from 4.9 – 18.6 lb/TBtu over the course of five (5) days of testing). Individual coal samples and how they varied across coal feeders, per day are shown in following table.

Table 2-5 — MRY Unit 1 Coal Sampling Analysis

Date	Sample	Coal Hg Inlet (lb/TBtu)				
		Feeder #1	Feeder #3	Feeder #4	Feeder #5	Feeder #7
19-Mar-24	#1@ 0730 hrs	14.5	13.0	-	-	-
	#2@ 1600 hrs	-	-	11.1	8.2	8.0
20-Mar-24	#3@ 0100 hrs	12.5	10.5	-	-	-
20-Mar-24	#1@ 0730 hrs	6.2	7.9	-	-	-
	#2@ 1600 hrs	-	-	7.2	10.1	18.5
21-Mar-24	#3@ 0100 hrs	10.9	8.1	-	-	-
21-Mar-24	#1@ 0730 hrs	14.1	7.9	-	-	-
	#2@ 1600 hrs	-	-	18.6	4.9	7.1
22-Mar-24	#3@ 0100 hrs	7.2	7.1	-	-	-
22-Mar-24	#1@ 0700 hrs	10.4	13.4	-	-	-
	#2@ 1600 hrs	-	-	6.9	11.0	11.4
23-Mar-24	#3@ 0100 hrs	9.2	7.8	-	-	-
28-Mar-24	#1@ 1030 hrs	10.2	8.3	-	-	-
	#2@ 1500 hrs	-	-	14.9	11.9	9.5
1-Apr-24	#1@ 0930 hrs	16.3	8.0	-	-	-
	#2@ 1300 hrs	-	-	6.0	12.1	12.3
	#3@ 1500 hrs	10.2	6.9	-	-	-

2.3.2. Required Mercury Removal Based on Lignite Coal Mercury Content

Based on the recent Hg fuel analyses, Hg control higher than 90% would actually be required based on the range of inlet coal Hg content expected to control to 1.2 lb/TBtu (i.e. keeping the outlet value calculated by the EPA constant). Note that control to this value does not off er any operating margin for potential exceedances that may occur due to response delays associated with coal variability. The following table identifies the required Hg control needed based on several different coal Hg content references. Based on these estimations, any Hg control approach would need to be able to accommodate a wide range of inlet Hg in order to optimize operating costs long-term.

Table 2-6 — Hypothetical Hg Emissions and Control Performance Based on Coal Analyses

Fuel Hg Content Reference	Coal Hg Inlet (lb/TBtu)	Est. Hg Control at 4.0 lb/TBtu (%)	Est. Hg Control at 1.2 lb/TBtu (%)
EPA Technical Memo			
2023 Table 11 Docket ID. No: EPA-HQ-OAR-2018-0794[1]	7.81	48.8	84.6
2024 Table 10 Docket ID. No: EPA-HQ-OAR-2018-0794[2]	9.70	58.6	87.6
2024 MRY Unit 1 Test Campaign			
Average	10.1	60.4	88.1
Maximum	18.6	78.5	93.5
Minimum	4.9	18.4	75.5
Center Mine Forecast			
Average	8.41	52.4	85.7
Maximum	17.42	77.0	93.1
Minimum	4.79	16.5	75.0

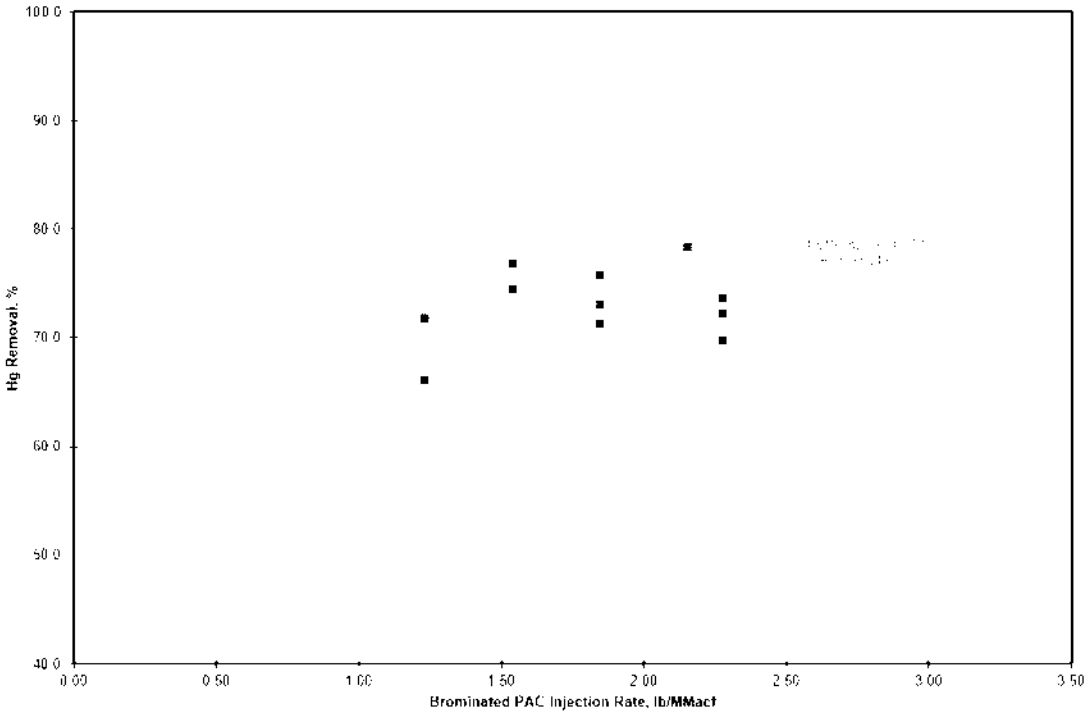
2.3.3. Projected Mercury Removal Based 3.0 lb/MMacf BPAC

Based on the maximum BPAC rate that MRY Unit 1 was able to test due to current system limitations (185 lb/hr or 2.28 lb/MMacf), the figure below plots the estimated percent removal at the higher injection rate of 3.0 lb/MMacf BPAC using all measurements from the MRY Unit 1 March testing (with and without fuel additive usage). The plotted values demonstrate a trend line in which BPAC cannot even achieve 80% Hg removal efficiency.

[1] Benish S. et al. (January 2023). *2023 Technology Review for the Coal- and Oil-Fired EGU Source Category*. Environmental Protection Agency.
[2] Benish S. et al. (January 2024). *2024 Update to the 2023 Proposed Technology Review for the Coal- and Oil-Fired EGU Source Category*. Environmental Protection Agency.

ED_021114A_00008629-00021

Figure 2-1 — MRY Unit 1 Existing System Mercury Removal Performance Capabilities using Brominated PAC



This result is contrary to EPA's assumption that BPAC at a rate of 3.0 lb/MMacf can be used to result in a 90% removal efficiency. The plotted curve shown in the figure shows a leveling off such that increasing the amount of sorbent results in diminishing improvement in Hg control. The projected curve based on the test campaign results shows this leveling off taking place somewhere less than 80% capture.

Although the plotted values do not support a conclusion that the new Hg 1.2 lb/TBtu limit can be met, further investigation into other Hg control options in combination with upgrading/optimizing existing Hg control equipment would be required to determine the lowest mercury emission rate in lb/TBtu that can be achieved on a long-term basis, considering the range of fuel Hg variability and other technological challenges inherent in capturing Hg resulting from lignite that have been documented to occur. Some proposed options for additional Hg control include:

- Increased fuel additive rate
- Improved reliability of fuel additive concentration in relation to real-time coal firing rates
- Implementation of inlet Hg monitor for improved feedback control of Hg control systems
- Improved lance design to achieve ideal distribution of PAC at all typical unit operating conditions
- Application of WFGD re-emission control additive

Further analysis, engineering, testing and equipment modifications would be necessary to determine if these options would improve Hg control. However, it is clear that adding morebrominated PAC, as was assumed in the Final Rule, is not adequate, given the properties of lignite, compliance margin necessary, andimitation of mine mouth facilities in regards to fuel staging (i.e. must use coal received from mine; unableto fire only certain coals that have a more ideal or predictable range of Hg content during a 30-day rolling average).

It should be noted that the achievable Hg emission rate should not be construed to represent an enforceable regulatory or proposed permit limit. Corresponding permit limits must consider normal operating fluctuations and coal variability and take into account a minimum additional 20% margin for these fluctuations. Since a combination of new and/or upgraded control systems would be expected to be required, obtaining a guarantee from a single vendor to ensure that the unit achieves compliance below the permit limit will be challenging.

ED_021114A_00008629-00023

3. EPA COST VALIDITY

3.1.1. Current Hg Compliance Cost Effectiveness (4.0 lb/TBtu)

With respect to MRY, EPA estimated the cost effectiveness for current 2021 Hg emissions is shown below in an excerpt from Table 12 in 2023 Technology Review for the Coal - and Oil-Fired EGU Source Category (Docket ID. No: EPA-HQ-OAR-2018-0794).

TABLE 12. ESTIMATED COST-EFFECTIVENESS FOR CONTROL OF MERCURY IN 2021 AT LIGNITE-FIRED EGUS

Plant Name	PM Control	Est Hg Inlet (lb/TBtu)	Est Hg In (lb)	2021 Hg (lb/TBtu)	Est Hg Out (lb)	Avg Sorbent injection (lb/MMacf)	Avg Sorbent (lb/hr)	Sorbent Cost ($/lb) **	Est 2021 Sorbent Cost (lb)	Est 2021 Sorbent Cost ($)	Est 2021 Additive Cost ($) *	2021 C/E ($/lb)
Spiritwood Station 1	FF	5.03	22.3	1.9	7.9	4.0	13.2	$0.83	121,662	$92,680	$92,680	$13,276
Leland Olds 1	ESPC	7.79	93.8	2.5	29.6	3.9	45.0	**$0.97**	299,689	$290,699	$290,699	$9,343
Leland Olds 2	ESPC	7.79	142.2	3.0	55.1	2.5	55.0	**$0.97**	294,762	$285,919	$285,919	$6,568
Milton R Young 2	ESPC	7.79	330.1	3.2	93.5	1.6	43.0	$0.83	177,453	$147,267	$147,267	$3,844
Milton R Young 1	ESPC	7.78	255.5	3.2	306.2	1.3	19.0	$0.83	273,988	$227,410	$227,410	$3,046
Major Oak Power 1	FF	14.67	293.6	1.2	16.4	1.9		**$0.83**	161,759	$134,260	$134,260	$1,515
Major Oak Power 2	FF	14.65	207.0	1.3	18.5	1.9	-	**$0.83**	172,603	$143,261	$143,261	$1,519
Red Hills Generating Facility 1	FF	12.40	292.7	1.3	20.7	2.6	36.0	**$0.76**	259,600	$197,296	$197,296	$2,293
Red Hills Generating Facility 2	FF	12.40	209.4	1.4	22.9	2.4	36.0	**$0.76**	262,434	$199,454	$199,454	$2,141
Oak Grove 1	FF	14.60	980.0	2.0	134.9	0.1	8.0	$1.15	65,331	$75,131	$75,131	$178
Martin Lake 1	ESPC	8.22	392.7	2.3	211.0	1.0	39.0	$0.97	323,150	$303,755	$303,755	$2,156
Oak Grove 2	FF	14.88	887.2	2.6	154.2	0.3	17.0	$1.15	126,484	$145,456	$145,456	$397
San Miguel 1	ESPC	14.62	346.6	2.8	66.7	2.2	59.5	$0.97	418,050	$405,509	$405,509	$2,897
Martin Lake 2	ESPC	8.13	331.1	3.0	321.3	3.0	113.0	$0.97	809,959	$785,660	$785,660	$7,504
Martin Lake 3	ESPC	7.85	372.8	3.0	344.1	3.4	126.0	$0.97	1,046,260	$1,014,872	$1,014,872	$8,897

* Additive costs are unknown. For this analysis, the EPA assumed the additive costs are the same, annually, as the sorbent costs.
** Bolded costs are those that were provided to the EPA in the 2022 CAA section 114 information survey.

Response: Flaws in EPA's cost analysis for current compliance:

- Est. Hg In (lb) & Hg Out (lb)
  - Table 12 would appear to have flipped MRY Unit 1 and Unit 2 in the table, utilizing the higher MRY Unit 2 operating conditions (heat input, hg loading, etc.) for the smaller sized Unit 1 and vice versa.

- PAC Injection Rate:
  - Table 12 Avg. Sorbent (lb/hr) – EPA noted MRY Unit 1: 19.0 lb/hr and MRY Unit 2: 43.0 lb/hr to achieve controlled Hg rate of 3.2 lb/TBtu.
  - Minnkota PAC sorbent injection rates to achieve controlled Hg rate of 3.85 lb/TBtu for MRY Unit 1 is expected to be 86 lb/hr and for MRY Unit 2 is 158 lb/hr.

- Cost of PAC:
  - Table 12 non-brominated PAC sorbent cost – EPA assumed a cost of $0.83/lb.
  - In the 2024 Technical Memo, EPA adjusted this cost down to $0.80/lb.
  - Based on MRY operational costs for 2023, non -brominated PAC sorbent cost is $0.86/lb.
  - Based on MRY operational costs for 2023, actual non -brominated PAC costs for achieving current compliance with 4.0 lb/TBtu indicated MRY Unit 1: $119,813 and MRY Unit 2: $329,328

- Cost of Fuel Additive:
  - Table 12 Est. 2021 Additive Cost – EPA noted that "Additive costs are unknown. For this analysis, the EPA assumed the additive costs are the same, annually, as the sorbent costs." And lists costs as MRY Unit 1: $227,410 and MRY Unit 2: $147,267
  - Based on MRY operational costs for 2023, actual fuel additive costs for achieving current compliance with 4.0 lb/TBtu indicated MRY Unit 1 $715,157 and MRY Unit 2:$1,574,793.
  - Based on the actual 2023 fuel additive usage r ates and costs, EPA's underestimate results in $487,747 and $1,347,383 that should have been included in the cost analysis for MRY Units 1 and 2, respectively.

3.1.2.Future Hg Compliance Cost Effectiveness (1.2 lb/TBtu)

EPA calculated unit-level cost-effectiveness to meet the proposed, more stringent, emissions standard using brominated activated carbon at an injection rate of 5.0 lb/MMacf for units with an ESP for PM control or at an injection rate of 2.5 lb/MMacf for units with fabric filter for PM control.

With respect to MRY, the EPA estimated the cost effectiveness (assuming 2021 operational characteristics) is shown below in an excerpt from Table 13 in 2023 Technology Review for the Coal- and Oil-Fired EGU Source Category (Docket ID. No: EPA-HQ-OAR-2018-0794):

TABLE 13. ESTIMATED COST-EFFECTIVENESS TO MEET A REVISED MERCURY OF 1.2 LB/TBTU AT LIGNITE-FIRED EGUS (ASSUMING 2021 OPERATIONAL CHARACTERISICS)

Plant Name	PM Control	Est Hg Inlet (lb/TBtu)	Est Hg In (lb)	Hg Out (lb)	Br-ACI rates (lb/MMacf)	Est Br-AC Sorbent Used (lb)	Br-AC cost ($)	C/E ($/lb) assuming no chemical additives	C/E ($/lb) assuming previous chemical additives
Spiritwood Station 1	FF	5.03	21.3	5.09	3.0	83,123	$95,592	$5,884	$11,589
Leland Olds 1	ESPC	7.79	91.8	14.15	5.0	385,175	$442,952	$5,702	$9,444
Leland Olds 2	ESPC	7.79	142.2	21.91	5.0	595,945	$685,337	$5,695	$8,071
Milton R Young 2	ESPC	7.79	130.1	20.05	5.0	545,753	$627,616	$5,702	$7,040
Milton R Young 1	ESPC	7.78	255.5	39.42	5.0	1,072,786	$1,233,703	$5,709	$6,761
Major Oak Power 1	FF	14.62	193.6	15.89	3.0	259,507	$298,433	$1,679	$2,434
Major Oak Power 2	FF	14.65	207.0	16.96	3.0	276,903	$318,439	$1,675	$2,429
Red Hills Generating Facility 1	FF	12.40	192.5	16.03	3.0	261,630	$300,870	$2,021	$3,145
Red Hills Generating Facility 2	FF	12.40	209.4	20.26	3.0	330,893	$380,526	$2,022	$3,067
Oak Grove 1	FF	14.60	980.0	80.56	3.0	1,315,485	$1,512,808	$1,682	$1,765
Martin Lake 1	ESPC	8.22	392.7	57.36	5.0	1,560,741	$1,794,852	$5,352	$6,257
Oak Grove 2	FF	14.88	887.2	71.55	3.0	1,168,333	$1,343,583	$1,647	$1,826
San Miguel 1	ESPC	14.62	346.6	28.46	5.0	774,167	$890,292	$2,798	$4,073
Martin Lake 2	ESPC	8.13	332.1	48.90	5.0	1,330,919	$1,530,557	$5,423	$8,207
Martin Lake 3	ESPC	7.85	372.8	56.99	5.0	1,550,850	$1,783,478	$5,647	$8,861

EPA's incremental cost-effectiveness per the 2024 Update to the 2023 Proposed Technology Review for the Coal- and Oil-Fired EGU Source Category (Docket ID. No: EPA-HQ-OAR-2018-0794) is based on a model 800 MW Gulf Coast lignite-fired EGU with a heat rate of 11,000 Btu/kWh operating at an 80% capacity factor and a Hg concentration of 25.0 lb/TBtu, resulting in an incremental cost-effectiveness of $28,176 per pound of Hg controlled. It assumes that the unit currently meets a Hg emission standard of 4.0 lb/TBtu using an injection rate of 2.5 lb/MMacf of non-brominated activated carbon at a sorbent cost of $0.80/lb and that the

unit can meet a Hg emission standard of 1.2 lb/TBtu using an injection rate of 5.0 lb/MMacf of brominated activated carbon at a sorbent cost of $1.15/lb.

- Note that the example does not include fuel additives or any equipment upgrade costs.
- EPA made following changes to the calculations between 2023 and 2024 Technical Memo's:
  - EPA updated the Gulf Coast Hg concentration from 14.9 lb/TBtu (2023) to 25.0 lb/TBtu (2024). This resulted in the baseline annual uncontrolled Hg emissions to change from 919 lb Hg to 1,542 lb Hg.
  - EPA corrected the formula for conversion of sorbent injection rate from lb/MMacf to lb/hrby adjusting the conversion factor from (520 R / 785 R) to (785 R / 520 R). The conversion factor was applied incorrectly in 2023 Technical Memo.
  - EPA added an additional factor to update the formula for conversion of sorbent injection rate from lb/MMacf to lb/hr which was not previously accounted for in 2023 Technical Memo.
- For comparison with the values calculated by the EPA in Table 13, it should be noted that the 2024 calculated cost effectiveness of the 800 MW example used by the EPA to meet 1.2 lb/TBtu, without fuel additives, is $5,083 per pound of Hg controlled.

Response: Flaws in EPA's cost analysis for future compliance with 1.2 lb/TBtu:

- Est. Hg In (lb) & Hg Out (lb)
  - See previous responses on Table 12 for flipped MRY Unit 1 and MRY Unit 2 unit information/sizing and cost of fuel additive.

- BPAC Injection Rate:
  - EPA's cost analysis assumes lignite units with an ESP can achieve 1.2 lb/TBtu, which has not been demonstrated. The injection level has a direct bearing on the operational costs because it dictates the amount of BPAC necessary to reduce Hg emissions. Therefore, cost calculations are hypothetical because no project data demonstrates what the injection level would be, if 1.2 lb/TBtu is feasibl e.
  - Although the overall feasibility of complying with the proposed Hg limit is undetermined, the testing confirms that based on maximizing injection capabilities of the existing systems,MRY's current equipment configuration cannot achieve 1.2 lb/TBtu

- Cost of BPAC:
  - Table 13 brominated PAC sorbent cost – EPA assumed of $1.15/lb.
  - MRY Unit 1 test campaign brominated PAC cost = $1.25/lb.

- Missing capital costs:
  - Irrespective of feasibility, EPA calculated cost-effectiveness shown in Table 13 does not include capital costs for modifying, upgrading and/or adding new equipment that would be necessary for the MRY Station due to limitations of existing equipment.
  - Modification to the existing PAC injection system, would include, but not be limited to, the following:
    - The materials of construction of the existing PAC silo (common to MRY Units 1 and 2) is not currently compatible to store halogenated PAC. The silo would require an internal coating to prevent corrosion in order to store brominated PAC.

ED_021114A_00008629-00026

- New feeding equipment, transport piping and injection lances would be required to accommodate a higher injection rate.
- As the existing PAC storage silo is shared by MRY Units 1 and 2, the higher injection rate required for achieving 3.0 lb/MMacf for both units would reduce the total storage duration to less than seven (7) days of storage. Due to the weather experienced at the site and the remote location, seven (7) days of storage is recommended for each unit. Improved equipment redundancy would also likely be required to accommodate the range of coal Hg expected to be experienced in the future. Therefore, it is likely that the existing equipment would be dedicated to MRY Unit 1, and a separate silo would be required for MRY Unit 2 to ensure adequate supply, turndown flexibility, and reliability is achieved to maintain compliance with a defined Hg emission limit.

- As such, a new MRY Unit 2 system would be required to achieve higher injection rates of PAC. An analogous project to install Hg control equipment at a 500 MW coal-fired unit in 2021 costs roughly $5.0 million dollars, based on S&L internal mercury control database, actual project costs from recent relevant projects, and adjusted for MRY specific design.

Overall, the cost-effectiveness calculated is still a substantial under-estimation for the incremental Hg control on MRY Units 1 and 2.

- To provide an example, hypothetical MRY Unit 2 costs are summarized in the following table to underscore the magnitude of dollars that EPA failed to include in its calculations and that must be expended by Minnkota.
- Note the table below does not include or account for any costs associated with MRY Unit 1 system upgrades.

Table 3-1 — Example MRY Unit 2 Cost Underestimations Summary

Parameter	EPA Example Hypothetical 800 MW	EPA Assumed MRY U2 Costs 447 MW	Est. Actual MRY U2 Costs 447 MW
Current Hg Compliance (4.0 lb/TBtu) Cost [1]	$2.6 M	$0.3 M	$1.9 M
Current Hg Removed	1,295 lb	77 lb	149 lb
Current C/E ($ per lb Hg Removed)	2,004	3,845	12,754
Hg Control System Annualized Capital Cost	Not included	Not included	$472k [2]
BPAC Cost @ 5 lb/MMacf	$7.5 M	$0.6 M	$1.3 M [3]
M-Prove Cost	Not included	$0.2 M	$1.6 M [4]
Future Hg Compliance (@ 5 lb/MMacf) Cost	$7.5 M	$0.8 M	$3.4 M
Future Hg Removed (EPA Assumed @ 1.2 lb/TBtu)	1,447 lb [5]	110 lb	216 lb
Future C/E ($ per lb Hg Removed)	5,083	7,040	15,678
Incremental C/E ($ per lb Hg Removed)	28,176	14,360	22,217

Note 1 – EPA example only based on sorbent. EPA assumed current compliance cost includes sorbent and chemical fuel additive. Est. actual cost based on 2023 MRY Unit 2 usage rate & pricing for both sorbent and chemical additive.
Note 2 – Cost of $5.0 million dollars from S&L project database was annualized using a capital recovery factor calculated based on annual interest rate of 7% (pre-tax marginal rate of return on private investment, EPA Cost Manual Section 5) and 20 year evaluation period (EPA Cost Manual Section 6)
Note 3 – Cost based on EPA assumed rate but using 2023 MRY BPAC pricing.
Note 4 – Cost based on 2023 MRY Unit 2 usage rate & pricing instead of assuming same as sorbent costs.
Note 5 – Based on calculated value for EPA example inlet Hg of 1,542 lb s (current Hg coal content) – 95 lbs (future emitted amount). However, the EPA example identifies 1,468 lb for the incremental cost effectiveness calculation.

ATTACHMENT B

Minnkota Power COOPERATIVE
A Touchstone Energy® Cooperative

Minnkota Power Cooperative, Inc.
Milton R. Young Station Unit 2

Particulate & Mercury Control Technology Evaluation & Risk Assessment for Proposed MATS Rule

Final

June 23, 2023

Project No.: A14559.010

S&L Nuclear QA Program Applicable:

Yes

No

55 East Monroe Street
Chicago, IL 60603-5780 USA
312-269-2000
www.sargentlundy.com

Sargent & Lundy

1. INTRODUCTION

1.1. PURPOSE

Sargent & Lundy (S&L) was retained by Minnkota Power Cooperative, Inc. (Minnkota) to evaluate potential filterable particulate matter (PM) and mercury (Hg) emissions reductions in response to the proposed rule to amend the National Emission Standards for Hazardous Air Pollutants (NESHAP) for Coal- and Oil-Fired Electric Utility Steam Generating Units (EGUs), commonly known as Mercury and Air Toxics Standards (MATS) published on April 24, 2023 that would require additional filterable PM and Hg emissions reductions on the Milton R. Young (MRY) Station Unit 2. These proposed revisions are the result of EPA's review of the residual risk and technology review (RTR) from May 22, 2020. Based on the proposed rule, EPA is planning to revise the filterable PM standards from 0.030 lb/MMBtu to 0.010 lb/MMBtu and is soliciting comments to consider even more stringent standard of 0.006 lb/MMBtu or lower. For lignite-fired units, EPA is also proposing to revise and tighten mercury emission standard from 4.0 lb/TBtu to 1.2 lb/TBtu to make it same as other units firing bituminous and subbituminous coal.

S&L reviewed the existing MRY Unit 2 PM and Hg control technologies to determine potential optimizations that could achieve incremental emission reductions as well as consider new PM and Hg control technologies S&L prepared an evaluation of available control technologies including technical feasibility and effectiveness, and costs based on the current emissions from the unit S&L's evaluation was completed based on past experience on similar projects, as well as input from established original equipment manufacturers (OEMs) regarding predicted performance for the lignite application at MRY Unit 2.

1.2. FACILITY BACKGROUND

The MRY station is located approximately seven (7) miles southeast of Center, North Dakota or forty (40) miles northwest of Bismarck, North Dakota on ND Highway 25 at 3401 24th Street SW, Center, North Dakota 58530. MRY station provides energy to the Midcontinent Independent System Operator (MISO) system. MRY station consists of two (2) units. Both MRY units are lignite-fired Babcock and Wilcox (B&W) cyclone boilers. The Unit 1 single wall cyclone boiler was placed into service in 1970 and has a typical output capacity rating of 257 MWg (gross). The Unit 2 opposed wall cyclone boiler (Carolina type, radiant pump assisted natural circulation) was placed into service in 1977 and has a typical output capacity rating of 470 MWg (gross). Both boilers fire North Dakota lignite coal supplied from BNI Coal, Ltd.'s Center Mine located in close proximity to the plant. Both units utilize selective non-catalytic reduction (SNCR) and separated overfire air (SOFA) systems for NOx control, fuel additive (halide injection) system and non-halogenated powdered activated carbon (PAC) for Hg control, dry electrostatic precipitators (ESP) for PM emissions control, and wet flue gas desulfurization (WFGD) systems for sulfur dioxide (SO_2) control.

1.3. DIFFERENCES IN MRY UNIT 1 AND 2 DESIGN & OPERATION

MRY Unit 1 and 2 have the same air pollution control equipment in series; however, the design of the equipment differ in ways other than unit MWg size. Of particular note, the Unit 2 ESP design attributes are superior to Unit 1, with use of a wider plate spacing (12 vs. 9 inches), and a higher specific collection area (375 ft^2/1000 actual cubic feet per minute (acfm) vs. 288 ft^2/1000 acfm). However, the Unit 2 ESP design consists of the first 2 fields' specific corona power = 160 W/1000 acfm and the last 2 fields = 240 W/1000 acfm

which is consistent with historic ESP designs where transformer-rectifier (T/R) sets were typically selected to provide lower current density at the inlet sections, where the dust concentration will tend to suppress the corona current, and to provide higher current density at the outlet sections, where there is a greater percentage of fine particles. In comparison, the Unit 1 ESP design does not follow this approach, with all fields' specific corona power = 493 W/1000 acfm and is currently achieving significantly lower PM emissions than Unit 2. The single Unit 1 WFGD vessel has four (4) slurry recycle pumps (SRPs). Each of the two (2) WFGD vessels on Unit 2 have five (5) SRPs.

Furthermore, manual cleaning of the boiler on Unit 1 is also able to include air preheater (APH) cleaning, whereas the large hoppers below the Unit 2 APH prevent APH washes from being completed during short-term boiler cleaning outages. The Unit 1 offline cleaning occurs on average every 110-115 days and requires the unit to be offline typically for three (3) days. The Unit 2 offline cleaning (only including APH tube rodding) occurs on average every 85-90 days and requires the unit to be offline typically for four (4) days.

1.4. CURRENT BASELINE EMISSIONS

Minnkota provided the past five (5) years of emissions to establish baseline emissions used for this evaluation. The baseline emissions were developed using data submitted by Minnkota to the EPA between January 01, 2018 through December 31, 2022 as part of emissions reporting requirements. For PM emissions, a 30-boiler operating day rolling average was selected as the baseline PM emission calculation methodology to be in-line with the permit reporting requirements. For Hg emissions, the maximum 30-boiler operating day experienced during the evaluation period was selected as the baseline Hg emission.

Table 1-1 — Baseline Unit 2 PM & Hg Emissions

Parameter	Units	Unit 2
PM Emissions	lb/MMBtu	0.015
Hg Emissions	lb/TBtu	3.90

2. PARTICULATE TECHNOLOGY EVALUATION

As part of this evaluation, PM control technologies were evaluated based on achieving post-upgrade emissions limits in accordance with the proposed emissions included in the April 24, 2023, MATS proposed rule, 0.010 lb/MMBtu and potentially 0.006 lb/MMBtu. The description and assessment of each control option are discussed in the sections below.

2.1. OPTIONS TO REACH 0.010 LB/MMBTU

2.1.1. Increased Boiler Cleaning Outages

When manual cleaning of the boiler occurs, the following unit operation indicates reduced economizer outlet temperatures and subsequently APH outlet temperatures. The fly ash resistivity is reduced at lower temperatures making it easier to capture in the ESP. The decrease in temperature would also slightly reduce the volumetric flow through the ESP, which may also allow for improved flow and velocity through the ESP, subsequently improving the ESP overall performance. Although scheduling short term outages to complete cleaning of the boiler on a regular basis (regardless of near-term long-term outages) has shown the ability to maintain emissions below the baseline emissions, a PM emission of 0.010 lb/MMBtu likely cannot be achieved and therefore this option was not considered further.

2.1.2. Flow & Distribution Devices

Uniform gas and dust distribution to each ESP casing will allow for uniform treatment/conditions of each casing to facilitate optimal performance of each. Concentrated flow and/or dust to a casing will require that casing to work harder than the others, ultimately contributing to and/or causing other operating inefficiencies within the ESP to reduce its PM removal capabilities. Replacement of existing inlet and outlet flow & dust distribution devices to achieve the latest standards of the Institute of Clean Air Companies (ICAC) Publication No. EF-7 will improve the ESP overall performance. Implementation of other flow correction devices to minimize sneakage between cells and/or around collecting fields as well as to minimize particle re-entrainment from hoppers and collecting surfaces when rapped can also be implemented, as required, to meet best industry practices, if not already implemented as part of ESP designs.

A detailed assessment including computational flow dynamic (CFD) analysis and physical flow model studies would be performed to determine the design and placement of all flow and dust distribution devices. New designs of perforated plates (with rappers) would be implemented to allow for the easy removal of fly ash into the first field hopper to minimize the potential fly ash accumulation in the inlet plenum. Although PM emissions reductions are expected to be achieved with this option, a PM emission of 0.010 lb/MMBtu likely cannot be achieved and therefore this option was not considered further.

2.1.3. Increased Power Supply

In an ESP, the collection efficiency is proportional to the amount of corona power supplied to the unit, assuming the corona power is applied effectively (maintains a good sparking rate). The resulting corona current charges the PM in the flue gas which are then attracted to the grounded, oppositely charged collecting plates. For a given flow rate, the collection efficiency will increase as the corona power is increased. To achieve a high collection efficiency, corona power is usually between 100 and 500 W/1000 acfm, but newer ESP installations

have been designed for as much as 800-900 W/1000 acfm.

Increasing the power delivered into the ESP casing for this option would be done by replacing the T/R sets with higher rated power supplies, e.g. switch mode power supplies (SMPS), also referred as high frequency T/R sets, or 3-phase power supplies. Replacement of the T/R sets will require new cables, as the existing cables for 2-phase will need to be upgraded to accommodate 3phase; cables are assumed to be able to be pulled while the unit continues to operate. Further assessment would be required to determine all electrical infrastructure modifications required, including the ability to reuse the existing MCC and T/R set controls. Although PM emissions reductions are expected to be achieved with this option, a PM emission limit of 0.010 lb/MMBtu with adequate operating margin likely cannot be achieved and therefore this option was not considered further.

2.1.4.Additional ESP Field

As ESP performance does depend on the number of fields in the direction of flue gas flow, the addition of another field will increase the amount of power that can be supplied to the ESP and provide incremental removal of the filterable PM. As approximately 80% of the ash is expected to be collected in the first field, with decreasing degrees of particulate removal in the following fields, the last field in the ESP casing is expected to have the least amount of fly ash removed. This option can be implemented by either increasing the sectionalization of the last field (adding a T/R set) or potentially by utilizing the ESP outlet nozzle to retrofit another independently operated ESP field.

Sectionalization in the direction of gas flow is not feasible without a rebuild of the fields to be sectionalized as the current high voltage frames span the entire length of the field. Therefore, this option is only feasible if a new field is added at either the inlet or outlet of the existing ESP casing (assuming space available). However, the retrofit implications of this option would be considered to be a large capital retrofit project in lieu of an equipment optimization. This option is not anticipated to provide significant enough cost savings compared to the other large capital retrofit options that will be evaluated later in this evaluation. Therefore, this option is not considered further.

2.1.5.Additional ESP Casing

Installation of additional ESP casings in parallel to the existing Unit 2 ESP casings would increase the specific collecting area (SCA) and improve the velocity and treatment time of the existing ESP casings. The smaller wing ESP casings would be installed adjacent to the existing ESP casings, one added to north of Casing A and one added to the south of Casing B. The new wing casings will utilize a separate support structure and new power supplies to be independent, stand-alone structures. It is anticipated that modifications to the inlet and outlet ductwork would be required to evenly balance the flow to the new casings. The hoppers of the new ESP casings would be tied into the existing fly ash handling system. Although PM emissions reductions are expected to be achieved with this option, a PM emission limit of 0.010 lb/MMBtu with adequate operating margin likely cannot be achieved and therefore this option was not considered further.

2.1.6.ESP Rebuild

Rebuilding the existing Unit 2 ESP would involve replacement of all internals, while only reusing the outer shell/walls, hoppers, support structures, and ash conveying system. To accomplish the rebuild of the ESP

casings, the roof, T/R sets, high voltage bs ducts, top end frames, intermediate roof beams, the top section of the inlet and outlet nozzles and all internal components of the existing ESPs will be removed, and replaced with new equipment. The flow distribution and correction devices in the inlet and outlet plenums would be replaced to optimize the flue gas and fly ash distribution to the casings. The hot and cold roofs would also be replaced as well to accommodate construction activities.

Before moving forward with rebuild, a structural integrity and thickness study should be completed on the entire structure to ensure that the steel has not thinned as a result of normal long-term option. The design of the support structure (casing, structural members, and determination of ESP loads to steel), support steel and foundation will need to be reviewed to verify if acceptable for reuse or if modifications are required for the weight change in the ESP casings as a result of the rebuild, which may result in additional reinforcement required. The existing ash handling systems would be reused without requiring any modifications for the incremental increase in the amount of ash collected. It would be assumed that the complete rebuild of the ESP casings and optimization of the flow distribution/collection devices in the inlet and outlet nozzles should be capable of achieving no net increase in the current pressure drop across the ESP and therefore would not require modifications or replacement of the existing ID fans.

The level of rebuild and repair to the existing ESP casings will require a longer construction outage , most likely requiring a twelve (12) week outage, if not longer. Limited access to the Unit 2 casings will also limit the construction sequence, and may cause delays, further extending the outage. Winter weather conditions experienced at the site could also prolong the construction process. Additional construction personnel would likely be required to complete work in multiple areas in an effort to reduce the outage duration.

With this option, the PM emissions are estimated to potentially achieve an emission rate of 0.008 lb/MMBtu. However, vendors would likely have to complete a more detailed qualitative study in order to provide a guarantee and would require baseline testing to qualify ESP inlet and outlet emissions.

2.2. OPTIONS TO REACH 0.006 LB/MMBTU

To achieve PM emissions that would allow for compliance with the more stringent proposed standard, a baghouse would be required. It should be noted that a baghouse will likely not provide sufficient operating margin to achieve the proposed 0.006 lb/MMBtu emission rate. It will likely be challenging to obtain a guarantee below 0.006 lb/MMBtu from baghouse OEMs. However, a baghouse is not considered to be economically feasible[1] and is therefore not evaluated further. The baghouse installation options that could be considered, described below, and the expected timeline for implementation of this control option, described in Table 2-2, are included for reference only.

- Conversion of ESP to Baghouse:
  - The existing ESP casings would be reused and ESP internals and all roof mounted equipment would be removed. A vertical partition wall, running in the direction of gas flow from the hopper bend line to the tube sheet, would be constructed in the center of each ESP casing.
- Polishing Baghouse (Downstream of ESP):
  - The existing ESP would continue to operateDue to the reduced inlet ash loading, a polishing

[1] A high-level estimation of the cost effectiveness of a baghouse retrofit on MRY Unit 2 is approximately $162k/ton, based on the annualized capital and O&M costs ($/yr) divided by the annual reduction in annual emissions (ton/yr).

baghouse can be designed using a 6.0air-to-cloth (AC) ratio, which allows for a reduced footprint compared to a 4.0 AC ratio sized to handle the entire unit fly ash loading
    - There is not adequate space available adjacent to the existing ESP casings for placement of a baghouse. Therefore, long tie-in ductwork will be required to route flue gas to an o pen area where the baghouse can be constructed. As such, the reduced size of the polishing baghouse is not anticipated to provide significant enough cost savings when compared to a baghouse that utilizes a 4.0 AC ratio.
- Baghouse (Primary PM Collection):
    - The existing ESP would be abandoned in place (could be demolished at a later date). As mentioned previously, long tie-in ductwork will be required to route flue gas to an open area where the baghouse can be constructed while the unit continues to operate in order to minimize the tie-in outage duration.

A baghouse is expected to have a pressure drop of 8 in. w.c., but could be higher depending on the location of the baghouse in relation to the tie-in to the existing flue gas path. The current axial fans are already operated very close to their stall curve, and do not have any pressure drop operating margin. Therefore, either replacement of the existing ID fans or installation of new booster fans would be required to accommodate the additional pressure drop through the baghouse.

2.3. PARTICULATE EMISSIONS SUMMARY

Table 2-1 below provides a summary of the post-upgrade achievable emission rate for the feasible PM control option evaluated to achieve a proposed PM emission limit of 0.010 lb/MMBtu The estimated emission rates included in the following tables are considered to be representative of an average emission rate that could be achieved under normal operating conditions. The emission rates provided **should not be** construed to represent an enforceable regulatory or proposed permit limit. Corresponding regulatory and/or permit limits must be evaluated on a control system-specific basis taking into consideration normal operating variability (i.e., a minimum additional 20% margin would likely be needed to account for operating margin).

Table 2-1 — Unit 2 PM Emissions Summary

Parameter	Control Efficiency [Note 1]	Projected Emissions [Note 2] (lb/MMBtu)	Expected Emissions (ton/year)
Baseline (Dry ESP)	--	**0.015**	**254**
ESP Rebuild	46.7%	0.008	135

Note 1 – Control efficiency is based on incremental improvement achieved with the option in addition to baseline dry ESP operation (e.g. not to be misconstrued as a total percent removal from uncontrolled PM emissions).

Note 2 – No compliance margin is included in these estimates. The emissions rate projections should not be used as an achievable limit for these upgrades.

2.4. TIMELINE FOR INSTALLATION

A high-level implementation schedule that outlines the time needed for the project steps necessary for the implementation of the feasible control options are summarized below. It should be noted that although a baghouse is not considered to be economically feasible, the control option is included in the summary below for reference on the expected timeline required for implementation of this control option.Other project-related

activities, such as the time needed to obtain internal project approval, financing or permitting, if required, are not included. It should be noted that these time frames are separate from the regulatory time frames foEPA to take final action on the Proposed MATS RTR.

Lead times of equipment that would be used in these types of retrofits have been observed to be double or triple the lead times typically provided by suppliers before the COVID pandemic, with longer durations observed for electrical and instrumentation and control equipment. With continued supply-chain issues, it is anticipated that longer and longer lead times may be required that are difficult to quantify at this time. Therefore, timelines represented are estimated based on past project durations and not reflective of post-pandemic market delays nor the limited number of experienced OEMs capable of providing the equipment.

Table 2-2 — PM Control Implementation Schedule

PM Control Option	Design/ Specification/ Procurement (months)	Detail Design/ Fabrication (months)	Construction/ Commissioning/ Startup (months)	Minimum Total (months)
ESP Rebuild	8	16	12	36
Baghouse	10	20	18	48

3. MERCURY TECHNOLOGY EVALUATION

3.1. MERCURY EMISSIONS BACKGROUND

3.1.1. Mercury Speciation

Mercury (Hg) is contained in varying concentrations in different coal supplies. During combustion, Hg is released in the form of elemental Hg in the high temperature combustion zone of a boiler. As the combustion gases cool, a portion of the elemental Hg transforms or oxidizes to ionic Hg. However, the amount of elemental Hg that oxidizes is dependent on the cooling rate of the gas and the presence of halogens in the flue gas Ultimately, there are three possible forms of Hg:

- Elemental (Hg^0):
  - The conversion of elemental Hg to the other forms depends upon several factors including cooling rate of the gas, presence of halogens or sulfur trioxide (SO_3) in the flue gas, amount and composition of fly ash, presence of unburned carbon, and the installed APC equipment.
  - Hg^0 is insoluble in water and therefore removal requires injected sorbents or must be converted to another form to be captured, depending on the installed APC equipment.
- Ionic or Oxidized (Hg^{++} or Hg^{2+}):
  - In contrast to elemental Hg, ionic Hg is highly water soluble, allowing for collection in water streams that may be utilized in certain APC equipment and subsequently leave the process with the solid by-product or as a constituent in the purge water.
- Particulate-bound:
  - Particulate-bound Hg typically is bound to fly ash or unburned carbon. Particulate-bound Hg is efficiently removed from the flue gas by the particulate control device, making it desirable to convert as much Hg as possible to particulate-bound Hg.
  - High SO_3 levels have been shown to inhibit the binding of ionic Hg to fly ash or Hg sorbents. The addition of halogens increase the conversion of elemental and ionic Hg to particulate-bound Hg.

The proportion of the various Hg forms is referred to as Hg speciation. As such, Hg speciation testing has indicated that the distribution of Hg species varies with coal type The effectiveness of post-combustion Hg control technologies is highly influenced by the Hg speciation in the flue gas, with gaseous oxidized (or ionic) Hg compounds (i.e. $HgCl_2$) being easier to capture by downstream APC equipment.

3.1.2. Lignite Coal Variability

Industry experience has shown that lignite coal deposits vary significantly in quality, including fuel combustion performance, mineral content, and Hg content, resulting in a coal that can change on a day-to-day basis depending on the coal seam being mined at the time. For example, during the 2005 Energy & Environmental Research Center (EERC) sixty (60) day testing on MRY Unit 2[2], the coal samples analyzed ranged from 6.22

[2] Refer to the EERC "Large-Scale Mercury Control Technology Testing for Lignite-Fired Utilities - Oxidation Systems for Wet FGD" report (Cooperative Agreement No. DE-FC26-03NT41991) dated March 2007 for further details on the testing completed from March 15, 2005 to May 15, 2005 on MRY Unit 2.

lb/TBtu to 10.9 lb/TBtu (Hg content varied from 0.05 to 0.25 ppm, and averaged 0.112 ± 0.014 ppm on a dry coal basis). As such, units firing lignite coal with lower heating values have to accommodate frequently changing coal quality and require a wide range of flexibility to account for instances of firing high Hg seams of coal to consistently achieve adequate operating margin below the required Hg emission limit.[3]

The variability of the projected lignite coal quality received from the Center Mine from 2025 through 2036 is shown in Table 3-1.

Table 3-1 — Center Mine Ultimate Coal Analyses (As -Received)

Fuel Parameter	Units	Average	Minimum	Maximum
Carbon	wt.%	40.53	39.73	41.24
Hydrogen (fuel-based)	wt.%	2.78	2.71	2.82
Nitrogen	wt.%	0.30	0.26	0.34
Sulfur	wt.%	0.86	0.68	1.07
Oxygen (by difference)	wt.%	9.97	9.47	10.83
Moisture	wt.%	38.83	38.53	39.25
Ash	wt.%	6.73	6.00	7.87
Higher Heating Value (HHV)	Btu/lb	6,625	6,489	6,739
Mercury Content	ppm	0.091	0.053	0.184
Estimated Hg Emission	lb/TBtu	8.41	4.79	17.42

3.1.3.Hg Removal with ESPs

For ACI on ESP applications, 80% of Hg capture occurs in the flue gas, and 20% occurs on the dust within the ESP (as the dust on the collecting plates are consistently removed as part of the process). Therefore, for ESP applications, achieving ideal mixing and residence time to allow for elemental Hg to oxidize to ionic Hg and for Hg to be adsorbed on the carbon particles (of the PAC or unburned carbon content in the fly ash) is critical. It should be noted that this ratio is the exact opposite for baghouse applications, i.e. 20% capture in-duct and 80% capture on the dust of the filter cake accumulated in the baghouse. For this reason, fabric filters can result in extremely high Hg capture and can improve the capture with any Hg sorbent.

3.1.4.Existing System Limitations

Documented evidence of a lignite unit achieving 1.2 lb/TBtu or below has not been found/reviewed at the time of this report. Minnkota personnel recently completed short-term parametric testing in May 2023 to determine the Hg emissions that could be achieved by maximizing the existing fuel additive and PAC injection. Even when maximizing the fuel additive rate in addition to maximizing the non-halogenated ACI addition, an emission rate of 1.2 lb/TBtu was not able to be achieved. Due to the variability of the coal, a longer period of testing would be required to gauge the Hg emissions that could be achieved just using the capacity within the existing equipment.

[3] Based on Response of Minnkota Power Cooperative Clean Air Act Section 114 Request, dated July 29, 2022.

3.2. INCREMENTAL HG CONTROL ON A LIGNITE UNIT

As mentioned previously, S&L is not aware of anydocumented evidence of a lignite unit achieving 1.2 lb/TBtu or below. As such, the following sections describe issues that need to be resolved/tested to establish if it is feasible to achieve a 1.2 lb/TBtu Hg emission rate with sufficient operating margin on a lignite unit and if so, develop an overall Hg compliance approach that likely would consist of a suite of control approaches It should be noted that any achievable Hg emission should not be construed to represent an enforceable regulatory or proposed permit limit. Corresponding regulatory and/or permit limits must be evaluated on a control system-specific basis taking into consideration normal operating and coal variability (i.e., a minimum additional 20% margin or higher would likely be needed to account for coal fluctuations and operating margin).

3.2.1.Increased Oxidation of Elemental Hg

Recent 2011 Hg speciation data measured at the Unit 2 stack, with no control technologies, indicated the Hg emissions consisted of approximately 98.3% elemental Hg, 0.8% oxidized Hg, and 0.9% particulate Hg. Recent operating data from a retired Hg process monitor indicates that the Unit 2 Hg emissions, with the currently installed Hg control technologies, consisted of approximately 86% elemental Hg, and 14% oxidized Hg. Because the current Hg emissions are made up mostly of elemental Hg, the unit emissions would benefit from an increased amount of halogen in an attempt to oxidize the elemental Hg in the flue gas. Theadditional halogen (chlorine, iodine, and bromine) can be added to the PAC, to the coal, or both.

The current fuel additive injection could be increased and/or replaced with a different halogen-based additive. In addition, the current non-halogenated PAC would be replaced with a more expensive halogenated PAC. The increased amount of halogen present is expected to increase the amount of elemental Hg that is oxidized to be more easily captured on the surface area of the PACand in downstream APC.[4]

3.2.2.Increased PAC

It is anticipated that additional halogenated PAC (i.e. more than the current capabilities of the existing equipment) will need to be injected for the increased amount of oxidized Hg to be efficiently captured. However, preliminary feedback received from PAC suppliers have indicated that demonstration testing would be required to determine a PAC dosage rate and the emissions rate that can be achieved when considering the Hg content variability of the lignite Therefore, additional modifications that may be required cannot be concluded at this time; however, it is likely that the existing lances and transport piping would need to be replaced to accommodate a higher injection rate. As the existing PAC storage silo is shared by Units 1 and 2, it is likely that a separate silo would be required for Unit 2 to ensure adequate supply, turndown flexibility and reliability is achieved to maintain compliance with a defined Hg emission limit.

The degree of increased PAC injection rates can have an impact on the ESP performance as the increased amount of carbon particles that have low resistivity will decreasethe overall resistivity of the fly ash (can cause particles to rapidly lose their charge on arrival at the collecting plate and become re-entrained). If/when

[4] It should be noted that the existing PAC silo is not currently compatible to store halogenated PAC due to the material of construction of the fluidizing air nozzles and may also require an internal coating of the silo to prevent corrosion. Additional assessment will be required to determine modifications required to reuse the existing silo, and may be subject to the brominated PAC utilized.

additional testing is completed to determine the supplier recommended brominated PAC injection rate, PM emissions should also be closely monitored to confirm no longer term impacts are caused by the increased ACI rate. In order to mitigate potential increases or deviations for the current PM emissions, it would be reasonable to anticipate some ESP upgrades (operational changes and/or equipment optimizations) to be required to ensure the ESP maintains its current performance.

3.2.3. Increased Contact

Increasing the degree of flue gas and PAC mixing can optimize the sorbent utilization to ensure adequate mixing of the oxidized Hg and PAC is achieved, which potentially could result in the use of less PAC to achieve the same Hg emission rate. Similarly, additional testing and evaluation would be required to determine the beneficial incremental Hg removal improvement that could be achieved. Additional mixing could be implemented by either adding static mixers into the flue gas path and/or using a more advanced injection lance design to increase sorbent dispersion relative to a straight lance design to optimize sorbent usage.

Increased contact time could also be achieved by relocating the injection lances upstream of the APH.[5] Hg reduction effectiveness with PAC has been shown to be temperature limited, as the absorption capacity of the carbon is reduced at temperatures above approximately 350°F. Although flue gas temperatures downstream of the APH are more ideal for capture, temperatures upstream of the APH are within an ideal zone for mercuric halogens to be formed, taking advantage of the additional halogen introduced with the PAC. Furthermore, for applications with SO_3 concentrations above 5 ppm in the flue gas (as is on the MRY units), carbon active sites may be preferentially occupied by SO_3. Although adsorption rates slow down above 350°F, injection upstream of the APH is sometimes considered to lower the impact of SO_3 competition. Furthermore, tubular APH designs will not offer as much mixing compared to Ljungstrom type APHs; therefore, relocating the injection lances upstream of the APH will likely only achieve added residence time for adsorption to occur in lieu of additional mixing. Therefore, the high temperature environment and resulting residence time for injection at the APH inlet would need to be evaluated further.

3.2.4. WFGD Re-Emission Control

Oxidized Hg is highly water soluble and exists in vapor phase at back -end equipment flue gas temperatures. WFGDs readily capture approximately 90% of oxidized Hg because it is highly soluble, but will not remove elemental Hg. However, re-emission of Hg is possible in some circumstances when Hg precipitates out in scrubber solids (mercuric sulfide or equivalent) and the scrubber slurry converts some of the oxidized Hg back into elemental form. Re-emission of elemental Hg can be mitigated through the use of a sulfide-donating liquid reagent additive that enhances the Hg capture within the WFGD by decreasing soluble Hg in the WFGD slurry. Testing would be required to determine the amount of re-emission currently occurring based on recent operating conditions.

3.3. MERCURY EMISSIONS SUMMARY

Presently, there is not any publicly available information to determine if improvements to any of the above categories (individually or in combination) can achieve a Hg emission of 1.2 lb/TBtu or below on a lignite unit.

[5] It should be noted that this approach is patented by Alstom, and use of this approach would need to consider intellectual property implications.

Therefore, additional testing would be required to establish if it is feasible to achieve a 1.2 lb/TBtu Hg emission rate with sufficient operating margin on a lignite unit and if so, develop an overall Hg compliance approach that likely would consist of a suite of control approaches to achieve this rate on MRY Unit 2.

In summary, additional testing would include, but not be limited to, the following:

- Hg speciation data upstream of the ESP, upstream of the WFGD and at the stack (with no controls, current operation and maximum capacity of existing Hg control equipment, and test conditions for other listed items)
- Performance with increased concentrations of current fuel additive system, including additional injection locations, as well as potentially testing other halogen -based fuel additives than what is currently used.
- Performance with halogenated PAC, considering capabilities of existing Hg control equipment and increased injection rates (while also consid ering other test conditions for other listed items). Note that due to the limitations of the existing equipment, a separate test skid will be required to facilitate this testing campaign.
- If WFGD re-emission is determined to be occurring based on Hg speciation upstream and downstream of the WFGD, the performance of a re-emission additive can also be tested.

As mentioned previously, PAC suppliers have indicated that testing would be required in order to obtain any guaranteed performance. Therefore, recommended consumption and/or injection rates to determine the modifications and/or new systems required are not available at this time to develop the subsequent cost of the suite of Hg controls neededto achieve adequate operating margin below a 1.2 lb/TBtu Hg emission limit on MRY Unit 2.

4. SUMMARY

The existing MRY Unit 2 PM and Hg control technologies were found to not be capable of achieving the proposed emissions included in the April 24, 2023, MATS rule: filterable PM emissions limit of 0.010 lb/MMBtu and potentially 0.006 lb/MMBtu and Hg emissions limit of 1.2 lb/TBtu.

The evaluation of available PM control technologies found that an ESP rebuild would be required to achieve the proposed PM emission limit of 0.010 lb/MMBtu considering the need for adequate operating margin However, testing to determine the baseline ESP inlet flow profile, ESP inlet and outlet emissions, and amount of PM removal occurring across the WFGD will likely be required in order for a vendor to complete a detailed qualitative study required to provide a PM emission guarantee. A baghouse will likely not provide sufficient operating margin for compliance with the more stringent 0.006 lb/MMBtu proposed emission limit; furthermore, this alternative was not considered to be economically feasible, and OEMs may not offer a PM emission guarantee with sufficient operating margin. A significant outage will be required to complete an ESP rebuild on MRY Unit 2, likely requiring the unit to be offline 12 weeks or longer as part the retrofit. Due to current post-pandemic market delays and the limited number of experienced OEMs capable of completing an ESP rebuild, it is highly likely that the implementation of this large-scale capital project will take longer than the estimated 36-month implementation schedule.

At the time of this evaluation, no evidence or examples demonstrating that an operating lignite unit could achieve the proposed Hg emission limit of 1.2 lb/TBtu were found. As the Hg content of the lignite coal fired at MRY Unit 2 can range from as low as 4.8 lb/TBtu to as high as 17.4 lb/TBtu, a wide range of flexibility in Hg control to account for instances of firing high Hg seams of coal to consistently achieve adequate operating margin below the proposed Hg emission limit will be required. Additional testing will also be required to navigate the challenges of Hg speciation, flue gas temperature, flow profile/mixing, residence time, and coal variability for application on a lignite fired unit to establish if it is feasible to achieve a 1.2 lb/TBtu Hg emission rate with sufficient operating margin. Furthermore, PAC suppliers have indicated that testing would be required in order to obtain any guaranteed performance. Once testing is completed, recommended consumption/injection rates, required flexibility of the suite of Hg control approaches, and the subsequent costs of the modifications and/or new systems required to achieve adequate operating margin below a 1.2 lb/TBtu Hg emission limit on MRY Unit 2 can be developed

ATTACHMENT C

RLR Consulting, LLC
5401 Aztec Dr
Raleigh, North Carolina 27612
Phone (919) 696-7008
Fax (919) 788-0878

MEMORANDUM

TO: Rae Cronmiller, NRECA

FROM: Ralph L. Roberson, P.E.

DATE: June 16, 2023

SUBJECT: Technical Comments on EPA's Proposed Rule: Mercury and Air Toxics Standards Risks and Technology Review – PM CEMS

INTRODUCTION

Recently, the Environmental Protection Agency (EPA) proposed revisions to the Agency's Mercury and Air Toxics Standards (MATS) rule.[1] These revisions are the proposed response of EPA to its previously announced review of its 2020 Risks and Technology and Review (RTR).[2] Among other things, EPA proposes to eliminate the quarterly stack testing option for demonstrating compliance with the filterable particulate matter (fPM) emission standard. If EPA finalizes the rule as proposed, the only compliance option for fPM will be with a PM continuous emission monitoring system (CEMS). Compliance with the proposed emission standard of 0.010 lb/10^6 Btu will be based on 30-day rolling averages computed from hourly PM CEMS data.

The National Rural Electric Cooperative Association (NRECA) asked RLR Consulting LLC (RLR) to review EPA's proposed rule and to assist in preparing technical comments. NRECA asked RLR to focus its effort on the EPA requirement to mandate the use of PM CEMS to demonstrate compliance with the revised fPM emission standard.

REGULATORY DISCUSSION

Section 112(f) of the Clean Air Act (CAA) states, among other things, "if standards promulgated pursuant to subsection (d) and applicable to a category or subcategory of sources emitting a pollutant (or pollutants) classified as a known, probable or possible human carcinogen do not reduce lifetime excess cancer risks to the individual most exposed to emissions from a source in the category or subcategory to less than one in one million, the Administrator shall promulgate standards under this subsection for such category." Then, Section 112(d)(6) requires EPA to "review and revise as necessary

[1] 88 Fed. Reg. 24.854 (April 24. 2023).
[2] 87 Fed. Reg. 7.624 (February 9. 2022).

(taking into account developments in practices, processes, and control technologies), emission standards promulgated under this section no less often than every 8 years." Taken together, these two provisions of the CAA constitute what is termed EPA's Risk and Technology Reviews (RTR). Clearly, Section 112(f) is concerned with health risks and has nothing to do with compliance methods or procedures. Section 112(d)(6) concerns itself with revising numerical standards based on "developments in practices, processes, and control technologies." Thus, there appears to be no legal basis for EPA's proposed elimination of the quarterly stack testing option for demonstrating compliance with the fPM emission standard.

TECHNICAL DISCUSSIONS

The fundamental problem with PM CEMS is, and always has been, an issue of technology. That is, commercially available PM CEMS do not provide a direct measure of PM emissions. By direct measure, we mean that the instrument measures the mass of PM and the volume of flue gas from which that mass of PM was sampled. Rather, commercially available PM CEMS measure some property (i.e., light scatter or beta attenuation[3]) that must be correlated to actual stack PM measurements.

Correlation Testing and Data Range

The procedure and requirements for correlation testing are specified in EPA Performance Specification 11 (PS-11).[4] PS-11 requires a minimum of 15 test runs using the appropriate EPA reference method (e.g., MATS Method 5) spaced over three distinct PM concentrations (i.e., low, mid and high).[5] For the resulting correlation to be useful, these three distinct PM concentrations should span the range of expected concentrations with a target level (i.e., 50 percent of the limit) in the middle of the range.

A PM CEMS correlation curve plots the PM CEMS output on the x-axis and the reference method PM concentration on the y-axis. Reference method PM concentrations (y-axis) are typically expressed in the units of milligrams per actual cubic meter (mg/acm), and "actual" refers to the condition at which the PM CEMS detector operates. EPA is proposing to lower the filterable PM emission limit from 0.030 to 0.010 lb/10^6 Btu.[6] Conversion of 0.010 lb/10^6 Btu to mg/acm requires knowledge of the detector temperature and stack diluent (e.g., CO_2) concentration. If we use a typical CO_2 concentration of 12.5 percent (wet) and a detector temperature of 320 ° F, then 0.010 lb/10^6 Btu converts to 7.5 mg/acm. Following EPA's assumption that the unit will

[3] The EPA statement at 88 Fed. Reg. at 24,872, that a beta gauge "detector measures the amount of radiation emitted by the sample" is categorically incorrect and illustrative of several uninformed statements (e.g., cost estimates) about PM CEMS in the preamble to the proposed rule.
[4] 40 C.F.R. 60, Appendix B.
[5] PS-11 defines "low" to be zero to 50 percent of the maximum PM concentration; "mid" to be 25 to 75 percent of the maximum PM concentration; and "high" to be 50 to 100 percent of the maximum PM concentration. RLR's many years of experience with PM CEMS correlation testing is to equate "maximum PM concentration" with the PM emission limit.
[6] 88 Fed. Reg. at 24,857.

operate at the "target compliance level," which is 50 percent of the emission limit, (0.005 lb/10^6 Btu) we then have a unit operating at 3.75 mg/acm with an equivalent emission limit of 7.5 mg/acm. Not only will it be virtually impossible to conduct correlation testing at three PM concentrations (low, mid and high), it is far from clear that any type of valid PM CEM correlation can be established over such a limited data range. Using 7.5 mg/acm as the emission limit: low becomes 0 to 3.75 mg/acm; mid is 1.88 to 5.63; and high is 3.75 to 7.5 mg/acm. Anyone who believes he or she can regulate and control PM emissions from a coal-fired EGU that precisely has never set foot in such a facility. If EPA finalizes the MATS fPM limit to 0.010 lb/10^6 Btu, there is a much stronger technical argument to eliminate PM CEMS as a compliance option altogether and rely on quarterly stack testing with longer run times for all EGUs.

EPA states that 3-hr stack testing runs are the solution to minimizing both costs and uncertainty associated with the proposed lower fPM emission limit. While 3-hr testing runs may be acceptable for a standard compliance test that consists of three independent test runs, it is quite unreasonable for either PS-11 initial correlation tests and/or response correlation audits (RCAs). As noted above, PS-11 correlation testing requires a minimum of 15 runs and allows the owner/operator to discard up to five runs to improve correlations. Thus, it is not unusual to conduct 20 test runs for the PS-11 initial correlation test. [7]

A 20-run test program with 3-hr test runs will require on the order of 2 weeks. This is an excessive amount of time to take a unit off dispatch and hold constant load conditions for the sake of testing. How ironic it would be to displace renewable generation with a coal-fired EGU for 2 weeks simply to complete EPA-required testing. The increase in stack testing cost will be significant. [8] Granted, longer test runs improve Method 5 accuracy at low PM concentrations. However, longer test runs will neither expand the range of the data nor the quality of the resulting PM CEMS correlations. The range of the data will be limited even with longer test runs, and the robustness on any resulting correlation will be questionable.

Portland Cement Argument

EPA acknowledges that in the 2012 Portland Cement rulemaking, the Agency was aware of the difficulty in using PM CEMS to demonstrate compliance with a fPM emission limit in the range of 5 to 8 mg/dscm.[9] In the MATS RTR proposal, EPA attempts to dismiss comparisons to the Portland Cement rule by asserting that the particle characteristics between the two source categories are different. We agree that the particle

[7] The RCA requires a minimum of 12 individual runs, and also allows owners/operators to discard up to five runs. Thus, 17 individual runs are often performed for an RCA.
[8] RLR Consulting obtained a budgetary cost estimate of $80,000 for conducting PS-11 correlation test with the proposed sample volume requirement of 4 dscm. The budgetary estimate is $30,000 for conducting PS-11 correlation test under the current MATS requirements.
[9] The Portland Cement fPM emission limit is expressed in the units of pounds of particulate per ton of clinker produced. Thus, the conversion to PM concentration (mg/dscm) is not exact but depends on plant-specific parameters.

characteristics may indeed be different; however, 5 to 8 mg/dscm is a low PM concentration regardless of the size, shape, or constituency of the particles.

EPA addressed its concerns in the Portland Cement rule by (1) increasing the emission limit to a range of 7 to 14 mg/dscm, and (2) no longer requiring PM CEMS to demonstrate compliance with the emission limit. If the real problem were, as EPA now claims, (i.e., 1-hr test runs "led to inherent measurement uncertainty"), we initially wondered why EPA did not simply increase the run times as the Agency is proposing to do in the MATS rule? Further research reveals that EPA did examine the effect of longer run times in 2012 Portland Cement rule. However, EPA recognized then that longer run times would not solve the problem created by a very limited data range for the correlation testing associated with a very low emission limit.[10] The Agency correctly concluded that reference method measurement uncertainty coupled with a limited data range would make establishing a meaningful PM CEMS correlation curve next to impossible.

As noted earlier, PS-11 specifies the correlation requirements that are applicable to PM CEMS. To satisfy PS-11, the PM CEMS correlation must meet the following statistical criteria:

- The correlation coefficient shall be ≥ 0.85.
- The confidence interval (95%) half range at the median PM CEMS response value must be within 10% of the PM emission limit value.[11]
- The tolerance interval half range at the median PM CEMS response value must have 95% confidence that 75% of all possible values are within 25% of the PM emission limit value.

These PS-11 statistical considerations coupled with the low proposed emission limit clearly played a role in EPA's final decision to forego PM CEMS in the Portland Cement rulemaking. In the final Cement rule, EPA states[12]

> A particular challenge in applying PM CEMS to source emissions monitoring is in measuring the very low PM concentrations associated with a low applicable emissions limit for PM precisely enough to meet the PS 11 correlation requirements. In addition to measurement uncertainty inherent in PM CEMS data, the measurement uncertainty associated with the reference test method (e.g., Method 5) is a significant contributor to successful development of a PM CEMS correlation regardless of the type of PM CEMS used.

[10] 77 Fed. Reg. 42,368, 42374 (July 18, 2023).
[11] PS-11 states that the points at which the confidence interval and tolerance interval half ranges are evaluated are a function of the form of the regression equation. For linear and logarithmic correlations, the half intervals are evaluated at the mean PM CEMS response.
[12] 77 Fed. Reg. at 42,374.

As noted above, PS 11 specifies acceptable criteria for a correlation directly related to the applicable emissions limit. If we use 7.5 mg/acm for EPA's proposed fPM limit of 0.010 lb/10^6 Btu,[13] the 95% confidence interval would have to be less than or equal to 0.75 mg/acm. Likewise, the tolerance interval would have to be less than or equal to 1.88 mg/acm. We are not aware of any data or technical support that any commercially available PM CEMS is capable of meeting these very tight confidence and tolerance intervals, and EPA cites none. Adding to the challenge of achieving these strict confidence and tolerance intervals is the fact that these intervals will be at or near the method detection limit of the EPA Method 5, even with extended run times. While PS-11 ascribes all of the measurement errors to the PM CEMS, variability in reference method measurements at these low PM concentrations will likely result in numerous PS-11 failures.

PM CEMS and New EGUs

EPA appears to dismiss concerns with PM CEMS measurements at the low PM concentrations that would be required by the proposed emission standard (0.010 lb/10^6 Btu) by stating: (1) PM CEMS are mandated for new EGUs and (2) the revised fPM emission standards for existing EGUs and the fPM for new EGUs are approximately the same (0.010 lb/10^6 Btu v. 0.090 lb/MWh).[14] We have two issues with EPA's use of new EGUs to support PM CEMS at low concentrations.

Assuming PM CEMS are required for new EGUs, EPA's claim is without merit because PM CEMS are not and have never been demonstrated on new EGUs. The reality is there are no new EGUs in operation, and there is never likely to be one. Apparently, EPA agrees because in the Agency's recently signed proposed rule for controlling greenhouse gas emissions from the power sector, EPA explains not revising the NSPS for newly constructed fossil-fuel-fired steam generating units with the following sentence: "[t]his is because the EPA does not anticipate that any such units will construct or reconstruct and is unaware of plans by any companies to construct or reconstruct a new coal-fired EGU."[15] Supporting the proposed use of PM CEMS at low fPM concentrations by stating the requirement is consistent with a theoretical requirement for new EGUs that have not been built and will never be built is no support at all.

Discussion of PM CEMS Costs

EPA's statement, "not all EGU owners or operators chose the most cost-effective means of demonstrating compliance with the fPM emission limits"[16] is as insulting as it is incorrect. In 2015, we were asked by an EGU owner to estimate the cost over a 10-year

[13] Base on a stack CO_2 concentration of 12.5% (wet basis) and a PM CEMS detector temperature of 320 ° F.
[14] For the MATS rule, a new EGU is defined as one that commenced construction after May 3, 2011.
[15] 88 Fed. Reg. 33,245 (May 23, 2023).
[16] 88 Fed. Reg. 24,872 (April 24, 2023).

period of demonstrating compliance with the MATS fPM emission limit based on (1) quarterly stack testing and (2) PM CEMS. For stack testing, we estimated a total cost of $260,000 (i.e., 10 yr. x 4 quarters x $6,500). The 10-year cost for PM CEMS was $479,500. The PM CEMS estimate included $90,000 capital (representative of an extractive light scatter instrument), $35,000 for initial PS-11 correlation test, $90,000 for three response correlation audits (RCA), $45,500 for seven relative response audits (RRA), and about $20,000 per year for routine maintenance and spare parts. Note that our PM CEMS estimate did not include the cost of three PM spiking events, which would significantly increase the cost of the PM CEMS option. Also, neither cost estimate assumed 3-hr test runs. Longer test runs will increase the cost of quarterly stack tests; however, we believe the cost increase would be greater for PM CEMS because so many more test runs are involved.

We also disagree with EPA statements regarding stack testing costs. EPA states, "annual cost for M5 testing with 3 hour run duration is estimated to be $85,127 ($82,000 for testing, and $3,127 for 24 hours of site technical support); quarterly testing using M5I with runs of similar duration is estimated to be $107,127."[17] RLR obtained a cost estimate of $38,000 from a stack testing company to conduct four quarterly stack tests and collect a minimum sample volume of 4 dscm for each run. EPA digs a deeper hole with its absurd M5I annual estimate of $107,127. As a threshold matter, M5I is not allowed under the MATS rule because M5I specifies a probe and filter temperature of 250 ° F whereas the MATS rule requires a probe and filter temperature of 320 ° F. Assuming EPA were to correct this technical oversite, EPA could never explain how M5I testing would or should cost $22,000 more per year than M5 testing. In other words, EPA grossly inflates its stack testing cost estimates in attempting to make PM CEMS appear more palatable.

Qualitative Aerosol Generator

EPA is correct in stating that for several years the Electric Power Research Institute (EPRI) funded research associated with the development of the Qualitative Aerosol Generator (QAG). The QAG could generate particles of uniform size distribution at precisely known concentrations. The QAG contained components (i.e., mass flow meter) whose calibrations were traceable to the National Institute of Standards and Technology (NIST). However, it was never clear whether the PM aerosol concentration could be shown to be "NIST traceable."

More importantly, EPRI ceased funding QAG research circa 2018. Among the reasons for stopping the research were (1) the field tests had become increasingly complex and expensive and (2) utility-funders lost interest primarily because of EPA's lack of response despite several attempts by EPRI to get EPA involved in a project that sought to make PM CEMS correlations more efficient. We find it incredulous that EPA would dredge up an EPRI project that the Agency never showed any support for and attempt to use that defunct project to support this rulemaking proposal.

[17] Ibid at 24873.

EPA Random Error Memo

EPA states that the impact of sampling times and random errors on measurable emission limits is described in a memorandum in the docket.[18] The Memorandum statement, "2 mg/dscm for a one-hour test run (which is equivalent to a mass per heat input value of 0.0082 lb/mmBtu)," is simply incorrect. A fPM concentration of 2 mg/dscm is approximately 0.0021 lb/10^6 Btu assuming nominal CO_2 concentration of 10.5 % (dry).

The following Memorandum statement "one can calculate the range of the contribution of random error to the total PM CEMS tolerance to be between thirty-six and seventy-three percent" may or may not be incorrect. The Memorandum provides neither a reference nor a method for how random error is defined or calculated. Likewise, there are no text or equations to support the results shown in Table 1. Frankly, the Agency should be embarrassed to include in a rulemaking docket a 2-page Memorandum that is so poorly explained or substantiated.

CONCLUSIONS

First, RLR is not certain the RTR process affords EPA the latitude to make changes to compliance determination procedures. However, as discussed above, the technical justification for mandating PM CEMS, especially if EPA were to lower significantly the fPM standard (as it currently has proposed) is deeply flawed and fraught with several incorrect or inaccurate statements, both concerning the ability to obtain meaningful correlations over a limited data range and the cost of PM CEMS. Thus, for the reasons explained in this memorandum, EPA would be well advised to maintain the quarterly stack testing option for fPM in its MATS rule. Moreover, if EPA were to lower the fPM limit to 0.01 lb/10^6 Btu, EPA should follow the precedent the Agency set in the Portland Cement rule and withdraw PM CEMS as a compliance testing option. Periodic, quality stack tests will be a much better indicator of compliance than continuous data of questionable quality.

If you have any questions regarding our technical comments or require additional information, please do not hesitate to contact me (919) 696-7008 or rlph.roberson@gmail.com.

[18] "PM CEMS Random Error Contribution by Emission Limit," Docket ID No. EPA-HQ-OAR-2018-0794-0794 (hereinafter "Memorandum").

ATTACHMENT D

ROBERT MCLENNAN
DECLARATION OF HARM IN SUPPORT OF MOTION FOR A STAY PENDING REVIEW

1. My name is Robert McLennan. I am the President and Chief Executive Officer at Minnkota Power Cooperative, Inc. (Minnkota). I am over the age of 18 years, and I am competent to testify concerning the matters in this declaration. I have personal knowledge of the facts set forth in this declaration, and if called and sworn as a witness, could and would competently testify to them.

2. I have more than 29 years of experience in electricity generation. I have been employed at Minnkota since 2011. I hold dual bachelor's degrees in history and political science, and psychology from the University of Jamestown. As President and CEO at Minnkota, my responsibilities include ensuring access to safe, reliable, affordable and sustainable electricity for 11 member-owner cooperatives in eastern North Dakota and northwestern Minnesota. This includes oversight of more the 400 employees and a budget of more than $450 million annually.

3. I am providing this Declaration in support of the motions to stay challenging the U.S. Environmental Protection Agency's (EPA) National Emission Standards for Hazardous Air Pollutants: Coal and Oil-Fired Electric Utility Steam Generating Units Review of the Residual Risk and Technology Review, 89 Fed. Reg. 38508 (May 7, 2024), known as the Mercury and Air Toxics Standards Risk and Technology Review (the Final Rule or the MATS RTR).

4. Minnkota is a not-for-profit electric generation and transmission cooperative headquartered in Grand Forks, North Dakota. Minnkota provides wholesale electric energy to 11 member-owner distribution cooperatives located in eastern North Dakota and northwestern Minnesota. Minnkota also serves as the operating agent for the Northern Municipal Power Agency (NMPA), headquartered in Thief River Falls, MN.

5. Electricity generated by Minnkota is distributed through the Midcontinent Independent System Operator (MISO) regional transmission organization (RTO). MISO "operates the transmission system and centrally dispatched market" in fifteen states ranging from Canada down to the Gulf

ED_021114A_00008629-00054

Coast. Across those states, it serves more than 42 million customers[1]. Minnkota and its system partners (Northern Municipal Power Agency and Square Butte Cooperative) have the capability of generating 1,425 MWs, which may be provided to MISO for scheduling and reliability purposes. Over half of the electricity generated by Minnkota is dispatchable power from coal sources, meaning it is available on demand, unlike power from wind and solar resources, which do not have on-demand capabilities. Dispatchable power is critical for MISO because MISO has small reserve margins, which is the amount of power needed to ensure demand is met and avoid failure of the grid.

6. Minnkota is a member of the Lignite Energy Council (LEC). LEC represents the regional lignite industry in North Dakota, an $18 billion industry critical to the economy of the Upper Midwest and the reliability of its electrical grid. The primary objective of LEC is to maintain a viable lignite coal industry and enhance development of the region's lignite

[1] FERC, MISO, https://www.ferc.gov/industries-data/electric/electric-power-markets/miso.

ED_021114A_00008629-00055

resources. Members of LEC include mining companies, utilities that use lignite to generate electricity, synthetic natural gas and other valuable byproducts, and businesses that provide goods and services to the lignite industry. LEC has advocated for its members since 1974 to protect, maintain, and enhance development of our region's abundant lignite resources. LEC is committed to environmental stewardship and understands the importance of protecting North Dakota's natural beauty.

7. Minnkota is a member of the National Rural Electric Cooperative Association (NRECA). NRECA represents the interests of rural electric cooperatives across the country.

8. Minnkota is a member of America's Power (AP). AP is a national trade organization that advocates at the federal and state levels on behalf of the U.S. coal fleet and its supply chain.

9. North Dakota contains the world's largest known deposit of lignite and is the fifth-largest coal producing state, accounting for 5% of total U.S. coal production. Most of that lignite is utilized at mine-mouth power generation facilities, which are coal-fired power plants built near a

ED_021114A_00008629-00056

coal mine that use coal from that mine as fuel. As a result of this plentiful natural resource, coal provides the majority of the electric power generated and consumed in North Dakota.

10. The MATS RTR threatens the viability of North Dakota's lignite-powered plants. It also threatens the reliability of the entire grid across the region, places burdens on the power sector as a whole, and causes harm to industries dependent on a reliable electric grid.

MILTON R. YOUNG STATION

11. Minnkota is the operator and a partial owner of the Milton R. Young Station (the Young Station or MRY), a two-unit (the Units or MRY 1 and MRY 2), cyclone lignite coal-fired power plant located near the town of Center, North Dakota.

12. MRY 1 and 2 are well-controlled electric generating units (EGUs), which provide energy to the MISO system. MRY Units 1 and 2 have substantially reduced NOx and SO2 emissions, which have been documented in the context of the Regional Haze program. MRY 1 has reduced SO_2 emissions by 96% since 2002, and MRY 2 has reduced SO_2 by

ED_021114A_00008629-00057

75% since 2002. Both Units have reduced NOx emissions approximately 60% since 2002.

13. MRY 1 is a cyclone lignite-fired unit with a 235 MW nominal net rating. The Unit controls NOx with advanced separated over-fire air (ASOFA) and selective non-catalytic reduction (SNCR). A wet scrubber controls SO_2. An electrostatic precipitator (ESP) controls particulate matter (PM).

14. MRY Unit 2 is also a cyclone lignite-fired unit, with a larger capacity (440 MW nominal net rating). It also is equipped with a SNCR, wet scrubber, and an ESP.

15. The MRY Units have different configurations. Although Minnkota uses the same control devices for the Units, operation and emissions output differs based on a number of factors. The Units vary in capacity and control device design. MRY 2 has a different ductwork configuration between the air heater and the electrostatic precipitator than MRY 1. MRY 1 has shorter ductwork and a smaller outlet for measurement of mercury emissions. The ductwork configuration affects the amount of

ED_021114A_00008629-00058

residence time for the flue gas to be exposed to the injection of powder activated carbon (PAC), also known as activated carbon injection(ACI) in the Final Rule.

16. Minnkota uses the same mercury control strategies for both Units. Minnkota currently uses a fuel additive system to apply a Potassium Iodide fuel additive sorbent known as M-Prove procured from ARQ (formerly ADA). Minnkota injects non-halogenated PAC post-combustion. The fuel additive system was designed to meet the original 2012 MATS limitation for lignite units of 4.0 lb/TBtu, with a margin for compliance due to the variability of lignite coals.

17. MRY 1 and 2 at the Young Station combust lignite coal. The Young Station's lignite supply comes exclusively from BNI Coal Inc. (BNI), which is in close proximity to the plant.The lignite supplied by BNI is run-of-mine (ROM) coal that contains impurities and does not conform to a single mineral content or heat value specification. For this reason, the ROM supply currently varies in mercury content from 4.9 lb/TBtu to 18.6 lb/TBtu, based on recent mercury content testing. *See* Sargent & Lundy, "Mercury

ED_021114A_00008629-00059

Testing Results for the MATS Residual Risk and Technology Review," at Table 2-5 (May 22, 2024) [hereinafter Mercury Testing 2024 Report], **Attachment A**. The broad range of variability is projected to continue into the future. *See id.* at Table 2-4.

MATS RTR RULE REVISIONS

18. The MATS RTR eliminates the low rank coal subcategory for lignite-powered facilities and changes the limit for mercury from lignite-fired power plants from 4.0 lb/TBtu to 1.2 lb/TBtu (the New Mercury Limitation). EPA assumes this limit can be met using brominated ACI to achieve greater than 90% mercury removal by lignite-burning units. 89 Fed. Reg. 38508, 38547 (May 7, 2024).

19. The MATS RTR decreases the limit for filterable particulate matter (fPM) to 0.010 lbs/MMBtu (the New fPM Limitation).

20. Compliance with the New Mercury and fPM Limitations is required on or before three years after the effective date of the Final Rule.

ED_021114A_00008629-00060

21. The MATS RTR provides that Continuous Emission Monitoring Systems (CEMS) are the only method to demonstrate compliance with the fPM limit.

LIGNITE COMBUSTION

22. Lignite varies in composition and the distribution of mercury within individual coal samples is not uniform, unlike other types of coals. The amount of mercury within one seam of coal can vary drastically, not to mention mercury content fluctuations between seams at the same mine.[2] Minnkota's units see this large degree of variability within a 24hour operating period. *See* **Attachment A**, at Tables 2-4, 2-5.

23. An important difference between mine-mouth coal plants and typical coal-fired power plants is the control over fuel composition. Non-mine-mouth facilities purchase coal of a specified quality to be delivered to the facility. Unlike other types of facilities that may be able to blend coals to achieve greater consistency in the character of their fuel, many North

[2] LEC Comments filed June 23, 2024, https://downloads.regulations.gov/EPA-HQ-OAR-2018-0794-5957/attachment_1.pdf

Dakota lignite units are located at mine-mouth facilities without access to other coal types. MRY does not have access to alternate coal supplies. It has no rail spur or barge access to transport the coal to the facility. Therefore, MRY depends entirely on the fuel extracted from the neighboring BNI mine, and without incurring substantial economic cost and significant waste of resources, MRY has no means to control coal quality.

24. When high mercury batches of coal are combusted, the original 2012 MATS mercury emission limitation provided lignite power plants enough margin in their percentage of mercury removal to account for higher mercury emissions due to the mercury content in the coal. 77 Fed. Reg. 9304, 9490 (Feb. 16, 2012).

25. It is well-known and consistent with Minnkota's experience that lignite deposits vary significantly in quality, including fuel combustion performance and mineral content. Mercury content in the lignite varies because different seams within the mine yield lignite with diverse attributes (including mercury) on a day-to-day basis. Minnkota currently

ED_021114A_00008629-00062

maintains continuous emission controls to accommodate for the changing lignite quality to assure compliance with existing MATS mercury limitations. The variability of the lignite results in a much broader design range of controls and the equipment operation must account for the maximum mercury ROM and in turn must have a greater performance design standard for removal percentage removal. A compliance margin in the performance design standard for percentage removal is critical to allow for controls to adjust in response to changing lignite content, assuring continuous compliance with the MATS RTR Rule. *See* **Attachment A**, at Table 2-4.

ELIMINATION OF THE MERCURY SUBCATEGORY FOR LIGNITE CAUSES IMMEDIATE AND IRREPARABLE HARM TO THE NORTH DAKOTA LIGNITE INDUSTRY AND TO MINNKOTA

26. EPA established the lignite subcategory for mercury because lignite units have different characteristics than units designed to combust bituminous and subbituminous coals. 77 Fed. Reg. at 9378. Lignite has a higher mercury content in many instances and presents greater variability than other coals. *See* E.J. Cichanowicz, "Technical Comments on MATS

ED_021114A_00008629-00063

RTR," EPA-HQ-OAR-2018-0794-5956, at Section 6.3.1 EIA Hg-Sulfur Relationship (June 19, 2024) [hereinafter Cichanowicz Technical Report], **Attachment B**. The higher sulfur content found in lignite fuels inhibits the ability of injected sorbents to reduce mercury emissions at lignite plants. The mercury content also results in higher levels of SO_3 formed, which significantly limits the mercury emission redu ction potential of emission controls at lignite plants. *Id.*

27. Minnkota has used the same technology (combination of sorbent injection plus a chemical additive (oxidizing agent)) as its primary mercury control strategy since the MATS rule came into effect. While there are many variations of PAC on the market, in Minnkota's experience with these products, no PAC product has been identified as more successful than the others at MRY. Therefore, Minnkota has continued to use activated carbon injection as its primary mercury control system. Minnkota is not aware of any new developments in practices, processes, and control technologies in mercury control since the original MATS rule's technology evaluation.

ED_021114A_00008629-00064

28. Minnkota is unaware of any verified testing or evidence that demonstrates that lignite units can meet the New Mercury Limitation of 1.2 lb/TBtu at full load. EPA finds that by using brominated activated carbon, without regard for equipment performance design, "greater than 90 percent Hg control can be achieved at lignite-fired units," 89 Fed. Reg. at 38547, and cites for support a beyond-the-floor memorandum from the 2012 MATS rule, Kevin Culligan, SPPD/OAQPS to EPA-HQ-OAR-2009-0234, "Emission Reduction Costs for Beyond-the-floor Mercury Rate for Existing Units Designed to Burn Low Rank Virgin Coal" (Dec.16, 2011) [hereinafter Beyond-the-Floor Memorandum], **Attachment C.** EPA concludes that "units could meet the final, more stringent, emission standard of 1.2 lb/TBtu by utilizing brominated activated carbon at the injection rates suggested in the beyond-the-floor memorandum from the 2012 MATS Final Rule." 89 Fed. Reg. at 38547. To support this removal rate, the Beyond-the-Floor Memorandum cites a technical publication: Sjostrom, "Activated carbon injection for mercury control: Overview," Fuel Vol. 89, Issue 6, at 1320-22 (June 2010) [hereinafter ACI Fuel 2010 Article], **Attachment D.**

ED_021114A_00008629-00065

The ACI Fuel 2010 Article presents a chart that compiles mercury removal test results from Department of Energy (DOE) mercury control systems. The ACI Fuel 2010 Article scatterplot presents a variety of results under different conditions and equipment configurations. The ACI Fuel 2010 Article dataset contains only one lignite datapoint, which is a unit equipped with a fabric filter. Fabric filters aid in mercury removal because of increasing resonance time and temperature differential. The raw testing data from the ACI Fuel 2010 Article is not available in the docket. Given that the dataset (1) uses a single lignite data point (containing Fabric Filter controls), (2) fails to include the backup testing data, and (3) lacks data from ESP-equipped units like the MRY Units, the scatterplot in the ACI Fuel 2010 Article does not support the conclusion that a emissions standard based on 90% mercury removal can be achieved across the lignite industry, particularly with respect to lignite-fired units that are not equipped with a fabric filter.

29. Concluding that mercury removal over 90% is possible and equates to meeting the New Mercury Limitation, EPA calculates the removal

ED_021114A_00008629-00066

percentages for various lignite units across the country. EPA reports that lignite plants would need to remove up to 95% of mercury in the flue gas to meet the new limit based on 2022 data. 89 Fed. Reg. at 38547.

30. After the release of the proposed MATS RTR, Minnkota performed testing to evaluate the capability of its current mercury reduction system at MRY 1 and to examine the feasibility of EPA's mercury removal assumptions as applied to MRY 1. *See* **Attachment A**. Minnkota used its existing mercury control system to apply PAC and M-Prove sorbent, both of which MRY uses routinely for mercury control. Minnkota added as much PAC and Potassium Iodide sorbent as the MRY conveyors, injection lances, and associated components would allow, based on their maximum performance design capabilities and consistent with good engineering practices. As described in more detail in the Mercury Testing 2024 Report (**Attachment A)** the test results showed:

ED_021114A_00008629-00067

MRY Unit	Average Hourly Mercury Emissions Value Achieved at Full Load (Sorbent Trap Data) 18 ppm MProve and Non-Brominated PAC
Unit 1	2.17
Unit 2	1.61

31. The Final Rule solely relies on the conclusion that brominated PAC improves mercury removal. 89 Fed. Reg. at 38547 (citing the Beyond-the-Floor Memorandum). Consequently, MRY purchased brominated PAC for the purpose of determining if that product would achieve improved mercury removal as compared to non-brominated PAC. Minnkota selected MRY 1 for this trial because its mercury emissions baseline rate was higher than MRY 2 in the results identified above. As shown below, the MRY 1 average mercury emissions rate was higher when injecting brominated PAC as compared with non-brominated PAC.

MRY Unit	Average Hourly Hg Emissions Value Achieved at Full Load (Sorbent Trap) Brominated PAC	Average Hourly Hg Emissions Value Achieved at Full Load (Sorbent Trap) Non-Brominated PAC
Unit 1	2.57	2.17

ED_021114A_00008629-00068

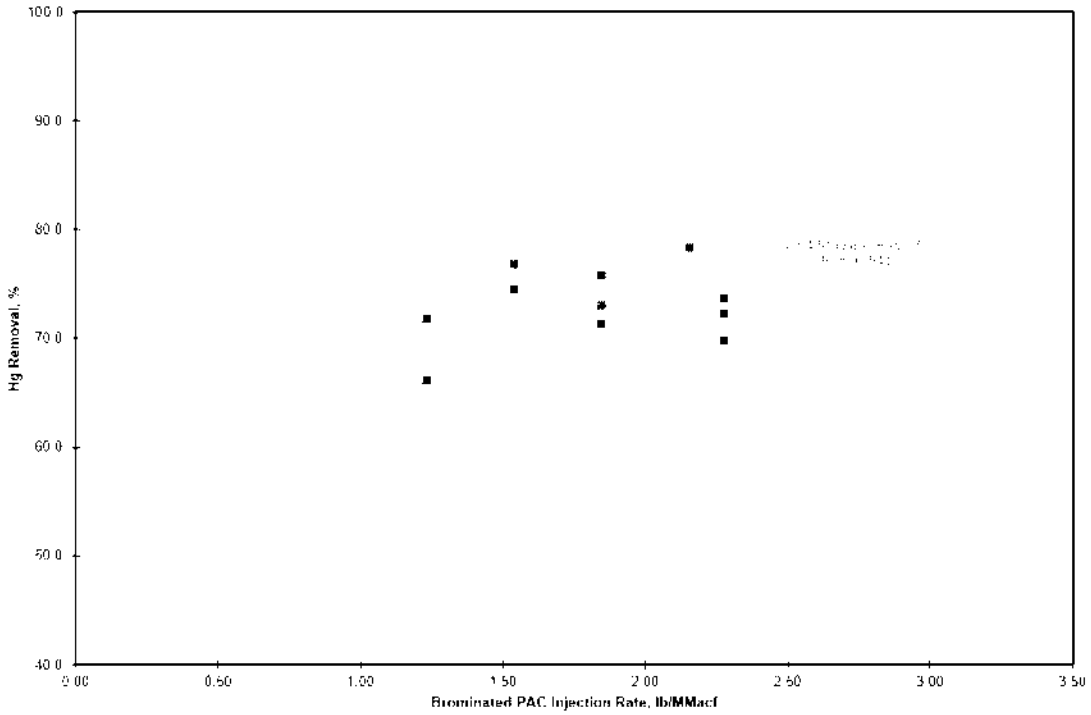
32. With existing equipment, the recent testing results demonstrate that MRY is unable to achieve the New Mercury Limitation on an hourly basis at full load. Further, Minnkota has no information or data supporting the conclusion that MRY 1 or MRY 2 could achieve the New Mercury Limitation on a 30-day rolling basis while operating at full load. The short-term testing data suggest that even a longer-term averaging period would not result in compliance.

33. In fact, Minnkota plotted the recent test results to project the removal rate at a brominated PAC injection rate of 3.0 lb/MMacf, which is a higher injection rate than the existing MRY equipment can achieve, but is consistent with EPA's achievability conclusion in the Beyond-the-Floor Memorandum and Final Rule. The trend line shows an estimated maximum mercury removal rate of less than 80%. The plotted trend line, based on the test values, is far below EPA's conclusion (consistent with the ACI Fuel 2010 Article) that injection of brominated PAC at the rate of 3.0 lb/MMacf will result in a 90% removal rate. Rather, the trend line levels off, demonstrating that increasing the amount of brominated PAC injected

ED_021114A_00008629-00069

into MRY Unit 1 is not an adequate control strategy to achieve the New Mercury Limitation and that EPA ignored and erroneously omitted limitations of ACI in its achievability conclusion . **Attachment A**, at Figure 2-1. The scatterplot from the Report is presented below.

Figure 2-1 — MRY Unit 1 Existing System Mercury Removal Performance Capabilities using Brominated PAC



34. Mercury testing and analysis of data at MRY confirms and supports Minnkota's belief that numerous variables affect its mercury emissions rate. Specifically, Minnkota observed mercury emissions rate fluctuations based on unit load, mercury content in lignite, and normal variability in unit operation and control equipment function. Some hourly

mercury emissions increases were not directly traceable to a cause, even upon data analysis.

35. One of Minnkota's conclusions, based on recent testing experience, is that known and unknown variables cause mercury emissions fluctuation, such that a standard for mercury must include a minimum compliance margin of 25%.

36. Minnkota is irreparably harmed by the final MATS RTR because MRY's existing mercury controls cannot achieve the New Mercury Limitation of 1.2 lb/TBtu on an hourly or sustained basis at full load. In fact, the MRY testing data predicts that increased injection of brominated PAC beyond the capabilities of the existing mercury control system will not achieve the New Mercury Limitation due to the leveling off of mercury removal at less than an 80% removal rate.

37. The Final Rule places Minnkota in an urgent and untenable position, given the Rule's impending compliance date. Noncompliance with the Clean Air Act is not an option. Therefore, prior to making a shutdown decision regarding critical assets, Minnkota would determine

ED_021114A_00008629-00071

what mercury emission rate the MRY units can achieve. That would require significant additional investment in testing that, along with existing testing costs, will exceed $600,000.00.

38. To achieve lower mercury emissions, MRY must install and operate advanced pollution control equipment to replace its existing equipment, such as an ACI system with a higher injection rate. Even though the New Mercury Limitation is not shown to be feasible, Minnkota must complete this installation project to improve the emission rate and avoid the only other option of derating the units for compliance. The installation costs and ongoing operation expenses are significant. Specifically, these technologies will require an estimated minimum of $5,000,000.00 capital expenditure upfront, as well as increased labor costs for installation, operation, and maintenance of the technology, and equipment and associated training, and will result in increased operating costs over the long term. This expenditure must take place expeditiously and certainly before the resolution of this case.

ED_021114A_00008629-00072

39. Without the ability to meet the New Mercury Limitation, the Final Rule provides no other option but to force Minnkota to ultimately shut down MRY Unit 1 and Unit 2. Shutting down MRY substantially harms Minnkota by entirely eliminating its ability to generate dispatchable electricity for its cooperative members and end users.

40. EPA failed to take into consideration the actual costs of compliance and had a significantly flawed calculation. *See* **Attachment A**, at Section 3 EPA Cost Validity.

41. Further, EPA underestimates the cost of the Final Rule to Minnkota by using incorrect fuel additive costs for MRY 1 and for MRY 2. EPA's underestimate results in $487,747 and $1,347,383 that should have been included in the cost analysis for MRY Units 1 and 2, respectively.

42. The magnitude of EPA's underestimation of cost is apparent when actual compliance costs are used to calculate cost effectiveness. Compared to EPA's hypothetical 800 MW unit, the cost for just one 250 MW lignite unit is nearly 80% EPA's estimate—and this fails to include equipment upgrades necessary to achieve an injection rate unproven to

ED_021114A_00008629-00073

meet a 90% removal rate on lignite. Note the table does not include or account for any costs associated with MRY 1 mercury system upgrades.

Example MRY Unit 2 Cost Underestimations Summary Table 3-1

Parameter	EPA Example Hypothetical 800 MW	EPA Assumed MRY U2 Costs 447 MW	Est. Actual MRY U2 Costs 447 MW
Current Hg Compliance (4.0 lb/TBtu) Cost [1]	$2.6 M	$0.3 M	$1.9 M
Current Hg Removed	1,295 lb	77 lb	149 lb
Current C/E ($ per lb Hg Removed)	2,004	3,845	12,754
Hg Control System Annualized Capital Cost	Not included	Not included	$472k [2]
BPAC Cost @ 5 lb/MMacf	$7.5 M	$0.6 M	$1.3 M [3]
M-Prove Cost	Not included	$0.2 M	$1.6 M [4]
Future Hg Compliance (@ 5 lb/MMacf) Cost	$7.5 M	$0.8 M	$3.4 M
Future Hg Removed (EPA Assumed @ 1.2 lb/TBtu)	1,447 lb [5]	110 lb	216 lb
Future C/E ($ per lb Hg Removed)	5,083	7,040	15,678
Incremental C/E ($ per lb Hg Removed)	28,176	14,360	22,217

Note 1 – EPA example only based on sorbent. EPA assumed current compliance cost includes sorbent and chemical fuel additive. Est. actual cost based on 2023 MRY Unit 2 usage rate & pricing for both sorbent and chemical additive.

Note 2 Cost of $5.0 million dollars from S&L project database was annualized using a capital recovery factor calculated based on annual interest rate of 7% (pre-tax marginal rate of return on private investment, EPA Cost Manual Section 5)and 20 year evaluation period (EPA Cost Manual Section 6).

Note 3 – Cost based on EPA assumed rate but using 2023 MRY BPAC pricing.

Note 4 – Cost based on 2023 MRY Unit 2 usage rate & pricing instead of assuming same as sorbent costs.

Note 5 Based on calculated value for EPA example inlet Hg of 1,542 lbs (current H g coal content) 95 lbs (future emitted amount). However, the EPA example identifies 1,468 lb for the incremental cost effectiveness calculation.

43. Costs to comply with the New Mercury Limitation are exorbitant and damage Minnkota. Many costs may be passed along to its member cooperatives and end users who are harmed via higher electricity

prices. The capital and operational costs to Minnkota, its member cooperatives, and end users cannot be recouped.

44. At a minimum, compliance with the new standard for mercury is estimated to cost $22,217 per pound of incremental emission removed for Unit 2. The significant cost of reducing mercury emissions is overly burdensome for Minnkota as a small entity and as a not-for-profit electric cooperative.

45. Minnkota's harm due to the New Mercury Limitation is immediate. Minnkota must immediately begin mercury testing to determine maximum mercury removal rates and capabilities.

46. The MATS RTR sets a mercury limitation for lignite units without any technical basis or data demonstrating its achievability. In summary, the New Mercury Limitation is defective due to the following flawed assumptions:

a. EPA assumes that greater than 90% mercury control can be achieved at lignite-fired units at a < 2.0 lb/MACF injection rate for units with installed fabric filter and using brominated PAC

ED_021114A_00008629-00075

and greater than 90% mercury control can be achieved at lignite-fired units at < 3.0 lb/MACF injection rate for units with installed ESPs and using brominated PAC. Yet, MRY's testing data demonstrates that EPA's assumptions that greater than 90% mercury control can be achieved is in error. EPA's Beyond-the-Floor Memorandum and its supporting data also demonstrates that EPA's achievability conclusions around application of ACI are clearly erroneous.

b. EPA finds that no lignite units will need to achieve a removal rate higher than 95% mercury control to meet the New Mercury Limitation of 1.2 lb/TBtu, based on EPA's unit-by-unit calculations, and finds MRY would need 87% removal in the Final Rule. Yet, Minnkota's calculations for MRY show that greater than 90% removal would be required when combusting high mercury content lignite based on test results at the mercury inlet.

ED_021114A_00008629-00076

47. Minnkota is harmed by having to comply with a New Mercury Limitation that is not achievable and is based on flawed and unsupported technical conclusions.

THE NEW fPM LIMITATION WILL CAUSE IMMEDIATE AND IRREPARABLE HARM TO THE NORTH DAKOTA UTILITIES AND TO MINNKOTA

48. EPA's new fPM limit of 0.010 lb/MMBtu will require either the installation of a baghouse (fabric filter technology) or complete retrofit of electrostatic precipitators at MRY. *See* Sargent & Lundy, "Particulate & Mercury Control Technology Evaluation & Risk Assessment for Proposed MATS Rule Report," EPA-HQ-OAR-2018-0794-5978 (June 2023) [hereinafter MATS 2023 Study], **Attachment E**.

49. ESP improvements may result in fPM reductions. These upgrades would require substantial modifications, including structural support modification, and would represent substantial expenditures in cost per ton removed. **Attachment E**, at Section 2.3.

ED_021114A_00008629-00077

50. Minnkota's harm is immediate. Minnkota would need to begin constructing an ESP upgrade as soon as possible to have any opportunity to meet the new compliance date for the MATS RTR.

51. For MRY 2, an ESP upgrade may achieve the New fPM Limitation with adequate margin. However, the MATS 2023 Study finds that vendors would have to complete a more detailed qualitative study and baseline testing to determine whether an ESP rebuild can achieve a low enough fPM rate based on ESP inlet and outlet emissions. **Attachment E**, at Section 2.1.6. Otherwise, a baghouse would be required. MRY would need 48 months to convert to baghouse technology. *Id.* at Table 2-2.

52. ESP upgrades take 36 months to complete. There are 26 units in the country that would need ESP upgrades for a new limitation of 0.010 lb/mmBtu. *Id.* Only 4 vendors in the United States can undertake these projects. It is likely that the 36-month estimate will be further protracted due to the dearth of contractors available to perform the work.

53. Costs of compliance with the New fPM Limitation are overly burdensome, for the following reasons.

ED_021114A_00008629-00078

54. Baghouse installation is extremely costly. It is estimated to cost $282,715 per fPM ton removed. *See* **Attachment B**.

55. ESP retrofits are expensive. NRECA's technical consultant estimates $67,262 per fPM ton removed. *See* **Attachment B.**

56. Electric cooperatives have limited financial resources to undertake projects of this magnitude in general and especially when coincident with other environmental compliance projects.

57. Minnkota is harmed by having to comply with a New fPM Limitation that may not be achievable prior to the compliance deadline, is based on flawed and unsupported technical conclusions, and is very costly.

58. To comply with the MATS RTR, Minnkota is forced to take measures that immediately increase compliance and operational costs. The MATS RTR impacts Minnkota's ability to supply affordable, reliable energy to its customers. Added costs will place upward pressure on rates for rural customers, particularly when combined with the effects of EPA's other recent electric utility sector-focused rules.

ED_021114A_00008629-00079

THE MATS RTR CREATES GRID RELIABILITY CONCERNS DUE TO EARLY RETIREMENTS OF COAL-FIRED UNITS

59. Lignite coal provides the majority of the electric power generated and consumed in North Dakota. Lignite power plants play a significant role in the regional economy.

60. Thus, this rule, with its reversal of EPA's position on lignite-fired sources, impacts North Dakota more profoundly than other areas of the country. These concentrated impacts affect the ability of the North Dakota utilities to maintain adequate generation resources.

61. Most (if not all) of the lignite plants in North Dakota must make some changes as result of this rule. There will be a marked impact on grid stability and reliability. In addition, increased maintenance needs of new pollution control technology will continue to affect reliability in the longer term.

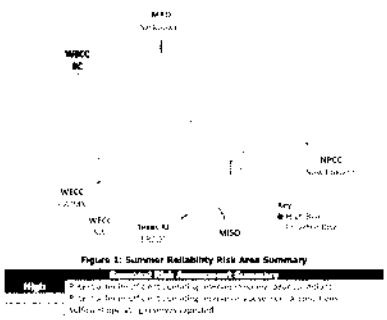
62. Units will retire due to the inability to meet the New Mercury or fPM Limitations.

63. Existing generation resources are unlikely to be adequate in North Dakota to sustain the grid with multiple unit retirements in a short

ED_021114A_00008629-00080

time frame. Multiple environmental regulations that EPA promulgated this month directly and profoundly impact generation resources in North Dakota.[3] This Final Rule is part of those cumulative reliability and cost impacts on coal-fired generation.

64. The North American Electric Reliability Corporation (NERC) has predicted continued future shortfalls in North Dakota.[4] The MATS RTR intensifies an already tenuous, overburdened grid in transition.



[3] New Source Performance Standards for Greenhouse Gas Emissions From New, Modified, and Reconstructed Fossil Fuel-Fired Electric Generating Units; Emission Guidelines for Greenhouse Gas Emissions From Existing Fossil Fuel-Fired Electric Generating Units; and Repeal of the Affordable Clean Energy Rule, 89 Fed. Reg. 39798 (May 9, 2024); Hazardous and Solid Waste Management System: Disposal of Coal Combustion Residuals From Electric Utilities; Legacy CCR Surface Impoundments, 89 Fed. Reg. 38950 (May 8, 2024); Supplemental Effluent Limitations Guidelines and Standards for the Steam Electric Power Generating Point Source Category, 89 Fed. Reg. 40198 (May 9, 2024); National Emission Standards for Hazardous Air Pollutants: Coal- and Oil-Fired Electric Utility Steam Generating Units Review of the Residual Risk and Technology Review, 89 Fed. Reg. 38508 (May 7, 2024).

[4] NERC, 2024 Summer Reliability Assessment (May 2024), https://www.nerc.com/pa/RAPA/ra/Reliability%20Assessments%20DL/NERC_SRA_2024.pdf.

65. Dramatic repercussions would flow from the loss of North Dakota generation units due to the Final Rule. North Dakota Transmission Authority (NDTA), "Analysis of Proposed EPA MATS Residual Risk and Technology Review and Potential Effects on Grid Reliability in North Dakota" (Apr. 3, 2024) [hereinafter NDTA Analysis], **Attachment F.**

66. The MATS RTR will cause the loss of tax revenue and a decrease in economic activity for the region if units must shut down. Retirements not only economically impact local communities, jobs, and industries, but put more strain on existing resources to provide reliable and affordable energy.

67. The interruption of power delivery from a grid failure would cause damage to public health. North Dakotans rely on electricity to heat their homes during the extreme winter temperatures of the long winter season. Affordable and consistent power allows for medical providers to provide essential services to the elderly, infirm, and to vulnerable individuals with chronic health conditions. Evidence from grid failures in other areas of the country in winter storms Uri and Elliott show the

ED_021114A_00008629-00082

documented health impacts and morbidity caused by those events.[5] The MATS RTR places the portion of the grid serving North Dakota in jeopardy of failure and resulting consequences.

68. With respect to MRY, Minnkota would anticipate a loss of jobs. Minnkota employs approximately 200 people in the vicinity of Center, North Dakota. In addition, subcontractors provide services to the plant on a regular basis. The nearby BNI Coal mine would be impacted or possibly close because it sells lignite to MRY. On information and belief, BNI employs approximately 178 persons at the mine. In total, the direct cost to the community from the loss of employment would be staggering. Impacts from the loss of jobs in the area would have a ripple effect on ancillary industries, such as nearby service stations, reduced demand for customer services, and the social and psychological impacts of job loss on the affected individuals and their families. Premature retirement of units

[5] *See, e.g.*, Hanchey, "Mortality Surveillance During Winter Storm Uri, United States – 2021," Disaster Med Public Health Prep (Dec. 2023), https://pubmed.ncbi.nlm.nih.gov/37974501/; Sharma, "Winter Storm Elliott death toll climbs to 56 as thousands still without power in -40 temperatures," Yahoo News (Dec. 26, 2022), https://www.yahoo.com/news/winter-storm-elliot-power-outages-154557710.html.

results in irreversible harm that economically damages Minnkota and impacts the entire region.

69. EPA failed to account for the costs due to a grid failure in the rulemaking. In its service area, Minnkota would anticipate that grid failures would cause end users to suffer economic damages such as food spoilage, property damage, lost labor productivity, and loss of life. The NDTA Analysis discusses these damages in more detail in Section D (Modeling Results).

SUMMARY OF HARM TO MINNKOTA

70. With respect to the New Mercury Limitation, MRY is unable to meet the new limit with its existing technology at full load. Recent test data suggest that Minnkota will not be able to meet the New Mercury Limitation even at the higher PAC injection rates that EPA assumed to be sufficient to meet the New Mercury Limitation. Further testing and analysis would need to be performed to identify MRY's emission reduction rate. If either no feasible technology exists, or if a technology cannot be installed to meet the compliance deadline, the MRY units will be forced to

ED_021114A_00008629-00084

ultimately cease operation immediately upon the Final Rule compliance date.

71. With respect to the fPM limitation, Minnkota is unable to meet the New fPM Limitation with its existing technology at full capacity at MRY Unit 2.

72. An ESP rebuild project must take place at a minimum. If further study indicates that an ESP upgrade is not sufficient, Minnkota must install a baghouse. If Minnkota cannot commence these projects – either due to cost or timing – then MRY would be forced to cease operation beginning on the MATS compliance date.

73. Minnkota is immediately harmed because it must expend financial resources to commence testing and project development to lower its fPM and mercury emissions and even have an opportunity to meet the MATS RTR compliance deadline.

74. In summary, the Rule may force MRY off-line due to control infeasibility, cost, or project timing. The Rule would cause this dispatchable,

ED_021114A_00008629-00085

reliable generating resource to operate differently at a substantial cost and permanent loss to Minnkota.

75. Minnkota's member cooperatives and end userswill also be economically impacted. If MRY must prematurely retire, Minnkota would not have time to construct replacement generationprior to the compliance date for the Final Rule in 2027. Minnkota would be faced with increased exposure and reliance on an often volatile and constrained MISO market. Past market pricing demonstrates the extraordinary costs to purchase power from the market. The costs of purchasing power off the MISO market may expose Minnkota's membership to a current cap of $3,500 per MWh. A four-day exposure to the MISO market cap (half of the total days of the market conditions resulting from Winter Storm Uri) would result in a total exposure of $236,888,000 to replace the megawatts that MRY 1 and MRY 2 generate (705 MWns cumulatively), thereby eliminating the entire annual operating revenues of MRY. In fact, these staggering costs have bankrupted a small utility recently (Brazos Electric Power

ED_021114A_00008629-00086

Cooperative) due to power purchases during Winter Storm Uri from the ERCOT market.

76. The following Tables compile of all of the harms identified herein that Minnkota will suffer due to the Final Rule.

Table A: MRY 1 and 2 Mercury Compliance Costs

Activity	Cost	Notes
MRY Unit 2 Capital Costs:		
Future mercury testing to determine lowest achievable rate	$600,000	This is a minimum value.
Inlet Hg Monitor	$150,000	To track coal quality
WFGD Additive Dosing System	$750,000	To attempt to reduce mercury emissions further
WFGD Oxidizing Reduction Potential (ORP) Monitoring System	$7,500	For WFGD dosing system feedback
Mercury New PAC Silo and injection equipment capital cost to reach the lowest achievable rate	$5,000,000	Based on industry data from similar projects; This is the total project cost without financing costs.
MRY Unit 2 Operating & Maintenance (O&M) Costs:		
WFGD Additive costs (based on annual operation)	$1,412,000	Based on MRY usage rate and supplier pricing
Mercury control additional PAC costs (based on annual operation)	$1,300,000	Based on EPA hypothetical 5.0 lb/MMacf injection rate for 800 MW unit

Activity	Cost	Notes
Mercury control additional Potassium Iodide costs (based on annual operation)	$1,600,000	Cost based on 2023 MRY Unit 2 usage rate & pricing instead of assuming same as sorbent costs. Cost is $1.4 million more than estimated by EPA.
Incremental Mercury Control O&M cost	$2,412,000	This is the cost in excess of the current O&M costs. This estimate is based on current compliance of approximately $1.9 million.
Capital & O&M Costs:		
Total MRY 2 Costs	**$8,919,500**	Per MW (440MW) = $18,978
MRY 1 Projected Costs	**$4,880,000**	MRY has 235 MW. Based on the cost per MW from itemized costs for MRY 2
Total for MRY 1 and MRY 2	**$13,799,500**	

Table B: MRY 2 fPM Compliance Costs

Activity	Cost	Notes
fPM Feasibility Study	$175,000	Based on roughly budgetary estimates from Southern Environmental , Inc.
Low cost: MRY 2 ESP Rebuild Capital Cost	$36,326,000	Based on S&L's conceptual cost estimates and inputs from Southern Environmental, Inc.

Activity	Cost	Notes
Low cost: MRY 2 ESP Rebuild Incremental O&M Cost	$530,000	Incremental costs accounts for costs incurred above what is currently paid for by station for existing PM compliance (i.e. ESP power consumption, fly ash disposal, etc.)
Low cost: MRY 2 ESP Rebuild Outage Cost	$1,421,000	
High cost: New MRY 2 Baghouse	$242,083,000	Based on S&L's conceptual cost estimating
Low cost: MRY 2 Baghouse Incremental O&M Cost	$4,047,000	Incremental costs accounts for costs incurred above what is currently paid for by station for existing PM compliance (i.e. ESP power consumption, fly ash disposal, etc.)
Low cost: MRY 2 Baghouse Outage Cost	$507,000	
Total fPM Cost Range:	High – $246,812,000 Low – $38,452,000	

Table C: Minnkota's Total MRY Mercury and fPM Compliance Costs

Activity	Cost	Notes
MRY Total Mercury Costs for MRY 1 and MRY 2	$13,799,500	From Table above, O&M based on 1 year
MRY Total fPM Costs for MRY 2	High – $246,812,000 Low – $38,452,000	From Table above, O&M based on 1 year

ED_021114A_00008629-00089

Activity	Cost	Notes
Total Compliance Cost to MRY	High – $260,611,500 Low – $52,251,500	

77. The compliance cost estimates for MRY to comply with the MATS RTR (assuming its possible for the New Mercury Limit), presented in the above Tables A, B, and C, equate to between 15% (low fPM compliance option) to 60% (high fPM compliance option) of Minnkota's total annual operating revenue. Such expenditures will severely and permanently harm Minnkota's membership.

78. Even if the MATS RTR is overturned, the direct costs to Minnkota, its member cooperatives, and end users cannot be recouped once spent. These damages are permanent.

* * * *

[Signature Follows on Next Page]

ED_021114A_00008629-00090

* * *

I declare under penalty of perjury under the laws of the United States of America, pursuant to 28 U.S.C. § 1746, that the foregoing is true and correct to the best of my knowledge.

Executed on this 9 day of June, 2024, in Grand Forks ND

Robert McLennan

Big Rivers

D.B. Wilson Station
5663 State Route 85 West
Centertown, KY 42328
www.bigrivers.com

March 28, 2025

Mr. Lee Zeldin, Administrator
United States Environmental Protection Agency
1200 Pennsylvania Avenue NW
Washington, D.C. 20460

airaction@epa.gov

Subject: **Presidential Exemption - D.B. Wilson Station, Ohio County, Kentucky**
National Emission Standards for Hazardous Air Pollutants: Coal- and Oil-Fired Electric Utility Steam Generating Units Review of the Residual Risk and Technology Review
(Federal Register - May 7, 2024)

Dear Mr. Zeldin,

D.B Wilson Station is a 440 megawatt coal-fired electric generating unit that is owned and operated by Big Rivers Electric Corporation (BREC). BREC is a member-owned, not-for-profit, G&T Cooperative that supplies wholesale electric power to three distribution members across 22 rural counties in western Kentucky.

BREC is respectfully requesting a two-year exemption from compliance with the 0.010 lb/mmBtu filterable Particulate Matter (fPM) emission limitation that was codified in the Federal Register on May 7, 2024 as referenced in the Subject line above. The current deadline for meeting this new standard is July 6, 2027.

A new scrubber was installed at D.B. Wilson Station in December 2022 that enhanced the control efficiency of air emissions including SO_2, fPM, and acid gases (HCl). In spite of this multi-million dollar investment by BREC, compliance with the new limit of 0.010 lb/mmBtu cannot be reliably achieved at D.B. Wilson Station. EPA's own analysis corroborated this finding as documented in Appendix A of EPA's PowerPoint presentation dated April 25, 2024, which is attached for review.

The intent of the reconsidered rule is to reduce the emissions of Hazardous Air Pollutants (HAPs). fPM is considered a surrogate to HAPs, but not an actual HAP. EPA provides no evidence that periods of increased fPM concentrations correlate to an actual increase in HAP emissions at the levels of the revised standard. In addition, the basis of the fPM / non-Hg metal surrogacy was established during performance testing at full load. EPA has failed to provide supporting documentation that HAP emissions increase during periods of control device upset that may result in higher fPM concentration.

ED_021114A_00008630-00001

Big Rivers

D.B. Wilson Station
5663 State Route 85 West
Centertown, KY 42328
www.bigrivers.com

Furthermore, EPA failed to consider the accuracy limitations of the measurement techniques used as the basis of the revised standard. EPA relied upon performance test data (representing only full load operation during discreet time periods) to establish a revised limitation that would apply at all times. EPA also relied on PM CEMS data in which the PM CEMS response is correlated to actual fPM measurements. On an ongoing basis, the response of the PM CEMS was considered acceptable within a broad tolerance range (the allowable measurement error was approximately ±0.0075 lb/mmBtu).

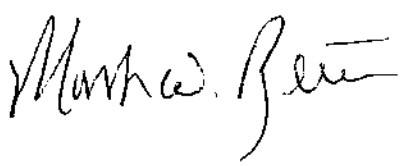
Moreover, EPA "selectively" picked data to support their desired narrative but failed to consider normal fluctuations in unit operations that are necessary to support the reliability of the nation's energy grid and did not consider normal fluctuations in control device capabilities. EPA's revised standard removed all compliance margin such that the cost of compliance was grossly under-estimated in the reconsidered rule.

The reliability of the nation's energy grid is critical to the national security interests of the United States. In establishing the revised standard, EPA failed to consider normal fluctuations in unit operations that are necessary to support the reliability of the nation's energy grid, to support future growth in demand, and to maintain fuel flexibility. Sites subject to this standard, such as D.B. Wilson Station, must commit to millions of dollars in capital investments to meet the 2027 standard, all while being faced with the regulatory uncertainty of other regulatory actions which are also being reconsidered by your Administration.

The factors noted above necessitate that companies invest significant time, money, and research to develop additional control technologies prior to July 6, 2027 knowing that emission standards in the reconsidered rule were not based on sound science, a comprehensive set of operational data, or appropriate financial considerations. We ask for the 2-year exemption to allow adequate time for your Administration to reconsider those aspects of the rule that are significantly flawed.

BREC would like to thank you in advance for the opportunity to make this request. Please contact me at mark.bertram@bigrivers.com if you have questions or need additional information.

Best Regards,



Mark W. Bertram
Director, Environmental Services
Big Rivers Electric Corporation

Mercury and Air Toxics Standards (MATS) for Coal-Fired Power Plants

Review of the 2020 Residual Risk and Technology Review (RTR)
Final Rule

April 25, 2024

ED_021114A_00008630-00003

Overview

- Key Messages
- Background on MATS Since 2012
- Final Rule
- Emissions Changes, Benefits and Costs

ED_021114A_00008630-00004

Key Messages

- On April 25, 2024, EPA issued final revisions to strengthen the Mercury and Air Toxics Standards rule for existing coal-fired power plants.
- EPA is finalizing more stringent emissions standards and additional, cost-reasonable monitoring and control methods to further reduce harmful pollution from these sources. The final rule will reduce emissions of mercury and non-mercury metal hazardous air pollutants (HAPs), such as nickel, arsenic, and lead.
- MATS pairs a stronger filterable particulate matter (fPM) standard, as a surrogate for non-mercury HAP metals, with a requirement to use continuous emissions monitoring (CEMs) at the stack. The standard and monitoring requirements work together to increase health protection and provide operators and communities access to better, more up-to-the-moment data.
  - The fPM standard will reduce emissions of hazardous metals and ensure that the worst performing units reduce their emissions to a level that has been demonstrated by most of the existing coal-fired electric steam generating units (EGUs).
  - PM CEMS requirements mean a continuous stream of emissions and performance data will be collected hourly by all coal-fired power plants, and it will be publicly reported at regular intervals -- just like all coal-fired power plants already use CEMS for SO2 and NOX emissions.
- The tighter mercury standard for lignite units will ensure these units meet the same mercury standard as other coal-fired power plants.
- EPA is committed to protecting communities from the various health and environmental impacts of power plant pollution.
- This final rule provides regulatory certainty that allows states, grid operators, and power companies to make investments and planning decisions, while supporting the industry's ability to deliver reliable and affordable electricity.

ED_021114A_00008630-00005

Background and Timeline

- 2012 – EPA issued final MATS rule for coal- and oil-fired EGUs
  - Within 8 years of promulgating standards under Clean Air Act (CAA) section 112(d)(2), the EPA must conduct a residual risk and technology review (RTR)
  - 112(f)(2): update standards if needed to provide an ample margin of safety to protect public health
  - 112(d)(6): review and revise standards as necessary taking into account developments in practices, processes, and control technologies
- 2020 - RTR Conclusions:
  - Current MATS requirements provide ample margin of safety to protect human health; and
  - Existing air pollution control technologies in use were well-established and provided capture efficiencies necessary for compliance
- 2021 - Executive Order 13990 instructed EPA to consider publishing a notice of proposed rulemaking suspending, revising, or rescinding the 2020 RTR
  - EPA found that no revisions were warranted under risk review – the 2020 risk analysis was conducted approaches and methodologies consistent with those used in RTRs for other source categories
  - EPA found that there have been developments in the costs and effectiveness of control technologies and that many sources outperform current standards
- April 24, 2023 - Published proposed revisions to the MATS rule under Clean Air Act (CAA) 112(d)(6) technology review
- April 25, 2024 – Final Revision to MATS Rule

ED_021114A_00008630-00006

Final Rule Strengthens MATS

- Particulate Matter (PM) standard used as a surrogate for non-mercury HAP metals, and compliance demonstration requirement:
  - Tighter filterable particulate matter (fPM) standard of **0.010 lb/MMBtu**
    - **Strengthens by 67 percent** compared to 2012 MATS standard of 0.030 lb/MMBtu
- Require all sources to use PM Continuous Emissions Monitoring Systems (PM CEMS) to demonstrate compliance
    - 0.010 lb/MMBtu is the lowest possible fPM limit where PM CEMS can provide valid and enforceable data
- Mercury (Hg) standard for lignite-fired EGUs
  - Tighter Hg emission standard of **1.2 lb/TBtu**
    - **Strengthens by 70 percent** compared to 2012 MATS standard of 4.0 lb/Tbtu
    - 1.2 lb/TBtu is the standard that must be met by all non-lignite-fired EGUs
- Remove startup definition #2

ED_021114A_00008630-00007

Startup Requirements

- MATS had two options for defining startup:
  - Definition #1: startup ends when steam is used for generation or any on-site purpose
    - requires use of clean fuels for ignition and control device use when coal/oil combustion begins (except for dry scrubber or selective catalytic reduction units, which come online as conditions allow)
  - Definition #2: startup ends 4 hours after the start of generation of electricity or useful thermal energy
    - operators must provide records of clean and non-clean fuel use, load characteristics, as well as exhaust flow and PM control device parameters
- **Final Rule:** Removes startup definition #2

ED_021114A_00008630-00008

Emissions Changes and Public Health

- Controlling HAP emissions from power plants improves public health for all Americans by reducing the risk of fatal heart attacks, cancer, developmental delays in children, and by reducing adverse environmental impacts.
- These public health improvements are especially important for children and particularly vulnerable segments of the population such as indigenous communities, and people of color and low-income populations who regularly consume fish.
- Emissions reductions in the year 2028:
  - **1,000 pounds** of mercury;
  - **770 tons** of fine particulate matter (PM2.5)
  - **280 tons** of nitrogen oxides (NOx)
  - **65,000 tons** of carbon dioxide (CO2)
  - At least **7 tons** of non-mercury HAP metals

ED_021114A_00008630-00009

Benefits and Costs

- Benefits over the 10-year period from 2028-2037
  - $300 million in health benefits
  - $130 million in climate benefits.
- Compliance costs over the 10-year period
  - $860 million
- These monetized benefits do not include benefits associated with reductions of HAP such as mercury, lead, arsenic, chromium, nickel, and cadmium.
- In addition, the benefits of the additional transparency provided by the requirement to use PM CEMS for communities that live near sources of HAP, and the assurance PM CEMS provide that the standards are being met on a continuous basis are not monetizable.

ED_021114A_00008630-00010

For More Information

- A copy of the final rule and fact sheets are at: Mercury and Air Toxics Standards.

ED_021114A_00008630-00011

Appendix

ED_021114A_00008630-00012

Units that may need to update controls to meet MATS

- This table summarizes the locations of EGUs expected to need to upgrade existing controls to meet the final revised standards.
- EPA anticipates 33 coal-fired EGUs would need to improve or upgrade their filterable particulate matter (fPM) control technology in order to meet the finalized limit of 0.010 lb/MMBtu.
- EPA anticipates 22 lignite-fired EGUs would need to make changes to comply with the revised mercury emission standard of 1.2 lb/TBtu.

Seminole	136	fPM	Florida
Marion	976	fPM	Illinois
D B Wilson	6823	fPM	Kentucky
Mill Creek	1364	fPM	Kentucky
Red Hills Generating Facility	55076	Lignite & fPM	Mississippi
Labadie	2103	fPM	Missouri
Colstrip	6076	fPM	Montana
Mayo	6250	fPM	North Carolina
Roxboro	2712	fPM	North Carolina
Antelope Valley	6469	Lignite	North Dakota
Coal Creek	6030	Lignite	North Dakota
Coyote	8222	Lignite	North Dakota
Leland Olds	2817	Lignite	North Dakota
Milton R Young	2823	Lignite & fPM	North Dakota
Spiritwood Station	56786	Lignite	North Dakota
Colver	10143	fPM	Pennsylvania
Foster Wheeler Mt Carmel Cogen	10343	fPM	Pennsylvania
John B Rich Memorial power Station	10113	fPM	Pennsylvania
St Nicholas	54634	fPM	Pennsylvania
Westwood Generation LLC	50611	fPM	Pennsylvania
Martin Lake	6146	Lignite & fPM	Texas
Oak Grove (TX)	6180	Lignite	Texas
San Miguel	6183	Lignite	Texas
Harrison	3944	fPM	West Virginia
Mt Storm	3954	fPM	West Virginia
Jim Bridger	8066	fPM	Wyoming
Laramie River Station	6204	fPM	Wyoming

ED_021114A_00008630-00013

March 28, 2025

Via electronic mail to airaction@epa.gov

U.S. Environmental Protection Agency
1200 Pennsylvania Ave. NW
Washington, DC 20460

RE: Presidential Exemption: [New Source Performance Standards for the Synthetic Organic Chemical Manufacturing Industry and National Emission Standards for Hazardous Air Pollutants (NESHAP) for the Synthetic Organic Chemical Manufacturing Industry (SOCMI) and Group I & II Polymers and Resins Industry]: [Bakelite Synthetics @ Riegelwood, NC; Conway, NC; Crossett, AR; Louisville, KY; Lufkin, TX; and Taylorsville, MS]

To Whom It May Concern,

Bakelite Synthetics requests an exemption from the compliance obligations of the New Source Performance Standards for the Synthetic Organic Chemical Manufacturing Industry and National Emission Standards for Hazardous Air Pollutants (NESHAP) for the Synthetic Organic Chemical Manufacturing Industry (SOCMI) and Group I & II Polymers and Resins Industry (collectively referred to as the HON Rule).[1] For the reasons highlighted in this letter, we believe it is necessary and appropriate for the President to grant an exemption under Clean Air Act (CAA) Section 112(i)(4) for sources regulated by the final rule either on an individual basis or collectively. If done collectively, we request that EPA include our regulated facilities under that collective action.

We urge the Administration to swiftly consider and issue such an action based on an understanding that both: 1) "availability" for the purposes of this section refers not only to the existence of technology capable of achieving compliance with the rule, but encompasses practical challenges with the timeframes necessary to plan, procure, and install required technologies and such activity cannot occur within the current compliance timeframe; and 2) national security encompasses not only military defense applications and infrastructure, but also economic security, a perspective that has been acknowledged by the President in Executive Orders and key security agencies like the Department of Defense. Indeed, as the White House has stated regarding domestic priorities, "economic security is national security."[2] As additional support on this point, we reference the separate joint coalition submission sent to EPA from the American Chemistry Council (ACC) and the American Fuel & Petrochemicals Manufacturers (AFPM) associations detailing the critical nature of our products as a building block to several supply chains throughout domestic manufacturing, and the potential risks to our nation's national security interests if continued production is jeopardized.

We believe that the Administration has already been provided with sufficient information (including prior comments and the underlying petition for reconsideration on the HON rule) to support an exemption covering all regulated facilities or on a facility-specific basis. This letter provides additional detail and support on the time-critical nature of the request for relief and to

---

[1] National Emissions Standards for Hazardous Air Pollutants (NESHAP), Powering the Great American Comeback https://www.epa.gov/system/files/documents/2025-03/neshap_powering-the-great-american-comeback_fact-sheet_2.pdf 89 Fed. Reg. 42932 (May 16, 2024).
[2] https://www.whitehouse.gov/presidential-actions/2025/02/america-first-investment-policy/.

address EPA's request for information. We submit both in support of a category-wide grant, as well as to provide company-specific information if the President pursues a facility-specific exemption action.

To illustrate this point, our Bakelite facilities have been in discussions with vendors, consultants, and process engineering firms on potential control technology since the draft regulation was released in July 2023. By the time of the HON rule's July 2024 publication, Bakelite was engaged in preliminary engineering studies to evaluating controls that could meet the Rule's requirements for multiple emission control projects. As of today, Bakelite has not found a practical, economically feasible engineering solution for the required controls. Despite this early engagement, the engineering solutions, even those economically costly proposals, would be difficult to be installed and operational before the *2027 deadline* due to permitting and supply chain limitations. In addition to the concerns about the availability of controls related to capital expenditure projects, we also agree that other Rule requirements pose practical or literal availability concerns. As EPA previously heard from the ACC and AFPM, it will be difficult to install a suite of controls that will allow our facilities to comply with the Rule. In addition to these concerns, the following list highlights some specific requirements that speak to these concerns:

Ex. 4 CBI

Ex. 4 CBI

Ex. 4 CBI

Ex. 4 CBI

The HON Rule and its technically infeasible requirements has the potential to result in facility shutdowns, imperiling jobs, and threatening supply chains for a vital chemical building block critical to our national security. The substantial risk of shutdowns combined across HON facilities could result in a strain on domestic supply of chemicals that are critical to national security and central to the U.S.'s strategic position in the global economy in key markets.

Without immediate intervention, such as a Presidential exemption under CAA Section 112(i)(4) to extend the compliance deadline for two years or, in the alternative, a compliance extension under CAA Section 112(i)(3), and an interim final rule rescinding those regulatory requirements not based on the best reading of CAA section 112(f), Bakelite and other chemical manufacturing companies will evaluate whether to shut down units or offshore their operations to prevent the application of an imprudent and unlawful rule.

* * * * * * * * * *

Bakelite Synthetics appreciate this opportunity to request a two-year compliance extension for all sources subject to the HON Rule. If you have questions or need more information, please do not hesitate to contact me at [HYPERLINK "mailto:Robert.Osika@Bakelite.com"].

Sincerely,

_____
Robert Osika
Director, EHS

****

cc: Aaron Szabo, Senior Advisor to the Administrator, Office of the Administrator
Abigale Tardif, Principal Deputy Assistant Administrator, Office of Air and Radiation
Sean Donahue, Principal Deputy General Counsel, Office of General Counsel
Alex Dominguez, Deputy Assistant Administrator for Mobile Sources, Office of Air and Radiation
[redacted] Director, Office of Air Quality Planning and Standards
[redacted], Director, Sector Policies and Programs Division, Office of Air Quality Planning and Standards
[redacted], Refining and Chemicals Group Leader, Office of Air Quality Planning and Standards
[redacted], General Engineer, Office of Air Quality Planning and Standards

From: Water Plant
To: AirAction
Subject: Florida City Water Plant - Clean Air Act Exemption Request
Date: Monday, March 31, 2025 7:26:49 AM
Attachments: Outlook-16/65/0658.png

Caution: This email originated from outside EPA, please exercise additional caution when deciding whether to open attachments or click on provided links.

Good morning,

I am submitting a request for the Clean Air Act Exemption. We are subject to it with storage of over 2500lbs of chlorine disinfectant onsite. With there being only one chlorine gas supplier in the entire state of Florida, the exemption would help us meet demand for water treatment if the supplier is (again) unable to deliver in a timely fashion.

Thank you for your consideration in the matter.

Best Regards,

Tim Fogle
Water Plant Supervisor
City of Florida City
461 NW 6th Ave,
Florida City, Fl 33034
305 248 6855 (Office)
954 642 6241 (Cell)
www.floridacityfl.gov
waterplant@floridacityfl.gov



Please note: Florida has a very broad public records law. Most written communications to or from city officials regarding city business are public records available to the public and media upon request. Your email communications therefore may be subject to public disclosure.

Message

From: [redacted]@epa.gov]
Sent: 5/2/2025 9:54:39 PM
To: Szabo, Aaron [Szabo.Aaron@epa.gov]
Subject: final of 6 presidential exemption request e-mails
Attachments: Stepan Company-Request for Exemption.pdf; Presidential Exemption_ HON rule_ Zeon Chemicals Kentucky Plant and Zeon Chemicals Mississippi Plant.pdf; Sterilizer Rule (89 FR 24090)_ APS- Owned and Operated Facilities.pdf; Presidential Exemption Req_Taconite NESHAP Cliffs 3 31 25 FINAL.pdf; DuPont Pontchartrain Site CAA 112i4 Extension Request 3-31-2025.pdf; 2025-03-31 Eastman HON 112(i)(4) Letter_Redacted.pdf; FMMI--Presidential Exemption Request (March 31 2025).pdf

Per my earlier e-mail – if folks want these organized in zipped folders for each MACT rule, I can have that done Monday

These are mostly ones that we found after we sent the batch I provided back in early April that were submitted on time but were in the junk folder of the mailbox. One was submitted late.

Stepan

Stepan Company
Corporate Headquarters
1101 Skokie Boulevard, Suite 500
Northbrook, Illinois 60062
Telephone (847) 446-7500

www.stepan.com

March 31, 2025

Via Electronic Mail
airaction@epa.gov

Re: Presidential Exemption: New Source Performance Standards for the Synthetic Organic Chemical Manufacturing Industry and National Emission Standards for Hazardous Air Pollutants for the Synthetic Organic Chemical Manufacturing Industry and Group I & II Polymers and Resins ("HON Rule"): Stepan Company, Millsdale, Illinois Facility

To whom it may concern.

I write on behalf of Stepan Company ("Stepan") to request that the President of the United States issue a two-year exemption pursuant to his authority under Clean Air Act (CAA) Section 112(i)(4) for emission standards and associated requirements set or revised in the U.S. Environmental Protection Agency's (US EPA's) May 16, 2024 *New Source Performance Standards for the Synthetic Organic Chemical Manufacturing Industry and National Emission Standards for Hazardous Air Pollutants for the Synthetic Organic Chemical Manufacturing Industry and Group I & II Polymers and Resins*, 89 FR 42,932 (May 16, 2024) (the "HON Rule"). For the reasons described in this letter, Stepan believes it is necessary and appropriate for the President to grant an exemption under CAA Section 112(i)(4) for sources regulated by the final rule either on an individual basis or collectively. If done collectively, Stepan requests that EPA include Stepan's regulated facilities under that collective action.

Following are the requested details for this Presidential Exemption request:

Emissions standards or limitations subject to the request:

Stepan requests that the Presidential Exemption apply to all standards (including emission limitations, monitoring, reporting, and recordkeeping requirements) issued or revised in the HON Rule. For Stepan, there are three emission standards and associated requirements set or revised in EPA's May 16, 2024 HON Rule that are of particular concern:

- 40 C.F.R. Part 63, Subpart G
  - 40 C.F.R. § 63.113, Process vent provisions—reference control technology

- 40 C.F.R. Part 63, Subpart H
  - 40 C.F.R. § 63.165, Standards: Pressure relief devices in gas/vapor service or light liquid service
  - 40 C.F.R. § 63.184, Fenceline monitoring provisions

Facilities and/or affected sources:

The subject of this Presidential Exemption request is Stepan's Millsdale facility that is located at 2900 Millsdale Road in Elwood, Illinois 60436.

Length of compliance period being requested:

Stepan requests that the President issue a two-year exemption as quickly as possible and designate it as taking effect on the compliance deadlines for the standards in the HON Rule. Specifically:

- For standards set or revised under 40 C.F.R. § 63.113 and 40 C.F.R. § 63.165 and all corresponding requirements (including monitoring requirements), the exemption should apply for two years commencing on July 15, 2027 (the compliance deadline for those standards).

- For standards set or revised under 40 C.F.R. § 63.184 and all corresponding requirements (including monitoring requirements), the exemption should apply for two years commencing on July 15, 2026 (the compliance deadlines for those standards).

Justification to support the request and additional information:

Stepan is committed to compliance with Environmental laws and maintaining emission controls that meet regulatory requirements. Stepan's Millsdale facility is already heavily regulated by the US EPA and the Illinois Environmental Protection Agency and Stepan has extensive compliance systems in place. These controls have been in place for many years and are inspected regularly. Stepan makes this two-year exemption request because it needs additional time to install and optimize the necessary technological upgrades and monitoring equipment to meet the challenging and complex requirements of the HON Rule.

For purposes of this application, we understand that: 1) "availability" refers not only to the existence of technology capable of achieving compliance with the rule, but encompasses practical challenges with the timeframes necessary to plan, procure, and install required technologies and equipment[1], and such activity cannot occur within the current compliance timeframes; and 2) national security encompasses not only military defense applications and infrastructure, but also economic security, a perspective that has been acknowledged by the President in Executive Orders and key security agencies like the Department of Defense. Indeed, as the White House has stated regarding domestic priorities, "economic security is national security."[2]

The HON Rule requires upgrades and additions to the emission control systems, process control systems, and emission monitoring systems at Stepan's Millsdale facility. Although Stepan has developed a plan to implement the HON Rule's rigorous requirements, significant work remains. Compliance with the HON Rule's requirements will require significant additional engineering work, equipment procurement, and the installation of new equipment, all of which are time-intensive actions that require testing and validation to ensure the systems are fully operational. As a result of all these required steps, the necessary technology is functionally unavailable within the timeframes and deadlines set in the HON Rule

In addition to the above-described complications, various provisions in the HON Rule— including those related to fenceline monitoring— add technical complexity and cost without

[1] Specific challenges include, but are not limited to, establishing sufficient areas within the facility to construct additional control equipment, installing energy infrastructure to support control equipment, and prolonged permitting processes related to area attainment designation.

[2] https://www.whitehouse.gov/presidential-actions/2025/02/america-first-investment-policy/.

delivering meaningful emission reductions. These burdens hinder efficient implementation and divert resources from more impactful control efforts.

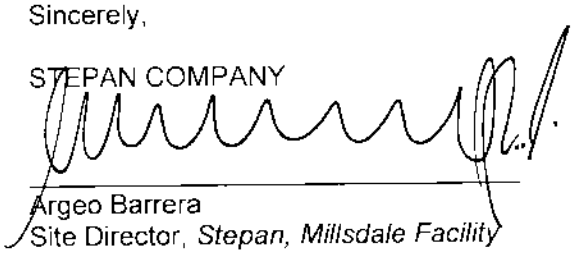
The approval of Stepan's exemption request is in the national security interests of the United States. The products developed and manufactured by Stepan play a critical role in maintaining the supply chain and financial stability of the US. Stepan's products are used in polyester resins, alkyd resins, and plasticizers for applications in construction materials and components of automotive, boating, and other consumer products, and internally in the production of polyols. In addition, Stepan develops and manufactures essential chemical ingredients used in agricultural products and food production markets, institutional and industrial cleaning operations, and the energy industry through increased oilfields production. Compliance with the HON Rule's deadlines and requirements at Stepan's Millsdale facility may significantly reduce the company's production, development, and manufacturing capacities. Based on current requirements of the HON Rule, absent the Presidential Exemption, Stepan will be required to take lengthy outages to install the necessary equipment upgrades. Furthermore, it may be necessary for Stepan to reduce production of its various products, which numerous customers and clients comprising the US economy rely on, to ensure continued compliance with the HON Rule's requirements. These potential disruptions in production capacity could have severe impacts on the continued supply of key products and goods in the United States.

As a result of the technology, including its required installation and operational readiness, that is necessary to comply with the HON Rule being unavailable or unachievable within the allotted timeframe, and due to the anticipated impacts to the national security of the United States, the President has the authority to grant the relief requested by Stepan through this letter.

If you have any questions on this exemption request or require additional information, please contact Michael Schmidt, Stepan's Millsdale Facility Air Team Manager, by phone at (815) 274-6469 or email at mschmidt@stepan.com. Stepan appreciates EPA's attention to this important matter and urges EPA to recommend that the President issue the requested exemption as quickly as possible

Sincerely,

STEPAN COMPANY



Argeo Barrera
Site Director, *Stepan, Millsdale Facility*

From: Lori Carson
To: AirAction
Subject: Presidential Exemption: HON rule: Zeon Chemicals Kentucky Plant and Zeon Chemicals Mississippi Plant
Date: Wednesday, April 9, 2025 2:11:13 PM

Caution: This email originated from outside EPA, please exercise additional caution when deciding whether to open attachments or click on provided links.

I respectfully request a 2-year Presidential Exemption from the HON Rule for Zeon Chemicals LP's Louisville, Kentucky plant and Hattiesburg, Mississippi Plant.

Emissions standards or limitations subject to the request

The HON rule (see below) requires facilities subject to the Polymer & Resins I NESHAP to conduct extensive fence line monitoring of facilities for certain air pollutants. The cost of fence line monitoring has been estimated at more than $50,000 per year for our Kentucky Plant which emits less than one ton of the covered chemical per year. The cost of fence line monitoring has been estimated at more than $600,000 per year for our Mississippi Plant which emits 2 pounds or less of the covered chemical per year.

"New Source Performance Standards for the Synthetic Organic Chemical Manufacturing Industry and National Emission Standards for Hazardous Air Pollutants for the Synthetic Organic Chemical Manufacturing Industry and Group I & II Polymers and Resins" (89 FR 42932; May 16, 2024) (HON rule)

Facility(ies) and/or affected source(s)

Zeon Chemicals Kentucky Plant in Louisville, KY
Zeon Chemicals Mississippi Plant in Hattiesburg, MS.

Length of compliance period being requested.

2 years.

Provide a justification to support the request

The requested extension is in the national security interests of the United States. Zeon Chemicals LP produces a domestic supply of elastomers. Our elastomers are used to make parts that are used in vehicles including farming equipment and military vehicles. Our Kentucky Plant makes a base rubber that is used to make components for petroleum extraction and refining equipment. The HON Rule's provisions threaten our ability to remain competitive in our industry. This could impact supply chain resilience and defense/military preparedness. Having domestic supply of parts made from this critical raw material avoids any supply chain interruptions to US industries and military forces due to geopolitical tensions, trade disruptions, natural disasters or other crises. It also ensures that national defense and essential US industrial sectors remain operational. Our elastomer is a critical

material for seals, belts and other components of military equipment. Having a domestic supply guarantees the readiness of the armed forces in times of conflict. Similarly, components of petroleum extraction and refining processes made from elastomers allow the industry to maintain operational continuity which is vital for fueling military operations and civilian infrastructure.

ZEON

Lori Carson, PE, CSP | Director of Safety, Health & Environment
4100 Bells Lane | Louisville, KY 40211 | USA
Mobile: +1 502 791 3507 | lori.carson@zeonchemicals.com
zeonchemicals.com

ZEON

Lori Carson | Director of Safety, Health & Environment
4100 Bells Lane / B101 | Louisville KY, 40211 United States
zeonchemicals.com LinkedIn

ISO 9001/14001/45001 *Rubber News "Best Places to Work 2024"*

Disclaimer
"This transmission including any attachments is confidential and may be legally privileged. If you are not the intended recipient, or their agent, you are hereby notified that reading, disclosing, copying, distributing or using any information contained in this transmission is strictly prohibited. If you have received this transmission in error, please immediately notify the sender or forward the e-mail to abuse@zeonchemicals.com and destroy the transmission. To opt-out of marketing emails, please contact us at marketing-optout@zeonchemicals.com or +1.502.775.2000. To view our privacy policy, please visit www.zeonchemicals.com/privacy. Thank you for your assistance."

CLEVELAND-CLIFFS INC.

March 31, 2025

U.S. Environmental Protection Agency
1200 Pennsylvania Ave., NW
Washington, DC 20460
Submitted by Electronic Mail to: airaction@epa.gov

REQUEST FOR PRESIDENTIAL EXEMPTION: National Emission Standards for Hazardous Air Pollutants: Taconite Iron Ore Processing, EPA Docket No. EPA-HQ-OAR-2017-0664, RIN 2060-AT05, 89 Fed. Reg. 16,408 (March 6, 2024) on behalf of the Cleveland-Cliffs Major Source Taconite Iron Ore Processing facilities

Pursuant to Section 112(i)(4) of the Clean Air Act ("CAA"), Cleveland-Cliffs Inc. ("Cliffs") hereby requests a two-year exemption from the current March 8, 2027, compliance date of emissions standards promulgated in the final rule *National Emission Standards for Hazardous Air Pollutants: Taconite Iron Ore Processing* (the "Taconite Rule"), published in the *Federal Register* at 89 Fed. Reg. 16,408 (March 6, 2024), extending the compliance date to March 8, 2029, for each Taconite Iron Ore Processing plant subject to the rule, pending EPA's reconsideration of the rule. Cliffs operates six of the eight Taconite Processing facilities in the United States. Cliffs and the American Iron & Steel Institute ("AISI") submitted several rounds of extensive comments and scientific data and analysis to U.S. EPA on the Taconite Rule that contain further support for this request.

Cliffs is a leading North America based steel producer that is vertically integrated from the mining of iron ore, production of pellets and direct reduced iron, and processing of ferrous scrap through primary steelmaking and downstream finishing, stamping, tooling and tubing. Cliffs owns and operates most of the Taconite Processing plants in the United States. These include the Taconite Iron Ore Processing facilities in Minnesota (United Taconite, Northshore Mining, Hibbing Taconite (85.3% owned) and the Minorca Mine) and Michigan (the Tilden Mine and Empire Mine). Cliffs asks that the requested Presidential exemption be granted for each of these taconite processing plants to provide needed relief from the 2024 version of the Taconite Rule.

As explained below, a Presidential exemption under CAA § 112(i)(4) is appropriate for sources impacted by the Taconite Rule because the technology to implement the new emission standards added in 2024 is not available, and Cliffs must spend tens of millions of dollars now to evaluate potential compliance pathways for the current 2027 compliance target. Protecting the

United States' iron mining industry, which is the life blood of domestic iron and steel manufacturing, is central to the country's national security interests.

REGULATORY BACKGROUND

On March 6, 2024, in the last year of the Biden Administration, U.S. EPA promulgated the final Taconite Rule, revising the Trump EPA's 2020 Residual Risk and Technology Review ("RTR") rulemaking for the Taconite Iron Ore Processing source category. The 2020 Taconite RTR Rule concluded that the original 2003 Taconite MACT Rule addressed the risk from hazardous air pollutants with an ample margin of safety to protect public health and the environment and that there were no new technologies that justified revisions to the 2003 MACT standards under CAA § 112(d)(6). In 2024, armed with an expansive interpretation of a new D.C. Court decision, the Biden EPA concluded the Trump EPA was wrong and proceeded to impose new and unwarranted emission limitations on processing the iron ore critical to the United States iron and steel manufacturing sector.

EPA's regulation of hazardous air pollutants ("HAPs") from Taconite Iron Ore Processing started over two decades ago when, in 2003, U.S. EPA promulgated the National Emission Standards for Hazardous Air Pollutants for Taconite Iron Ore Processing (40 CFR Subpart RRRRR §§ 63.9580, *et. seq.*). U.S. EPA carefully evaluated the taconite processing sector and set maximum achievable control technology ("MACT") standards that regulated HAP emissions based on what the best controlled sources in the source category achieved in practice. *See* CAA §112(d). This process resulted in establishing particulate matter ("PM") standards as surrogates for HAP, including acid gases. Based on this evaluation, U.S. EPA decided not to regulate acid gases individually or to set mercury limits as MACT standards considering available control technologies and the best available science.

In 2020, EPA issued a final rule to fulfill its obligations under CAA §§ 112(d)(6) and (f)(2), or the "risk and technology review" ("RTR"). U.S. EPA found that "risks from the Taconite Iron Ore Processing source category are acceptable [and] that the standards provide an ample margin of safety to protect public health" and therefore found that it was unnecessary to set standards for hydrogen chloride ("HCl"), hydrogen fluoride ("HF"), or mercury, fulfilling the Agency's CAA § 112(f)(2) obligation. *National Emission Standards for Hazardous Air Pollutants: Taconite Iron Ore Processing Residual Risk and Technology Review*, 85 Fed. Reg. 45476, 45479 (July 28, 2020). U.S. EPA further determined that "[t]here are no developments in practices, processes, or control technologies that necessitate revisions to the standards," fulfilling the Agency's CAA § 112(d)(6) obligation. *Id.*

In the rulemaking process that led to U.S. EPA's 2024 Taconite Rule, U.S. EPA was not motivated by additional human health risk. U.S. EPA did not disturb its 2020 determination that the 2003 Taconite MACT rule controlled HAP from the Taconite Iron Ore Processing industry to an acceptable risk level with an ample margin of safety, without any additional controls. Cliffs provided detailed comments on the proposed rule explaining why U.S. EPA should follow the

Trump EPA's approach in 2020 and decline to set new standards, or in the alternative, should set standards that were reasonable, less costly and more likely achievable by the industry. Nevertheless, U.S. EPA rejected Cliffs' comments and promulgated the final Taconite Rule imposing onerous, unreasonable and extremely costly standards for HCl, HF and Mercury.

THE 2024 TACONITE RULE

The 2024 Taconite Rule was rushed without adequate consideration of industry input and without making the required finding that additional emission standards were "necessary" considering cost and other factors. *See* CAA § 112(d)(6)

For example, acid gases were adequately controlled under the existing 2003 MACT Rule through PM surrogacy standards. The Biden EPA's 2024 Taconite Rule justified new individual acid gas emission limits for HCl and HF premised on characterizing long-standing, existing technology as a "new" development under CAA § 112(d)(6). It was not new. Facilities that used existing wet scrubber control technology for PM met the new acid gas standard. The Tilden Mine, which happens to use electrostatic precipitators ("ESPs") as its existing particulate control technology, cannot meet the new acid gas standard. The 2024 Taconite Rule concedes that replacing ESPs with wet scrubbers was too costly, but the Taconite Rule assumed without evidence that Tilden could inject lime into its exhaust to bind with acid gases to be removed at the ESP. This technology is not demonstrated in the taconite industry. In fact, injecting such lime material causes build-up in the ducts, ESPs, and other associated equipment, thereby disrupting the taconite facility's complex systems and ability to operate. A Presidential exemption is warranted in this situation where technology is not available to implement the standard.

Then, relying on an aggressive interpretation of the D.C. Circuit's decision in *Louisiana Environmental Action Network v. EPA* ("*LEAN*"), 955 F.3d 1088 (D.C. Cir. 2020), the Biden EPA decided to set emission limits for mercury that U.S. EPA had rejected in the original 2003 Taconite MACT Rule and subsequent 2020 RTR Rule as impractical and unnecessary. Taconite iron ore is mined in Michigan and Minnesota where naturally occurring mercury is variably encountered at trace concentrations within the ore deposits. It is impossible to exclude mercury from the mining process, and it is unreasonably expensive to control for mercury that is variably present at trace concentrations with the taconite iron ore being processed. Nonetheless, the 2024 Taconite Rule imposed stringent mercury emission limits based on emission tests at facilities that happened to be processing lower-mercury ores at the time. As the Trump EPA had concluded in 2020, no taconite facility was controlling for mercury or otherwise demonstrating that such control was technically feasible or economically reasonable. As such, there is no demonstrated technology that Cliffs' facilities can use to meet the mercury emission limits.

Cliffs sought relief from the Taconite Rule, filing a petition for judicial review in the D.C. Circuit and a motion for judicial stay of the final rule. Cliffs also filed a petition for administrative reconsideration and sought administrative stays of the rule with U.S. EPA. The request for judicial stay was denied on October 3, 2024 by the D.C. Circuit Court of Appeals after being opposed by the Biden EPA. The Court has since ordered the challenges to the Taconite Rule be held in abeyance pending U.S. EPA action on the petitions for reconsideration.

On March 12, 2025, U.S. EPA announced its intention to reconsider the Taconite Rule, citing numerous issues with a group of rules establishing or modifying various National Emission Standards for Hazardous Air Pollutants. EPA further indicated that the President was considering issuing exemptions from compliance dates under CAA § 112(i)(4) where appropriate, and that affected sources should provide recommendations for such exemptions to U.S. EPA by March 31, 2025. Reconsideration is an important first step, but the deadlines in the Taconite Rule are still looming. Since there is no demonstrated technology to achieve the new 2024 emission standards, Cliffs' facilities need multiple years to investigate, create, and evaluate a potential pathway to compliance. The Presidential exemption is essential to ensure that reconsideration is afforded the opportunity to properly and lawfully reset standards before Cliffs invests significant resources in an effort to comply with a flawed rule. Without a Presidential exemption, Cliffs must spend tens of millions of dollars now and thousands of hours of valuable staff resources to meet the 2027 compliance targets.

Cliffs strongly supports U.S. EPA's plan to reconsider this final regulation, for numerous technical and legal reasons previously raised in industry comments during the notice and comment period preceding the Taconite Rule, in Cliffs' lawsuit challenging the Rule, and in Cliffs' petition for reconsideration.

A. TECHNOLOGY TO IMPLEMENT THE 2024 TACONITE RULE IS UNAVAILABLE

1. Technology to Implement the Standard Is Not Available

EPA's candidate control technologies identified as necessary for taconite processing furnaces to comply with the Taconite Rule are not available, have not been demonstrated in practice, and will require significant research and development, pilot plant experimentation, and great expense to address uncertainties. These candidate technologies have not been applied in this industry. The controls for acid gases and mercury both require the injection of lime or activated carbon into the exhaust stream. Other industrial sectors where these technologies have been demonstrated, *e.g.*, electric generation, have different exhaust gas characteristics and do not have to manufacture iron ore pellets to quality specifications. They are essentially boiling water. By contrast, Taconite Iron Ore Processing uses a complex high-heat system that uses and re-uses exhaust heat to fire pellets to specifications essential to producing quality iron ore pellets. This quality is essential to the safe and effective operation of blast furnaces and direct reduced iron systems in the iron and steel manufacturing sector. U.S. EPA's erroneous assumptions about the transfer of control technology from the electric sector to the taconite sector demonstrate a poor understanding of the taconite industry and warrant time for thorough reconsideration. Because control technology is not available for the taconite industry, a Presidential exemption is important to allow this thorough review.

The current compliance date, March 8, 2027, is less than two years away, an extremely short period to marshal capital expenditures of hundreds of millions of dollars for unproven control technology development and installation. Furthermore, it would be unreasonable, and unfair, to require taconite processing plants to begin expending substantial financial and other

resources to prepare for compliance with the Taconite Rule at a time when U.S. EPA intends to reconsider the rule.

Accordingly, even for technologies that operate effectively in simpler systems like utilities, these controls are far from being demonstrated workable in taconite processing plants. As such, the standard of unavailability in CAA § 112(i)(4) is met due to the exceedingly short time frame for compliance, and the two-year exemption is necessary to make room for reconsidering the standards and the controls on which they are based.

2. <u>The Standards Cannot Be Implemented with Cost-Effective Technology</u>

No *cost-effective* technology is available, or could be available, to implement the standards established in the Taconite Rule. U.S. EPA estimates that the rule will cost the industry, for mercury alone, $134 million in capital investment (or $385,579 per pound of mercury removed) over the next 20 years. Industry estimates are even higher, at least $750 to 800 million, with $170 to 180 million in annualized costs (or $745,975 per pound of mercury removed). The Minnesota Pollution Control Agency's ("MPCA's") cost estimates were similar to the industry estimates and ranged from $636 to $685 million with $130 to $138 million in annualized costs. As noted above, U.S. EPA's own risk assessment showed that even without controls, emissions from the industry presented an acceptable level of risk to public health with an ample margin of safety. As a result, any costs expended to meet these standards are unreasonable, and, by definition, not cost-effective.

3. <u>EPA Has Not Established That Standards in the Taconite Rule Are Achievable with the Proposed Technology</u>

As noted above, EPA imposed standards requiring use of control technologies, despite the fact that these technologies are not in use at any taconite furnace in the country. Thus, the efficacy of these technologies in actual taconite furnaces is speculative and will need significant testing and piloting before they can be considered achieved in practice or even achievable in this source category. In some cases, there is serious doubt about whether compliance with the new emission standards is possible at all. As summarized below, the record is insufficient to demonstrate that these technologies are available to implement the standards in the Taconite Rule.

Hydrogen Chloride ("HCl")

To treat HCl and HF, U.S. EPA finds that some taconite plants will need to use dry sorbent injection ("DSI"), in which a lime product is injected into the exhaust stream to react with and potentially remove HCl and HF. While this technology has been used in other industries to treat HCl, it is not in use in the United States at any taconite furnace. This means that U.S. EPA's projections of the feasibility and costs of using this technology were not based on data from taconite furnaces and thus are speculative and unproven to be available. Accordingly, the implications of DSI injection into the complex workings of the taconite furnace are not well understood. Early assessments indicate that substantial build up occurs in the system that was

not considered in U.S. EPA's assumption that this control technology was feasible when applied to the taconite sector. The parameters and efficacy of this application are unknown until actual testing is done. This will take a significant amount of time, and thus it is unknown if this technology can be consistently installed at taconite furnaces and successfully achieve the HCl standards before the current compliance date. Thus, this technology should be deemed currently unavailable.

In its comments submitted to EPA, with support from its technical consultants, Cliffs identified numerous technical problems with EPA's prediction of the efficacy of DSI for control of HCl in taconite furnaces. As a baseline, EPA did not establish the rates for DSI representative of actual production levels. Unlike mercury, where EPA permitted establishment of rates at low, medium, and high production levels, EPA only permitted rate establishment at and/or near maximum capacity during a single stack test. By putting industry in a position where rates are set at the maximum, further technical issues include waste of the resource of hydrated lime, additional scrubber and/or wet ESP systems to address the increased lime, and sludge buildup leading to increased maintenance costs.

Mercury

The technology identified by EPA for treatment of mercury is Activated Carbon Injection ("ACI"). As with all the technologies addressed here, ACI has not been used at Taconite Iron Ore Processing plants in the United States to treat mercury. Once again, U.S. EPA's projections of the feasibility and costs of using this technology were not based on data from indurating furnaces and thus are speculative. Since ACI changes the form of mercury emitted from elemental to particle-bound or oxidized, this technology will change how and where mercury will be deposited. It is irresponsible for EPA to proceed with a rule relying on this technology without fully assessing how these changes applied for the first time to Taconite processing may affect the deposition and availability of mercury in the environment. A technology should not be considered "available" for this industry until the data are available to confirm that it does not cause more harm than good. A two-year extension offers U.S. EPA time to better understand the data relevant to this issue before requiring facilities to invest in ACI control systems.

Testing to determine how to treat mercury in each taconite furnace will take a significant amount of time, and thus it is unknown if this technology can be consistently installed at taconite furnaces and successfully achieve the mercury standards before the current compliance date. Given the novelty of the technology, design, engineering, fabrication, installation, and testing will take a minimum of two to three years to complete. Pilot testing alone must be completed within the first year, testing which requires outages and production shutdowns that can range in costs from $300,000 to $1,300,000 per day. Not only are such costs exponential, but facilities are expected to undertake them with no precedent for using ACI in the industry before. Thus, this technology should be deemed currently unavailable.

Overall, U.S. EPA's candidate control technologies identified as necessary for taconite furnaces to comply with the Taconite Rule will require significant research and development, pilot plant experimentation, and great expense (and uncertainty). Furthermore, their application

to achieve the very low levels of HAP emissions from taconite furnaces is far from demonstrated in practice and may not be achievable for many taconite furnaces. Accordingly, a minimum of a two-year extension of time for compliance is clearly appropriate for all affected sources in the Taconite Iron Ore Processing industry. For additional information on issues with control technologies in the taconite processing industry refer to *Comments of AISI and U. S. Steel, (July 7, 2023),* Docket No. EPA-HQ-OAR-2017-0664-0181.

For all the reasons stated above, none of the technologies identified to implement standards in the Taconite Rule are available within the period between the present and the compliance date of March 8, 2027, and an exemption should be granted extending the compliance date until March 8, 2029, to all the sources on the attached list, while EPA reconsiders the Taconite Rule.

B. IT IS IN THE NATIONAL SECURITY INTERESTS OF THE UNITED STATES TO PROVIDE AN EXEMPTION FROM THE TACONITE RULE COMPLIANCE DATE

The impact of the Taconite Rule is far-reaching and undermines the country's national security interests given that taconite is an essential raw material for the integrated iron and steel industry, an industry critical to national security. The U.S. Department of Commerce recognized that domestic steel production is essential for national security applications, which it indicated encompasses transportation systems, the electric power grid, water systems, and energy generation systems in its report summarizing the findings of an investigation conducted by the Department of Commerce pursuant to Section 232 of the Trade Expansion Act of 1962, as amended (19 U.S.C. § 1862 ("Section 232")), into the effect of imports of steel mill products ("steel") on the national security of the United States.[1] In a 2021 Congressional Research Service Report on United States Steel Manufacturing: National Security and Tariffs, it was noted that under the Defense Production Act, 50 U.S.C. §4533, "Congress provides the President with a broad set of authorities …, including Title III, which authorizes the use of economic incentives to secure domestic industrial capabilities essential to meet national defense and homeland security needs. DOD has funded several Title III projects to increase domestic production of steel products," including a $56 million agreement in 2020 to boost steel plate production signed by the predecessor owner of a Cliffs' facility.[2]

Ensuring the strength and global competitiveness of this industry is of vital importance to the nation's economy, security, and manufacturing prowess. Supporting this is the fact the industry provides more than **$520 billion** in economic output, nearly **two million jobs,** more than **$130 billion in wages and benefits** to employees, and **$56 billion in federal, state and local taxes**. Cliffs alone employs approximately 27,000 people, most of whom are members of

[1] *See* U.S. Department of Commerce Bureau of Industry and Security Office of Technology Evaluation, *The Effect of Imports of Steel on the National Security Report, Report by the January 11, 2018*, https://www.commerce.gov/sites/default/files/the_effect_of_imports_of_steel_on_the_national_security_-_with_redactions_-_20180111.pdf

[2] Congressional Research Service Report, *U.S. Steel Manufacturing: National Security and Tariffs* (August 12, 2021), https://www.congress.gov/crs-product/IF11897

unions such as the United Steelworkers and the International Association of Machinists and Aerospace workers.

Rulemaking must take into consideration the necessary role that iron ore (Taconite) plays in our country and balance management of these critical resources. Senators, Members of Congress, and representatives from the United Steelworkers all recognize the vital role of the taconite industry in maintaining the economic competitiveness of the American integrated iron and steel industry. Eight current or former U.S. Senators (Senators Brown, Vance, Braun, Manchin, Casey, Klobuchar, Capito and Young) wrote a letter to U.S. EPA warning the Agency that its three proposed rules aimed at the steel industry impacting taconite iron ore processing, coke manufacturing, and integrated iron and steelmaking – "would dramatically undermine the domestic steel industry and national security while driving production overseas …."[3] United Steelworkers likewise urged EPA to grant reconsideration of the rulemaking petitions in order to "prevent unintended consequences, such as job loss [and] loss of domestic steelmaking capacity," among others.[4]

The threat of global steel imports raised by the Senators in the letters to EPA is a material threat. Foreign steel imports risk the competitiveness and advancement of the domestic steel industry, to the point of potentially threatening U.S. domestic production capacity and continued investment in taconite iron mining, coke manufacturing, and iron and steelmaking capacity based on the costs outlined above. As emphasized by the U.S. Department of the Treasury's Committee on Foreign Investment in the United States ("CFIUS"), without such domestic steelmaking investment, there could be ripple effects on the supply chains that depend on such steel, particularly supply chains that are part of our national defense infrastructure such as "critical manufacturing, energy, transportation, and communications (all vital to national security)."[5] National defense infrastructure, for example, needs ready access to high purity steel from blast furnaces.[6] Once these complicated iron and steel making operations are shut down and/or idled, it is no simple matter to restart them. In short: "The loss of domestic production is a critical national security concern given the ubiquitous nature of steel throughout multiple critical industries."[7]

For all the reasons stated above, Cliffs urges the issuance of a two-year exemption from the current March 8, 2027, compliance date of the final Taconite Rule, extending the compliance date to March 8, 2029, pending EPA's review of the rule for possible revision.

---

[3] Letter from U.S. Senators Brown, Vance, Braun, Manchin, Casey, Klobuchar, Capito, and Young to Michael Regan, EPA Administrator (Dec. 6, 2023), pp. 1-2.

[4] Letter from David McCall, International President (United Steelworkers) to Michael Regan, EPA Administrator (June 24, 2024).

[5] Letter from Andrew Fair, Acting Assistant Secretary for Investment Security, U.S. Department of the Treasury, to Ama Adams, Ropes & Gray LLP, and Mark Plotkin, Covington & Burling LLP, Re: CFIUS Case 24-154 (Dec. 14, 2024) ("CFIUS Letter"), p. 28.

[6] *Id.* at p. 24.

[7] *Id.* at p. 28.

Thank you for considering this request. Please direct any questions to Jason Aagenes at jason.aagenes@clevelandcliffs.com.

Respectfully submitted,



Traci L. Forrester
Executive Vice President, Environmental & Sustainability
Cleveland-Cliffs Inc.

cc:
[redacted], U.S. EPA OAQPS Director, @ [redacted]@epa.gov
[redacted], U.S. EPA OAQPS Director of Sector Policies and Programs Division @ [redacted]@epa.gov

DuPont Water & Protection Business
586 Hwy 44
La Place, LA 70068

DUPONT

Via electronic mail to airaction@epa.gov

March 31, 2025

U.S. Environmental Protection Agency
1200 Pennsylvania Ave. NW
Washington, DC 20460

RE: Presidential Exemption: [New Source Performance Standards for the Synthetic Organic Chemical Manufacturing Industry and National Emission Standards for Hazardous Air Pollutants (NESHAP) for the Synthetic Organic Chemical Manufacturing Industry (SOCMI) and Group I & II Polymers and Resins Industry]: DuPont Specialty Products USA, LLC – Pontchartrain Site, Diamine Unit

To Whom It May Concern,

DuPont Specialty Products USA, LLC ("DuPont") requests an exemption from the compliance obligations of the New Source Performance Standards for the Synthetic Organic Chemical Manufacturing Industry and National Emission Standards for Hazardous Air Pollutants (NESHAP) for the Synthetic Organic Chemical Manufacturing Industry (SOCMI) and Group I & II Polymers and Resins Industry (collectively referred to as the HON Rule).[1] For the reasons highlighted in this letter, we believe it is necessary and appropriate for the President to grant an exemption under Clean Air Act (CAA) Section 112(i)(4) for sources regulated by the final rule either on an individual basis or collectively. If done collectively, we request that EPA include our regulated facilities under that collective action.

We urge the Administration to swiftly consider and issue such an action based on an understanding that "availability" for the purposes of this section refers not only to the existence of technology capable of achieving compliance with the rule, but encompasses practical challenges with the timeframes necessary to plan, procure, and install required technologies and such activity cannot occur within the current compliance timeframe.

We believe that the Administration has already been provided with sufficient information (including prior comments and the underlying petition for reconsideration on the HON rule) to support an exemption covering all regulated facilities or on a facility-specific basis. This letter provides additional detail and support on the time-critical nature of the request for relief and to address EPA's request for information. We submit both in support of a category-wide grant, as well as to provide company-specific information if the President pursues a facility-specific exemption action.

DuPont operates a diamine unit at the Pontchartrain Site in Laplace, Louisiana. This facility is regulated under 40 CFR Part 63, Subparts F, G, and H, which establish National Emission Standards for Hazardous Air Pollutants (HAPs) from the Synthetic Organic Chemical Manufacturing Industry for process vents, storage vessels, transfer operations, and wastewater (HON). The emission sources impacted by the final rule amendments effective July 15, 2024,

[1] National Emissions Standards for Hazardous Air Pollutants (NESHAP), Powering the Great American Comeback https://www.epa.gov/system/files/documents/2025-03/neshap_powering-the-great-american-comeback_fact-sheet_2.pdf 89 Fed. Reg. 42932 (May 16, 2024).

ED_021114A_00008731-00001

include flares and non-flare control devices, pressure relief devices (PRDs), process vents, storage tanks, and fenceline monitoring. Key reasons for requesting additional time to comply with the new requirements include:

1. **Flares and Monitoring Requirements**: Flares must be equipped with composition monitors or direct net heating monitors. The facility operates multiple flares and is assessing various options to comply with the flare management requirements. These options may include combining vent streams to reduce the total number of flares, replacing the current flares with alternative air pollution control technologies, or installing the required monitoring equipment on each flare as outlined in the 2024 rule amendments. Each of these options will necessitate time for feasibility studies and the capital project implementation process.
2. **Pressure Relief Devices (PRDs) Monitoring:** PRDs vented to the atmosphere are required to have a monitor that provides immediate alerts to operators in the event of a release, as well as three (3) redundant prevention measures. The facility has more than twenty (20) PRDs vented for safety purposes. While there are currently monitors in place for detecting releases, system upgrades or additional monitoring devices may be needed to comply with recordkeeping, reporting requirements, and the specified redundant measures. In some instances, these upgrades may necessitate a temporary shutdown of equipment. The additional time requested will facilitate improved planning to minimize disruptions to regular production.
3. **Fenceline Monitoring for Hazardous Air Pollutants (HAPs)**: Fenceline monitoring standards require surveillance for six specific HAPs (benzene, 1,3-butadiene, ethylene dichloride, vinyl chloride, ethylene oxide, and chloroprene). The facility will need to install monitoring systems around its perimeter to detect leaks of benzene and 1,3-butadiene. Given that the facility is adjacent to another facility that also processes these chemicals, the requested additional time will allow both facilities to collaborate on developing an effective monitoring strategy to accurately identify emissions of the targeted HAPs.

For these reasons, DuPont is requesting a 2-year extension to comply with the relevant requirements outlined in 40 CFR 63 Subparts F, G, and H. If granted, this extension will provide DuPont with the necessary time to conduct feasibility studies and evaluate options to meet the new regulations while minimizing the impact on resources and operations.

If additional information is needed, please contact Corey Blanchard at (985) 224-1661 or email at corey.w.blanchard@dupont.com.

Sincerely,

Mark Schorr
Plant Manager

cc: Aaron Szabo, Senior Advisor to the Administrator, Office of the Administrator
Abigale Tardif, Principal Deputy Assistant Administrator, Office of Air and Radiation
Sean Donahue, Principal Deputy General Counsel, Office of General Counsel
Alex Dominguez, Deputy Assistant Administrator for Mobile Sources, Office of Air and Radiation
[redacted] Director, Office of Air Quality Planning and Standards
[redacted] Director, Sector Policies and Programs Division, Office of Air Quality Planning and Standards
[redacted] Refining and Chemicals Group Leader, Office of Air Quality Planning and Standards
[redacted] General Engineer, Office of Air Quality Planning and Standards

Message

From: [redacted]@epa.gov]
Sent: 6/18/2025 8:29:00 PM
To: Szabo, Aaron [Szabo.Aaron@epa.gov]
Subject: #6 - taconite
Attachments: Taconite.zip; Taconite_Summary.xlsx

From: [redacted]@epa.gov>
Sent: Wednesday, June 18, 2025 4:10 PM
To: [redacted]@epa.gov>
Cc: [redacted]@epa.gov>
Subject: Taconite

Best,
[redacted]

[redacted]
OAR/OAQPS
Office: [redacted] | cell: [redacted]
[redacted]@epa.gov

From: [redacted]
Sent: Wednesday, June 18, 2025 2:37 PM
To: [redacted]@epa.gov>
Cc: [redacted]@epa.gov>
Subject: RE: Lime

- Spreadsheet has summary of requests.
- Material in zipped file, the number after the Rule name (HON Rule.) corresponds to the ID in the spreadsheet.

Let me know if the zip file doesn't come through. I may need to split it.

Best,
[redacted]

[redacted]
OAR/OAQPS
Office: [redacted] cell: [redacted]
[redacted]@epa.gov

From: [redacted]
Sent: Wednesday, June 18, 2025 2:34 PM
To: [redacted]@epa.gov>

Cc: [redacted]@epa.gov>
Subject: Lime

- Spreadsheet has summary of requests.
- Material in zipped file, the number after the Rule name (Lime Rule.) corresponds to the ID in the spreadsheet.

Best,
[redacted]

[redacted]
OAR/OAQPS
Office: [redacted] | cell: [redacted]
[redacted]@epa.gov

From: [redacted]
Sent: Wednesday, June 18, 2025 2:33 PM
To: [redacted]@epa.gov>
Cc: [redacted]@epa.gov>
Subject: Copper

- Spreadsheet has summary of requests.
- Material in zipped file, the number after the Rule name (Copper Rule.) corresponds to the ID in the spreadsheet.

Best,
[redacted]

[redacted]
OAR/OAQPS
Office: [redacted] | cell: [redacted]
[redacted]@epa.gov

From: [redacted]
Sent: Wednesday, June 18, 2025 2:29 PM
To: [redacted]@epa.gov>
Cc: [redacted]@epa.gov>
Subject: Coke Ovens

Just want to confirm the attached files are what you want.

- Spreadsheet has summary of requests.
- Material in zipped file, the number after the Rule name (Coke Ovens Rule.) corresponds to the ID in the spreadsheet.

Best,
[redacted]

[redacted]
OAR/OAQPS
Office: [redacted] | cell: [redacted]
[redacted]@epa.gov

From: [redacted]@epa.gov>
Sent: Wednesday, June 18, 2025 2:00 PM
To: [redacted]@epa.gov>
Cc: [redacted]@epa.gov>
Subject: are you going to be able to do those e-mails?

Re: presidential exemption?

From:	Bartovich, Chrissy L
To:	AirActior
Cc:	Zeldin, Lee; Szabo, Aaron; schwab.justin@epa.gov; Tardif, Abigale (Abbie); Campbell, Stephani L; Hardin, Christopher W; Turro, Brett J; Woodwell, Tishie W
Subject:	Presidential Exemption: Taconite MACT RTR Rule (2024): U. S. Steel's Keetac and Minntac Facilities
Date:	Monday, March 31, 2025 5:13:01 PM
Attachments:	image001.png US Steel Request for Presidential Exemption - Taconite MACT RTR.pdf

> **Caution:** This email originated from outside EPA, please exercise additional caution when deciding whether to open attachments or click on provided links.

Good Afternoon,

Please see the attached document.

Thank you,

Chrissy Bartovich
Sr. Director – Environmental
U. S. Steel Minnesota Ore
(218) 749-7364 (P)
(218) 780-9816 (C)

ENVIRONMENTAL
EXCELLENCE

DISCLAIMER & CONFIDENTIALITY NOTICE: This email neither constitutes an agreement to conduct transactions by electronic means nor creates any legally binding contract or enforceable obligation in the absence of a fully signed written contract. The information contained in this email and any attachments may be confidential, legally privileged and/or exempt from disclosure under applicable law. It has been sent for the sole use of the intended recipient(s). If the reader of this message is not an intended recipient, or the employee or agent responsible for delivering the message to the intended recipient, you are hereby notified that any unauthorized review, use, disclosure, dissemination, distribution, or copying of this communication, or any of its contents, is strictly prohibited. Any inadvertent or accidental disclosure of confidential, legally privileged and/or exempt information contained in this email does not constitute a knowing waiver of any rights regarding such information or materials. If you have received this communication in error, please reply to the sender and destroy all copies of the message (including any attachments).

From:	Aageres, Jason D
To:	AirAction
Cc:	[redacted]; Forrester, Traci L
Subject:	REQUEST FOR PRESIDENTIAL EXEMPTION: National Emission Standards for Hazardous Air Pollutants: Taconite Iron Ore Processing, EPA Docket No. EPA-HQ-OAR-2017-0664, RIN 2060-AT05, 89 Fed. Reg. 16,408 (March 6, 2024)
Date:	Monday, March 31, 2025 6:15:35 PM
Attachments:	Presidential Exemption Req Taconite NESHAP Cliffs 3 31 25 FINAL.pdf Exh A.pdf Exh B.pdf Exh C.pdf

Caution: This email originated from outside EPA, please exercise additional caution when deciding whether to open attachments or click on provided links.

Dear Administrator, Hon. Lee M. Zeldin:

On behalf of Cleveland-Cliffs Inc., please see the attached request for a two-year Presidential exemption for the **National Emission Standards for Hazardous Air Pollutants: Taconite Iron Ore Processing, EPA Docket No. EPA-HQ-OAR-2017-0664, RIN 2060-AT05, 89 Fed. Reg. 16,408 (March 6, 2024).** We are requesting a two-year Presidential exemption from the current compliance dates in accordance with CAA § 112(i)(4) for the six Major Source Taconite Iron Ore Processing facilities that Cleveland-Cliffs operates in Minnesota and Michigan.

Granting the extension will not result in any unacceptable risks to the public or the environment because EPA has determined that the source category presents an acceptable risk to human health with an ample margin of safety with the present controls, requirements, and limits already in effect.

Also attached are three referenced **Congressional letters** which support the request for a **Presidential exemption of steel manufacturers and related supply chains from:**

- National Emission Standards for Hazardous Air Pollutants: Integrated Iron and Steel Manufacturing Facilities Technology Review (89 FR 23294; April 3, 2024)
- National Emission Standards for Hazardous Air Pollutants: Lime Manufacturing Plants Technology Review, EPA Docket No. OAR-2017-0015, RIN 2060-AV59, 89 Fed. Reg. 57,738
- National Emission Standards for Hazardous Air Pollutants for Coke Ovens: Pushing, Quenching, and Battery Stacks, and Coke Oven Batteries; Residual Risk and Technology Review, and Periodic Technology Review (89 FR 55684; July 5, 2024) (Coke Ovens Rule)
- National Emission Standards for Hazardous Air Pollutants: Taconite Iron Ore Processing, EPA Docket No. EPA Docket No. EPA-HQ-OAR-2017-0664, RIN 2060-AT05, 89 Fed. Reg. 16,408 (March 6, 2024)

If you have any questions or need additional information, please contact me at jason.aageres@clevelandcliffs.com or 218-744-6037.

Best Regards,

CLIFFS

jason.aagenes@clevelandcliffs.com
CLEVELAND-CLIFFS INC.

Message

From: [redacted]@epa.gov]
Sent: 6/18/2025 8:02:53 PM
To: Szabo, Aaron [Szabo.Aaron@epa.gov]
Subject: First of 7 e-mails - coke ovens
Attachments: Coke Ovens.zip; CokeOvens_Summary.xlsx

We checked and have verified that all the coke oven sources are real sources.

From:	Tamukong, Walter
To:	AirAction
Cc:	[redacted]; Forrester, Traci L
Subject:	Presidential Exemption: National Emission Standards for Hazardous Air Pollutants for Coke Ovens: Pushing, Quenching, and Battery Stacks, and Coke Over Batteries; Residual Risk and Technology Review, & Periodic Technology Review (89 FR 55684; July 5, 2024)
Date:	Monday, March 31, 2025 5:26:24 PM
Attachments:	Request for Presidential Exemption - Coke Over MACT (3-31-2025 FINAL).pdf Exh A.pdf Exh B.pdf Exh C.pdf

Caution: This email originated from outside EPA, please exercise additional caution when deciding whether to open attachments or click on provided links.

Dear Administrator, Hon. Lee M. Zeldin:

On behalf of Cleveland-Cliffs Inc., Please see attached request for **Presidential Exemption: National Emission Standards for Hazardous Air Pollutants for Coke Ovens: Pushing, Quenching, and Battery Stacks, and Coke Oven Batteries; Residual Risk and Technology Review, and Periodic Technology Review (89 FR 55684; July 5, 2024) (Coke Ovens Rule)**

Cleveland-Cliffs Inc. hereby requests a two-year Presidential exemption in accordance with CAA § 112(i)(4) for Cleveland-Cliffs Burns Harbor LLC; Cleveland-Cliffs Cleveland Works LLC, Warren Location; and Cleveland-Cliffs Monessen Coke LLC from compliance with the standards and limitations in the National Emission Standards for Hazardous Air Pollutants for Coke Ovens: Pushing, Quenching, and Battery Stacks, and Coke Oven Batteries; Residual Risk and Technology Review, and Periodic Technology Review, 89 Fed. Reg. 55684 (July 5, 2024) (collectively, the "Coke Ovens Rule").

Granting the extension will not result in any unacceptable risks to the public or the environment because EPA has determined that the source category presents an acceptable risk to human health with an ample margin of
safety with the present controls, requirements, and limits already in effect.

Also attached are three referenced documents (**Congressional letters**) to support the request for **Presidential exemption of steel manufacturers and related supply chains from:**

- National Emission Standards for Hazardous Air Pollutants: Integrated Iron and Steel Manufacturing Facilities Technology Review (89 FR 23294; April 3, 2024)
- National Emission Standards for Hazardous Air Pollutants: Lime Manufacturing Plants Technology Review, EPA Docket No. OAR-2017-0015, RIN 2060-AV59, 89 Fed. Reg. 57,738
- National Emission Standards for Hazardous Air Pollutants for Coke Ovens: Pushing, Quenching, and Battery Stacks, and Coke Oven Batteries; Residual Risk and Technology Review, and Periodic Technology Review (89 FR 55684; July 5, 2024) (Coke Ovens Rule)
- National Emission Standards for Hazardous Air Pollutants: Taconite Iron Ore Processing, EPA Docket No. OAR-, RIN, 89 Fed. Reg. 16408 (March 6, 2024)

If you have questions or need additional information, please contact Walter Tamukong at 216-694-

4862 or at walter.tamukong@clevelandcliffs.com

Sincerely

Walter Tamukong



CLEVELAND-CLIFFS INC.
200 Public Square, 3300
Cleveland, OH 44114
P: (216) 694-5700 www.clevelandcliffs.com

This electronic message and any attachments included with this message are for the exclusive use of the individual or entity to which it is intended to be addressed. This message may contain information that is privileged or confidential and thereby exempt and protected from unauthorized disclosure under applicable law. If the reader of this message is not the intended recipient, or an employee or agent responsible for delivering the message to the intended recipient, be aware that any disclosure, dissemination, distribution or copying of this communication, or the use of its contents, is not authorized and is strictly prohibited. If you have received this communication and are not the intended recipient, please notify the sender immediately and permanently delete the original message from your e-mail system.

CLEVELAND-CLIFFS INC.

March 31, 2025

U.S. Environmental Protection Agency
1200 Pennsylvania Ave., NW
Washington, DC 20460
Submitted by Electronic Mail to: airactions@epa.gov

Re: Presidential Exemption: National Emission Standards for Hazardous Air Pollutants for Coke Ovens: Pushing, Quenching, and Battery Stacks, and Coke Oven Batteries; Residual Risk and Technology Review, and Periodic Technology Review (89 FR 55684; July 5, 2024) (Coke Ovens Rule)

Cleveland-Cliffs Inc. hereby requests a Presidential Exemption under Clean Air Act (CAA) section 112(i)(4) for Cleveland-Cliffs Burns Harbor LLC; Cleveland-Cliffs Cleveland Works LLC, Warren Location; and Cleveland-Cliffs Monessen Coke LLC (collectively "Cleveland-Cliffs") from compliance with the standards and limitations in the National Emission Standards for Hazardous Air Pollutants for Coke Ovens: Pushing, Quenching, and Battery Stacks, and Coke Oven Batteries; Residual Risk and Technology Review, and Periodic Technology Review, 89 Fed. Reg. 55684 (July 5, 2024) (collectively, the "Coke Ovens Rule").

Cleveland-Cliffs operates three coke oven plants that feed our five integrated steel mills across Indiana, Michigan, and Ohio. We also purchase coke from merchant suppliers including Sun Coke and ESS Coke. Cliffs invested $1 billion to build a facility to produce Hot Briquetted Iron (HBI), consumption of which in our furnaces has reduced coke consumption. However, Cliffs' ironmaking operations must still rely on coke as a key raw material to meet critical production needs.

On July 5, 2024, EPA promulgated the final Coke Ovens Rules, which establishes:

1) New maximum achievable control technology (MACT) standards for acid gases (AG), dioxin and furans (D/F), formaldehyde, hydrogen cyanide (HCN), mercury (Hg), polycyclic aromatic hydrocarbons (PAH), and volatile organic HAP (VOHAP) from coke oven pushing operations;

2) MACT and work practice standards for AG, D/F, HCN, Hg, PAH, particulate matter (PM), HAP metals, and VOHAP from coke oven battery stacks;

3) New facility fenceline emission monitoring and corrective action requirements; and

4) Lowered limits for leaks from coke oven doors, lids, and offtakes.

The American Coke and Coal Chemicals Institute (ACCCI) and Coke Oven Environmental Task Force (COETF), in which Cleveland-Cliffs participates, filed a petition for reconsideration and administrative stay of the Coke Ovens Rule, urging EPA to reconsider numerous aspects of the Coke Ovens Rule and to stay the effective date pending promulgation of replacement regulations.[1] On March 12, 2025, EPA announced it will reconsider several National Emission Standards for Hazardous Air Pollutants (NESHAPs) affecting a broad range of American industry, including the Coke Ovens Rule. On March 21, 2025, EPA informed the COETF that it will reconsider all the issues included in our petition for reconsideration for the Coke Ovens Rule.

CAA section 112(i)(4) provides that the President may exempt any stationary source from compliance with any standard or limitation under section 112 for up to two years if the President determines that the technology to implement such standard is not available and it is in the national security interests of the United States to do so. Section 112(i)(4) further provides that an exemption may be extended one or more additional periods, each additional period not to exceed two years.

Cleveland-Cliffs is requesting a two-year Presidential Exemption for each of the following Coke Ovens Rule requirements:

1) Fenceline monitoring, root cause and corrective action, and related reporting requirements;

2) Limits for allowable leaks from coke oven battery doors, lids, and offtakes and related reporting requirements; and

3) New MACT and work practice standards for coke oven pushing and battery stacks and related testing and reporting requirements.

A Presidential Exemption is warranted for the reasons detailed below.

I. This Request is Timely

This request has been submitted by the March 31, 2025 date indicated in EPA's Clean Air Act Section 112 Presidential Exemption Information fact sheet.

[1] The ACCCI/COETF's comments on the proposed rule and petition for reconsideration and stay are hereby incorporated by reference in support of this request. *See* ACCCI/COETF Petition for Reconsideration and Stay of the National Emission Standards for Hazardous Air Pollutants for Coke Ovens: Pushing, Quenching, and Battery Stacks, and Coke Oven Batteries; Residual Risk and Technology Review, and Periodic Technology Review (Sept. 3, 2024) ("ACCCI/COETF Petition for Reconsideration and Stay"); COETF Comments on the Proposed Rule National Emission Standards for Hazardous Air Pollutants for Coke Ovens: Pushing, Quenching, and Battery Stacks, and Coke Oven Batteries; Residual Risk and Technology Review, and Periodic Technology Review (Oct. 2, 2023) ("COETF Comments"), available at https://www.regulations.gov/comment/EPA-HQ-OAR-2003-0051-1380.

II. The Technology Needed to Implement the Coke Ovens Rule is Not Available

A. Fenceline Monitoring Requirements

For the reasons set forth in the ACCCI/COETF petition for reconsideration, the fenceline monitoring benzene action level in the Coke Ovens Rule is overly stringent and is not based on modeling showing the correct highest benzene concentration at the facility fenceline using allowable (vs. actual) emissions. As a result, new and currently unavailable emission controls and leak detection/repair technology would be necessary to comply with the unlawful action level. Due to the complex nature of coke facilities, developing new control strategies and technologies would involve engineering suitable capture and control systems at multiple locations. The technologies needed to identify and engineer controls suitable for each location are not currently demonstrated or available for the coke ovens or associated coke byproducts recovery systems.

Likewise, the "root cause" investigation and corrective action requirements add significant complexity and technology challenges, considering the many miles of piping and thousands of valves and flanges at a coke facility. Methods to further reduce benzene emissions are not currently demonstrated for coke facilities and would include redesign or modification of process vessels, tar decanters, gas blanketing and vapor collection systems, replacing sections of coke oven gas piping, and redesign of tar and light oil loadout systems to reduce fugitive emissions and/or leak rates.

B. Revised Standards for Coke Oven Battery Doors, Lids, and Offtakes

The Coke Ovens Rule lowers the long-standing allowable leak limits for coke battery doors, lids, and offtakes including for the first time more stringent leak rate allowables on a single coke facility based on annual coke production. However, industry commenters informed EPA that there have been no changes or improvements in leak control technology or practices across the industry, which means facilities cannot consistently achieve the lower leak rate limits without developing novel new leak control methods or technologies for both coke ovens and associated coke byproduct operations.

For coke oven doors, this requires a technical evaluation to identify new ways to reduce the number of already very low door leaks in order to comply with the new Coke Ovens Rule limits. This may include replacing door machines, rebuilding or replacing oven doors, and redesigning door-jamb cleaning mechanisms, or other currently unidentified means to control leaks around coke oven doors. For coke battery lids and offtakes, this requires research and trials on new ways to reduce leaks to comply with the revised limits. Control methods could include redesigning or replacing lids or developing different sealing materials.

None of the technologies needed to comply with these new standards are currently available or demonstrated in the coke byproduct recovery industry.

C. New MACT and Work Practice Standards for Coke Oven Pushing and Battery Stacks

The Coke Ovens Rule imposes numerous new MACT and work practice standards covering multiple hazardous air pollutants (HAP), which EPA claimed are in response to the D.C. Circuit decision in *Louisiana Environmental Action Network v. EPA* (*LEAN*), 955 F.3d 1088 (D.C. Cir. 2020). However, the technologies that would be needed to control these HAP are not available and have not been demonstrated to work for the coke byproduct recovery industry, either in the US or internationally.

The very short 18-month compliance period (i.e., January 5, 2026) in the Coke Ovens Rule is one-half the time allowed under the Clean Air Act and was based on EPA's incorrect and unsupported assumption that facilities would only need to do testing to confirm EPA's assumption that all coke facilities *can meet* the new MACT limits. EPA failed to address specific concerns and data submitted by commenters showing that facilities *cannot meet* the new standards without costly and undemonstrated control technologies. EPA also did not address data submitted by commenters showing raw material (i.e., coal) and process variability that affect emission performance, which make these limits unachievable without developing and installing novel emission control technology that is not commercially available.

As provided in numerous technical reports and declarations,[2] emission control technologies to achieve compliance with the PQBS emission limitations and coke oven leak rates and benzene action levels are not commercially available.[3] Even assuming that facilities are ultimately able to research and develop the new technologies needed to implement these new MACT standards, facilities need much longer than the 18-month compliance period under the Coke Ovens Rule. A Presidential Exemption is warranted for several reasons:

- The technologies used in some other industries to control these HAP have not been demonstrated to work in the coke byproduct recovery industry. Controlling multiple pollutants and retrofitting controls into existing equipment and operations adds technical and engineering complexity due to process interactions of the requirements for control, including pollutant interactions, flow rates, chemistry, and temperatures.

- The Coke Ovens Rule includes first-time emission limits for hydrogen cyanide (HCN); however, it is widely acknowledged that there are no existing technologies available to control HCN. Air pollution control vendors indicate that any potential solution for control of HCN is not technically feasible for coke battery combustion stack or pushing emissions.[4]

- The coke battery underfiring system is naturally drafted, with the underfire gas stream predominantly located underground. Added equipment such as heat exchangers, sorbent injection systems, etc., result in static pressure loss, necessitating installation of an induced draft fan. The impacts of added fans and equipment need to be studied to ensure adequate

[2] *See* ACCCI/COETF Petition for Reconsideration and Stay (Sept. 3, 2024); COETF Comments (Oct. 2, 2023); COETF Motion for Stay, filed Sept. 30, 2024, in *Am. Coke and Coal Chemicals Inst. and Coke Oven Env't Talk Force v. U.S. EPA*, Case No. 24-1287 (D.C. Cir.) ("COETF Motion for Stay"); COETF Reply, filed November 5, 2024, in *Am. Coke and Coal Chemicals Inst. and Coke Oven Env't Talk Force v. U.S. EPA*, Case No. 24-1287 (D.C. Cir.) ("COETF Reply") and associated exhibits/attachments.
[3] *Id.*
[4] *Id.*

ED_021114A_00008772-00004

heating of the batteries have never been implemented for a by-product battery. Furthermore, enough physical space to install potential additional new equipment may not be feasible. This poses obstacles and engineering challenges for any new add-on equipment, which could include construction of a new battery combustion stack.[5]

- Changes to the underfiring system requires coke battery outages, during which purchased natural gas is needed to keep the battery hot. All coke production would cease; and battery refractory brick and other equipment could suffer unanticipated damage, which takes more time and expense to correct.

- Limited available physical space within coke oven battery areas requires vertical construction, adding complexity and time to all related construction, and may be infeasible altogether.

- Retrofitting additional controls on mobile pushing emission control devices involves unique engineering challenges compared to non-mobile sources, this type of retrofit is not commercially available.

III. An Exemption is in the National Security Interests of the United States

The impact of the Coke Rule is far-reaching and undermines U.S. national security interests given that metallurgical coke is an essential raw material input for the integrated iron and steel industry, which is an industry critical to national security interests of the U.S. The Coke Ovens Rule will have far-reaching consequences, given that the American iron and steel industry is the backbone of the nation's defense and transportation industries and is critical to national security. Steel is one of the most important building materials in America and an essential component for all types of buildings, transportation infrastructure, and military hardware. Currently, approximately 70% of steel produced globally is made using metallurgical coke, a high-quality fuel and reductant used in blast furnaces to separate iron from iron ore to make steel.[6] A strong, competitive coke and steel manufacturing industry is vital to building and maintaining critical infrastructure and military readiness.

The U.S. Department of Commerce recognized that domestic steel production is essential for national security applications which it indicated encompasses transportation systems, the electric power grid, water systems, and energy generation systems in its report summarizing the findings of an investigation conducted by the Department of Commerce pursuant to Section 232 of the Trade Expansion Act of 1962, as amended (19 U.S.C. § 1862 ("Section 232")), into the effect of imports of steel mill products ("steel") on the national security of the United States.[7] In a 2021 Congressional Research Service Report on U.S. Steel Manufacturing: National Security

[5] *Id.*

[6] See R. Nolan, *Build Back Better with America's Met Mines* (May 20, 2021) https://mma.org/2021/05/20/met-coal-steel-infrastructure

[7] See U.S. Department of Commerce Bureau of Industry and Security Office of Technology Evaluation, *The Effect of Imports of Steel on the National Security Report, Report by the January 11, 2018*, https://www.commerce.gov/sites/default/files/the_effect_of_imports_of_steel_on_the_national_security_-_with_redactions_-_publication.pdf

and Tariffs, it was noted that under the Defense Production Act, 50 U.S.C. §4533, "Congress provides the President with a broad set of authorities …, including Title III, which authorizes the use of economic incentives to secure domestic industrial capabilities essential to meet national defense and homeland security needs. DOD has funded several Title III projects to increase domestic production of steel products," including a $56 million agreement in 2020 to boost steel plate production signed by the predecessor owner of a Cliffs' facility.[8]

A Presidential Exemption would advance all of the following national security interests while EPA goes about reconsidering and revising the Coke Ovens Rule: (1) maintaining a strong domestic steelmaking industry; (2) avoiding regulatory mandates that lead to coke and steel shortages, offshoring of coke production, and resulting supply chain impacts; (3) promoting economic and job growth made possible by the coke and steel industries; and (4) avoiding wasteful commitments of resources on regulatory mandates that provide no discernable public health or environmental benefit.

Without a Presidential Exemption, the coke production industry would be faced with an estimated $1.3 billion in new capital costs, plus more than $220 million in annual operating costs. Coke facilities would be forced to install new, unproven pollution control technologies in an effort to comply with the new standards, even though compliance may not be feasible using available technology. The cost associated with the Coke Ovens Rule would substantially impact local and national economies and would undermine the coke and steel sectors' vital role in producing the iron and steel needed to support critical infrastructure, defense, and national security.

The importance of avoiding these harms to the coke and steel industry is emphasized in a December 6, 2023 letter from eight current and former U.S. Senators — including then-Senator JD Vance — to EPA warning that the Coke Ovens Rule and two other rules aimed at the steel sectors "… would dramatically undermine the domestic steel industry and national security while driving production overseas likely resulting in no net reduction in emissions from the steel industry globally."[9] Likewise, in a June 14, 2024 letter six current and former U.S. Senators — again including then-Senator Vance — urged EPA to reconsider the Coke Ovens Rule and two other rules aimed at the steel industry, warning that "… the steel industry will be forced to proceed with planning and spending for unproven technologies and work practices while the final provisions of the rules remain uncertain. Given that these regulations will impact nearly every aspect of the integrated iron and steelmaking process, it is imperative that EPA grant both the petitions for reconsideration and requests for stay of the rules."[10] Similar concerns were raised in a letter to EPA from Congress Members Crawford and Mrvan of the Congressional Steel Caucus.[11]

[8] Congressional Research Service Report, U.S. Steel Manufacturing: National Security and Tariffs (August 12, 2021), https://www.congress.gov/crs-product/IF11838

[9] Letter from U.S. Senators Vance, Brown, Braun, Manchin, Casey, Klobuchar, Capito, and Young to Administrator Regan, p. 1 (Dec. 6, 2023).

[10] Letter from U.S. Senators Vance, Brown, Braun, Casey, Klobuchar, and Young to Administrator Regan, p. 2 (June 14, 2024).

[11] Letter from Congressmen Crawford and Mrvan to Administrator Regan, p. 1 (Dec. 18, 2023).

The threat of global steel imports raised by the Senators in the letters to EPA is a material threat. Foreign steel imports risk the competitiveness and advancement of the domestic steel industry, to the point of potentially threatening U.S. domestic production capacity and continued investment in taconite iron mining, coke manufacturing, and iron and steelmaking capacity based on the costs outlined above. As emphasized by the U.S. Department of the Treasury's Committee on Foreign Investment in the United States ("CFIUS"), without such domestic steelmaking investment, there could be ripple effects on the supply chains that depend on such steel, particularly supply chains that are part of our national defense infrastructure such as "critical manufacturing, energy, transportation, and communications (all vital to national security)."[12] National defense infrastructure, for example, needs ready access to high purity steel from blast furnaces.[13] Once these complex iron and steel making operations are shut down and/or idled, it is no simple matter to restart them. In short: "The loss of domestic production is a critical national security concern given the ubiquitous nature of steel throughout multiple critical industries."[14]

IV. Conclusion

For all the reasons stated above, Cliffs urges the issuance of a 2-year exemption from the compliance deadlines in the Coke Ovens Rule, pending EPA's review of the rule.

Thank you for your consideration of this Presidential Exemption request. If additional information is needed, please contact Walter Tamukong at walter.tamukong@clevelandcliffs.com or 216-649-4862.

Sincerely,



Traci L. Forrester
Executive Vice President, Environmental & Sustainability
Cleveland-Cliffs Inc.

cc: [redacted] EPA OAQPS @[redacted].epa.gov
[redacted], EPA OAQPS @[redacted].epa.gov
M. Long, Cleveland-Cliffs Inc

[12] Letter from Andrew Fair, Acting Assistant Secretary for Investment Security, U.S. Department of the Treasury, to Ama Adams, Ropes & Gray LLP, and Mark Plotkin, Covington & Burling LLP, Re: CFIUS Case 24-154 (Dec. 14, 2024) ("CFIUS Letter"), p. 28.
[13] *See id.* at p. 24.
[14] *Id.* at p. 28.

ED_021114A_00008772-00007

SunCoke Energy®

March 31, 2025

VIA ELECTRONIC MAIL: AIRACTION@EPA.GOV

President Donald J. Trump
The White House
1600 Pennsylvania Avenue, NW
Washington, DC 20500

Administrator Lee Zeldin
U.S. Environmental Protection Agency
Office of the Administrator 1101A
1200 Pennsylvania Avenue, N.W.
Washington, DC 20460

Re: Presidential Exemption: "National Emission Standards for Hazardous Air Pollutants for Coke Ovens: Pushing, Quenching, and Battery Stacks, and Coke Oven Batteries; Residual Risk and Technology Review, and Periodic Technology Review," 89 Fed. Reg. 55684 (July 5, 2024) (Coke Ovens Rule): Facilities' Names: Middletown Coke Company, LLC, Jewell Coke Company, L.P., Haverhill Coke Company LLC, Gateway Energy & Coke Company LLC, and Indiana Harbor Coke Company LP.

Dear Mr. President and Administrator Zeldin:

In accordance with Section 112(i)(4) of the Clean Air Act (CAA), SunCoke Energy, Inc. (SunCoke) is writing to request a two-year exemption from all compliance obligations under the Coke Ovens Rule for its metallurgical coke plants located in Granite City, Illinois ("Granite City"); East Chicago, Indiana ("Indiana Harbor"); Franklin Furnace, Ohio ("Haverhill I" and "Haverhill II"); Middletown, Ohio ("Middletown"); and Vansant, Virginia ("Jewell"), on the basis that: 1) the technology to implement the standards is not available, and 2) it is in the national security interest of the United States (U.S.) to provide the exemption.

1. Background on SunCoke's Facilities

SunCoke is the largest independent producer of blast furnace coke in the U.S., with a total domestic coking capacity of 4.2 million tons, and more than 50 years of experience producing coke. Coke is a principal raw material in the blast furnace steelmaking process. Coke is produced by heating metallurgical coal in a refractory oven, which releases volatile components from coal,

thus transforming the coal into coke. SunCoke's facilities manufacture metallurgical grade coke using efficient, modern technology designed and operated under negative pressure to combust the coal's volatile components and, at all but one of the facilities, use the resulting waste heat to create steam or electricity.[1] SunCoke owns U.S. coke plants located in Granite City, Illinois, East Chicago, Indiana, Franklin Furnace, Ohio, Middletown, Ohio, and Vansant, Virginia. Our five U.S. plants supply nearly 40 percent of the entire domestic coke supply for the American steel industry. SunCoke uses nearly all American coal to produce our coke, which is then used to produce automobiles, military gear and equipment, weapons, pipelines, infrastructure, construction materials, municipal/water infrastructure, and more. SunCoke is also one of only two foundry coke producers in the U.S., which is used to produce iron castings for a wide range of applications including auto parts, railroads, infrastructure, and military gear and vehicles.

On July 5, 2024, the U.S. Environmental Protection Agency (EPA) finalized changes to two Clean Air Act rules (NESHAP Subparts CCCCC and L), regulating the production of both blast furnace and foundry coke in the U.S. 89 Fed. Reg. 55684 (July 5, 2024) (Coke Ovens Rule). Existing facilities must comply with the new MACT floor emission limits and related reporting and recordkeeping requirements for existing sources by January 5, 2026, 18 months after the effective date of the Coke Ovens Rule. Existing facilities must also comply with the related testing requirements by July 4, 2026. Importantly, in the Coke Ovens Rule, EPA determined that risks due to emissions of hazardous air pollutants (HAPs) from coke production are acceptable and that the current NESHAP standards provide an ample margin of safety to protect public health. Notwithstanding its conclusions, EPA then established 17 new, lower, "MACT floor" emission limits. *Id.* at 55689.

2. The Technology to Implement the Coke Ovens Rule is not Available.

In the Coke Ovens Rule, EPA projected that regulated facilities would be able to comply with the new MACT floor emission limits "without the need for any new controls or operating costs." 89 Fed. Reg. at 55696. This is incorrect. EPA reached its conclusion by using a methodology to set the new limits that is inaccurate with the dataset employed by EPA. The methodology is only accurate with a much larger data set. In addition, EPA failed to consider all available test data, and failed to account for variability of chlorine and mercury in coal and its impact on emissions. These and other errors resulted in EPA setting limits for pushing, main

[1] SunCoke operates four heat recovery facilities and one non-recovery facility, all of which are referred to as heat and/or nonrecovery (HNR) facilities. SunCoke's heat recovery facilities use heat recovery steam generators (HRSGs) to recover waste heat, and the coal volatiles are combusted within the ovens. SunCoke's nonrecovery facility does not recover waste heat but coal volatiles are still combusted in the ovens. This innovative process is different from the traditional coking process, known as byproduct cokemaking, in which the coal volatiles and combustion products are recovered downstream of the oven chamber and refined to produce chemicals such as light oil, tar, and ammonia, as well as coke oven gas for use in oven underfiring and in other areas of the facility. None of these elements are present at SunCoke's HNR facilities. Additionally, in contrast to byproduct coke ovens that operate under positive pressure, HNR coke ovens operate under negative pressure and combust the coal volatiles, thereby virtually eliminating leaks from coke ovens to the atmosphere and minimizing emissions of volatile organic compounds and HAPs.

ED_021114A_00008785-00002

stacks, and bypass vent stacks that cannot be met with existing controls and the technology to implement the new limits is not available.[2]

a. Pushing limits at 40 C.F.R. § 63.7290(b) (e):

For pushing, EPA promulgated numeric MACT floor emission limits for acid gases (AG), hydrogen cyanide (HCN), mercury (Hg), and polycyclic aromatic hydrocarbons (PAH).[3] The technology to implement these new pushing limits is not available.

Pushing emissions at byproduct (ByP) facilities are controlled using stationary devices (baghouses). In contrast, SunCoke's facilities use flat push hot cars, which have roofs and multicyclones (also referred to as multiclones) that capture pushing emissions.[4] The flat push hot cars cannot be equipped with additional controls needed to meet the new limits because flat push hot cars are mobile, subject to significant vibration, and have very limited space or structural capacity for additional equipment.[5]

Moreover, unlike ByP facilities, SunCoke's HNR facilities' configuration does not allow for controls, like a traveling hood with a fixed baghouse, on flat push hot cars.[6] SunCoke's ovens are horizontal and their batteries and tunnels are longer, whereas ovens at byproduct coke facilities are vertical and their batteries and tunnels are shorter. Because of the unique configuration of SunCoke's ovens and batteries, SunCoke would not be able to pull sufficient draft to run a traveling hood fixed to a baghouse, and if SunCoke were unable to pull sufficient draft, that could create positive pressure that increases the likelihood of emissions of pollutants into the environment. SunCoke's negative pressure technology requires a specific configuration that uses negative pressure and draft to pull pollutants through environmental treatment technology. SunCoke's technology requires this configuration, and SunCoke cannot reconfigure its equipment at existing HNR facilities to install controls.

For the reasons described above, SunCoke requests a two-year exemption from compliance with the new MACT floor emission limits established in the Coke Ovens Rule for pushing (40 C.F.R. § 63.7290(b) (c)). SunCoke also requests a two-year exemption from compliance with the following obligations associated with the new MACT floor emission limits: initial performance tests to demonstrate compliance with the new emission limits (§ 63.7320(a)); subsequent performance tests (§ 63.7321); compliance report requirements specific to the new MACT floor

---

[2] SunCoke submitted extensive comments in response to EPA's proposed revisions to NESHAP Subparts CCCCC and L, as well as a petition for reconsideration of the final Coke Ovens Rule. SunCoke Comment, Docket ID EPA-HQ-OAR-2002-0085-0968 (Oct. 2, 2023) [attached at Tab A, without attachments]; SunCoke Petition for Reconsideration to M. Regan, former EPA Administrator (Sept. 3, 2024) [attached at Tab B]. In the comment letter and petition for reconsideration, SunCoke extensively addressed its inability to meet new MACT floor emission limits with existing controls and the technological infeasibility of installing new controls. *See* SunCoke Comment; SunCoke Petition for Reconsideration.

[3] 89 Fed. Reg. at 55708; 40 C.F.R. § 63.7290(b) (e).

[4] *See* SunCoke Comment at 9.

[5] *See id.* at 30.

[6] *Id.*

ED_021114A_00008785-00003

emission limits (§ 63.7341(e)); and recordkeeping requirements specific to the new MACT floor emission limits (§ 63.7342(a)).

b. Main Stack limits at 40 C.F.R. § 63.7297(a)–(d):

For main stacks, EPA promulgated numeric MACT floor emission limits for AG, Hg, PAH, and particulate matter (PM).[7] The technology to implement the new main stack limits is not available. To meet the new main stack limits, SunCoke would have to install multiple layers of controls in order to control individual HAPs; this new technology configuration does not exist, has never been done before, and would be prohibitively expensive.

First, installing controls to control a HAP on the main stacks will necessarily impact emissions of other HAPs and process combinations regulated by the Coke Ovens Rule due to pollutant interactions. Thus, installing controls for one HAP has the potential to increase other HAP emissions, requiring the addition of unknown layers of controls. Multiple integrated technologies have never been tested for, or applied at, a coke plant. SunCoke, therefore, cannot ensure that the multiple integrated technologies that could be required to meet the new MACT floor emission limits for main stacks are technologically achievable at its facilities.

Second, even if multiple integrated technologies were available and feasible to install at SunCoke's facilities, they would be cost prohibitive. To comply with the main stack MACT floor emission limits for only *two* HAPs (PM and Hg) at *one* of SunCoke's facilities (Haverhill I), SunCoke would need to spend a minimum of $61–99 million on testing, designing, engineering, procuring, and installing the new controls (an estimated $54 million to control PM emissions and $4 million to control Hg emissions).[8] If more expensive equipment is needed to control the Hg emissions, then SunCoke's costs could balloon up to more than $99 million.[9] This cost estimate does not account for controls that may be needed due to impacts from the Hg and PM controls on other pollutants, nor does the cost include the controls that would be needed at SunCoke's four other facilities. Adding in these additional controls could lead to an astronomical and prohibitive cost.

Third, the new MACT floor emission limits for main stacks do not account for the significant variability of chlorine and mercury in coal.[10] Coal is formed from organic materials. The levels of chlorine in a coal seam will generally depend on a geological formation's proximity to ancient seas. Mercury levels will generally depend on the coal seam's overlay materials and how the coal was formed from those materials. Not only will levels of these substances vary greatly from mine to mine, but they could also vary within the same coal seam at a particular mine. SunCoke cannot ensure that it can meet the new MACT floor emission limits with existing controls without adjustments to the limits to account for the range of chlorine and mercury in different coal sources, which EPA failed to consider when it established the limits.

[7] 89 Fed. Reg. at 55709; 40 C.F.R. § 63.7297(a)–(d).

[8] *See* Declaration of J. Quanci at 14–16, *American Coke and Coal Chemicals Institute, et al. v. EPA*, Case No. 24-1287 (Sept. 30, 2024) [attached at Tab C, without exhibits].

[9] *See id.* at 15–16.

[10] *See* SunCoke Petition for Reconsideration at 11–12.

ED_021114A_00008785-00004

For these reasons, SunCoke requests a two-year exemption from compliance with the new MACT floor emission limits established in the Coke Ovens Rule for main stacks (§ 63.7297(a)–(d)). SunCoke also requests a two-year exemption from compliance with the following associated obligations associated with the MACT floor emission limits: initial performance tests to demonstrate compliance with the new emission limits (§ 63.7320(a)); subsequent performance tests (§ 63.7321); compliance report requirements specific to the new MACT floor emission limits (§ 63.7341(c)); and recordkeeping requirements specific to the new MACT floor emission limits (§ 63.7342(a)).

c. Bypass Vent Stack limits at 40 C.F.R. § 63.7298(a)–(c):

For bypass vent stacks, EPA promulgated numeric MACT floor emission limits for AG, formaldehyde, Hg, PAH, and PM.[11] The technology to implement the new bypass vent stack limits is not available.

Bypass vent stacks are a passive safety device. They maintain negative pressure on SunCoke's ovens in the event of a power failure or other malfunction. During normal operations, bypass vent stacks are held closed by powered pistons, and negative pressure on the ovens is maintained by other means. When a power failure occurs, the pistons cease operating, and the bypass vent stacks automatically open (without any power source), creating negative pressure. The negative pressure keeps the volatile organic compounds (VOCs) inside the oven and protects nearby personnel from fire and chemical exposure. The negative pressure continues to draw in air to fully combust the VOCs, protects the environment from the release of HAPs, and protects the downstream equipment from potential gas build up to explosive concentration levels. Operating an HNR facility without bypass vent stacks would be a serious safety hazard because there would be no way to maintain negative pressure in the event of a power failure or other malfunction.[12] And applying any pollution controls to the bypass vent stacks would be infeasible because these controls would require power to run. Thus, there is no technologically feasible control equipment that can be implemented for SunCoke's bypass vent stacks.[13]

For these reasons, SunCoke requests a two-year exemption from compliance with the new MACT floor emission limits established in the Coke Ovens Rule for bypass stacks (§ 63.7298(a)–(c)). SunCoke also requests a two-year exemption from compliance with the following additional obligations associated with the new MACT floor emission limits: initial performance tests to demonstrate compliance with the new emission limits (§ 63.7320(a)); subsequent performance tests (§ 63.7321); compliance report requirements specific to the new MACT floor emission limits

[11] 89 Fed. Reg. at 55709; 40 C.F.R. § 63.7298(a)–(c).

[12] *See* SunCoke Petition for Reconsideration at 12–13; *see also* SunCoke Comment Letter at 34.

[13] SunCoke provided EPA with data showing that it could not meet some of the MACT floor limits on its bypass vent stacks. *See* Declaration of J. Quanci at 19–20, *American Coke and Coal Chemicals Institute, et al. v. EPA*, Case No. 24-1287 (Sept. 30, 2024). For example, in 2020, the bypass vent stacks of SunCoke's Indiana Harbor facility in East Chicago, Illinois emitted particulate matter at 204 percent of the Coke Ovens Rule's MACT floor. In 2021, SunCoke's Haverhill 1 facility located in Franklin Furnace, Ohio emitted particulate matter at 147 percent of the Coke Ovens Rule's MACT floor. EPA did not address these emission limit failures because the Agency's limited data analysis led it to conclude that SunCoke's bypass vent stacks tested below the new MACT floor emissions limits.

ED_021114A_00008785-00005

(§ 63.7341(c)); and recordkeeping requirements specific to the new MACT floor emission limits (§ 63.7342(a)).

d. Zero percent leaking door standard at 40 C.F.R. § 63.303(a)(1)(i):

To monitor for emissions from coke oven doors, EPA required that HNR facilities either (1) meet the 0.0 percent leaking requirement, as determined using EPA Method 303A, or (2) conduct daily pressure monitoring in each oven or in each common battery tunnel to ensure that the ovens are operated under negative pressure. Under the Coke Ovens Rule, EPA now requires HNR facilities to do both. 40 C.F.R. § 63.303(a)(1).

SunCoke already employs daily pressure monitoring, in compliance with the requirements at § 63.303(a)(1)(i), to monitor for coke oven door leaks. The existing monitoring system already accurately monitors for pressure and allows personnel to take action in a timely and safe manner when necessary to stop leaks. However, to guarantee 0.0 percent leaking from coke oven doors a technical impossibility. For this reason, SunCoke requests a two-year exemption from compliance with the new requirement to comply with the 0.0 percent leaking door requirement in the Coke Ovens Rule (§ 63.303(a)(1)(i)) and the associated recordkeeping requirement (§ 63.311(f)(1)(iv)).

3. It is in the National Security Interests of the U.S. to Provide the Exemption.

Granting a two-year exemption from the Coke Ovens Rule's compliance obligations as described above for SunCoke's metallurgical coke plants is in the national security interests of the U.S. Maintaining a strong domestic steel industry supplied by a domestic supply of coal and coke is critical to national defense, to the health of the nation's infrastructure, and to many manufacturing industries essential to a strong economy.[14]

a. Jeopardizing SunCoke's supply of coke to the domestic steel industry due to new MACT floor emissions limits would be harmful to the national security interests of the U.S.

SunCoke's blast furnace and foundry coke are essential for the American manufacture of automobiles, military gear and equipment, weapons, pipelines, railroads, municipal/water infrastructure (e.g., piping, fire hydrants and manhole covers), and critical infrastructure, all of which are critically important to our national security.[15] SunCoke's coke likely could not be replaced by any other domestic supplier, which would directly impact domestic steel production and harm our national security. Further, nearly all of the coal that SunCoke uses to produce its coke is American coal. So, SunCoke's coke production not only supports the domestic steel industry, but also the domestic metallurgical coal industry.

Despite U.S. strategic defense and trade interests in maintaining an independent and robust domestic steel industry, there are only two remaining blast furnace steelmakers in the U.S.,

[14] During the shutdown caused by the COVID-19 pandemic, all companies in the coke and steel industry continued operations as critical members of the manufacturing sector that are crucial to the economic prosperity and continuity of the U.S. *See* https://www.cisa.gov/topics/critical-infrastructure-security-and-resilience/critical-infrastructure-sectors/critical-manufacturing-sector.

[15] *See id.* (identifying steel mills as a core of the "Critical Manufacturing Sector).

ED_021114A_00008785-00006

Cleveland-Cliffs, Inc. and United States Steel Corporation, both of whom rely heavily on the coke industry to provide them millions of tons of coke annually. As the supplier of nearly 40 percent of the entire domestic coke supply for the American industry, SunCoke's coke is vitally important to that industry.

Due to its reliable supply of high-quality coke, SunCoke has long-term, take or pay contracts with these two remaining blast furnace steelmakers. Should the new Coke Ovens Rule be implemented, it could jeopardize the ability of domestic cokemakers to supply the quantities of coke necessary to fuel the domestic steel industry. Given the limited number of cokemaking facilities remaining in the U.S. and the importance of the domestic steel industry to this administration's priorities, the possibility of curtailing operations at even one coke plant would have substantial downstream impacts on the U.S. economy and this country's national security.

b. SunCoke's supply of coke to domestic steel producers and manufacturers is critical to national security as it reduces reliance on foreign imports.

Over time, multiple administrations have recognized that a strong domestic steel industry is vital to national and economic security, critical infrastructure, and the competitiveness of many domestic manufacturing industries.[16] Section 232 of the Trade Expansion Act of 1962, as amended, authorizes the President to adjust steel imports which threaten to impair the national security. "National security" for purposes of Section 232 includes the "general security and welfare of certain industries, beyond those necessary to satisfy national defense requirements, which are critical to minimum operations of the economy and government."

In a 2018 proclamation, President Trump determined pursuant to his authority under section 232 that foreign steel imports "threaten to impair the national security of the United States." 83 Fed. Reg. 11625, 11626 (Mar. 15, 2018). Using that authority thereby imposed a tariff on steel imports from all countries except Canada and Mexico to "reduce our Nation's need to rely on foreign producers for steel and ensure that domestic producers can continue to supply all the steel necessary for critical industries and national defense." *Id.* On February 18, 2025, President Trump again reiterated the connection between domestic steel production to national security in a proclamation titled "Adjusting Imports of Steel into the United States." 90 Fed. Reg. 9187 (Feb.

[16] In 2018, the U.S. Department of Commerce issued a report assessing the effect of imports of steel mill products on the national security of the U.S. That report reiterated the importance of domestic steel production to our national security. *See* U.S. Department of Commerce, Bureau of Industry and Security, Office of Technology Evaluation, The Effect of Imports of Steel on the National Security (Jan. 11, 2018), https://www.commerce.gov/sites/default/files/the_effect_of_imports_of_steel_on_the_national_security_-_with_redactions_-_20180111.pdf ("Domestic steel production is essential for national security. Congress, in Section 232(d) [of the Trade Expansion Act of 1962, as amended], directed the Secretary of Commerce and the President to consider domestic production and the economic welfare of the U.S. in determining whether imports threaten to impair national security. The history of U.S. Government actions to ensure the continued viability of the U.S. steel industry demonstrates that, across decades and administrations, there has been consensus that domestic steel production is vital to national security.").

ED_021114A_00008785-00007

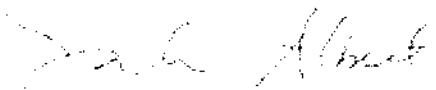
18. 2025). In that proclamation, President Trump again exercised his authority under section 232 to "adjust imports of steel and aluminum to protect our national security."[17]

A thriving domestic coke industry is necessary to ensure that domestic steel is produced for critical industries. As noted above, SunCoke can meet those needs as the supplier of close to 40 percent of the current coke production for the steel industry. The MACT floor emission limits in the Coke Ovens Rule, however, could jeopardize the domestic coke industry's ability to supply the amount of coke needed for domestic steel production. As this will be detrimental to the national security interests of the U.S., the administration should grant the two-year exemption to these limits as requested above.

4. Conclusion

We appreciate this administration's strong commitment to domestic steel production and recognition of its importance for national security. Requiring SunCoke to comply with the new MACT floor emission limits and related obligations in the Coke Ovens Rule when the technology to do so is not available will harm domestic coke production and increase America's reliance on foreign imports, thus impairing our national security. For these reasons and as set forth above, we therefore urge you under Clean Air Act Section 112(i)(4) to issue a two-year exemption for SunCoke from all compliance obligations under the Coke Ovens Rule for its metallurgical coke plants.

Sincerely,



Sarah Albert

cc: Katie Batten, Director of Environmental and Sustainability, SunCoke Energy

[17] *See* Fact Sheet, https://www.whitehouse.gov/fact-sheets/2025/02/fact-sheet-president-donald-j-trump-restores-section-232-tariffs/. Vice President Vance has equally drawn the connection between domestic steel production and national security. In 2023, in his role as Senator of Ohio, Vice President Vance led a congressional letter recognizing that foreign acquisition of domestic steel assets would "threaten[] to impair the national security of the United States." Letter from Sen. Vance to President Biden (May 9, 2024) (quoting 50 U.S.C. § 4565(d)(1)), available at https://www.hawley.senate.gov/wp-content/uploads/files/2024-05/Hawley-Letter-to-Biden-re-Nippon-Steel-Takeover.pdf. The Vice President also penned an op-ed in which he noted that "preservation of the domestic steel industry remains vital to our national security." Sen. J.D. Vance, *America cannot afford to auction off its industrial base*, WASHINGTON POST (Sept. 5, 2023), https://www.washingtonpost.com/opinions/2023/09/05/jd-vance-america-auction-industrial-base/.

ED_021114A_00008785-00008

TAB A

Beveridge
& Diamond

Heidi C Knight
155 Federal Street, Suite 1600
Boston, MA 02110
+1.617.419.2365
HKnight@bdlaw.com

October 2, 2023

Submitted via https://www.regulations.gov

U.S. Environmental Protection Agency
EPA Docket Center
Mail Code 28221T
1200 Pennsylvania Avenue NW
Washington, DC 20460

Re: Comments on Proposed Rule, National Emission Standards for Hazardous Air Pollutants for Coke Ovens: Pushing, Quenching, and Battery Stacks, and Coke Oven Batteries, Docket ID Nos. EPA–HQ–OAR–2002–0085 and EPA–HQ–OAR–2003–0051

To Whom It May Concern:

On behalf of SunCoke Energy, Inc. ("SunCoke"), Beveridge & Diamond, P.C., respectfully submits these comments to the U.S. Environmental Protection Agency ("EPA" or "the Agency") on the Agency's *Proposed Rule: National Emission Standards for Hazardous Air Pollutants for Coke Ovens: Pushing, Quenching, and Battery Stacks, and Coke Oven Batteries*, as published in 88 Fed. Reg. 55858 (Aug. 16, 2023) (the "Proposed Rule").

SunCoke believes that the Proposed Rule would impose numerous, onerous new limits and requirements that are unnecessary for environmental protection and are technically and economically infeasible, despite the Agency's findings of acceptable risk and lack of developments in practices, processes, or control technologies.[1] In fact, EPA's proposed requirements could cause irreparable harm to SunCoke. The 45-day comment period was woefully inadequate, as SunCoke explained in its request for an extension (Attachment A), which EPA denied without any explanation (Attachment B). In the limited time provided, SunCoke spent considerable effort evaluating the proposed amendments and the technical memoranda and other new information that was only recently made available to SunCoke and other affected parties; however, there was a

[1] *See, e.g.*, 88 Fed. Reg. 55858, 55858 (Aug. 16, 2023); *see also infra* Section II (describing Agency's RTR findings and its analysis of HNR cokemaking process and emissions in prior rulemakings).

substantial amount of review, testing, monitoring, and analysis that SunCoke could not complete in the too short, 45-day, comment period. *See infra* Section V. The fact that EPA was under a court-ordered deadline to issue the Proposed Rule does not excuse the Agency's obligation under 42 U.S.C. § 7607(h) to provide a reasonable period of time for review.

SunCoke is the largest independent producer of coke in the United States, with a total U.S. cokemaking capacity of 4.2 million tons of coke per year and more than 50 years of experience producing coke. SunCoke owns or has interests in U.S. coke plants located in Granite City, Illinois ("Granite City"), East Chicago, Indiana ("Indiana Harbor"), Franklin Furnace, Ohio ("Haverhill"), Middletown, Ohio ("Middletown"), and Vansant, Virginia ("Jewell"). SunCoke provides a total of 887 well-paying jobs in the United States, many in rural, economically distressed areas. Forty (40) percent of SunCoke's workforce are union (United Steelworkers).

Coke is an essential ingredient in the blast furnace production of steel. The blast furnace steelmakers use SunCoke's coke in the process of making lightweight, strong steel for automobiles (including for electric automobiles), pipelines, infrastructure construction, and more. The high quality and strength of SunCoke's coke results in less overall use of coke in the blast furnace process, resulting in lower GHG emissions from the blast furnace.

SunCoke's facilities manufacture metallurgical-grade coke using innovative, superior technology that sets the standard for environmental performance in cokemaking. EPA has declared that SunCoke's process is the most environmentally friendly way to make coke.[2] SunCoke's coke ovens are designed and operated under negative pressure to combust the coal's volatile components, and, at all but one of its facilities (Jewell), use the resulting waste heat to create steam or electricity, with no net new Greenhouse Gas ("GHG") emissions. SunCoke also operates in substantial compliance with its environmental permits.

Yet far from taking the differences in cokemaking technologies into account, the Proposed Rule ignores them, indiscriminately saddling SunCoke with requirements that make sense only for a different type of facility. Several of the new limits and requirements are "one size fits all," even though byproduct recovery ("ByP") coke plants operate and emit in ways that are entirely different from SunCoke's heat and/or nonrecovery ("HNR") coke plants. *See infra* Section III.A.1.

The significant impact of the additional costs of complying with the Proposed Rule greatly outweighs the potential benefits. *See infra* Sections VIII–XIII. The Proposed Rule's impacts on SunCoke's Jewell coke plant would be particularly severe; if it were even feasible to install these controls, the costs would ***exceed $474.9 million (not $7.4 million)*** in capital investments and ***$66 million (not $4.7 million)*** in annual costs, based on SunCoke's detailed engineering estimates and experience having installed similar controls at other SunCoke facilities but without Jewell's unique siting considerations. *See infra* Section VIII.B. Moreover, the retrofitting required to comply with

[2] *See, e.g.*, 66 Fed. Reg. 35326, 35328–29 (Jul. 3, 2001); 42 U.S.C. § 7412(d)(8)(A) (directing the Agency to establish emission standards for coke oven batteries, and, in establishing such standards, to evaluate "(ii) as a basis for emission standards under this subsection for new coke oven batteries that begin construction after the date of proposal of such standards, *the Jewell design Thompson non-recovery coke oven batteries and other non-recovery coke oven technologies,* and other appropriate emission control and coke production technologies, as to their effectiveness in reducing coke oven emissions and their capability for production of steel quality coke") (emphasis added).

ED_021114A_00008786-00003

the proposed amendments would increase GHG emissions by more than 46,000 tons annually and hazardous dust disposal by at least 4,360 tons per year. *Contra* 88 Fed. Reg. 55858, 55894 (Aug. 16, 2023).

SunCoke believes that the Proposed Rule is deficient in several ways. SunCoke offers comment on several elements of the Proposed Rule, and specific recommendations for improving the proposed amendments. The following identifies key elements of SunCoke's comments:

- Imposition of the amendments, as proposed, could impair the domestic steel and foundry industries, disrupt the U.S. transition to a lower carbon economy, and cause job loss in economically distressed areas (see Section I).
- The court-ordered deadline is causing EPA to scramble to interpret substantial information and publish a rule that, as proposed, will be deficient and unworkable (see Section II).
- EPA's mischaracterization of SunCoke's heat and nonrecovery cokemaking processes and its confusion of SunCoke's processes with that of byproduct coke manufacturing results in inaccuracies in EPA's development of the proposed emissions limits, proposed benzene fenceline monitoring work practices, and other portions of the Proposed Rule (see Section III).
- EPA should continue to regulate SunCoke's heat and nonrecovery cokemaking operations differently from byproduct coke manufacturing (see Section IV).
- Due to the highly technical nature of this rulemaking and the large volume of information in the docket, EPA is violating the CAA and the APA by limiting the notice and comment period to a mere 45 days (see Section V).
- EPA further violated the APA by failing to publish revised rule text in the *Federal Register*; the redline provided in the docket is not an adequate substitute, especially in light of the number of changes that are included in the redline but not explained or discussed in the *Federal Register* notice (see Section VI).
- SunCoke's facilities constitute "existing sources" under the CAA, despite EPA's failure to revise the definition of "new source" as part of this rulemaking; interpreting otherwise would result in coke oven batteries that are almost 20 years old being considered "new" (see Section VII).
- The proposed beyond-the-floor limits for SunCoke's Jewell facility are unwarranted under the applicable legal standard and based on flawed assumptions, inaccurate data, and the legally erroneous use of a cost-effectiveness threshold from an unrelated industry (see Section VIII).
- The proposed MACT limits for the HNR facilities' pushing operations are not "necessary," are based on limited and/or unreliable data, and are not "achievable," and for the facilities' main stacks and bypass/waste heat stacks, are also based on limited and/or unreliable data and are not "achievable" (see Section IX).
- The performance testing requirements for pushing emissions are not feasible, including the minimum sample volume for the Hg and PAHs test methods (see Section X).

ED_021114A_00008786-00004

- EPA's technology review does not support requiring fenceline monitoring at HNR facilities under Section 112(D)(6); the Agency lacks authority to require fenceline monitoring at the HNR facilities because there is no evidence that these requirement are "necessary," and EPA's proposed approach has several flaws with the proposed action level, the corrective action process, and the timeline and approach for monitoring (see Section XI).
- Implementing the proposed more rigorous oven pressure monitoring *and* Method 303A monitoring is not "necessary" to achieve emissions standards (see Section XII).
- EPA's technology review does not support the proposed new opacity limit and daily observation requirements (see Section XIII).
- EPA's proposal to allow the use of ASTM D7520-16 as an alternative to the long-standing EPA Reference Method 9 to measure opacity is unreasonable because the proposed method is experimental and has not consistently been accurately demonstrated for use at the type of source being regulated (i.e., a source of fugitive emissions) (see Section XIV).
- EPA's elimination of the startup, shutdown, and malfunction exemption must be replaced with alternative limits (see Section XV).
- The redline versions of the Agency's proposed amendments to the current Subpart L and Subpart CCCCC include new and revised terms and definitions, several of which are inaccurate and should be revised as indicated herein (see Section XVI).

I. IF THE RULE IS PUBLISHED AS PROPOSED, EPA COULD IMPAIR THE DOMESTIC STEEL AND FOUNDRY INDUSTRIES, DISRUPT THE U.S. TRANSITION TO A LOWER CARBON ECONOMY, AND CAUSE JOB LOSS IN ECONOMICALLY DISTRESSED AREAS

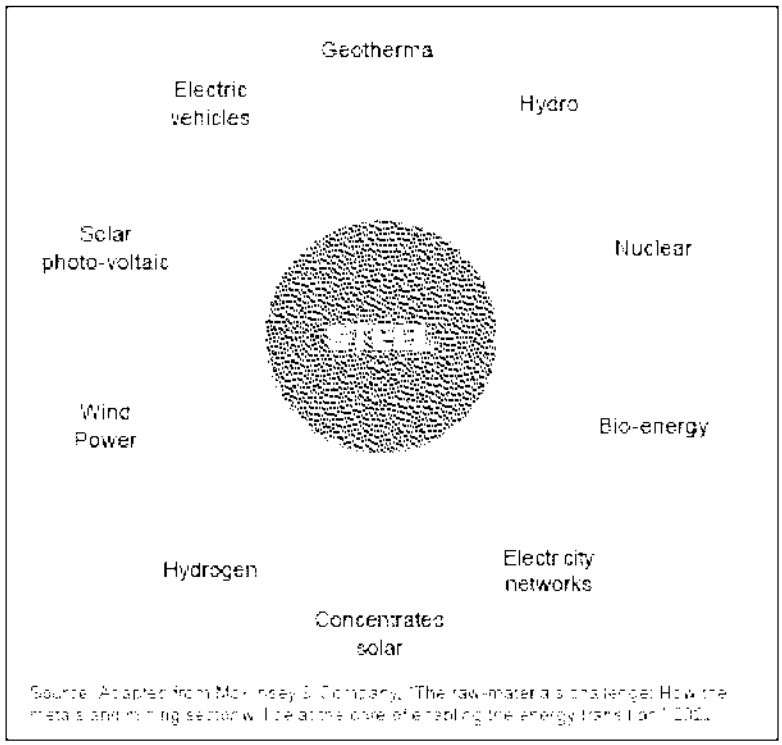
Coke is an essential ingredient in blast furnace production of steel, which steelmakers use to make lightweight, strong steel for automobiles (including electric vehicles, which are required to be made from blast furnace steel), pipelines, infrastructure construction, solar panels, geothermal plants, and more. Despite U.S. strategic defense and trade interests in maintaining an independent and robust steel industry, there are only two remaining blast furnace steelmakers in the U.S., Cleveland-Cliffs, Inc. and United States Steel Corporation, both of whom rely heavily on the coke industry to provide them millions of tons of coke annually. Due to its reliable supply of high-quality coke, SunCoke has long-term, take or pay contracts with these two remaining blast furnace steelmakers. Should SunCoke be forced to curtail or cease coke production to meet the new, overly stringent limits as required by the EPA rulemaking, SunCoke may be unable to meet its contractual obligations and be unable to supply steelmakers with the quantities of coke necessary to fuel the domestic steel industry.

A strong domestic steel industry is vital to national and economic security, the U.S. clean energy transition and decarbonization strategy, critical infrastructure, and the competitiveness of many domestic manufacturing industries.[3] The domestic steel industry is the cleanest and most energy-efficient in the world; steel production in the United States has the lowest GHG emissions

[3] Indeed, all of SunCoke's coke plants remained operational during the COVID-19 pandemic government shutdowns because they were deemed "critical infrastructure" as suppliers to steelmakers and energy generators.

ED_021114A_00008786-00005

intensity of the nine largest steel producing countries and the EU-27.[4] The curtailment of domestic steel production due to a coke supply shortage would make the U.S. dependent on imports of steel from countries where GHG emissions from steel production are substantially higher, not to mention the environmental emissions associated with shipping millions of tons of coke across the world. Domestic steel is a critical material for U.S. transition to a low-carbon economy.



Source: Adapted from Mar nsey & Company, "The raw-material c allenge: How the metals and mining sector will be at the core of enabling the energy transition," 202

SunCoke produces 37% of the entire domestic metallurgical coke supply used by the domestic steel industry. SunCoke's patented heat recovery cokemaking process was recognized by EPA as the MACT and the most environmentally friendly method to make coke.[5] SunCoke's unique cokemaking process creates higher quality, higher strength coke that results in steelmakers using *less* coke in their blast furnaces and thereby lowering their GHG emissions; in this way, SunCoke supports steelmakers in achieving their GHG-reduction goals.[6] SunCoke invests in maintaining and improving its cokemaking plants to ensure they are performing optimally and in compliance for decades to come. With its environmentally superior technology and younger cokemaking assets,[7] SunCoke is well positioned to be a leader in producing coke for the domestic steel market for many years to come.

SunCoke's Jewell facility also began producing foundry coke in 2021 after making a $50 million investment to refurbish its coking facility in Vansant, Virginia. Foundry coke is distinct

[4] Adapted from Hasanbeigi, "Steel Climate Impact: An International Benchmarking of Energy and CO2 Intensities," Global Efficiency Intelligence, 2022.

[5] *See* n.1.

[6] In addition to its environmental signature, SunCoke's innovative process generates enough electricity to power 60,000 homes.

[7] The majority of SunCoke's coke plants were built after 2005, with the exception of Jewell and Indiana Harbor, which have undergone extensive refurbishments.

in size and drop strength from blast furnace coke and is not interchangeable with blast furnace coke. There are only two remaining foundry coke producers in the U.S., one of which is SunCoke's Jewell coke plant and the other being ABC Coke. Iron foundries use coke to melt scrap metal to produce cast iron shapes that are used in a wide variety of industries, including automotive parts (in particular for electric vehicles), construction, agriculture, defense, energy, and municipal water. SunCoke produces approximately 31% (approximately 170,000 tons per year) of the entire domestic foundry coke supply. The U.S. Department of Commerce has prohibited imports of foundry coke from China since 2003, after concluding that China's foundry coke imports violated antidumping laws and were being sold for less than fair market value in the U.S.[8] For these reasons, SunCoke's production of foundry coke is critical to the U.S. economy and should not be curtailed.

SunCoke is also a significant employer; it employs a substantial union workforce and provides jobs in economically challenged areas of the country. In total, SunCoke provides 887 well-paying jobs to its employees, with 40% of its workforce being members of the United Steelworkers union. With respect to SunCoke's coke plants, Jewell (VA) plant provides 116 jobs; Granite City (IL) provides 102 jobs; Haverhill (OH) provides 173 jobs; Indiana Harbor (IN) provides 163 jobs; and Middletown (OH) provides 91 jobs. SunCoke is a stable employer, with the average length of tenure for its employees being 11 years. In addition to SunCoke's own employees, it provides numerous jobs for long-term, on-site contractors. SunCoke's coke plants provide a positive impact to the local economies far beyond SunCoke jobs. SunCoke employs a wide variety of local businesses as contractors and supports local communities through donations and participation in community-building events.

Numerous coke plants have closed over the past decade due to aging assets and the high costs necessary to maintain these facilities to meet existing environmental requirements.[9] Because EPA's proposed changes are uneconomical and impractical, additional coke plant closures or curtailments will result, leading to a decline in domestic steel and cast iron production. Regulations rendering domestic cokemaking infeasible would further cripple the domestic steel and iron foundry industries, increase the necessity to import these products, hinder the U.S. transition to a low-carbon economy, and cause job loss in economically distressed areas. The end result of the amendments as proposed would be to harm rather than protect the environment, and they should be modified.

[8] *See, e.g., Final Results of Antidumping Administrative Review: Foundry Coke from the People's Republic of China*, 69 Fed. Reg. 4,108, 4,108 (Dep't Commerce Jan. 28, 2004) ("AR 2001–2002 Final Results").

[9] Closures since 2014: DTE Shenango (300Kt); USS Granite City (500Kt); USS Gary Works (1,200Kt); Tonawanda (150Kt); Erie Works (150Kt); Bluestone (300Kt); Middletown (Wilputte) (400Kt); Mountain State Carbon (700Kt); and Clairton (Partial) (700Kt).

ED_021114A_00008786-00007

II. EPA WAS RUSHED TO PUBLISH PROPOSED AMENDMENTS TO LONG-ESTABLISHED COKE OVEN MACT STANDARDS

EPA is proposing to amend two existing rules at the same time: the NESHAP for Coke Ovens: Pushing, Quenching, and Battery Stacks (40 CFR Part 63, Subpart CCCCC) and the NESHAP for Coke Oven Batteries (40 CFR Part 63, Subpart L).

EPA promulgated Subpart L in 1993. 57 Fed. Reg. 57534, 57536 (Dec. 4, 1992); 58 Fed. Reg. 57898, 57898 (Oct. 27, 1993). For HNRs, Subpart L addresses leaks of coke oven emissions (COE)[10] from oven doors and charging emissions. According to EPA, the controls and work practice requirements included in the rule provide "concurrent control of many air toxics and hazardous pollutants included in the coke oven emissions from batteries or bypass/bleeder stacks." 58 Fed. Reg. at 57906. EPA made minor corrections to the standards in 1994. 59 Fed. Reg. 1992-C (Jan. 13, 1994). EPA amended Subpart L in 2005 after an RTR review in order to address health risks remaining after implementation of the 1993 standards and new calculations based on revised cancer guidelines. 69 Fed. Reg. 48338 (Aug. 9, 2004); 70 Fed. Reg. 19992 (Apr. 15, 2005). In the 2005 rule, EPA used particulate matter as "a surrogate for particulate HAP in [COE]," 70 Fed. Reg. at 19994, and considered in the risk assessment a group of PAH and lead." *Id.* at 20002. EPA noted that it "continue[s] to consider the MIR [maximum individual risk] due to emissions at the limits in the 1993 national emission standards to be an acceptable level of risk." 70 Fed. Reg. at 19993.

EPA promulgated Subpart CCCCC in 2003. 66 Fed. Reg. 35326 (Jul. 3, 2001); 68 Fed. Reg. 18008 (Apr. 14, 2003). Subpart CCCCC established MACT standards that included PM limits as a surrogate for HAP metals[11] for pushing, opacity limits for PM/HAP metals from battery stacks of oven combustion air, and a work practice standard to limit PM and volatile HAP emissions for quenching.[12] EPA made corrections to these standards in 2003. 68 Fed. Reg. 19885-C (Apr. 22, 2003). EPA issued a direct final rule amending these standards in 2004, but withdrew a part of that direct final rule in 2005. 69 Fed. Reg. 60813 (Oct. 13, 2004); 70 Fed. Reg. 1670

---

[10] "COE are a separately-listed hazardous air pollutant (HAP) emitted from most subpart L sources that is thought to consist of more than approximately 71 chemicals, including volatile and semi-volatile organic HAP and particulate matter (PM) HAP." EPA-HQ-OAR-2002-0085-0873, EPA, Memorandum, *Technology Review for NESHAP for Coke Ovens: Pushing, Quenching, and Battery Stacks (40 CFR part 63, subpart CCCCC), and NESHAP for Coke Oven Batteries (40 CFR part 63, subpart L)* (May 1, 2023).

[11] The HAP metals are antimony, arsenic, beryllium, cadmium, chromium, cobalt, lead, manganese, nickel, and selenium.

[12] EPA noted in a response to comments that regulation of PM through the use of control devices directly reduces individual HAP emissions, stating:

> We agree with the comment that baffles reduce PM emissions. In addition, we believe that baffles also reduce the emission of HAP metal compounds contained in the particles of grit released, as well as semivolatile and VOC such as polycyclic aromatic hydrocarbons (PAH) and benzene, when green coke is quenched. Semivolatile organic compounds evolve from green coke and condense to form fine PM or condense on other particles during the quenching process. Consequently, baffles reduce emissions of both metal and organic HAP.

71 Fed. Reg. at 18018. EPA also defended the continued use of opacity as a surrogate, citing the correlation between opacity and HAP: "Higher opacities mean a higher concentration of particles and therefore higher concentrations of HAP." 71 Fed. Reg. at 18020.

ED_021114A_00008786-00008

(Jan. 10, 2005). EPA finalized the withdrawn provisions in 2005. 70 Fed. Reg. 44285 (Aug. 2, 2005).

SunCoke's heat-recovery coke oven technology set an example and served as the basis for establishing the MACT, as it is designed to limit emissions of HAPs. 66 Fed. Reg. at 35328-29. All of SunCoke's heat-recovery cokemaking facilities built in the U.S. since 1998 have either met or exceeded the applicable BACT or LAER standards set forth for cokemaking facilities.

For the RTR for Subpart CCCCC and the technology review for Subpart L, EPA issued CAA section 114 information collection requests ("ICRs") to SunCoke and certain other affected sources in April 2016, June 2022, and July 2022. These requests included lengthy questionnaires and source test requests. SunCoke and other affected sources provided a significant amount of data and information to EPA in response to these ICRs. SunCoke conducted extensive stack testing of various sources including bypass vent stacks, main stacks, hot car stacks, and pusher/charger machine stacks for over 75 constituents, including HAPs and other target pollutants. SunCoke alone spent around $1.5–1.6 million to perform the stack testing and multitude of other types of tests required under EPA's ICRs.

EPA is proposing amendments to the NESHAPs for the Coke Ovens: Pushing, Quenching, and Battery Stacks ("PQBS") source category and the Coke Oven Batteries ("COB") source category, after conducting its RTR for the PQBS source category and its periodic technology review for the COB source category. There is no dispute that EPA was rushed to publish the Proposed Rule. EPA was sued by environmental groups in the Northern District of California for failing to undertake the statutorily-required residual risk and technology reviews for the two coke oven source categories. *Citizens for Pennsylvania's Future v. Wheeler*, 469 F. Supp. 3d 920, 934 (N.D. Cal. 2020). The court ordered EPA to take final action by December 26, 2022, and then extended the deadline to May 23, 2024, causing EPA to scramble to gather information, conduct an analysis, and publish the Proposed Rule that is the subject of these comments. In its haste to respond to the court order, EPA has proposed a rule that does not provide feasible solutions or enough time for stakeholders to meaningfully comment.

III. EPA'S MISCHARACTERIZATION OF SUNCOKE'S HEAT/NONRECOVERY COKEMAKING PROCESS, DISTINCT FROM BYPRODUCT COKEMAKING, RESULTS IN A FLAWED PROPOSED RULE

A. EPA Mischaracterizes SunCoke's Cokemaking Process and Facilities

In its haste to get the Proposed Rule published, EPA made a number of factually incorrect assumptions and statements about SunCoke's process that could lead to irrevocably prejudicial and damaging results for SunCoke.[13] HNR ovens operate under negative pressure, adding air from the outside to oxidize volatile matter and release the heat of combustion within the coke oven system. Coal is charged into an HNR oven at the beginning of the coking cycle, using a mobile pushing/charging machine ("PCM") to create a coal bed in the oven. The mobile PCM charges coal into one side of the oven. Each PCM is equipped with a traveling hood/baghouse system that controls charging emissions.

[13] *See, e.g.*, 88 Fed. Reg. at 55863-65 (describing processes of HNR and ByP facilities).

ED_021114A_00008786-00009

The coking cycle is typically 48 hours (about 2 days) for blast coke and 72 hours (about 3 days) for foundry coke. During the coking cycle, coal molecules are pyrolyzed and polymerized to create larger coke carbon crystalline structures. Pyrolysis products are released from the coal bed as volatile matter ("VM"). The VM is partially burned in the headspace, i.e., crown, of the oven above the coal bed. Partially combusted gases then pass into a sole flue system beneath the oven floor where essentially all of the combustion is completed. The flue gases then pass into a common tunnel where any remaining uncombusted volatile organics are oxidized and fully combusted.

In SunCoke's sole non-recovery plant (Jewell), the fully combusted flue gas is exhausted to the atmosphere through waste heat stacks on top of each battery of ovens. The waste heat stacks provide the natural draft to draw the VM and combustion air through the system. In SunCoke's heat recovery plants (Haverhill, Granite City, Middletown, and Indiana Harbor), the common tunnel system routes the flue gases from the coking process to heat recovery steam generators ("HRSGs") to recover heat for steam generation, which can be used as process steam or electricity that off-sets the use of fossil fuels. The HRSGs also cool the flue gases that go to downstream pollution control devices. Particulate matter ("PM"), sulfur dioxide ("SO^2"), mercury ("Hg"), acid gases, and other compounds are removed from the flue gases in a flue gas desulfurization ("FGD") system that consists of a spray dryer absorber ("SDA") with activated carbon injection, followed by a baghouse. Scrubbed flue gases are then emitted via induced draft fans through the main stack. The induced draft fans provide the draft that draws the gas through the entire system.

At the end of the coking cycle, after the coal has been converted to coke, the coke is pushed into a mobile hot car. At SunCoke's Jewell and Indiana Harbor plants, the hot car is a conventional open top design. At the remainder of SunCoke's plants (Haverhill, Granite City, and Middletown), the hot car is a flat push hot car design. The open top hot cars operate under a cokeside shed that captures pushing emissions. The flat push hot cars are equipped with a roof and multicyclone (also referred to as a multiclone) that captures pushing emissions. The cokeside sheds and multicyclones control HAP metals that are in the form of PM.[14]

The hot car travels on rails to convey the coke to the quench station. The open top hot cars are quenched directly inside the quench tower while a stationary quench ram transfers the coke loaf from the flat push hot cars to a quench car. Quenching is performed in a specially designed quench tower with baffles to control PM. Quenching emissions are also controlled by using water with total dissolved solids ("TDS") levels no greater than 1,100 milligrams per liter ("mg/L"). Acceptable quench makeup water is used (e.g., river water and retained stormwater runoff) to maintain the TDS level in the quench water at or below 1,100 mg/L. SunCoke's coke plants are a net user of water and do not discharge process waste waters.

Bypass vent stacks are normally closed. To safely maintain negative pressure in the coke ovens during an emergency (such as a severe storm with a major power outage) or during HRSG maintenance (typically 8 days per year) or FGD maintenance (typically 5 days per year), natural

[14] EPA-HQ-OAR-2002-0085-0873, EPA, Memorandum, *Technology Review for NESHAP for Coke Ovens: Pushing, Quenching, and Battery Stacks (40 CFR part 63, subpart CCCCC), and NESHAP for Coke Oven Batteries (40 CFR part 63, subpart L)*, at 5 (May 1, 2023).

ED_021114A_00008786-00010

draft bypass vent stacks can be used to vent the *fully combusted* flue gases to the atmosphere. These stacks are typically open for established limited periods during the year such that the lids are closed the majority of the time.

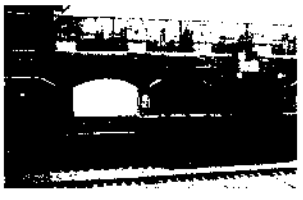
1. HNR Coke Ovens and ByP Coke Ovens are Fundamentally Different

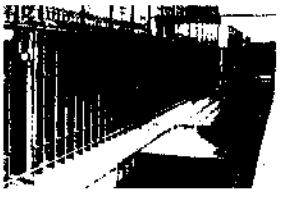
The design and operation of SunCoke's cokemaking process is so fundamental and unique that SunCoke's facilities should not be compared to ByPs. EPA nevertheless appears to confuse SunCoke's cokemaking process with that of byproduct coke manufacturing. This leads to several inaccuracies in EPA's development of the proposed emissions limits, proposed benzene fenceline monitoring work practices, and other portions of the Proposed Rule.

For example, in the Proposed Rule, EPA makes the following mischaracterizations of the coking process at both types of coke oven facilities:

> The process begins when a batch of coal is discharged from the coal bunker into a larry car (i.e., charging vehicle that moves along the top of the battery). The larry car is positioned over the empty, hot oven; the lids on the charging ports are removed; and the coal is discharged from the hoppers of the larry car into the oven. . . . This process takes place at two types of facilities: (1) by-product recovery (ByP) facilities, where chemical byproducts are recovered from coke oven emissions (COE) in a co-located coke byproduct chemical recovery plant (CBRP); or (2) heat and nonrecovery, or only nonrecovery with no heat recovery (HNR) facilities, where chemicals are not recovered but heat may be recovered from the exhaust from coke ovens in a heat recovery steam generator (HRSG).

88 Fed. Reg. 55858, 55863 (Aug. 16, 2023). These statements are false for several reasons, including: HNR cokemaking does not use a larry car; does not have a car of any kind on top of the battery; transfers coal via conveyor belts instead of cars; and has a different coking cycle timeframe than that described by EPA. The two cokemaking processes are fundamentally different and must be evaluated as such in this rulemaking.





	SunCoke Heat Recovery	Traditional By-Product
Pressurization	• Negative pressure	• Positive pressure
Air Emissions	• MACT standards for new batteries	• Emissions of hazardous air pollutants
Power Generation	• Co-gen electric power	• Power consuming process
Hazardous Inputs	• None	• [illegible] ammonia
Volatile Organic Compounds	• Complete combustion within process	• Not completed
Solid Wastes	• No process hazardous wastes	• Process produces hazardous waste (tar sludge, RCRA)
Wastewater	• No discharge of process wastewater	• Process produces wastewater discharge (CWA – NPDES)

ED_021114A_00008786-00011

One of the primary differences between HNR facilities and ByP facilities is that byproduct ovens operate under positive pressure, such that small openings or cracks in byproduct ovens allow raw coke oven gas and HAPs to leak into the atmosphere. The volatiles and combustion products are collected downstream of the oven chamber and refined in a chemical plant to produce coke oven gas and other products such as tar, ammonia, and light oils.

SunCoke's HNR ovens operate under negative pressure, using induced draft fans that pull air from the outside to oxidize volatile matter and release the heat of combustion within the oven system.[15] Operating the coke ovens under negative pressure virtually eliminates the risk of leakage of coke oven emissions through doors or other potential leakage points. Openings or cracks in the ovens simply allow additional air to be drawn into the oven as part of the carbonization process. Coal volatiles are combusted within the HNR oven system, unlike at ByP facilities, where the byproducts are recovered in a downstream chemical plant. This combustion generates heat, which is used to complete the coking cycle and, at heat recovery facilities, the remaining heat is recovered in HRSGs and used to produce electricity or process stream,

SunCoke's ovens are not sources of leaking coke oven emissions, with the exception of limited door leaks, which EPA recognized "are so infrequent and of such short duration that the annual emissions are orders of magnitude below those from door leaks on by-product batteries, which occur on a continuous basis."[16] EPA further stated that it did not "anticipate any adverse public health or environmental impacts due to emissions from charging and coke oven doors at non-recovery batteries." 69 Fed. Reg. 48337, 48344 (Aug. 9, 2004).

The equipment used by the two types of facilities is also different because of the difference in the design and operation of the ovens. SunCoke charges its HNR ovens from the side using a PCM, whereas ByP ovens charge from the top using a larry car. At an HNR facility, coke is pushed out of the ovens into a hot car, controlled by either a multiclone or a shed enclosure, whereas ByP facilities use hot cars controlled by baghouses or other devices. EPA accounted for the difference in these control types in the original MACT standard. *See* 58 Fed. Reg. 57898, 57899 (Oct. 27, 1993). Byproduct ovens, as EPA notes, are smaller in width than heat recovery ovens. 88 Fed. Reg. at 55863. The difference in pushing control technologies is due to the size and layout of the coke oven batteries, as further described in Section IV.

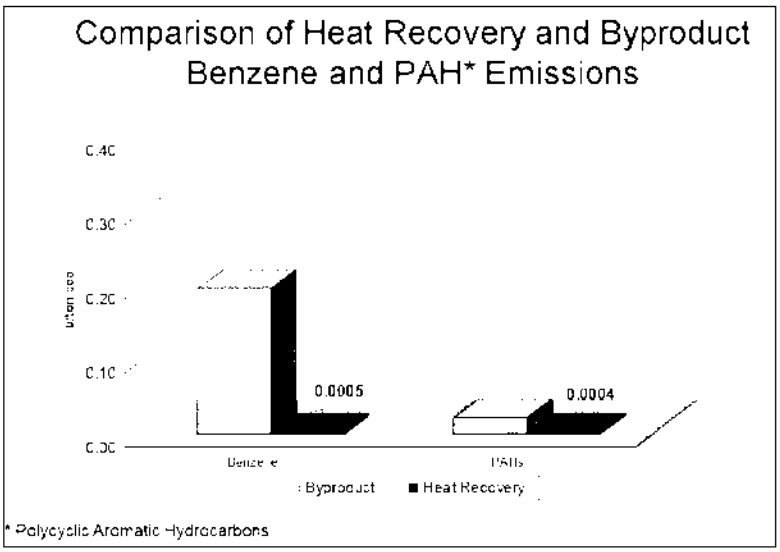
The differences in operations mean differences in emissions and, while EPA accounted for these differences in the original MACT standard, it ignored them in the Proposed Rule. One of the more egregious examples was failing to account for the fact that the annual emissions from HNR facilities (in EPA's own words) "are orders of magnitude below those from door leaks on by-product batteries, which occur on a continuous basis." *See, e.g.*, Sections XI.A.1, XII. The below chart further illustrates differences in emissions (here, benzene and PAH) between heat

[15] While Jewell does not have induced draft fans, it uses natural draft to pull air from the outside to oxidize and fully combust volatile matter and release the heat of combustion within the oven system. Similar to SunCoke's heat recovery plants, Jewell also operates under negative pressure; openings or cracks in the ovens simply allow additional air to be drawn into the oven system.

[16] EPA, *National Emissions Standards for Coke Oven Batteries: Background Information for Final Amendments*, at 21 (Mar. 31, 2005).

ED_021114A_00008786-00012

recovery and byproduct plants. EPA ignored these differences (and the Fenceline Monitoring data) when it determined, for example, that it was "necessary" to require Fenceline Monitoring for both.



2. SunCoke's Facilities Do *Not* Emit COE Directly to the Atmosphere

SunCoke does not emit coke oven emissions ("COE") directly to the atmosphere through its bypass or waste heat stacks. EPA makes significant mischaracterizations of SunCoke's venting process in the *Federal Register* notice and in its analysis of SunCoke's emissions:

> The one facility without HRSGs *sends COE directly to the atmosphere* via waste heat stacks, 24 hours per day, 7 days a week. At the current heat recovery facilities, each HRSG can be bypassed ranging from 192 to 1,139 hours per year, depending on the facilities' permits, *sending COE directly into the atmosphere.*

88 Fed. Reg. 55858, 55864 (Aug. 16, 2023) (emphasis added); *see also id.* 55877. The volatiles in the coke oven emissions are already fully combusted when vented out of the waste heat and bypass vent stacks and therefore, no COE is vented directly to the atmosphere. *See* Section III.A. Instead fully combusted oven flue gases (primarily CO_2, H_2O, and excess oxygen and nitrogen) are vented to the atmosphere. This is because, as described in Section III.A above, SunCoke's ovens operate under negative pressure such that the volatiles in the coal are combusted within the oven system, which means they are not vented to the atmosphere like ByP coke ovens.

SunCoke performs quarterly industrial hygiene monitoring for COEs at all of its facilities pursuant to OSHA's Coke Oven Emissions Standard, 29 CFR § 1910.1029. As part of this monitoring, SunCoke monitors employees' potential exposure to COEs by collecting personal air samples during normal operations from several categories of workers, including burners, hot car operators, door machine operators, and PCM operators, among others. This monitoring has consistently demonstrated that air samples taken from employees working in close proximity to operational coke ovens shows that the potential exposure to the relevant PAHs (phenanthrene,

anthracene, pyrene, chrysene, and benzo(α)pyrene) is below the analytical limit of quantification. This long-time monitoring further demonstrates that SunCoke does not emit COE directly to the atmosphere.

IV. EPA SHOULD TREAT HNR AND BYP AS SEPARATE SUBCATEGORIES

HNR and ByP facilities operate in fundamentally different ways and lead to different pathways for emissions. *See, e.g.*, 66 Fed. Reg. 35326, 35336 (Jul. 3, 2001) ("Non-recovery coke oven batteries differ from by-product coke oven batteries both physically and operationally."). EPA should use its discretion to regulate these facility types differently, as it has done in the past for this and countless other source categories. The CAA provides EPA with authority to regulate different types of sources differently for purposes of NESHAP regulations. Section 112(d)(1) provides, in establishing emission standards, "The Administrator may distinguish among classes, types, and sizes of sources within a category or subcategory in establishing such standards except that, there shall be no delay in the compliance date for any standard applicable to any source . . . ." 42 U.S.C. § 7412(d)(1).

EPA has acknowledged that regulating sources differently is appropriate if "differences in emissions characteristics, processes, [air pollution control device] viability, or opportunities for pollution prevention exist within the source category." 67 Fed. Reg. 47894, 47907 (July 22, 2002); *see also* 64 Fed. Reg. 63025, 63028 (Nov. 18, 1999). Courts have confirmed EPA's discretion to categorize based on a number of different parameters. *See, e.g.*, *Sierra Club v. EPA*, 895 F.3d 1 (D.C. Cir. 2018) (upholding EPA's approach to subcategorize based on size of brick kilns); *U.S. Sugar Corp. v. EPA*, 830 F.3d 579, 656–57 (D.C. Cir. 2016) (upholding EPA's discretion to subcategorize based on the type of fuel a boiler burns because the type of fuel "affect[s] boiler emissions and the feasibility of emission controls"); *Sierra Club v. Costle*, 657 F.2d 298, 318 19 (D.C. Cir. 1981) (holding that the text of 42 U.S.C. § 7411, which allows EPA to "distinguish among classes, types and sizes," permits distinctions based on variations in the sulfur content of coal used by utility plants). In *U.S. Sugar Corp.*, the D.C. Circuit noted that the statute "implicitly acknowledges that the EPA may need to set different emission standards within a category of major sources based on what is achievable for a subset of those sources." 830 F.3d at 657.

Differences in the design and operation of heat and non-recovery and byproduct technology and their pollution control equipment result in differences in emissions, such that EPA should treat these distinct facility types as separate subcategories. *See, e.g.*, 66 Fed. Reg. at 35334 (establishing separate subcategories for short and tall batteries after recognizing "the greater height of fall of the coke from a tall oven can result in more visible emissions," and establishing a subcategory for batteries with horizontal flues because of unique physical and operational differences from vertical flue batteries).

For example, byproduct coke plants control pushing emissions using stationary devices (baghouses) whereas three HNR sources (Granite City, Haverhill, Middletown) control pushing emissions using a mobile multiclone (on the flat push hot car) and two HNR sources (Indiana Harbor, Jewell) control pushing emissions using cokeside sheds, one of which has a baghouse system (Indiana Harbor). Differences in the design and operation of these types of coke plants and their pollution control equipment result in differences in emissions between HNR and ByP facilities. Installing additional controls on an HNR's flat push hot car for controlling any of these

ED_021114A_00008786-00014

pollutants is technically infeasible because the hot car is mobile, subject to significant vibration, and has very limited space or weight capacity for additional equipment. Despite the differences between these sources, EPA developed the proposed pushing limits using data from both byproduct and HNR sources. *See* 88 Fed. Reg. 55858, 55861 (Aug. 16, 2023). For these reasons, it is inappropriate, arbitrary, and capricious to use data from byproduct coke plants to establish limits for the HNR facilities. The HNRs' limits must be based solely on HNR facilities' data. *See* Section IX.C.3.

V. THE PROPOSED RULE VIOLATES THE APA BECAUSE EPA PROVIDED INADEQUATE TIME FOR REVIEW

Due to the highly technical nature of this rulemaking and the large volume of information in the docket, EPA is violating the CAA and the Administrative Procedure Act ("APA") by limiting the notice and comment period to 45 days. EPA's failure to provide a reasonable period for responding to the proposed amendments violates the CAA. Section 107(h) of the CAA requires EPA to provide a "reasonable period" for public participation in responding to a proposed rule: "It is the intent of Congress that . . . the Administrator in promulgating any regulation under this chapter, including a regulation subject to a deadline, shall ensure a *reasonable period* for public participation of at least 30 days . . . ." 42 USC § 7607(h) (emphasis added). This comment process is a "crucial" rulemaking requirement to "ensure that agency regulations are tested via exposure to diverse public comment . . . to ensure fairness to affected parties, and . . . to give affected parties an opportunity to develop evidence in the record to support their objections to the rule and thereby enhance the quality of judicial review." *Daimler Trucks N. Am. LLC v. EPA*, 737 F.3d 95, 100 (D.C. Cir. 2013); *see also Miami-Dade Cty. v. EPA*, 529 F.3d 1049, 1058 (11th Cir. 2008). Moreover, the fact that EPA has a court ordered deadline of May 23, 2024 to complete this rulemaking does not excuse the agency from complying with Section 107(h). The CAA is clear that EPA is required to provide a "reasonable period" for public participation even when a rulemaking is "subject to a deadline." 42 USC § 7607(h).

Further, EPA's failure to provide a meaningful opportunity for SunCoke and other affected sources to review and comment on the proposed amendments violates the APA. The APA requires agencies to "give interested persons an opportunity to participate in the rule making through submission of written data, views, or arguments with or without opportunity for oral presentation." 5 U.S.C. § 553(c). Agencies must provide the public with a "meaningful opportunity" to comment on a proposed rule. *Rural Cellular Ass'n v. FCC*, 588 F.3d 1095, 1101 (D.C. Cir. 2009). The length of a comment period is an important factor used to determine whether an agency provided a "meaningful" opportunity to comment. *See, e.g., N.C. Growers' Ass'n v. UFW*, 702 F.3d 755, 770 (4th Cir. 2012) ("Our conclusion that the Department did not provide a meaningful opportunity for comment further is supported by the exceedingly short duration of the comment period."); *see also Est. of Smith v. Bowen*, 656 F. Supp. 1093, 1099 (D. Colo. 1987) ("The comment period of 60 days was inadequate. The Secretary's failure to extend that period pursuant to the numerous requests to do so was arbitrary and capricious").

As further described in SunCoke's request for an extension, attached as Attachment A, EPA is proposing *major* changes to *two* different standards, 40 CFR Part 63, Subparts L and CCCCC, in a single rulemaking. The amendments are highly technical, and over 450 supporting documents including substantial volumes of technical memoranda, analyses, and important

ED_021114A_00008786-00015

data providing the basis for this rulemaking were not publicly available until the Proposed Rule was published on August 16, 2023.[17] For example, EPA's MACT Standard Calculations, Cost Impacts, and Beyond-the-Floor Cost Impacts for Coke Ovens Facilities consists of 114 pages each plus nine separate excel sheets filled with technical data that necessitate detailed review and analysis. It took EPA 10 years to develop the Proposed Rule, yet SunCoke and the other affected sources were given less than 2 months to evaluate and provide thoughtful comments on it.

Providing a full and comprehensive evaluation of the expected costs, feasibility, and other implications of the proposed amendments and preparing timely and thoughtful comments was virtually impossible for SunCoke (and undoubtedly other affected sources) to accomplish within the comment period provided. For example, SunCoke was unable to:

- Fully evaluate EPA's calculations and proposed emission limits;
- Perform modeling, including an analysis of the implications of the fenceline monitoring provisions;
- Conduct risk modeling on site-specific profiles;
- Fully analyze energy consumption requirements associated with installing, operating, and maintaining the additional pollution control equipment required by the Proposed Rule; or
- Fully analyze the cost and benefit estimates for the proposed requirements specifically described herein.

SunCoke also was unable to comment on many of the topics EPA specifically requested comment on, including:

- The merits of a 1-hour opacity standard (88 Fed. Reg. at 55861);
- The validity of the assumption of two for an acute factor for all sources at coke facilities (*Id.* at 55871);
- Alternative approaches to establishing emissions standards for HRSG main stacks and bypass stacks (*Id.* at 55879);
- The feasibility of capturing and controlling soaking COE (*Id.* at 55884);
- Alternative methods to reduce leaks from doors, lids, and offtakes, and from charging at coke oven batteries (*Id.* at 55884);
- The suitability of selecting benzene or other HAP, including naphthalene and other PAH, as the indicator to be monitored by fenceline samplers (*Id.* at 55887);
- The revised equation to estimate coke oven door leaks (*Id.* at 55889);
- Whether any situations exist where separate standards, such as work practices, would be more appropriate during periods of startup and shutdown (*Id.* at 55890);
- The content, layout, and overall design of the quarterly and semiannual compliance reports templates (*Id.* at 55892);
- The use of 1 BP and any potential emissions of 1 BP from this source category (*Id.* at 55892);
- Additional data that may improve the risk assessments and other analyses (*Id.* at 55899);
- Cost and benefit estimates for the proposed action (*Id.* at 55899);

[17] In contrast, the preamble to the Proposed Rule indicates that EPA began collecting and analyzing relevant data as part of this rulemaking as early as 2016. 88 Fed. Reg. at 55,866.

ED_021114A_00008786-00016

- The accuracy of revenue and employment data included in the EIA (*Id.* at 55899); and
- The impact of other ongoing rulemaking efforts (*Id.* at 55899).

Additional time is required for SunCoke and other affected sources to have a meaningful opportunity to review. Forty-five (45) days is not reasonable. As such, SunCoke renews its request to extend the comment period another 45 days.

VI. EPA VIOLATED THE APA BY FAILING TO PUBLISH PROPOSED RULE CHANGES IN THE *FEDERAL REGISTER*

EPA did not publish any proposed rule language in the *Federal Register* notice for the Proposed Rule. EPA instead included redline versions of its proposed amendments to the current Subpart L and Subpart CCCCC in the dockets.[18] These redline documents are not a valid substitute for publishing the actual proposed rule language in the *Federal Register*. EPA's failure to publish the Proposed Rule language in the *Federal Register* is particularly troubling because its redline versions of its proposed amendments include several changes that are not explained, nor in some instances even discussed, in the *Federal Register* notice. For example, the redlined version of EPA's proposed amendments to Subpart L proposes amending 40 C.F.R. § 63.305 to allow use of ASTM D7520-16 as an alternative to Method 9 to measure the opacity of emissions from coke oven doors equipped with sheds (see proposed addition of (iii)(A)-(E) to section 63.305(e)(3). This proposed amendment is not identified in the *Federal Register* notice. SunCoke is very concerned with these discrepancies, particularly since the short comment period did not allow sufficient time for SunCoke to analyze EPA's proposed changes to the redline versions, or sufficient time to compare those proposed changes to the *Federal Register* notice. As EPA is well aware, even minor changes to a rule can have significant impacts on an affected source.

For these reasons, EPA must re-publish the rule, including a description of all proposed rule changes, and allow additional time for public notice and comment.

VII. SUNCOKE'S EXISTING FACILITIES CONSTITUTE "EXISTING SOURCES" UNDER THE CAA

It appears that EPA may be mistakenly treating SunCoke's existing plants as "new sources" in the Proposed Rule, which, if so, would be contrary to the CAA's definition of "new source," contrary to EPA's past practice, and prejudicial to SunCoke. SunCoke's facilities have existed since well before EPA proposed amendments to this rule on August 16, 2023. SunCoke's newest facility, Middletown, OH, was brought online in 2011, and SunCoke's oldest facility, Jewell has been online since the 1960s. Because SunCoke's facilities predate EPA's Proposed Rule, the facilities must be considered "existing sources" for purposes of the rule. SunCoke's existing facilities should not be held to the same standard as new sources.

[18] EPA-HQ-OAR-2003-0051, EPA, Memorandum, *Coke NESHAP Redline Version of Proposed Rule Changes for 40 CFR part 63, subpart CCCCC* (Jul. 1, 2023); EPA-HQ-OAR-2003-0051-0753, EPA, Memorandum, *Coke NESHAP Redline Version of Proposed Rule Changes for 40 CFR part 63, subpart L* (Jul. 1, 2023).

ED_021114A_00008786-00017

A. It is Ambiguous Whether the Proposed Rule Applies to Existing or New Sources

Although the plain language of the CAA, applicable case law, and EPA's long-standing history of applying the "new source" definition all dictate that the existing SunCoke facilities must be considered existing sources, ambiguity exists within EPA's proposed amendments as written. The redline version of the proposed amendments — which EPA did not incorporate into the *Federal Register* notice—suggests that EPA is not updating the cut-off date for what is considered a "new" or "existing" coke oven battery under these amendments, and that EPA intends to consider coke oven batteries that are almost 20 years old to be "new."[19] EPA's technical analysis, however, correctly assumes that each of SunCoke's existing facilities will be considered "existing" sources under the proposed amendments and that only those coke oven batteries that are actually new after issuance of the rule would be subject to the proposed emission limits for "new" coke oven batteries, as explained in SunCoke's request for an extension. *See* Attachment A at 2 and n.2. As a regulated company, SunCoke has the right to understand exactly which standards are being applied to it in a proposed rulemaking, and the lack of clarity on this point is prejudicial to SunCoke and all other regulated entities.

B. The CAA and EPA's History of Interpretations Supports Designating All SunCoke Facilities as "Existing Sources"

The plain language of the CAA and EPA's own interpretations support the regulation of all SunCoke facilities as existing sources. Whether a source is considered "new" or "existing" is determined by whether the source's construction or reconstruction was commenced before or after proposal of the particular standards in question. The CAA defines a "new source" as "a stationary source the construction or reconstruction of which is commenced after the Administrator first proposes regulations under this section establishing an emission standard applicable to such source." 42 U.S.C. § 7412(a)(4). The Act also defines an "existing source," which is "any stationary source other than a new source." *Id.* § 7412(a)(10).

EPA has a history of applying the CAA's "new source" definition in accordance with this understanding that a "new source" is that for which construction or reconstruction begins after the date of proposal for rule amendments. In doing so, EPA has interpreted "first proposed" to mean that the "new source" designation applies to sources constructed or reconstructed *after* each subsequent rulemaking. In fact, EPA applied this same understanding to its 2005 amendments to the Coke Oven Batteries NESHAP:

> [EPA] concluded that it was not appropriate to increase the stringency of the current NESHAP for already-operating non-recovery batteries. This limit is appropriate for new sources, *which are those constructed after the date of proposal of these final rule amendments*, because it allows the new requirements to be incorporated into the considerations of design and operation of the new source.

[19] *See, e.g.*, EPA-HQ-OAR-2003-0051, EPA, Memorandum, *Coke NESHAP Redline Version of Proposed Rule Changes for 40 CFR part 63, subpart CCCCC*, at 3 (Jul. 1, 2023) ("An affected source at your coke plant is existing if you commenced construction or reconstruction of the affected source before July 3, 2001.")

ED_021114A_00008786-00018

70 Fed. Reg. 19992, 20009 10 (Apr. 15, 2005) (emphasis added). EPA's reasoning was clear; this "allows the new requirements to be incorporated into the considerations of design and operation of the new source." *Id.* at 20010. The same logic also must be applied to the current Proposed Rule.

The Portland cement manufacturing rule from 2000 provides another example of EPA's practice of treating only facilities built *after* a new rule is proposed as "new sources." EPA originally promulgated new emissions standards in 2000, but the D.C. Circuit Court remanded because EPA failed to set standards for certain HAPs. *See generally Nat'l Lime Ass'n v. EPA*, 233 F.3d 625 (D.C. Cir. 2000). Following the remand, EPA promulgated revised standards in 2006: *National Emission Standards for Hazardous Air Pollutants from the Portland Cement Manufacturing Industry, Final Rule*, 71 Fed. Reg. 76518 (Dec. 20, 2006). EPA applied the revised standards only to those sources constructed after 2005. In doing so, EPA expressly rejected comments seeking to apply the revised standards to sources constructed after 1999, when the original, remanded standards were proposed. 71 Fed. Reg. at 76518.[20]

In defending its interpretation, EPA reasoned:

> The whole premise of new source standards being potentially more strict than for existing sources . . . is that *these sources are being newly constructed and hence can immediately install the best pollution controls without incurring the time or expense of retrofitting*. Put another way, *new sources know from the beginning of the construction effort what controls will be required*, and do not have to incur the higher costs and the time-consuming disruptions normally associated with control retrofits. If we were to require 'new sources' that commenced construction prior to [2005] to retroactively install controls because we have changed rule requirements, then these particular sources would have to bear retrofit costs that we do not believe were intended by the CAA.

71 Fed. Reg. at 76541 (emphasis added). EPA further defended its refusal to retroactively apply the standards to sources constructed as early as 2000 by stating, "This reading makes no sense in the context of a court action which essentially required EPA to reexamine the entire issue, and re-determine what the standard should be. Under such circumstances, *the only reasonable date for determining new source applicability for a resulting standard would be the date EPA proposes it*." *Id.* (emphasis added).

The only reasonable date for determining new source applicability, therefore, is the date EPA proposes the new amendments. A logical reading of the CAA and EPA's own history of practices and enforcement support the conclusion that all SunCoke facilities must be considered "existing sources."

[20] *See also National Emission Standards for Hazardous Air Pollutants from the Portland Cement Manufacturing Industry, Proposed Rule*, 70 Fed. Reg. 72330, 72336 (Dec. 2, 2005) ("The underlying principle for having new sources meet stricter standards . . . is that such sources are essentially starting from scratch and, therefore, can most efficiently utilize the best means of pollution control. They will not need to retrofit. Sources classified as new under the [original standard] are not in this position. They have already commenced construction (and most likely started operating) and so are not in the position of a source starting de novo.").

ED_021114A_00008786-00019

C. Case Law Further Supports Designating All SunCoke Facilities as "Existing Sources"

Pertinent case law analyzing the distinction between a new source and an existing source in this context is limited, likely due to the commonsense nature of EPA's previous rulemakings. The limited case law that does discuss this distinction confirms that new sources are those whose construction is commenced after promulgation of a new rule. Therefore, all previously existing SunCoke facilities must be considered "existing sources" according to the CAA.

The D.C. Circuit supports this understanding. In *U.S. Sugar Corporation v. EPA*, the D.C. Circuit confirmed, "new sources" were "those built after promulgation of a HAPs limit." 830 F.3d 579, 594 (D.C. Cir. 2016). Further, "'new' sources are those 'on which construction begins after EPA publishes emission standards' . . . most of the others are 'existing' sources, see 42 U.S.C. § 7412(a)(10)." *Id.* (citing *Cement Kiln Recycling Coal. v. EPA*, 255 F.3d 855, 858 (D.C. Cir. 2001)).

Sixth Circuit jurisprudence has long supported this same understanding. In *United States v. City of Painesville, Ohio*, the Sixth Circuit held, "The statute [CAA] plainly provides that new sources are those whose construction is commenced after the publication of *the particular standards of performance in question* . . . ." 644 F.2d 1186, 1191 (6th Cir. 1981) (emphasis added). The Sixth Circuit makes clear that whether a source is considered "new" or "existing" is determined by whether the source's construction began before or after publication of the particular standards in question. Like the D.C. Circuit, the Sixth Circuit's holding in *City of Painesville* supports the argument that the determinative date for whether a source is "new" or "existing" is analyzed based on the proposal date of the standard or revision itself. Only sources whose construction begins after publication of a particular revision are considered "new sources" for purposes of applying that revision's standards for new sources. Accordingly, only the standards for existing sources under the current revision should apply to existing SunCoke facilities.

VIII. THE PROPOSED BTF LIMITS FOR SUNCOKE'S JEWELL FACILITY ARE BASED ON FLAWED ASSUMPTIONS, INACCURATE DATA, AND THE LEGALLY ERRONEOUS USE OF A COST-EFFECTIVENESS THRESHOLD FROM A DIFFERENT INDUSTRY

EPA's proposed beyond-the-floor ("BTF") measures for SunCoke's Jewell facility are unwarranted under the applicable legal standard and are based on faulty data and assumptions regarding both the costs of the measures and their expected emissions benefits. The CAA requires that proposed emission controls be "achievable"; this has not been demonstrated here. EPA has not justified — nor could it justify — its decision to require BTF measures that SunCoke expects are far from technically, physically, and economically achievable. Ironically, even if these measures were technically, physically, and economically feasible, these measures would have significant energy requirements and non-air quality health and environmental impacts that EPA insufficiently considered, including an estimated increase of over 46,000 ton annually in CO_2 emissions from the extra electricity needed to operate the system. Additionally, EPA's determination that the BTF measures were "cost-effective" was based on erroneous data concerning not only the costs of such measures, but also their effectiveness at reducing mercury and other HAP emissions. EPA's determination also improperly relied on a dollar threshold used in an entirely different regulatory

ED_021114A_00008786-00020

proceeding for a different industry. Under its own announced criteria, EPA's proposed measures are arbitrary and capricious.

A. BTF Measures Must be "Achievable" After Taking into Consideration their "Cost . . . and Any Non-air Quality Health and Environmental Impacts and Energy Requirements"

The first phase of EPA's standard setting process under CAA Section 112 consists of two parts: the Agency first sets the MACT standards as a minimum control level or "floor" for emissions reduction, then considers control options that are more stringent than ("beyond") this floor:

> Step one requires EPA to establish what has come to be known as the MACT floor—the minimum level of reduction required by statute. . . . Once EPA has set the MACT floor, it may then impose stricter standards—so-called "beyond-the-floor" limits if the Administrator determines them to be achievable after "taking into consideration the cost . . . and any non-air quality health and environmental impacts and energy requirements."

Sierra Club v. EPA, 353 F.3d 976, 980 (D.C. Cir. 2004) (citing 42 U.S.C. § 7412(d)(2)). When considering whether to implement BTF measures, EPA "must" take into consideration the cost of achieving such emission reduction. *Id.* at 988 (citing 42 U.S.C. § 7412(d)(2)). Costs are clearly an important component of achievability. *U.S. Sugar Corp. v. EPA*, 830 F.3d 579, 640 (D.C. Cir.), *on reh'g en banc*, 671 F. App'x 822 (D.C. Cir. 2016), *and on reh'g en banc in part*, 671 F. App'x 824 (D.C. Cir. 2016) (upholding decision not to adopt BTF measures that would cost certain facilities $230,000 per ton of emissions where "[n]othing in section 7429(a)(2) requires the Agency to impose a cost so disproportionate to the expected emissions gains"); *Sierra Club v. EPA*, 167 F.3d 658, 666 (D.C. Cir. 1999) ("In the absence of any type of quantification of benefits or costs, the Administrator had no basis for finding that, 'taking into account the cost,' emissions reductions from pollution prevention programs were 'achievable' as the statute uses the word.").

EPA's discussion of this second step in the preamble for the Proposed Rule acknowledges that BTF standards are considered only if they "might be cost-effective," and proposed only if they are technically feasible and have "reasonable cost impacts":

> *If EPA determines that there are potential BTF standards that might be cost-effective*, the EPA typically develops and evaluates those BTF control options. After evaluating the BTF options, the EPA typically proposes such BTF options *if EPA determines those BTF options under consideration are technically feasible, costs impacts are reasonable*, and that the BTF standard would achieve meaningful reductions and not result in significant *non-air impacts* such as impacts to other media or excessive energy use.

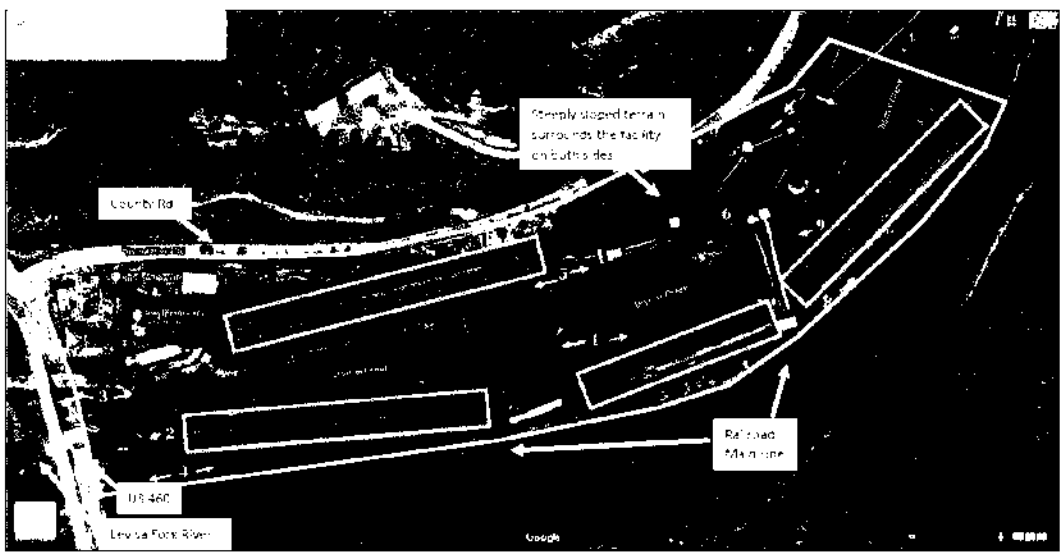
88 Fed. Reg. 55858, 55862 (Aug. 16, 2023) (emphasis added). For this rulemaking, EPA has not demonstrated that the proposed BTF limits are achievable, nor did it accurately consider costs for achieving those limits.

B. EPA Relied on Erroneous Assumptions to Compute Costs of Implementing the Proposed BTF Measures at Jewell

Under the approach adopted by EPA, only one category of facilities (HNR facilities that do not have HRSGs)—which has only one facility (SunCoke's Jewell plant at Vansant, VA)—would be required to implement the proposed BTF measures. 88 Fed. Reg. at 55893. The Jewell plant has a unique configuration that is a product of its topography, as EPA recognized when estimating the amount of time needed for Jewell to complete the work necessary to comply with the proposed new BTF PM limit:

> The facility that is affected by the new BTF PM limit is located between three rivers, a state road, and a railroad track. Therefore, due to the unique configuration of the facility, the resulting lack of space available to construct control devices and ductwork to reduce arsenic emissions from bypass stacks creates an impediment to a typical construction schedule.

88 Fed. Reg. at 55882, n.30. These same unique features are the reasons that SunCoke expects the changes that would be required under EPA's proposal to be exponentially more costly at Jewell—if they are technically or physically achievable at all. The plant's location in a river valley with rivers, a state road, railroad tracks, and extremely steep gradients on both sides does not provide sufficient space for baghouses of sufficient size to accommodate the exhaust flows from the exhaust coke oven batteries. *See* Attachment C for Jewell facility description and pictures.



ED_021114A_00008786-00022



The likelihood of significant costs and technical and physical infeasibility is especially true when considering that the oven exhaust must be cooled from 1,600°F or more to a minimum of 400°F for high temperature bag material to even function. And an air quench, as opposed to a water quench, would be required because the enormous water volumes otherwise required would far exceed the limitations of Dismal Creek, the source of plant cooling water. The air quench would result in a constant steam cloud within the valley. These two factors alone make a baghouse and an activated carbon injection ("ACI") system technically infeasible for this site.

In the limited time SunCoke has had to comment on the Proposed Rule, it has determined that EPA's cost calculation underestimates SunCoke's costs in at least the following ten respects:

- EPA's estimates did not include cooling before subjecting the 1,600° Fahrenheit exhaust from the B/W stacks to emissions controls, as would be necessary for the baghouse to function.

- The ductwork costs assume only a nominal length of unlined, galvanized steel duct between the battery stacks and the air emission controls. No provision for refractory lining, and ductwork foundations, structural support, access platforms, and underground routing of the duct were considered.

- The assumed height of the exhaust stack was too low. Given the valley location of the Jewell facility, an exhaust stack of significant height should have been considered.

- A shaker baghouse—notably the lowest capital cost baghouse type—was assumed. Shaker baghouses are old technology no longer used in industry because of high maintenance

ED_021114A_00008786-00023

requirements, challenges with operation, and degradation of removal efficiency over time. A compartmentalized, pulse jet baghouse is the industry standard for this application.

- EPA failed to consider the characteristics of the exhaust gases and the requisite materials of construction.

- EPA incorrectly assumed the volume of flue gas that would need to be treated based on arbitrary data from a single stack at a different plant.

- EPA failed to consider the unique retrofit requirements that would be necessary given the age, configuration, layout, and underground utilities existing at the Jewell facility.

- EPA significantly underestimated the amount of electricity usage and hazardous waste that would be generated.

- EPA used an incorrect algorithm to calculate the total capital investment for ACI (Sargent & Lundy 2011).

- EPA used an incorrect methodology to calculate the activated carbon injection rates. Based on the methodology included in a later study by the same authors (Sargent & Lundy 2017), the rate should be 699 lbs/hr rather than 50 lbs/hr, as EPA assumed.

See Attachment D (TRC, Technical Memorandum, Response to Proposed RTR, Oct. 2, 2023 ("TRC Technical Memo")). As a result of these errors, EPA's estimated costs to impose these controls at Jewell are low by orders of magnitude; a more realistic estimate is ***$474.9 million*** (not ***$7.4 million***) in capital investments and ***$66 million*** (not ***$4.7 million***) in annual costs.[21] Though this cost estimate is a high-level engineering estimate that does not account for the unique construction characteristics associated with the Jewell site and fails to consider the fact that this type of construction is infeasible at best.

C. EPA Erroneously Calculated the Emissions Reductions the Proposed BTF Measures Would Achieve at Jewell

EPA wrongly assumed the feasible addition of a baghouse with 99.9 percent reduction of metals and an ACI system with 90 percent reduction for mercury. *See* 88 Fed. Reg. 55858, 55879 (Aug. 16, 2023); *see also id.* at 55894 (assuming BTF measures would reduce air emissions by 4.0 tpy nonmercury HAP metals and 144 pounds per year mercury). According to SunCoke's analysis, 99.9 percent removal on a long-term basis is unlikely; a more realistic assumption is 99 percent removal. In addition, an outlet concentration, usually expressed as grain loading, is a better, more appropriate measure of baghouse performance, and the best performing baghouses can achieve an outlet concentration of 0.000437 grains per dry standard cubic foot.[22] Similarly, for mercury, a baghouse with ACI combination can only reasonably provide 80 percent mercury removal on a long-term basis.[23]

[21] *Compare* Tab. 6 with Attachment D (TRC Technical Memo) at 5.
[22] *See* Attachment D (TRC Technical Memo) at 3.
[23] *Id.*

ED_021114A_00008786-00024

The Agency erroneously calculated the cost-effectiveness by not including a baghouse for mercury control. When the cost and efficacy calculations are corrected, the cost-effectiveness for non-mercury HAP metals is ***$24.7 million*** per ton, not ***$756,000*** per ton, and the cost-effectiveness for mercury is ***$713,000*** per ton, not ***$32,000*** per ton.[24]

D. EPA Relied on Erroneous Data to Calculate Energy Required to Implement the Proposed BTF Measures at Jewell

EPA wrongly calculated that the increased energy to meet these proposed requirements would be ***15.1 million*** kilowatt-hours of increased electricity use. 88 Fed. Reg. at 55858, 55894 (Aug. 16, 2023). SunCoke has not been able to locate any analysis by EPA that supports these estimates, thereby depriving SunCoke of the opportunity to analyze the "connection between the facts found and the choice made." *Motor Vehicle Mfrs. Ass'n v. State Farm Mut. Ins. Co.*, 463 U.S. 29, 43 (1983). SunCoke's calculation shows that the true increase in energy would be ***93.18 million*** kilowatt hours (more than six times EPA's estimate).

E. EPA Did Not Consider Non-air Quality Health and Environmental Impacts of the Proposed BTF Measures

Related to its grossly inadequate estimate of the energy requirements for its proposed controls, EPA did not sufficiently consider the infrastructure upgrades that would be needed to serve the controls. At a minimum, the following electrical infrastructure upgrades would likely be required to address the incremental power demand of 10.5 MW:

- An upgraded Appalachian Power Company substation for an additional 69 kV load;
- Roughly 4,000 feet of 69 kV transmission line;
- A new substation at the Jewell site to receive 69 kV and step down to 4160V for further distribution across the plant;
- 4160V switchgear and motor control centers for multiple induced draft fans; and
- 4160V stepdown to 480V, switch gear, and motor control centers for ancillary gear serving the baghouse and ACI systems.

Moreover, in light of Jewell's topography, installing the infrastructure could require surfaces to be levelled and forested areas to be cleared. These electrical upgrades would likely impact wetlands, visual resources, soils, and/or vegetation and wildlife species in the affected areas, which EPA does not appear to have considered. This is especially true given the forested surroundings for the plant and the fact that the entirety of the facility lies in a floodplain; for this reason, federal law requires EPA, before requiring changes that would impact floodplains, to "consider alternatives to avoid adverse effects and incompatible development in the floodplains."[25] In addition, the increased 10.5 MW demand would increase CO_2 emissions by more than an estimated 46,000 tons annually just to produce the electricity needed to run such a system. EPA further underestimated

[24] *Compare* Tab. 6 with Attachment D (TRC Technical Memo) at 5.
[25] Exec. Order 11988—Floodplain Management, § 2(a)(2).

the tons of hazardous dust disposal at 761 tons per year.[26] The correct number would be closer to 4,360 tons per year.[27]

F. EPA Erroneously Relied on Dollar Threshold Taken from Rulemaking for A Different Industry to Find the Proposed BTF Measures were Cost-effective

The preamble to the Proposed Rule states that because EPA found $1.3 million/ton of HAP metals to be cost effective in another rulemaking about a different (unrelated) industrial process (lead smelters), any measures that cost less than that amount are per se "cost effective." 88 Fed. Reg. 55858, 55879 (Aug. 16, 2023). As discussed above, when the correct assumptions are incorporated into the cost and efficacy calculations, the actual number ***($24.7 million*** per ton for non-mercury HAP metals) far exceeds the selected benchmark. *See supra* Section VIII.C. But even if EPA's numbers did not grossly overestimate cost-effectiveness, the use of a cost-effectiveness threshold from another rulemaking as a benchmark is erroneous as a matter of law absent any showing that the economics of the two processes are the same; what is "cost effective" cannot be viewed in isolation but must be determined based on the context of the affected industry. As stated by the D.C. Circuit, EPA cannot use a one-size-fits-all number to determine cost-effectiveness in different regulatory contexts:

> This court has adopted an 'every tub on its own bottom' approach to EPA's setting of standards pursuant to the CAA, under which the adequacy of the underlying justification offered by the agency is the pertinent factor—not what the agency did on a different record concerning a different industry.

Sierra Club v. EPA, 353 F.3d 976, 986 (D.C. Cir. 2004); *see also Portland Cement Ass'n v. Ruckelshaus*, 486 F.2d 375, 389 (D.C. Cir. 1973) ("The essential question is whether the mandated standards can be met by a particular industry for which they are set, and this can typically be decided on the basis of information concerning that industry alone"); *Kennecott v. EPA,* 780 F.2d 445, 456 (4th Cir. 1985) ("This court does not have before it the records of the rulemakings for the five other industries; we are, therefore, reluctant to launch comparisons of model technologies established for one industry with those established for another."). The Proposed Rule's indiscriminate use of a threshold for "cost-effectiveness" from another industry, despite no reason to believe it is cost-effective for this industry (coke manufacturing), let alone this unique facility (Jewell), is arbitrary.

IX. THE PROPOSED MACT LIMITS FOR SUNCOKE'S HNR FACILITIES ARE UNNECESSARY, BASED ON LIMITED AND/OR UNRELIABLE DATA, AND NOT "ACHIEVABLE"

EPA's proposed MACT limits for SunCoke's HNR facilities are unnecessary and are based on limited and, in some circumstances, unreliable data, among other data issues, and are therefore not "achievable." The proposed amendments are inconsistent with EPA's Risk and Technology Review ("RTR") findings for the PQBS source category. EPA found through its RTR that risks due to the HAP emissions from coke ovens' PQBS are "acceptable"; that the existing PQBS rule "provides an ample margin of safety to protect public health"; and that there "are no developments in practices, processes or control technologies that necessitate revision of standards for this source

[26] Attachment D (TRC Technical Memo, Workbook, "Utility Cost Summary").
[27] Attachment D (TRC Technical Memo).

ED_021114A_00008786-00026

category. 88 Fed. Reg. 55858, 55858 (Aug. 16, 2023). Yet EPA nonetheless proposes new MACT limits under CAA Sections 112(d)(2) and 112(d)(3) for the stated purpose of complying with its interpretation of *LEAN v. EPA*, 955 F.3d 1088 (D.C. Cir. 2020). 88 Fed. Reg. at 55863 ("The EPA is required to address regulatory gaps, such as missing MACT standards for listed air toxics known to be emitted from the source category. *Louisiana Environmental Action Network (LEAN) v. EPA*, 955 F.3d 1088 (D.C. Cir. 2020)."); *id.* at 55876 n.25 (citing to *LEAN* as support for its proposal of MACT standards).

EPA's approach for evaluating and including the data it reviewed, and translating that data into proposed emission limits, is flawed for the following reasons described herein. These data issues result in MACT limits that do not approximate the limits "achieved" by the best-performing five sources, and therefore do not comply with the CAA. EPA should reevaluate and revise these proposed MACT limits, including addressing the issues described in this section.

A. The CAA Does Not Require EPA to Impose the Proposed MACT Limits on SunCoke's HNR Facilities

The CAA requires each source category's emission standard to address the recognized hazardous pollutants that the source category is known to emit. *See LEAN v. EPA*, 955 F.3d 1088 (D.C. Cir. 2020); *Nat'l Lime Ass'n v. EPA*, 233 F.3d 625, 634 (D.C. Cir. 2000). EPA's overly expansive interpretation of this requirement leads the Agency to impose unnecessary and ill-informed MACT floor limits on an industry (heat/non-recovery cokemaking) that EPA recognizes adequately controls HAP emissions.

CAA Section 112(f) directs EPA to evaluate whether the risk remaining after application of MACT standards is "acceptable" and, if it is not acceptable, directs EPA to take additional steps to address that risk as necessary "to provide an ample margin of safety to protect public health." 42 USC § 7412(f)(2). "[A]s a general matter, EPA has stated that where we determine that existing standards are adequate to protect public health with an ample margin of safety and prevent adverse effects, it is unlikely that EPA would revise MACT standards merely to reflect advances in air pollution control technology." 72 Fed. Reg. 5510, 5532 33 (Feb. 6, 2007).

CAA Section 112(d)(6) directs EPA to periodically "review, and revise as necessary (taking into account developments in practices, processes, and control technologies), emission standards promulgated under this section." 42 USC § 7412(d)(6); *see also infra* Section XI. "Necessary" is modified and must be interpreted by the parenthetical that follows it, i.e., "taking into account developments in practices, processes and control technologies." *See, e.g., Nat'l Assoc. for Surface Finishing v. EPA*, 795 F.3d 1, 5 (D.C. Cir. 2015) (stating that EPA must conduct a "technology review" to determine "whether standards [for an industry] should be tightened in view of developments in technologies and practices since the standard's promulgation or last revision").

EPA found through its RTR that risks due to the HAP emissions from coke ovens' PQBS are "acceptable"; that the existing PQBS rule "provides an ample margin of safety to protect public health"; and that there "are no developments in practices, processes or control technologies that necessitate revision of standards for this source category." 88 Fed. Reg. 55858, 55858 (Aug. 16, 2023).

ED_021114A_00008786-00027

EPA's sole reason for proposing the new MACT limits is to comply with its interpretation of *LEAN v. EPA*, 955 F.3d 1088 (D.C. Cir. 2020). While *LEAN* requires that EPA "address" all HAPs known to be emitted by a source category, it does not mandate that EPA set numerical MACT floors for every HAP, particularly those that are already controlled to an adequate margin of safety. *LEAN v. EPA*, 955 F.3d 1088, 1097 (D.C. Cir. 2020) ("an emission standard includes *as many limits as needed* to control all the emitted air toxics of a particular source category") (emphasis added). The unachievable numerical limits proposed by EPA purportedly regulate previously "unregulated" but already adequately controlled HAPs. *Cf.* Section II (describing EPA's analysis of HAP emissions in prior coke oven source category rulemakings). EPA should conclude, consistent with the CAA, and the *LEAN* decision, that it is not "necessary" to amend the MACT standard to include these limits.

B. EPA Should Have Included All Available Emissions Data When Setting the MACT Standards for Sources

EPA ignored relevant data when establishing the MACT floor limits. When establishing a "MACT floor," EPA must reflect the emission limits "achieved" by the "best performing" sources. *See, e.g.*, *Sierra Club v. EPA*, 353 F.3d 976, 980 (D.C. Cir. 2004). Where, as here, there are fewer than 30 sources in a category or subcategory, the MACT floor for existing sources must be at least as stringent as "the average emission limitation *achieved* by the best performing 5 sources (for which the Administrator has or could reasonably obtain emissions information)." 42 USC § 7412(d)(3)(B) (emphasis added).[28] In determining the "average," EPA must consider variability and set the standard at a level that the source can meet "every day and under all operating conditions." *Mossville Envt'l Action Now v. EPA*, 370 F.3d 1232, 1232 (D.C. Cir. 2004).

For this rulemaking, EPA calculated the MACT floor limits for the "previously unregulated HAP emissions" by ranking data and determining the top five (5) sources with emissions information, as per CAA sections 112(d)(2) and (3) for existing sources, then calculating the upper predictive limit ("UPL").[29] 88 Fed. Reg. 55858, 55876 (Aug. 16, 2023). The UPL calculation relies upon estimating the true average and true variance. While the estimation of the average can be confidently done with a small number of samples, the estimation of the variance requires a substantially larger number of samples and in particular samples that cover the range of varying factors. EPA's methodology results in proposed MACT limits that do not approximate the limits "achieved" by the best-performing five sources, and therefore do not comply with the CAA. In fact, the five best performing sources cannot reliably meet EPA's proposed limits based on their own testing data, which EPA did not consider in its evaluation of the MACT floor. EPA should reevaluate these proposed MACT floor limits, ensuring that it considers the full range of historic

[28] For *new* sources in a category or subcategory, the MACT standard may not be less stringent than the emission control that EPA determines is achieved in practice by the best controlled similar source. 42 U.S.C. § 7412(d)(3). SunCoke's comments focus on EPA's establishment of MACT standards for *existing* sources, since all SunCoke HNR coke plants constitute "existing sources." *See supra* Section VII. To the extent EPA believes any of SunCoke's HNR coke plants constitute a "new source" for purposes of the proposed amendments, SunCoke makes similar arguments with respect to EPA's development of the MACT standards, and notes that EPA is required to set limits based on worst foreseeable circumstances for best performing sources. *Sierra Club v. EPA*, 167 F.3d 658 (D.C. Cir. 1999).

[29] A UPL is a statistical tool that EPA uses to account for the variability inherent to emissions and emissions testing.

ED_021114A_00008786-00028

test data available, but only data that is from analogous, non-defunct facilities, using scientifically and statistically reliable collection methods.

C. EPA Should Not Impose MACT Floor Limits on HNR Pushing Operations

1. HNR Pushing Emissions are Too Minuscule to Necessitate A Limit

SunCoke's emissions from its pushing operations are *de minimis* and do not warrant any additional regulation or testing. In fact, additional testing would yield unreliable and potentially false results because the proposed limit and potential emission amounts are so low. For this reason, EPA should not require additional emissions standards associated with pushing.

Pushing is an intermittent emissions source. Emissions occur only during production, and only intermittently during production when the coke bed is pushed and travels to the quench tower. As such, pushing typically results in less than three (3) hours of actual emissions activity each day. Data presented in EPA's memo on HAP emissions from Coke Oven Facilities shows that estimated Total HAPs from Pushing at HNR facilities are typically less than 1 tpy.[30] Estimated emissions of individual HAPs, as presented in the same memo, are less than the reporting thresholds (for health risk analysis) established by many state agencies.[31] Thus, pushing HAPs are insignificant and any potential HAP emissions are already minimized by maintaining compliance with the existing PM limits on pushing.

Considering the intermittent nature of pushing emissions and the insignificant levels of HAP emissions, any new emission limits and testing requirements for pushing are unnecessary and burdensome. As noted by the D.C. Circuit, the *de minimis* doctrine serves "to alleviate 'severe' administrative and economic burdens by lifting requirements on 'minuscule' emission increases." *New York v. EPA*, 443 F.3d 880, 888 (D.C. Cir. 2006). Further, "the literal meaning of a statute need not be followed where the precise terms lead to absurd or futile results, or where failure to allow a de minimis exception is contrary to the primary legislative goal." *State of Ohio v. EPA*, 997 F.2d 1520, 1535 (D.C. Cir. 1993). It is within EPA's authority to set aside trivial applications of a regulation, particularly in this instance, where testing would do nothing more than yield unreliable results and frustrate the purposes of the regulation. *Alabama Power Co. v. Costle*, 636 F.2d 323, 361 (D.C. Cir. 1979) ("The 'de minimis' doctrine that was developed to prevent trivial items from draining the time of the courts has room for sound application to administration by the Government of its regulatory programs . . . .") (citing *District of Columbia v. Orleans*, 406 F.2d 957, 959 (1968)). Because the proposed limit and potential emission amounts are so low, EPA should not impose additional emission standards on the HNR facilities' pushing operations.

2. Mercury Emissions from Pushing Are Too Low for Establishing A Practical Emission Limit

Mercury emissions from SunCoke's pushing operations are also too low to permit scientific measurement of whether they comply with the proposed limits. A review of the individual sample

[30] EPA-HQ-OAR-2003-0051-0763, EPA, Memorandum, *HAP Emissions from Coke Oven Facilities*, May 1, 2023.

[31] https://www.phila.gov/media/20220218095051/AMR-VI-Risk-Assessment-Technical-Support-Document-09-14-2021.pdf; https://nj.gov/dep/airtoxics/Technical%20Support%20Document.pdf.

ED_021114A_00008786-00029

fractions in each test run of the SunCoke Middletown ICR Method 29 test show that the measured values in each sample fraction were either below the Method Detection Limit ("MDL") or barely above the MDL (1x to 2x MDL). Using such noise-level data to establish emission limits is unreasonable. Normal variability in measurement error on future stack test programs will make it difficult, if not impossible, to stay compliant with such low limits. The proposed MACT limit is so low that it allows for significant sampling error.

3. HNR Pushing Emissions are Different from ByP Pushing Emissions

EPA improperly used data collected from ByP pushing control devices to develop emission limits for SunCoke's unique pushing control devices; the data collected from ByP coke plants is not representative of SunCoke's HNR operating conditions. EPA's proposal to impose the same pushing emission limits on coke oven batteries in 40 C.F.R. § 63.7290(b-c) regardless of the type of coking technology—diverges from Subpart CCCCC's long-standing practice of distinguishing between HNR and ByP facilities for emission limits and work practice standards.

Pushing emissions at ByP facilities are controlled using stationary devices (baghouses), whereas HNR facilities use a cokeside shed or mobile multiclone (on the hot car) to control pushing emissions. The current rule on pushing emissions distinguishes between HNR and ByP facilities by setting separate limits; it is clear from the plain language of the rule and its descriptions of the distinct capture systems and control devices which of the rule's limits apply to HNR or ByP coke facilities.[32] The proposed amendments would impose the same emission limits regardless of the type of coking process or the type of capture and control device used, which is neither appropriate nor reasonable since the design and operation of SunCoke's cokemaking process is fundamentally different than ByPs, resulting in differences in emissions. While EPA properly accounted for these differences in the original MACT standard, it ignored them in the Proposed Rule.[33] EPA should establish separate limits for HNR and ByP facilities, consistent with EPA's long-standing practice of differentiating between the technologies.

EPA's use of ByP data to establish the proposed pushing limits applicable to HNR facilities is improper and arbitrary. EPA's technical memorandum (MACT memo) indicates that it used testing data from both HNR *and* ByP facilities to establish the proposed pushing limits.[34] It was unreasonable for EPA to use data from ByP facilities to establish limits for the HNR facilities. Differences in the design and operation of HNR and ByP facilities result in differences in their

---

[32] The current rule on pushing emissions, 40 C.F.R. § 63.7290, limits PM emissions from pushing. The current rule's PM limits differ in form and numerical value depending on the type of capture system used and whether the control device is stationary or mobile. While the capture and control devices in use primarily control PM emissions, they also help reduce HAP emissions, as EPA acknowledged in the 2003 final rule. *See* 68 Fed. Reg. at 18015. EPA should have therefore followed the same approach (as setting PM limits) when it proposed limits on HAPs from pushing.

[33] For example, the proposed new paragraph (b) in the redline version of the Proposed Rule would impose a mercury emissions limit of 3.4E-07 lb/ton coke on "a control device applied to pushing emissions from a new coke oven battery" or 8.9E-07 lb/ton coke from an "existing coke oven battery." The proposed new limits would therefore apply to any type of control device applied to pushing emissions on any type of coking process. This is neither appropriate nor reasonable.

[34] EPA-HQ-OAR-2003-0051-0785, EPA, Memorandum, *Maximum Achievable Control Technology Standard Calculations, Cost Impacts, and Beyond-the-Floor Cost Impacts for Coke Oven Facilities under 40 CFR part 63, subpart CCCCC)*, at B-6 and Tables B-1 through B-4 (May 1, 2023).

ED_021114A_00008786-00030

respective emissions. Flat car pushing, which is used at HNR facilities, is much different than conventional pushing which occurs at ByP facilities. With conventional pushing at ByP facilities, the coke bed falls into a hot car where it breaks apart and produces the traditional large hot pushing plume. The plume may be collected by either a mobile shed or by a large stationary coke side shed. With flat car pushing at HNR facilities, the coke bed is pushed onto a flat car with a hood that encloses the bed on the sides and top. Air from this hood is ducted to an air pollution control device, fan, and stack on a mobile car. These significant differences in the pushing process and the capture/control equipment warrant separating pushing emissions by process type and control type, as EPA has done in the past.

It also was unreasonable for EPA to use test data from closed ByP facilities to establish the new proposed pushing emission limits. EPA used testing data from the ByP facility in Middletown, Ohio (formerly, AK Steel Middletown), to develop the proposed limits,[35] even though Cleveland-Cliffs, which now owns the facility, idled these coke ovens in 2021. The CAA requires EPA to average emissions achieved by the "best performing" five (5) sources; a source that has shuttered its doors obviously is not "performing" at all. 42 USC § 7412(d)(3). Historically, only operating sources are included in the MACT floor analysis. EPA did not consider test data from other closed ByP facilities in its MACT floor calculations. EPA's MACT memo notes, for example, that while the Erie Coke facility conducted testing per the Section 114 request in 2016, the Agency did not include its emissions data in the MACT floor calculations because "the Erie Coke facility was shut down in late 2019."[36] Consistent with its approach with Erie Coke's data, EPA should also have excluded data from AK Steel Middletown from the MACT floor calculations for pushing.

4. Installing Additional Controls on Hot Car is Technically Infeasible

Installing additional controls on an HNR flat push hot car for controlling any of these pollutants is technically infeasible because the hot car is mobile, is subject to significant vibration, and has very limited space or structural capacity for additional equipment. HNR facilities' configuration does not allow for baghouses on the flat push hot car; SunCoke ovens are horizontal and their batteries and tunnels are longer, whereas ByP ovens are vertical and their batteries and tunnels are shorter. SunCoke would not be able to pull sufficient draft to run a baghouse, thus creating the potential for positive pressure. SunCoke's technology requires this configuration, and it would be unreasonable to require SunCoke to reconfigure its equipment at existing HNR facilities, particularly given the facilities' current use of other more suitable control devices (e.g., cokeside shed, mobile multiclone).

5. EPA Considered Data Collected Using Unreliable and "Abandoned" Test Method

EPA incorrectly established the proposed pushing limits for hydrogen cyanide (HCN) emissions using test data from an obsolete method. These proposed limits were established using

[35] EPA-HQ-OAR-2003-0051-0785, EPA, *Memorandum, Maximum Achievable Control Technology Standard Calculations, Cost Impacts, and Beyond-the-Floor Cost Impacts for Coke Oven Facilities under 40 CFR part 63, subpart CCCCC)*, at 4 and Table 1 (May 1, 2023).
[36] *Id.*

ED_021114A_00008786-00031

2016 ICR test data (from the SunCoke Middletown facility) that was collected using the Zinc Acetate method.[37] EPA acknowledges in its *Summary of Coke Ovens Risk and Technology Review: Data Summary* that "EPA abandoned the zinc acetate approach in mid-2017 due to its limited dynamic range of measurement, i.e., poor and inconsistent sample recovery."[38] Proposing limits using data collected from a test method that EPA has abandoned due to poor and inconsistent performance is arbitrary.

D. EPA's Methodology for Establishing the Proposed MACT Floor Limits for HNR HRSG Main Stacks was Flawed[39]

1. EPA Arbitrarily Limited Its Analysis to a Small Subset of Available Test Data, and Failed to Control for Differing Oxygen Levels in the Data it Sampled

EPA incorrectly established the proposed HNR HRSG main stack emission limits using only a limited subset of the available data, thus the data set is incomplete and not representative of SunCoke's HNR operating conditions. EPA included test data from the 2016 ICR and the 2022 ICR in its MACT floor calculations. The 2016 ICR and 2022 ICR data are very limited data set. A much larger dataset that more accurately represents trial-to-trial and plant-to-plant variations is available from compliance tests conducted on these sources in prior years. EPA provides no explanation for why it excluded this larger body of stack test data from its MACT floor calculations.

EPA used a statistical tool known as the UPL to seek to account for expected variability and uncertainty in emissions data to establish MACT floor standards.[40] *U.S. Sugar Corp. v. EPA*, 830 F.3d 579, 598 (D.C. Cir.), *on reh'g en banc*, 671 F. App'x 822 (D.C. Cir. 2016), *and on reh'g en banc in part*, 671 F. App'x 824 (D.C. Cir. 2016). EPA's use of the limited data set and its UPL approach did not reasonably account for variability. There are too few data points for a statistically valid analysis and limit. The UPL calculation relies upon estimating the true average and true variance. While the estimation of the average can be confidently done with a small number of samples, the estimation of the variance requires a substantially larger number of samples and in particular samples that cover the range of varying factors.

EPA's decision to base the Proposed Rule requirements on limited data is arbitrary and capricious. EPA gave no explanation for its decision to ignore relevant information provided by

---

[37] TEST REPORT FOR ICR TESTING AT SUNCOKE ENERGY, INC. FACILITIES REV. 1, Nov. 2017, AECOM Technical Services, Inc. The 2016 ICR test data that EPA used included data from SunCoke MTO. SunCoke's test plan and test report for the 2016 ICR testing shows that it used the Zinc Acetate method for HCN.

[38] EPA-HQ-OAR-2003-0051-0778, EPA, Memorandum, *Coke Ovens Risk and Technology Review: Data Summary*, at 30, Table 13 (May 1, 2023).

[39] Although EPA defines "HNR" to include "heat and nonrecovery, *or only nonrecovery, no heat*," and identifies Jewell as an HNR facility, SunCoke reminds the Agency that Jewell does not have a main stack or a HRSG, and therefore Jewell would not be subject to the proposed HRSG main stack limits. 88 Fed. Reg. at 55860, 55864, 55877. *Contra* EPA-HQ-OAR-2003-0051, EPA, Memorandum, *Coke NESHAP Redline Version of Proposed Rule Changes for 40 CFR part 63, subpart CCCCC* (Jul. 1, 2023) (proposing amendments to 40 C.F.R. § 63.7297).

[40] EPA-HQ-OAR-2003-0051-0664, EPA, Memorandum, *Approach for Applying the Upper Prediction Limit to Limited Datasets* (May 1, 2023).

ED_021114A_00008786-00032

the very types of facilities to which the proposed limits would apply. Agencies "must *examine the relevant data* and articulate a satisfactory explanation for its action including a 'rational connection between the facts found and the choice made.'" *Motor Vehicle Mfrs. Ass'n v. State Farm Mut. Ins. Co.*, 463 U.S. 29, 43 (1983) (emphasis added) (quoting *Burlington Truck Lines v. United States*, 371 U.S. 156, 168 (1962)); *see also* EPA, *Guidelines for MACT Determinations under Section 112(j) Requirements* (Feb. 2002) ("It is not necessary for the MACT floor to be determined based on emissions information from every existing source in the source category or subcategory if such information is not available. The permitting authority, however, should check with EPA Regional Offices and EPA Headquarters for *any available information* that could be used in determining the MACT floor.") (emphasis added).

In addition, the proposed HNR HRSG main stack emission limits are expressed purely on a concentration basis (gr/dscf) without normalization to a reference O_2 level. Concentration-based emission limits that are not corrected to a reference oxygen level will simply allow dilution of the stack gas with excess air as a means of complying with the emission limits. Similarly, the test data used in the MACT floor analysis to develop the concentration-based emission limits were uncorrected data. The individual data points used in the calculations are associated with varying oxygen levels in the stack. These data points should be corrected to a consistent reference oxygen level before being used in the calculations.

EPA must recalculate the HNR HRSG main stack limits using all available stack test data from 2006 through 2022 from SunCoke HNR HRSG main stacks at Haverhill, Middletown, and Granite City, and the Cokenergy HRSG main stack at Indiana Harbor, corrected to a consistent reference oxygen level. The 45-day comment period did not provide sufficient time for SunCoke to fully evaluate and propose more appropriate and accurate revised limits. Nonetheless, SunCoke's preliminary estimates correcting these two errors – i.e., the arbitrarily confined dataset used and the failure to correct for oxygen levels to enable separately collected datapoints to be meaningfully compared – demonstrate that the UPL used must be revised significantly.

2. The Proposed Compliance Date is Insufficient and Unreasonable

The Proposed Rule specifies that sources must be in compliance with the proposed HNR HRSG main stack limits within one (1) year of publication of the final rule. 88 Fed Reg. 55858, 55893 (Aug. 16, 2023). Yet the Proposed Rule would, for the first time, impose emission limits for HRSG main stacks (and HRSG bypass/waste heat stacks), among other major changes to Subparts L and CCCCC. One year is not sufficient to establish new controls necessary for compliance with these new limits. Haverhill's P901 HRSG main stack source will likely require SunCoke to install an Activated Carbon Injection (ACI) system to control mercury emissions from the HRSG main stack and meet any proposed or revised mercury limit. SunCoke expects installation of the ACI system to cost approximately $3 million – not including annual operating costs or costs for the activated carbon. The mercury control efficiency will vary widely depending on the inlet mercury loading and the actual control efficiency of the system; however, SunCoke estimates that it would cost at a minimum $6 million per ton of mercury removed.

SunCoke estimates that it would need at least three (3) years to develop and install the system. This extra time would be necessary due to long lead equipment items exacerbated by continued supply chain challenges, retrofit challenges for installing these controls on an existing system that is currently operating, and extensive startup and shakedown testing (for determining operational readiness) that is expected to take an extended period of time based on SunCoke's prior experience operating these systems at other facilities. It could take even longer than three (3) years to develop and install the system if Haverhill is required to minimize emissions during construction. SunCoke has not had sufficient time to fully evaluate the placement and process for installing the ACI system at Haverhill P901.

To the extent that the Proposed Rule is finalized in a manner that requires SunCoke to comply with these requirements, SunCoke requests EPA to change the compliance date to three (3) years after publication of the final rule, given the extensive nature of the proposed amendments. EPA has the discretion under 42 U.S.C. §7412(a)(3) to establish a compliance date of three (3) years after the effective date of any emissions standard, limitation, or regulation promulgated under that section. EPA has provided additional time in other rulemakings to, for example, provide time for installing or retrofitting controls when necessary. *See, e.g., National Emission Standards for Hazardous Air Pollutants: Miscellaneous Organic Chemical Manufacturing*, 70 Fed. Reg. 73098, 73100 (Dec. 8, 2005) ("Congress provided us discretion to set a compliance date for existing sources of up to 3 years in order to provide time for retrofitting of controls where necessary.").

E. EPA's Methodology for Establishing the Proposed MACT Floor Limits for HRSG Bypass/Waste Heat Stacks was Flawed[41]

1. EPA Arbitrarily Limited Its Analysis to a Small Subset of Available Test Data, and Failed to Control for Differing Oxygen Levels in the Data it Sampled

EPA incorrectly established the proposed HNR HRSG bypass/waste heat stack emission limits using only a limited selection of the available data, similar to EPA's approach for establishing the HNR HRSG main stack emission limits, thus the data set is incomplete and not representative of SunCoke's HNR operating conditions. *See supra* Section IX.D.1. EPA similarly used only test data from the 2016 ICR and the 2022 ICR in the MACT floor calculations, ignoring

---

[41] Although EPA defines "HNR" to include "heat and nonrecovery, *or only nonrecovery, no heat*," and identifies Jewell as an HNR facility, SunCoke reminds the Agency that Jewell does not have a HRSG, and therefore the proposed amendment's reference to *HRSG* bypass/waste heat stacks is confusing and should be revised. 88 Fed. Reg. at 55860, 55864, 55877. *Contra* EPA-HQ-OAR-2003-0051, EPA, Memorandum, *Coke NESHAP Redline Version of Proposed Rule Changes for 40 CFR part 63, subpart CCCCC* (Jul. 1, 2023) (proposing amendments to 40 C.F.R. § 63.7298).

Additionally, SunCoke respectfully requests that the test period identified in the redlined version of the proposed changes to 40 C.F.R. § 63.7321(b)—"once every five years"—be changed to "once during each Title V operating permit term," which is consistent with other MACT performance test requirements. This change ensures that bypass vent stack testing meets the proposed test schedule since it can only be tested during periods of FGD maintenance and also allows testing to be conducted at the same time as other tests already required under Subparts L and CCCCC.

ED_021114A_00008786-00034

a larger and more representative dataset that better accounted for test-to-test and plant-to-plant variations. EPA's use of the limited data set and its UPL approach was arbitrary. *See id.*

In addition, similar to EPA's approach for establishing the HNR HRSG main stack emission limits, the proposed HNR HRSG bypass/waste heat stack emission data were improperly analyzed without first correcting the data points to a consistent reference oxygen level, making it impossible to compare them. For the same reason, the proposed limits (which are expressed purely on a concentration basis (gr/dscf) without normalization to a reference O_2 level), would be ineffective because the limits can be met simply by diluting the stack gas with excess air as a means of complying with the emission limits. *See supra* Section IX.D.1.

EPA must recalculate the HNR HRSG bypass/waste heat stack limits using all available stack test data from 2006 through 2022 from SunCoke HNR HRSG bypass/waste heat stacks at Haverhill, Middletown and Granite City, and Indiana Harbor, corrected to a consistent reference oxygen level. The 45-day comment period did not provide sufficient time for SunCoke to fully evaluate and propose more appropriate and accurate revised limits. Nonetheless, as with the proposed HNR HRSG Main Stack limits, SunCoke's preliminary estimates correcting these two errors – i.e., the arbitrarily confined dataset used and the failure to correct for oxygen levels to enable separately collected datapoints to be meaningfully compared – demonstrate that the UPL used must be revised significantly.

2. The Proposed Limits are Not "Achievable" Under Section 112(d)(2) Because No Technically Feasible Controls Exist that Would Meet Them

EPA's analysis indicates that the proposed emission limits on the bypass vent stacks can be achieved at SunCoke's plants (with the exception of the Jewell Coke plant) with no additional controls. However, as described in great detail above, the emission limits are based on a very limited data set. Additional controls may be required to meet the proposed bypass vent limits at some or all of SunCoke's heat recovery facilities.[42] The waste gases exiting the bypass vent stacks are typically in the 1300°F to 2000°F temperature range. To install any kind of additional pollution control equipment on the bypass vent stacks would first require cooling the high temperature waste gases significantly, using HRSGs or similar equipment, to a level that is appropriate for the specific control equipment. The current layout of the plants and the limited space available in and around the bypass vent stacks make it extremely challenging to design and install additional HRSGs, route additional ductwork and install any additional control equipment for the bypass vent stacks. Even if this could be engineered, the cost effectiveness ($/ton removed) would be extremely high considering the fact that the bypass vent stacks are used and open for venting only a fraction of the time on an annual basis. Even then, any time that bypass venting was required for any reason, the source would not be able to meet the proposed limits because it is not technically feasible to install controls directly on waste heat stacks.

[42] Controls needed for Jewell are discussed separately in Section VIII and Attachment D.

ED_021114A_00008786-00035

X. PROPOSED PERFORMANCE TESTING REQUIREMENTS FOR PUSHING ARE NOT FEASIBLE

The Proposed Rule proposes using either Method 320 or ASTM D6348 as the compliance test method for HCN emissions from pushing.[43] Both test methods use Fourier Transform Infrared ("FTIR") analyzer equipment. There are several challenges with setting up and collecting reliable test data using FTIR equipment on a mobile hot car during production. The hot cars ride on steel rails with limited suspension and are subject to high vibration and strong jolts. The FTIR analyzer has moving mirrors inside and alignment errors caused by jostling of the equipment and excessive vibrations adversely impact the measurements and the reliability of the results. Space on the mobile hot car is very limited; there is no available space for an instrument rack with FTIR equipment and calibration gas cylinders on the hot car.

A. Minimum Sample Volume for Mercury and PAHs Test Methods Are Too High

EPA's proposed minimum sample volume for Method 29 (Mercury) and Method 23 (PAHs) are unnecessarily high given the low levels of mercury and PAHs expected in the sample gas (based on SunCoke's previous test data). Pushing is a brief and intermittent activity that includes pushing coke from inside of an oven to the hot car and transport of the coke loaf to the quench tower. This pushing process lasts between two and four minutes for each oven. In order to measure emissions during this intermittent process, sampling is conducted during the push of each oven on as many ovens as is necessary to achieve the specified sample volume. In order to collect the Agency's proposed minimum sample volume of 105 dry standard cubic feet ("dscf") for Method 29 (Mercury) and 140 dscf for Method 23 (PAHs), testing would need to occur over a month to safely perform isokinetic testing (i.e., one run at a time) on one hot car.

For example, at a 100 coke oven facility (such as the two units at Haverhill and the one unit at Middletown), only 50 ovens are pushed per day. Sampling of pushing could only occur 100 to 200 minutes per day, or 1.7 to 3.3 hours per day. Consequently, it could take 2 to 3 days to collect a single run (and ultimately one month to collect all necessary runs). Conducting testing for such an extended period not only raises personnel safety concerns, but also serves to disrupt critical aspects of production and maintenance. Any issues that arise during testing would extend the test period and disrupt the production schedule; pushing and charging ovens on a set schedule is key to consistently producing high quality coke for the steel industry. The proposed test method would therefore require testing under non-representative conditions due to the method's impacts on the production cycle. The daily production schedule is designed to maintain stable oven temperatures necessary for coking and oven health, minimize the need to add in other carbon-based fuels like diesel or natural gas to increase oven temperature, and to preserve the daily window for conducting maintenance on production related equipment by starting and ending production on time.

---

[43] EPA-HQ-OAR-2003-0051, EPA, Memorandum, *Coke NESHAP Redline Version of Proposed Rule Changes for 40 CFR part 63, subpart CCCCC* (Jul. 1, 2023) (proposing amendments to 40 C.F.R. § 63.7322(e)).

ED_021114A_00008786-00036

SunCoke implores EPA to establish minimum sample volumes of 70 dscf to allow one isokinetic test run to be safely completed in one day. However, as previously discussed, the intermittent nature of pushing emissions and the insignificant levels of Mercury and PAH emissions, make any new emission limits and related testing and sample collection requirements unnecessary and burdensome.

XI. EPA'S TECHNOLOGY REVIEW DOES NOT SUPPORT REQUIRING BENZENE FENCELINE MONITORING AT HNR FACILITIES UNDER SECTION 112(D)(6)

EPA lacks authority to impose fenceline monitoring at HNR facilities because there is no evidence that the monitoring requirements are "necessary" under Section 112, taking into account developments in practices, processes, and control technologies. Monitoring data shows virtually no fugitive emissions from HNR facilities because they operate under negative pressure. EPA has not provided any reason why fenceline monitoring at HNR facilities is "necessary." It appears that EPA's motivation is not driven by emissions reductions. Instead, the Agency suggests that the reasons for this requirement relate to environmental justice and a desire to "provide fenceline communities with greater access to information." 88 Fed. Reg. at 55903. If EPA moves forward with the proposed monitoring requirements as applied to SunCoke, the Agency will exceed its statutory authority by regulating ambient air under a provision of the CAA that authorizes only its regulation of "sources" of HAP emissions and by usurping the legislative function to achieve policy goals unrelated to its statutory authority. In addition, the proposal does not include a sunset provision, like that proposed in the NESHAP for integrated iron and steel plants, which would allow HNR facilities an escape from the unceasing obligation to survey and monitor for benzene based on what the surveys reveal and what degree of compliance they achieve. *See, e.g.*, 88 Fed. Reg. 49402, 49419 (Jul. 31, 2023).

Section 112(d)(6) requires EPA to "review, and revise as necessary (taking into account developments in practices, processes, and control technologies), emission standards promulgated under this section." 42 USC § 7412(d)(6). Under this process, EPA assesses whether existing standards for regulated toxics "should be tightened in view of developments in technologies and practices since the standard's promulgation or last revision, and, in particular, the cost and feasibility of developments and corresponding emissions savings." *Nat'l Ass'n for Surface Finishing v. EPA*, 795 F.3d 1, 5 (D.C. Cir. 2015). As used in the statute, "[n]ecessary" is modified and must be interpreted by the parenthetical that follows it, i.e., "taking into account developments in practices, processes and control technologies." *Nat. Res. Def. Council v. EPA*, 529 F.3d 1077, 1084 (D.C. Cir. 2008) (describing EPA's finding of no "significant developments in practices, processes and control technologies," as "the *core requirement* of subsection 112(d)(6)") (emphasis added).[44]

EPA's RTR "did *not* identify any developments in practices, processes or control technologies" relevant to coke oven doors or benzene fenceline monitoring. 88 Fed Reg. 55858, 55883 (Aug. 16, 2023) (emphasis added). Despite finding no facts that would support the statute's

[44] The D.C. Circuit held in *Louisiana Envt'l Actin Network v. EPA* that, at least for previously unregulated toxic substances, the three listed factors are not exhaustive. 955 F.3d 1088. But requirements proposed as part of the technology review must nonetheless be "necessary" to achieve an existing emissions standard or other requirement of the CAA.

ED_021114A_00008786-00037

prerequisite for regulating, EPA proposed a benzene fenceline monitoring requirement, a benzene action level (as a COE surrogate), and a root cause analysis and corrective action requirement if the action level is exceeded (collectively, "Fenceline Monitoring Requirements"), ostensibly "[t]o further address fugitive emissions at the Coke Oven Batteries facilities."[45]

The statute clearly requires EPA to "tak[e] into account developments in practices, processes, and control technologies" and to determine whether it is "necessary" to revise the standards. EPA "must give effect to the unambiguously expressed intent of Congress." *Chevron, U.S.A., Inc. v. Nat. Res. Def. Council, Inc.*, 467 U.S. 837, 842-43 (1984). Because there was no necessity with respect to these changes proposed by EPA, the Proposed Rule ignored this mandate and EPA may not legally adopt its proposed Fenceline Monitoring Requirements.

A. Fenceline Monitoring is Unnecessary and May Not Legally Be Adopted

Having concluded that there have been no developments in practice, processes, and control technologies necessitating additional controls, EPA may not legally adopt new control requirements.[46] With respect to SunCoke's HNR facilities, in particular, the Agency offers no basis for requiring Fenceline Monitoring, having concluded that there are no fugitive emissions because the ovens operate under negative pressure. As set forth in greater detail below, because HNR facilities use this unique technology, they must be excluded from any requirements for Fenceline Monitoring that may be adopted.

1. Even If It Were "Necessary" for EPA to Require Fenceline Monitoring at ByP Facilities, The Requirement Should Not Apply to HNR Facilities

---

[45] By contrast, in the Refinery MACT, EPA "determined that there *are* developments in practices, processes and control technologies that warrant revisions to the MACT standards for this [Refinery MACT 1] source category" and finalized a "fenceline monitoring work practice standard to improve the management of fugitive emissions." 80 Fed. Reg. 75,182-83 (Dec. 1, 2015).

[46] The proposed Fenceline Monitoring Requirements are not appropriate work practice standards for HNR facilities. EPA reached that conclusion earlier this year in the Lead Acid Battery RTR and should have similarly done so here. *See* Lead Acid Battery RTR, 88 Fed. Reg. 11,556, 11,566 (Feb. 23, 2023). It explained:

> We received three comments regarding the proposed fugitive dust minimization work practice standard. Environmental groups generally supported the proposal, but they commented that the EPA must require the use of fenceline monitoring and corrective action tied to that monitoring as well as full enclosure negative pressure requirements. We disagree that the use of fenceline monitoring and corrective action tied to that monitoring is an appropriate work practice standard for this source category.

In that rulemaking, EPA stated that it "did not find that fenceline monitoring in the lead acid battery manufacturing source category is a new trend in facility procedures or is generally in use at these facilities." EPA, New Source Performance Standards for Lead Acid Battery Manufacturing Plants And National Emission Standards for Hazardous Air Pollutants for Lead Acid Battery Manufacturing Area Sources, Summary of Public Comments and Responses on Proposed Rules, 87 Fed. Reg. 10134 (Feb. 23, 2022) (Response 4.7). Coupled with the significant economic impacts, EPA made clear that "it was not identified as a development or advancement in emissions reduction control technology or control methods." *Id.* The same is true here: fenceline monitoring is not a new trend in facility procedures or generally in use at HNR facilities.

ED_021114A_00008786-00038

The potential for fugitive emissions from ByP and HNR facilities are entirely different due to important design and operational differences between their respective facilities and operations. *See supra* Section III.A. As EPA acknowledges, the fact that HNRs operate under negative pressure makes a material difference in HNRs' potential for fugitive emissions:

> Ovens at ByP facilities operate under positive pressure and, consequently, leak COE, a HAP, that includes both gases and particulate matter (PM), via oven door jams (''doors''), charging port lids (''lids''), offtake ducts (''offtakes''), and during charging. Ovens at HNR facilities are designed to operate under negative pressure to reduce or eliminate leaks but require maintenance and monitoring to ensure constant operation at negative pressure.

88 Fed. Reg. 55858, 55863 (Aug. 16, 2023). While EPA briefly acknowledges some of the differences, including differences related to fugitive emissions, it nevertheless ignores those differences in its Proposed Rule.

Because byproduct ovens operate under positive pressure, small openings or cracks in byproduct ovens allow raw coke oven gas and HAPs to leak into the atmosphere. In contrast, SunCoke's HNR ovens operate under negative pressure and release the heat of combustion within the oven system. EPA previously acknowledged that operating the coke ovens under negative pressure virtually eliminates the risk of leakage of coke oven emissions through doors or other potential leakage points:

> [T]hese leaks are so infrequent and of such short duration that the annual emissions are orders of magnitude below those from door leaks on by-product batteries, which occur on a continuous basis.

EPA, "National Emissions Standards for Coke Oven Batteries: Background Information for Final Amendments," at 21 (Mar. 31, 2005). Indeed, EPA initially only planned to request fenceline monitoring data from ByP plants; HNR plants were an afterthought because of their minimal fugitive emissions.[47] EPA described multiple reasons to gather benzene fugitive emissions data from ByP plants, but said nothing about fugitives from HNR facilities.[48] As described in greater detail in Section XI.A.4 below, fugitive HAP emissions monitoring conducted at one of SunCoke's plants for ten years demonstrates that there is no impact on ambient HAP levels, and that any emissions are below risk-based screening levels; the state agency agreed with this determination. *See* Attachment E (Letter from Ohio EPA to Haverhill Coke Company, July 14, 2014).

Yet, in determining whether to adopt Fenceline Monitoring requirements in the current rulemaking, EPA selected five coke facilities – four ByP facilities and one heat recovery facility (Haverhill) – to "improve [the Agency's] understanding of fugitive emissions and to potentially address fugitive emissions sources at coke facilities". 88 Fed. Reg. 55858, 55885 (Aug. 16, 2023). Despite recognizing the very significant differences in the potential for fugitive emissions, the

[47] *See* Declaration of Penny Lassister, EPA's Director of Sector Policies and Programs Division in the Office of Air Quality Planning and Standards within the Office of Air and Radiation, May 5, 2022.
[48] *Id.* at Paragraphs 11 and 15.

ED_021114A_00008786-00039

Agency inexplicably lumped the sources together in concluding that Fenceline Monitoring is appropriate. *See infra* Section XI.A. It is impossible to reconcile EPA's current proposal to require Fenceline Monitoring of ByP and HNR with EPA's long-standing recognition that the differences in fugitive emissions between the two are so materially different.

An agency's decision is arbitrary and capricious if "the agency has [] offered an explanation for its decision that runs counter to the evidence before the agency." EPA does not offer any meaningful basis for its decision to require HNR plants to conduct Fenceline Monitoring and its data makes clear that there is no credible basis for doing so. *Sierra Club v. Dep't of the Interior*, 899 F.3d 260, 293 (4th Cir. 2018) (quoting *State Farm*, 463 U.S. at 43). EPA's conclusion suggests that it would have required Fenceline Monitoring regardless of the outcome of its analysis.

2. EPA's Reasons for Proposing Fenceline Monitoring Appear to be Unrelated to its Technology Review

EPA is proposing that coke oven batteries "conduct fenceline monitoring for benzene and report these data electronically to the EPA so that it can be made public and provide fenceline communities with greater access to information about potential emissions impacts." 88 Fed. Reg. at 55903. In other words, EPA is using the Technology Review as a vehicle to implement Executive Order Number 12898, "Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations." 59 Fed. Reg. 7629 (February 16, 1994). But EO 12,898 does not augment EPA's authority under the CAA. *See Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579, 588 (1952) ("The Constitution did not subject this law-making power of Congress to presidential or military supervision or control."). Rather, the Order directs EPA to adopt EJ requirements when "permitted by law," which the Agency is not in this case for the reasons described above.

In addition to being unlawful, providing Fenceline Monitoring data to fenceline communities, as EPA has proposed, tells the public nothing useful about the potential emissions impacts from the facilities because the Proposed Rule "does not correlate to any particular metric related to risk," and because benzene is ubiquitous and the Proposed Rule does not ensure that emissions from offsite sources and non-source category emissions are excluded. 88 Fed. Reg. at 55886. The fugitive HAP emissions monitoring data collected at SunCoke's Haverhill facility is publicly available on EPA's web site and provides more useful information concerning risk to fenceline communities than the proposed fenceline monitoring, demonstrating there is no impact on ambient HAP levels and that emissions are below risk-based screening levels.[49]

3. The Proposed Rule Exceeds EPA's Authority Under CAA Section 112 Because It Does Not Ensure That Emissions From Offsite Sources Are Excluded

Section 112 of the CAA does not authorize EPA to regulate ambient air. *See W. Virginia v. EPA*, 142 S. Ct. 2587, 2600 (2022) ("EPA, though, does not choose which sources must reduce

[49] *See* https://www.epa.gov/outdoor-air-quality-data; *see also* Attachment E (Letter from Ohio EPA to Haverhill Coke Company, July 14, 2014).

ED_021114A_00008786-00040

their pollution and by how much to meet the ambient pollution target"). CAA Section 112 only authorizes EPA to regulate emissions "sources." 42 U.S.C. § 7412(d)(1). Yet in print and in practice, EPA is proposing to regulate ambient air with this rulemaking. EPA proposes that benzene be measured at the fenceline of each coke oven facility using EPA Methods 325A/B. 88 Fed. Reg. at 55885. According to EPA, the facility would then determine a "delta c" in order to subtract out the estimated contribution from background emissions that do not originate from the facility. *Id.* The rolling annual average "delta c" would be compared against the benzene action level and owners and operators would be required to conduct root cause analysis and corrective action upon exceeding the action level. *Id.*

As EPA acknowledges, fenceline monitors measure ambient air concentrations, not facility-specific emissions. *See, e.g., id.* at 55887. While the Proposed Rule contemplates excluding sample results attributable to offsite sources as outliers, *id.* at 55887, in practice, EPA does not allow it. For example, EPA's Petroleum Refinery Sector Rule ("Refinery MACT"), the Agency claimed that the benzene fenceline monitoring program is not an ambient air standard. 80 Fed. Reg. 75178, 75192 (Dec. 1, 2015). The Agency explained that the benzene fenceline monitors must be placed "on the facility fenceline to measure emissions from the facility, i.e., on the property of the refiner." *Id.* The placement, according to EPA, is necessary to establish that the monitors are not monitoring ambient air. *Id.* In addition, the Agency explained that Method 325A sets out procedures to exclude outliers. *Id.*

Despite these assurances in the Refinery MACT, EPA has rejected quarterly reports in which regulated entities have done just that—used Method 325A to exclude benzene fenceline concentrations from offsite sources as "outliers." As a result, refineries are required to report benzene emissions from offsite sources in their quarterly reports, conduct root cause analyses and perform corrective action based on ambient air emissions, including offsite sources, and are not eligible for reduced monitoring if emissions from offsite sources cause the refinery's emissions to be above the benzene action level, all of which violate CAA Section 112.

The Proposed Rule contains the same flaws. The proposed amendments to Subpart L's reporting and recordkeeping requirements refers to Section 9.2 of Method 325A with respect to outliers.[50] In Method 325A, Section 9.2, a potential outlier is defined as "a result for which one or more PS tubes does not agree with the trend in results shown by neighboring PS tubes particularly when data from those locations have been more consistent during previous sampling periods." Method 325A, Section 9.2 also states that "if the anomalous result is not repeated for that monitoring location, the episode can be ascribed to transient contamination and the data in question must be flagged for potential elimination from the dataset." Yet, in practice, EPA has taken the position that "Method 325A does not account for off-site sample contamination" and that the data impacted by an off-site emissions event should not be discarded/eliminated from the delta c calculation as an outlier. This determination is based on precedence established in the Agency's review of similar cases brought to it by refineries when off-site emissions events impacted their benzene fenceline monitors. For these reasons, the Proposed Rule must be revised to clarify that "outliers" necessarily include sample contamination from off-site sources.

[50] EPA-HQ-OAR-2003-0051-0753, EPA, Memorandum, *Coke NESHAP Redline Version of Proposed Rule Changes for 40 CFR Part 63, Subpart L*, at 45 (Jul 1, 2023) (40 C.F.R. § 63.311(j)(7)).

ED_021114A_00008786-00041

The Proposed Rule must make clear that any emissions from outside the facility, or from non-source category emissions from within the facility, must be excluded from the quarterly reports. Otherwise, root cause investigations and corrective action obligations will be triggered based on benzene concentrations in the ambient air and on emissions the Agency lacks authority to regulate. While the Proposed Rule contains narrow exceptions allowing the owner or operator to collect one or more samples if the owner or operator believes that an offsite upwind source has influenced the sampler measurements, provided the regulated entity secures from EPA a site-specific monitoring plan, this exception does not go far enough. 88 Fed. Reg. at 55887. The exclusion must include all offsite sources, not just those that are "upwind," and all non-source category emissions, because EPA has no legal authority to regulate either.

Although EPA claims to "allow the subtraction of off-site interfering sources (because they are not within the control of the owner or operators of coke ovens facilities) through site-specific monitoring plans," the Proposed Rule language does not go this far, i.e., it is limited to offsite, "upwind" sources. 88 Fed. Reg. at 55887. More fundamentally, EPA admits that it is "not providing this option for on-site, non-source category emissions," *id.* at 55887, meaning that EPA intends to violate the law. The action levels are based on facility-wide emissions, which includes non-source category emissions, which EPA may not legally regulate through its Technology Review for COB. Nothing in CAA Section 112 allows EPA to compel monitoring and to trigger work practices requirements based on sources and HAP emissions that EPA may not legally regulate. Yet, 99% of EPA's modeling data was from non-category sources.

If EPA nevertheless adopts a Fenceline Monitoring program, even though it has no legal authority to do so, it must ensure that its flawed implementation of the Refinery MACT, which also is evident in the Proposed Rule, is not repeated:

- Regulated entities should only be required to report source category emissions that originate from source category emissions from their facilities, and there must be clear mechanisms in the regulations to exclude emissions "that do not originate from the facility." *Id.* at 55885.

- Regulated entities should not be required to perform either a root cause or corrective action analysis for emissions that "do not originate from the facility." *Id.* EPA must amend the definition of root cause to make clear that the analysis is limited to source category emissions that originate from the facility. The root cause analysis is an assessment conducted through a process of investigation to determine the primary underlying cause and all other contributing causes to an exceedance of an action level set forth in this rule.

- Coke manufacturers must be eligible for exemptions from reporting or reduced monitoring based on low emissions compared to the action level based on emissions that originate *from the facility*, not offsite sources. Regulatory obligations under a benzene fenceline monitoring program that are triggered by ambient air concentrations, emissions from offsite sources, and emissions from non-source categories violate Section 112 of the CAA.

As written, the Proposed Rule regulates ambient air and is illegal.

4. EPA's Action Level Is Technically Flawed and, Therefore, Arbitrary

If the Proposed Rule was adopted in its current form, regulated entities would be required to conduct root cause analysis and corrective action upon exceeding an entirely arbitrary annual average concentration "action level" for benzene of 3ug/m^3. As EPA explains, the action level does not correlate to any particular metric related to risk. 88 Fed. Reg. at 55886. Rather, the action level is based on modeling fenceline benzene concentrations using benzene emissions inventories in the facility wide risk assessment, and assuming that the reported emissions represented full compliance with all standards, adjusted for additional proposed control requirements. *Id.* at 55885. For purposes of its modeling analysis, EPA assumed that the nearest *off-site* polar grid receptor was the best representation of each facility's fenceline concentration, unless there was a census block centroid nearer to the fenceline than the nearest off-site polar grid receptor, or an actual receptor was identified from review of the site map. *Id.* at 55887.

In other words, the action level was derived based on modeled offsite concentrations of benzene rather than the benzene concentrations actually detected at the facility fenceline. *Id.* Only receptors that were estimated to be outside the facility fenceline were considered in determining the maximum benzene level for each facility, which also corresponded with the maximum benzene concentration modeled at the fenceline. And, although EPA acknowledged that "[d]ue to differences in short-term meteorological conditions, short-term (i.e., 2-week average) concentrations at the fenceline can vary greatly," EPA did not adjust the action level to account for this "great" variability. *Id.* EPA, without any support, assumed that a 2-week measurement period would take care of the "great" variability. *Id.*

More importantly, EPA's "modeling exercise" appears to entirely ignore the actual sampling data which showed that the "[a]verage benzene Δc concentrations ranged from 0.1 to 40 ug/m3 . . . at the fenceline."[51] As a result, some facilities would have to perform root cause investigations and take corrective actions as soon as the rule goes into effect, even though EPA concluded that monitoring is unnecessary based on the technology review.

Method	Coke Facilities									
	*Fenceline Concentration, µg/m3**									
	DTE/EES		USS Clairton		ABC		SunCoke-Haverhill		CC Burns Harbor	
	Naphthalene	Benzene	Naphthalene	Benzene	Naphthalene	Benzene	Naphthalene	Benzene	Naphthalene	Benzene
325A&B		2		40		15		0.1		3
325A (six months)		3		33		16				3
TO-15A	0.4	1	9	28	1	8	0.00	0.2	1.1	1
TO-13A	0.6		12		1		0.01		0.4	
	*Interior Concentration, µg/m3***									
TO-15A	25	25	78	339	3	34	NA		142	196
TO-13A	17		67		4				50	

*Difference the between measured value and background concentration ("delta C").

** Average across all time periods

Notably, the lowest benzene emissions were from SunCoke's Haverhill facility, an HNR facility, at 0.1 ug/m3. In contrast, the benzene emissions detected at ByP facilities were 90 to *4,000%* higher than the levels detected at SunCoke's Haverhill facility. Yet EPA did not remark upon this discrepancy nor attempt to distinguish between ByP and HNR facilities in determining the need for monitoring.

[51] EPA–HQ–OAR–2003–0051, EPA, *Memorandum, Fugitive Monitoring at Coke Oven Facilities*, at 11 (Jul. 1, 2023).

ED_021114A_00008786-00043

The absence of any necessity for Fenceline Monitoring at HNR facilities was demonstrated by the company's Haverhill facility, which performed almost 10 years of monitoring for PAH and VOCs as required by the facility's Title V Operating permit. The permit called for sampling at three ambient monitoring locations near the plant (one upwind, one downwind, and one adjacent to the entry gate to the plant). The sampling was initiated when the plant was being built in late 2004, continued as the plant became operational in mid-2005, and continued until Ohio EPA terminated the requirements for monitoring (in 2013 for PAH and in 2014 for VOC) because the HAP monitoring data demonstrated that Haverhill had no impact on ambient HAP levels and emissions were below risk-based screening levels. *See* Attachment E (Letter from Ohio EPA to Haverhill Coke Company, July 14, 2014).

5. Requiring HNR Facilities to Implement Fenceline Monitoring Would Necessitate Significant Capital Investment and Operational Expense with No Environmental or Public Health Benefit

Because HNR facilities emit minimal fugitive benzene emissions, the costs associated with SunCoke's compliance with the proposed Fenceline Monitoring Requirements would also outweigh any potential benefits. In any event, EPA's cost estimate overlooks key considerations. EPA states that Fenceline Monitoring is expected to cost about $120K/year per plant. 88 Fed. Reg. at 55894. First, even if this cost estimate were reasonable today, which it is not, EPA fails to adjust its estimates in light of its proposed implementation schedule, and the Agency fails to take into account the upfront costs for establishing on-site meteorological monitoring (or upgrading to the EPA stated standard) in facilities where it is not already in place.

Second, EPA neglects to consider that costs will be higher for certain facilities, such as the company's Jewell plant, due to terrain and siting considerations, area maintenance such as mowing to maintain safe access to the monitoring locations, and the cost of running utilities, where electricity is needed.

6. EPA's Proposed Monitoring Approach is Flawed Because the Obligation Survives Even if Tests Data Confirms that it is Not "Necessary"

Fenceline Monitoring is "unnecessary" as a matter of law. If EPA intends to impose Fenceline Monitoring Requirements on HNR facilities, the rule should include a sunset provision as proposed in the NESHAP for integrated iron and steel plants, *see, e.g.,* 88 Fed. Reg. 49402, 49419 (July 31, 2023), except SunCoke's HNR facilities should be eligible for a shorter time period considering SunCoke's prior monitoring results. If facilities remain below the action level for one (1) full year, they can terminate the fenceline monitoring as long as they continue to comply with all other rule requirements. The Proposed Rule should provide for a cessation of fenceline monitoring if this requirement is met, not merely a reduction in frequency or in the number of monitors; one (1) year of data is more than adequate to make a determination that the monitoring is unnecessary.

In addition, more clarity is needed with respect to continuous compliance with all other rule requirements. A single deviation from a rule requirement should not invoke a requirement to

resume Fenceline Monitoring. Ongoing compliance more than 95% of the operating time on a 365 day rolling average basis is a reasonable trigger.

As described herein, the futility of requiring Fenceline Monitoring at HNR facilities was demonstrated by SunCoke's Haverhill facility, which performed almost ten (10) years of monitoring demonstrating that Haverhill had no impact on ambient HAP levels and that emissions were below risk-based screening levels. *See* Attachment E (Letter from Ohio EPA to Haverhill Coke Company, July 14, 2014).

If EPA once again compels SunCoke to perform fenceline monitoring when all available information recognizes the futility of doing so, there should be a permanent offramp for when SunCoke inevitably demonstrates that the monitoring is unnecessary.

7. The Proposed Frequency of Fenceline Sampling Poses Data Risks and Should be Revised

EPA solicited comments on its proposed approach for reducing fenceline monitoring "for facilities that consistently measure fenceline concentrations below the concentration action level," and on the measurement level that should be used to provide such relief." 88 Fed. Reg. at 55888. SunCoke supports EPA's efforts to reduce fenceline monitoring requirements but requests that EPA revise its proposal in the manner described below. The current proposal is complicated and unworkable:

> In the interest of reducing the cost burden on facilities to comply with this rule, if a coke oven facility maintains the fenceline concentration below 0.3 ug/m^3 (a concentration that is 10 percent of the benzene action level) at any individual monitor for 2 years, the sampling frequency at that monitor can be reduced by 50 percent (e.g., 2 weeks of sampling for every 4-week period). For each sample location and monitor that continues to register below 0.3 ug/m^3 for an additional 2 years, the sampling may be reduced further to approximately once per quarter, with sampling occurring every sixth two-week period (i.e., five two-week periods are skipped between active sampling periods). If a monitor at the quarterly frequency continues to maintain a concentration of 0.3 ug/m^3 for an additional 2 years, sampling at that monitor may be reduced further to annual sampling. However, if the concentration at any sample location that is allowed a reduced frequency of testing increases above 0.3 ug/m^3 at any time, sampling would need to immediately return to the original continuous sampling requirement.

Id. EPA states that this proposed approach would be consistent with the fenceline alternate sampling frequency in the Refinery MACT I. That is true in that the sampling frequency reduction level is consistent with the Refinery MACT, i.e., 10% of the action level. However, the proposed action and sampling frequency reduction levels are both a third of the levels found in the Refinery MACT. Setting aside that SunCoke is unable to evaluate whether 3 ug/m^3 is an appropriate action level in the first place—because, as previously discussed, EPA has not explained the extent to which it used the Section 114 data to inform the modeled data—the proposed sampling frequency reduction level of 0.3 ug/m^3 is so low that it presents data quality risks.

ED_021114A_00008786-00045

The proposed sampling frequency reduction level of 0.3 ug/m^3 highlights the challenges associated with M325 benzene sampling and analysis: the proposed level not only exceeds the lowest point on laboratory benzene calibration curves, it also fails to take into account sample-to-sample variability in the effective detection limit for benzene. As a result, the proposed 0.3 ug/m^3 regulatory sample reduction level inevitably will be influenced by background benzene levels, which would contribute up to 0.1 ug/m^3 of benzene that is not associated with the ambient air, but rather germane to laboratory bias. These technical shortcomings would render the data inaccurate and over-inclusive (i.e., it would include other sources' emissions) and have unreasonable adverse effects on a facility's ability to be relieved of unnecessary monitoring. For example, even after a successful six-year effort and stepwise reductions in sampling frequency, a single unreliable sample location reporting above 0.3 ug/m^3 could cause the facility to immediately return to the original continuous sampling requirement.

If, despite SunCoke's comments, EPA proceeds with requiring fenceline monitoring for HNR facilities, SunCoke submits that the appropriate reduction level should be 0.9 ug/m3, which would be equivalent to that in the Refinery MACT, and should be based on an annual average similar to EPA's proposed corrective action threshold rather than a single sampling period. This would help mitigate against laboratory measurement bias and minimize decision outcome risk. In the Refinery MACT, EPA acknowledged the monitoring technology limitations, i.e., those related to equipment detection limits and the need to ensure reliable data quality, and set 0.9 ug/m^3 as the appropriate level, including because it facilitated using alternative monitoring approaches (e.g., gas chromatographs and open path monitoring systems).[52] EPA's reasoning with respect to the reduction level in the Refinery MACT applies here as well. Moreover, if EPA were to set the reduction level at 0.3 ug/m^3, the Agency effectively would eliminate the option to use non-M325 approaches to demonstrate compliance with the action level and make it exceedingly difficult to meet the sample reduction level due to non-ambient air contributions associated with analytical results at such a low level.

8. EPA Should Not Establish A One-Size-Fits-All Time Frame for Corrective Action or Require Corrective Action in Absence of Violation of Subpart L

EPA is proposing to require coke oven facilities to take corrective action to reduce fugitive emissions if monitored fenceline concentrations exceed the action level on a rolling annual average basis (recalculated every fourteen (14) days).[53] With respect to the requirement to perform corrective action after exceeding the action level, EPA should not require a "one size fits all" timeline. Corrective actions are facility- and cause-specific, and it would be untenable for EPA to predetermine and dictate a timeframe for corrective action without any information on what may

[52] *See* EPA, Presentation, *National Air Toxics Monitoring and Data Analysis Workshop*, Oct. 28th, 2015, available at https://www3.epa.gov/ttnamti1/files/ambient/airtox/2015workshop/Petroleum%20Refinery.pdf.

[53] Several of the example root cause analyses identified by EPA in the redline version of MACT L do not represent root cause analysis of an event that has already occurred. Instead, they reference an event is ongoing (e.g. "employing progressively more frequent sampling, analysis and meteorology (e.g. "using shorter sampling periods for Methods 325A and 325B of appendix A of this part, or using active sampling techniques)." EPA-HQ-OAR-2003-0051-0753, EPA, Memorandum, *Coke NESHAP Redline Version of Proposed Rule Changes for 40 CFR part 63, subpart L*, at 54–55 (Jul. 1, 2023) (amending 50 C.F.R. § 63.314(g)).

ED_021114A_00008786-00046

have triggered the corrective action or what work may be required. In addition, corrective action may take longer at certain facilities, like Jewell, because of its unique location.

The process proposed by EPA for investigating, completing, and reporting the corrective actions would be very burdensome to implement, particularly in the schedule being proposed by EPA. This new reporting burden adds to multiple other reporting requirements related to these MACT standards as well as other federal, state, and local laws and permitting obligations.

More fundamentally, regulated entities cannot be required to perform a root cause analysis or corrective action if they are in compliance with the standards in 40 C.F.R. §§ 63.302 63.308. If they are meeting those emissions standards, the emissions are necessarily coming from a non-source category and EPA has no legal authority to require either an investigation of the root cause or corrective action to control non-source category emissions. If EPA nevertheless requires regulated entities to perform root cause investigations and corrective actions, it should follow the well-established model typically used in settlement of enforcement actions rather than propose an unnecessary and overly burdensome process.

9. EPA's Proposed Timeline for Installing and Operating a Fenceline Monitoring System is Too Short

If EPA proceeds with requiring fenceline monitoring for HNR facilities, SunCoke opposes EPA's proposed timeframe for affected sources to comply with the requirements because these timeframes are not feasible. EPA is proposing that facilities begin fenceline monitoring within one (1) year after publication of the final rule, which is entirely too little time, and that facilities perform root cause analysis and take corrective actions upon exceedance of the fenceline action level starting three (3) years after publication. 88 Fed. Reg. at 55893.

EPA's timeline for the installation of monitors is unrealistic both because it ignores real world supply chain delays and the unique configurations of some facilities, like SunCoke's Jewell plant. If EPA finalizes the requirement for Fenceline Monitoring, SunCoke will need to retain a consultant for each of its facilities, design the monitoring network, order and install the monitors and a meteorological station, develop a site specific monitoring plan, and have everything up and running in just one year, all for each plant. The expedited timeframe is unreasonable, particularly since the monitoring is entirely unnecessary. At a minimum, the heat recovery facilities should have two (2) years to install the required monitoring network.

If Jewell is required to conduct Fenceline Monitoring, it will need an additional year to comply for the reasons described above and because of the unique configuration of the Jewell facility. EPA has authority under 42 U.S.C. § 7412(i)(3)(A) to establish a compliance date of three (3) years after the effective date of any emissions standard, limitation, or regulation promulgated under that section. EPA may issue a permit that grants an extension permitting an existing source up to one (1) additional year to comply with standards under subsection (i)(3)(B) if such additional period is "necessary" for the installation of controls. Since Fenceline Monitoring is a control (a work practice that triggers corrective action), EPA should allow Jewell an additional year to comply with this new requirement.

XII. THE PROPOSED OVEN PRESSURE *AND* METHOD 303A MONITORING ARE NOT "NECESSARY" TO ACHIEVE EMISSIONS STANDARDS

EPA lacks authority to require costly and onerous oven pressure monitoring as a means of policing HNR oven door leaks because there is no evidence that such a requirement is "necessary," taking into account developments in practices, processes, and control technologies. *See* 42 USC § 7412(d)(6) (requires EPA to "review, and revise as necessary (taking into account developments in practices, processes, and control technologies), emission standards promulgated under this section"). Indeed, EPA expressly stated that it "did not identify *any* developments in practices, processes or control technologies," 88 Fed. Reg. at 55883 (emphasis added), and also acknowledged that "[visible emissions] monitoring has been used as an effective surrogate for monitoring door leaks in the past."[54] EPA provides no rationale for why it is necessary to abandon this practice.

As part of its technology review for coke oven batteries, EPA is proposing to add a requirement to Section 63.303(a)(i) that requires HNR facilities to conduct visual monitoring for visible emissions leaks using EPA Method 303 or 303A *and* to monitor pressure in the ovens *and* common tunnel in order to detect leaks from coke oven doors, instead of allowing companies to choose one procedure over the other, as the NESHAP currently permits. EPA appears to assume, incorrectly, that increased pressure monitoring is necessary to establish negative oven pressure and that the leak rate is necessary to reduce COE. EPA also has raised a question concerning whether the "current practice," as EPA describes it, of operating one pressure monitor per common tunnel that may connect to 15-20 ovens, is sufficient. 88 Fed. Reg. at 55885. The current pressure monitoring practice for HNR facilities, which is different from that described by EPA, is indeed sufficient, as explained herein.

Because EPA's review of the coke battery ovens is authorized not as part of the RTR, but solely as part of the periodic technology review, EPA's authority for requiring any changes to Subpart L is limited to CAA Section 112(d)(6). Section 112(d)(6) authorizes EPA to "review, and revise as necessary (taking into account development in practices, processes, and control technologies), emissions standards promulgated under this section" every eight years. 42 U.S.C. § 7412(d)(6). Yet there is no evidence that exceedances of the 0.0 leaks standard for HNR have resulted in any COE emissions, nor of any developments in "practices, processes, and control technologies" that would justify the proposed changes. Indeed, EPA's proposed requirement "to measure pressure in the ovens during the main points in the entire oven cycle to include, at minimum, during pushing, coking, and charging," 88 Fed. Reg. 55884, is inconsistent with its findings that for pushing and charging, "no technology has been identified that demonstrates reduced emissions . . . beyond the current control technology in use."[55] This proposed requirement also is inconsistent with EPA's review under CAA Section 112(d)(2) and (d)(3), which found that for pushing operations, battery stacks, and HNR HRSG main stacks, no cost-effective BTF options existed. *Id.* at 55876.

[54] EPA-HQ-OAR-2002-0085-0873, EPA, *Memorandum, Technology Review for NESHAP for Coke Ovens: Pushing, Quenching, and Battery Stacks (40 CFR part 63, subpart CCCCC), and NESHAP for Coke Oven Batteries (40 CFR part 63, subpart L)*, at 22 (May 1, 2023).

[55] EPA-HQ-OAR-2002-0085-0873, EPA, Memorandum, *Technology Review for NESHAP for Coke Ovens: Pushing, Quenching, and Battery Stacks (40 CFR part 63, subpart CCCCC), and NESHAP for Coke Oven Batteries (40 CFR part 63, subpart L)*, at 6, 34 (May 1, 2023).

ED_021114A_00008786-00048

Subpart L clearly indicates that the purpose of monitoring visible emissions from the ovens is to minimize COE. *See* 40 C.F.R. § 63.303(a), (c). But if COE is the relevant criteria, additional pressure and visible emission monitoring of the ovens is not necessary. Section 63.302(c), adopted previously with respect to byproduct coke oven batteries, acknowledges that it is not necessary to determine the percent of leaking coke oven doors when ovens are operated under negative pressure: "The emission limitations in paragraph (b) of this section do not apply to the owner or operator of a by-product coke oven battery that utilizes a new recovery technology, including but not limited to larger size ovens, operation *under negative pressure* and processes with emission points different from those regulated under this subpart." 40 C.F.R. § 63.302(c) (emphasis added). This same logic should apply to HNR coke ovens.

SunCoke previously provided 10 years of interior monitoring data and recent fenceline monitoring data from SunCoke's Haverhill facility demonstrating that non-recovery coke plant batteries using Jewell-Thompson ovens do not emit COE.[56] Both types of datasets further demonstrate that HNR facilities meet EPA's proposed benzene action level of 3 ug/m^3, which is a surrogate for COE.

As the data show, the practices that SunCoke already has in place are wholly effective at achieving COE limits. That is not surprising given the company's extensive existing measures. In addition to operating ovens under negative pressure, SunCoke employees monitor the coke ovens for door leaks throughout all stages of the coking cycle and make adjustments to the ovens by reviewing electronic data and physically walking the coke oven batteries.[57] Any door leaks due to positive pressure are corrected by adjusting oven uptakes, dampers, and/or sole flues, and are then recorded, and reported as required under Section 63.303(c). SunCoke's work practices are already consistent with Section 63.303(c)(2) in that SunCoke monitors the ovens for the entirety of the coking cycle and responds to any observed door leaks. It is not necessary for EPA to impose conflicting and more burdensome regulations on an activity that is already regulated. This is equivalent to both Method 303 and 303A and additional monitoring in the common tunnel at key points throughout the oven cycle because ovens are monitored on a continuous basis; therefore, no additional requirements are necessary.

SunCoke's heat recovery facilities also monitor negative pressure in the common tunnel electronically on a continuous basis and have one pressure transmitter for every seven (7) ovens in the battery on average. Monitoring for negative pressure in the common tunnel, in conjunction with monitoring for coke oven leaks throughout all stages of coking as previously described, accurately captures any time that an oven is experiencing positive pressure. SunCoke's existing negative pressure monitoring system accurately monitors for pressure and allows personnel to take action in a timely and safe manner when necessary.

There is no evidence to suggest that SunCoke's current practices are ineffective at achieving COE limits. EPA may not simply presume that tests that rely on monitoring devices are

[56] Tab.4, July 1, 2023 Memorandum Fugitive Monitoring at Coke Oven Facilities Ug/m^3, Summary of 2022-2023 Results for Coke Ovens Fugitive Fenceline Average (Ae) and Interior Maximum Concentration Results for Benzene and Napthalene.

[57] *See* Attachment F (Haverhill Coke Company, LLC, Startup, Shutdown, and Malfunction Plan, Oct. 5, 2016).

ED_021114A_00008786-00049

superior to a methodology that relies on the visual observations of trained personnel. *See, e.g., Sierra Club v. EPA*, 353 F.3d 976, 991 (D.C. Cir. 2004) (in context of CAA Section 114, "[t]here is no presumption in favor of any particular type of monitoring . . . and EPA has imposed different monitoring requirements in different situations"). Installing and maintaining pressure monitors in each oven – despite no demonstrated necessity to do so in order to comply with emissions standards under the Act – would also be exorbitantly expensive, challenging and unreliable. SunCoke estimates costs of $3-4 million for every 100 ovens subject to this requirement. SunCoke has 788 ovens, which translates to a total cost of $16 million. This would be a significant percentage of SunCoke's annual capital budget, and, for this and the other reasons described herein, should be dropped from the Proposed Rule.

In addition, based on SunCoke's experience, installing additional pressure monitors in the ovens would be ineffective and unduly burdensome because they are subject to plugging and therefore require extensive maintenance to maintain. Pressure monitors located in the ovens must be manually cleaned out by maintenance personnel 2-3 times per week, exposing personnel to excessive heat, which is an unnecessary safety risk given SunCoke's existing and abundant measures to maintain negative pressure in the ovens. SunCoke therefore urges EPA to not include its proposed changes to Section 63.303(a)(i) in the final rule; inclusion of these changes would be unnecessary, arbitrary and capricious.

XIII. EPA'S TECHNOLOGY REVIEW DOES NOT SUPPORT THE PROPOSED NEW OPACITY LIMIT AND DAILY OBSERVATION REQUIREMENTS

EPA's redline version of its proposed amendments to Subpart L includes a proposed change to 40 C.F.R. § 63.303(d)(3) to impose a new opacity limit of 10% on the HNR facilities' bypass/waste heat stacks and to require a daily observation of all bypass or waste heat stacks when operating during charging to determine if visible emissions are present and record the results or the reason why conditions did not permit a daily observation. EPA lacks authority to impose the proposed new opacity limit and the related requirements. There is no evidence that they are "necessary," taking into account developments in practices, processes, and control technologies. *See* 42 USC § 7412(d)(6) (requiring EPA to "review, and revise as necessary (taking into account developments in practices, processes, and control technologies), emission standards promulgated under this section"); 88 Fed. Reg. at 55883 (EPA "did not identify *any* developments in practices, processes or control technologies") (emphasis added). EPA provides no rationale for these changes.

It is not "necessary" nor does EPA have authority under its technology review to require a new opacity limit of 10% on the HNR facilities' bypass/waste heat stacks, nor is SunCoke aware of *any* coke plant (SunCoke or otherwise) that could meet this limit. SunCoke's permits and state regulating authorities already limit visible emissions from the bypass/waste heat stacks to 20% opacity. As demonstrated by the performance testing conducted and the deviation reports submitted in response to EPA's ICRs, SunCoke is in substantial compliance with the existing opacity limits for the bypass/waste heat stacks. When this equipment is in operation, SunCoke personnel monitor opacity from the waste/bypass/waste heat stacks and adjust oven dampers to minimize or eliminate visible emissions if present to ensure compliance with the existing opacity limits. At SunCoke's Jewell facility, which is the only facility where the waste heat stacks operate on a continuous basis, an equivalent weekly monitoring requirement is already established by its

Title V requirement. As demonstrated by Jewell's vast history of complying with its opacity limit, more frequent monitoring is simply not necessary.

It also would not be appropriate to establish a daily observation requirement at heat recovery facilities since bypass vent stacks do not operate on a continuous basis. Because venting malfunctions at SunCoke's heat recovery facilities can be brief and intermittent, imposing such a requirement any time the bypass vent stacks are in operation would result in greater environmental harm because it would extend the duration of venting during malfunctions to allow SunCoke sufficient time to dispatch certified personnel to the appropriate location in the plant to conduct readings per Method 9. Furthermore, requiring Method 9 performance testing during periods of malfunction is specifically prohibited by other proposed MACT amendments. "§63.309 (a) . . . The performance test should be based on representative performance (i.e., performance based on normal operating conditions) of the affected source for the period being tested. Representative conditions exclude periods of startup and shutdown. *You shall not conduct performance tests during periods of malfunction.* . . . ." (emphasis added). SunCoke therefore urges EPA to not include its proposed changes to Section 63.303(d)(3) in the final rule; inclusion of these changes would be unnecessary, arbitrary and capricious. Moreover, SunCoke notes that EPA is attempting to regulate the same source – bypass/waste heat stacks – as part of two different source categories, Subparts L and CCCCC.

XIV. EPA SHOULD NOT ALLOW USE OF ASTM D7520-16 AS AN ALTERNATIVE METHOD FOR OPACITY

EPA's redline version of its proposed amendments to Subpart L includes a proposed change to 40 C.F.R. § 63.305 to allow the use of ASTM D7520-16 as an alternative to the long-standing EPA Reference Method 9 ("Method 9") to measure the opacity of emissions from coke oven doors equipped with sheds – see proposed addition of (iii)(A)-(E) to section 63.305(e)(3). SunCoke is very troubled by EPA's decision to allow use of the experimental digital camera opacity technique ("DCOT") and associated test method, ASTM D7520-16, even as an alternative, in lieu of Method 9 to determine compliance with section 63.305(e)(3)'s opacity standards because the test method was not used in the development of the subject opacity standards and the method has not consistently been accurately demonstrated for use at the type of source being regulated (i.e., a source of fugitive emissions). These factors alone make the proposed addition of the alternative method unreasonable.

Method 9 has been the primary method for determining compliance with federal and state opacity standards since it was published in 40 C.F.R. Part 60 in 1974. As recognized in ASTM D7520-13, Method 9 "has been tested in the courts and in practice and has wide acceptance within the regulatory community." ASTM D7520-13, Annex, A.1.5.1.1. EPA's decision to allow use of the ASTM D7520-16 as an alternative to Method 9 implies that the Agency considers the DCOT technology and the associated test method to be an appropriate method for monitoring opacity. However, there are multiple potential technical issues associated with the DCOT technology and the associated test method, as described in substantial detail in other NESHAP rulemakings.[58] Rather than repeating the arguments here, SunCoke adopts its comments on this topic on EPA's

[58] *See, e.g.*, Docket ID No. EPA-HQ-OAR-2010-0895, *National Emission Standards for Hazardous Air Pollutants: Ferroalloys Production*, published at 81 Fed. Reg. 45089 (Jul. 12, 2016).

ED_021114A_00008786-00051

proposed reconsideration of the *National Emission Standards for Hazardous Air Pollutants for Ferroalloys Production*, 81 Fed. Reg. 45,089 (July 12, 2016), as though fully set forth herein. *See* Attachment G.

SunCoke is concerned that this proposed addition to 40 C.F.R. § 63.305 will set an unfortunate precedent and that the Agency, either on its own volition or due to pressure exerted by environmental groups and other biased parties, will ultimately require coke facilities to employ this experimental technology as the sole method for determining compliance with opacity.

XV. EXEMPTIONS FROM STARTUP, SHUTDOWN AND MALFUNCTION MUST BE REPLACED WITH ALTERNATIVE LIMITS, NOT ELIMINATED

SunCoke has not had sufficient time to evaluate all of the potential consequences from EPA's proposal to remove exemptions for periods of startup, shutdown, and malfunction ("SSM"), because of the short time frame provided for review of the Proposed Rule. With the limited time available, SunCoke knows, at least, that alternate limits must to be established for emissions from the main stacks during periods of startup and shutdown of the FGD because the proposed limits in 40 C.F.R. § 63.7297 for main stacks would be impossible to meet otherwise. In addition, rather than eliminating SSM plans wholesale as EPA has proposed, EPA should use the facilities' SSM plans to develop work practices that would apply during SSM.

Before the baghouse, spray dry absorber, and carbon injection system can be placed into service, the FGD system must be slowly heated to the minimum operating temperature. This heating is achieved by starting up multiple HRSGs and directing the flue gas from the bypass vent stacks to the FGD and main stack in a controlled manner. When the FGD reaches the minimum operating temperature, SunCoke restarts the baghouse, spray dry absorber, and carbon injection system. If flue gases were not directed to the main stack to facilitate this heating, the low temperature of the materials injected into the system for pollution control would severely corrode the pollution control equipment. During these periods, the bypass vent stack emission limits set forth in 40 C.F.R. § 63.7298 should be applicable to emissions from the main stacks because it will be impossible to meet the emission limitations proposed at section 63.7297 for HRSG main stacks until the minimum operating temperature is met and the FGD system is online.

EPA also proposes to eliminate the requirement to have a written SSM plan in 40 C.F.R. §§ 63.7310 and 63.310, and thus to eliminate the ability of facilities to demonstrate compliance if the regulated entity complies with the plan during SSM. Rather than eliminating SSM plans, EPA should adopt work practices that would apply during SSM.

The Proposed Rule requires sources to comply with the emission limits and requirements at all times. Notably, these limits would apply even during malfunctions or outages caused by third parties outside the control of the plant. Subjecting coke manufacturers to penalties based on events that cannot be avoided would be arbitrary. Instead, regulated entities should be deemed in compliance with the applicable limits provided they comply with the general duty clause in 40 C.F.R. § 63.6(e)(1)(i) and the reference to the general duty clause should not be identified as "inapplicable."

XVI. THE PROPOSED RULE INCLUDES SEVERAL INACCURATE DEFINITIONS

The redline versions of the Agency's proposed amendments to the current Subpart L and Subpart CCCCC include several new and revised terms and definitions. In the limited time SunCoke has had to comment on the Proposed Rule, SunCoke has evaluated the proposed redlines to 40 C.F.R. §§ 63.301 and 63.7352, and asks the Agency to make the below-requested changes to both sections. SunCoke has not attempted to identify every error or mischaracterization in the below table, nor has SunCoke included errors or mischaracterizations to the extent they are otherwise addressed earlier in these comments. An omission of an incorrect statement from this table is not an indication that SunCoke agrees with that error.[59]

SunCoke also notes that in this rulemaking, EPA uses a number of different terms to refer to its operations, including but not limited to "HNR," "heat and/or nonrecovery coke oven battery," "nonrecovery coke oven battery," "non-recovery," "heat/nonrecovery," "heat recovery," "HNR facilities that have HRSGs," and "HNR facilities that do not have HRSGs," among other terms. SunCoke suggests referring to its facilities as (1) heat recovery facilities (e.g., Haverhill, Granite City, Middletown, and Indiana Harbor) or (2) non-recovery facilities (e.g., Jewell).

EPA's Proposed Redlined Text	**SunCoke's Response**
The redlined versions of the Proposed Rule's changes includes the following new term and definition: *Bypass stack* at a heat and/or nonrecovery facility means a stack that allows coke oven gas to be vented to the atmosphere and not through a heat recovery unit.	SunCoke suggests deleting this term and its definition because the term is already defined under the new proposed term "*heat recovery steam generator bypass/waste heat stack*" and because, as written, this definition for "*bypass stack*" is an inaccurate description of the equipment and the process.
The redlined versions of the Proposed Rule's changes includes the following new term and definition: *Heat and/or nonrecovery coke oven battery* means a group of ovens connected by common walls, where coal undergoes destructive distillation under negative pressure to produce coke and coke oven gas from which by-products are not recovered. For nonrecovery plants (i.e., no chemical recovery) with heat recovery, the oven gases are sent to a heat recovery steam generator that produces steam. For nonrecovery coke oven batteries (i.e., no chemical recovery) without heat recovery, oven gases are released to the atmosphere through waste heat stacks. Heat recovery coke oven batteries also may	EPA appears to be trying to distinguish between heat recovery and non-recovery ovens within these definitions, however the definitions themselves do not actually provide differentiation. This proposed definition, as written, is duplicative of EPA's definition of "*nonrecovery coke oven battery*." If EPA believes a separate definition is warranted, this definition should be revised. Additionally, the proposed changes provide an inaccurate description of the equipment and the process. SunCoke requests revising this definition as follows: *Heat and/or nonrecovery coke oven battery* means a group of ovens connected by common walls and a common tunnel after burner, where coal undergoes destructive

[59] SunCoke also requests the Agency make the definition changes identified in SunCoke's Initial Comments for Coke Oven MACT RTR Proposed Rule, submitted on May 22, 2023. *See* Attachment H.

ED_021114A_00008786-00053

release oven gases to the atmosphere through bypass stacks when the heat recovery steam generators are not available due to maintenance or repair.	distillation under negative pressure to produce coke, and which is designed for the combustion of the coke oven gas from which by-products are not recovered. For nonrecovery plants (i.e., no chemical recovery) with heat recovery, the flue ~~oven~~ gases are sent to a heat recovery steam generator that produces steam. For nonrecovery coke oven batteries (i.e., no chemical recovery) without heat recovery, flue oven gases are treated in the common tunnel afterburner and then released to the atmosphere through waste heat stacks. Heat recovery coke oven batteries also may release flue ~~oven~~ gases that have been treated in the common tunnel afterburner to the atmosphere through bypass stacks when the heat recovery steam generators are not available due to maintenance, or repair, or malfunction.
The redlined versions of the Proposed Rule's changes includes the following new term and definition: *Heat recovery steam generator* is a process unit that recovers heat from coke oven gas in order to produce steam.	The proposed changes provide an inaccurate description of the equipment and the process. SunCoke requests revising this definition as follows: *Heat recovery steam generator* is a process unit that cools the gas by recovering heat and producing steam, so that flue gas can be treated by pollution control equipment ~~recovers heat from coke oven gas in order to produce steam~~.
The redlined versions of the Proposed Rule's changes includes the following new term and definition: *Heat recovery steam generator bypass/waste heat stack* means a stack that exhausts coke oven gas into the atmosphere without passing through a HRSG. A HRSG bypass/waste heat stack exhausts coke oven gas directly from the oven batteries to the atmosphere.	The proposed changes provide an inaccurate description of the equipment and the process. SunCoke requests revising this definition as follows: *Heat recovery steam generator bypass/waste heat stack* means a stack that exhausts flue gas treated by the common tunnel afterburner coke oven gas into the atmosphere to maintain negative pressure within the oven when the HRSGs are not available due to maintenance, repair, or malfunction without passing through a HRSG. A HRSG bypass/waste heat ~~stack exhausts coke oven gas directly from the oven batteries to the atmosphere~~.

The redlined versions of the Proposed Rule's changes includes the following new term and definition: *Heat recovery steam generator main stack* means the exhaust stack from a HRSG that is the point of final discharge to the atmosphere of the gases emanating from a HRSG and any auxiliary processes, if present.	The proposed changes provide an inaccurate description of the equipment and the process. SunCoke requests revising this term and the definition as follows: ~~*Heat recovery steam generator m*~~ *Main stack* means the exhaust stack from a HRSG that is the point of final discharge to the atmosphere of the flue gases emanating from a heat recovery facilityHRSG and any auxiliary processes, if present.
The redlined versions of the Proposed Rule's changes includes the following revised definition for "*nonrecovery coke oven battery*": *Nonrecovery coke oven battery* means a group of ovens connected by common walls and operated as a unit, where coal undergoes destructive distillation under negative pressure to produce coke, and which is designed for the combustion of the coke oven gas from which by-products are not recovered. Also known as heat/nonrecovery. Nonrecovery coke oven battery refers to units from which heat is recovered from the coke oven gas exhaust as well as units where heat is not recovered.	The proposed changes provide an inaccurate description of the equipment and the process. SunCoke requests revising this definition as follows: *Nonrecovery coke oven battery* means a group of ovens connected by common walls and a common tunnel after burner ~~operated as a unit~~, where coal undergoes destructive distillation under negative pressure to produce coke, and which is designed for the combustion of the coke oven gas from which by-products are not recovered. Also known as heat/nonrecovery. Nonrecovery coke oven battery refers to units from which heat is recovered from the combusted coke oven gas exhaust (i.e., flue gas) as well as units where heat is not recovered.
The redlined versions of the Proposed Rule's changes includes the following new term and definition: *Waste heat stack* at a heat and/or nonrecovery facility means a stack that allows coke oven gas to be vented directly to the atmosphere without control and where there are no units available for heat recovery.	SunCoke requests deleting this term and its definition because the term is already defined under the new proposed term "*heat recovery steam generator bypass/waste heat stack*" and because, as written, this definition for "*waste heat stack*" is an inaccurate description of the equipment and process.

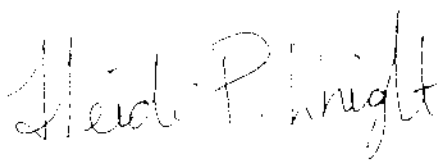
XVII. CONCLUSION

In closing, SunCoke would like to express that if the Proposed Rule is finalized as written, the rule would impose onerous new limits and requirements that are unnecessary for environmental

protection, are technically and economically infeasible, and could impair the domestic steel and foundry industries. Despite the Agency's findings of acceptable risk and lack of developments in practices, processes or control technologies, the Proposed Rule (and the redlined changes) include a number of requirements for SunCoke's HNR facilities that are not "necessary," based on flawed assumptions and/or inaccurate or incomplete data, and not "achievable," and in some instances, make sense for only ByP facilities, which, as EPA has long recognized, operate and emit in very different ways. EPA's rushed information gathering and rulemaking process could therefore cause irreparable harm to SunCoke.

SunCoke appreciates the opportunity to submit these comments on the Proposed Rule. SunCoke remains ready to assist EPA with additional information[60] that it may need to come to a reasonable and appropriate final rule. In the meantime, please call if you have any questions.

Sincerely,



Heidi P. Knight
Beveridge & Diamond, P.C.
Counsel for SunCoke Energy, Inc.

[60] SunCoke also has identified minor changes to other sections of Subparts L and CCCCC that it believes should be incorporated into the final rule for technical accuracy among other reasons (e.g., resulting in an environmental benefit in certain cases). SunCoke provided these comments to EPA on May 22, 2023, and is attaching them to these comments for ease of review. *See* Attachment H (SunCoke's Initial Comments for Coke Oven MACT RTR Proposed Rule).

ED_021114A_00008786-00056

Attachments:

Attachment A – SunCoke's Request for Extension
Attachment B – EPA's Denial of SunCoke's Request for Extension
Attachment C Jewell Facility Description and Pictures
Attachment D – TRC Technical Memorandum, Oct. 2, 2023
Attachment E – Letter from Ohio EPA to Haverhill Coke Company, Jul. 14, 2014
Attachment F Haverhill Coke Company, LLC, Startup, Shutdown, and Malfunction Plan, Oct. 5, 2016
Attachment G – SunCoke's Prior Comments Related to Digital Camera Use, Jul. 12, 2016
Attachment H SunCoke's Prior Comments Submitted to Donna Lee Jones, May 22, 2023

ED_021114A_00008786-00057

TAB B

Perkins Coie

September 3, 2024

Perkins Coie LLP

700 13th Street, N.W.
Suite 800
Washington, D.C. 20005-3960

T: +1.202.654.6200

F: +1.202.654.6211

PerkinsCoie.com

LEANN M. JOHNSON KOCH
LeAnnJohnsonKoch@perkinscoie.com
D: +1.202.654.6209
F: +1.202.654.9943

VIA ELECTRONIC MAIL AND CERTIFIED MAIL

The Honorable Michael S. Regan, Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Ave.
NW Washington, D.C. 20460

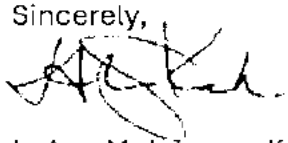
Re: Petition for Reconsideration and Request for Agency Stay Pending Reconsideration of Final Rule, Docket ID Nos. EPA–HQ–OAR–2002–0085; PA–HQ–OAR–2003–0051

Dear Administrator Regan:

Please find enclosed a petition for reconsideration and request for stay for the U.S. Environmental Protection Agency's final rule, ***National Emission Standards for Hazardous Air Pollutants for Coke Ovens: Pushing, Quenching, and Battery Stacks, and Coke Oven Batteries; Residual Risk and Technology Review, and Periodic Technology Review***, Sections 112(d)(2), (d)(3), (d)(6), and (f)(2), 89 Fed. Reg. 55684, published in the Federal Register on July 5, 2024. This petition and request is filed on behalf of SunCoke Energy Inc.

Please contact me with any questions you may have.

Sincerely,



LeAnn M. Johnson Koch

cc: [redacted] EPA
[redacted], EPA
[redacted], EPA
Sarah Albert, SunCoke Energy, Inc.
Michael R. Huston, Perkins Coie LLP

Aimee Ford, Perkins Coie LLP
Shae McPhee, Perkins Coie LLP
Aron Schnur, Beveridge & Diamond
Heidi Knight, Beveridge & Diamond

BEFORE THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In re: National Emission Standards for Hazardous Pollutants for Coke Ovens: Pushing, Quenching, and Battery Stacks, and Coke Oven Batteries; Residual Risk and Technology Review and Periodic Technology Review under the Clean Air Act	)	Docket Nos. EPA HQ OAR 2002 0085, EPA HQ OAR 2003 0051; FRL 8471 02 OAR

PETITION FOR RECONSIDERATION AND STAY OF THE FINAL RULE

SunCoke Energy, Inc. (SunCoke), pursuant to section 307(d)(7) of the Clean Air Act (CAA) and sections 705 and 553(e) of the Administrative Procedure Act (APA), petitions the Administrator of the Environmental Protection Agency (EPA) to reconsider the final rule titled, "*National Emission Standards for Hazardous Air Pollutants for Coke Ovens: Pushing, Quenching, and Battery Stacks, and Coke Oven Batteries; Residual Risk and Technology Review, and Periodic Technology Review*," 89 Fed. Reg. 55684 (July 5, 2024) (Final Rule), and to stay the effect of the Final Rule and compliance deadlines pending reconsideration and judicial review or initiate an action to amend the Final Rule.[1]

The Final Rule amends two separate, highly complex rules — the rule governing emissions standards for coke ovens in 40 C.F.R. Part 63, Subpart CCCCC, and those governing residual risk and technology review in 40 C.F.R. Part 63, Subpart L. EPA's amendments to these two parts in the Final Rule will cost SunCoke many millions of dollars. EPA adopted these amendments, despite finding that "[t]here are no measurable air quality impacts from this rule that can be guaranteed," and that EPA cannot "quantif[y] any benefits associated with this final rule, because all covered facilities are expected to already have HAP [hazardous air pollutants] emissions levels that are below the final limits." 89 Fed. Reg. at 55723. In fact, EPA could not quantify any "potential public health benefits associated with such prevention" at all because "they correspond to hypothetical scenarios of emissions beyond those indicated by current facility data." *Id.* The best EPA can say of the Final Rule is that EPA "anticipates that this final rule's new requirements will increase the likelihood of facilities successfully detecting any HAP emissions in excess of the specified thresholds" that EPA has no evidence occurred.

For the reasons set forth in the Petition, SunCoke respectfully requests that EPA:

1. Grant SunCoke's Petition for Reconsideration to address issues that SunCoke could not have addressed in SunCoke's comments on the Proposed Rule and are of central relevance to the Final Rule and grant SunCoke a stay of the effect of the Final Rule

[1] 42 U.S.C. § 7607(d)(7)(B); 5 U.S.C. § 705; 5 U.S.C. § 553(e).

and the compliance deadlines contained therein, pursuant to section 307 of the CAA[2]; and

2. Grant SunCoke's request for a stay of the effect of the Final Rule and the compliance deadlines set forth therein under section 705 of the APA[3] or agree to amend the Final Rule to rectify EPA's violation of the procedural requirements of the CAA and the APA and issue a new rule establishing appropriate, scientifically sound emissions standards, with ample time for public notice and comment, pursuant to section 553(e) of the APA.[4]

BACKGROUND

SunCoke is the largest independent coke producer in the United States, producing over one-third of the coke supply used by the domestic steel industry.[5] Coke is an essential ingredient in the blast furnace production of steel. Maintaining a strong domestic steel industry is critical to national defense, to the health of the nation's infrastructure, and to many manufacturing industries essential to a strong economy.[6]

Like EPA, SunCoke is committed to producing coke in the most environmentally responsible way possible. SunCoke has integrated cutting-edge practices, processes, and control technologies into its cokemaking plants to protect the environment and public health. In fact, EPA has declared SunCoke's cokemaking process to be the most environmentally friendly way to make coke and has adopted SunCoke's heat-recovery cokemaking process as the industry maximum achievable control technology (MACT).[7] Because SunCoke's patented heat recovery cokemaking process creates higher quality, higher strength coke, steelmakers use less coke in their blast furnaces, thereby lowering their GHG emissions.

In April 2019, several environmental groups sued EPA for failing to undertake the statutorily required residual risk and technology reviews for the two coke oven source categories: "Coke Oven Batteries," 40 C.F.R. Part 63, Subpart L, and "Coke Ovens: Pushing, Quenching, and Battery Stacks," 40 C.F.R. Part 63, Subpart CCCCC. There was no dispute that EPA had failed to meet its statutory obligations. On June 26, 2020, a federal district court ordered EPA to conduct both a

---

[2] 42 U.S.C. § 7607(d)(7)(B) ("The effectiveness of the rule may be stayed during such reconsideration, however, by the Administrator or the court for a period not to exceed three months.").

[3] 3 U.S.C. § 705.

[4] 5 U.S.C. § 553(e) ("Each agency shall give an interested person the right to petition for the issuance, amendment, or repeal of a rule.").

[5] Letter from H. Knight, Beveridge & Diamond, P.C., to EPA at pp. 2, 5 (Oct. 2, 2023), Docket ID EPA-HQ-OAR-2002-0085-0968 [hereinafter "SunCoke comment letter"].

[6] During the shutdown caused by the COVID-19 pandemic, all companies in the coke and steel industry continued operations as critical members of the manufacturing sector that are crucial to the economic prosperity and continuity of the United States. *See* https://www.cisa.gov/topics/critical-infrastructure-security-and-resilience/critical-infrastructure-sectors/critical-manufacturing-sector.

[7] *See, e.g.*, 66 Fed. Reg. 35326, 35328–29 (Jul. 3, 2001); 42 U.S.C. § 7412(d)(8)(A) (directing the Agency to establish emission standards for coke oven batteries, and, in establishing such standards, to evaluate "(ii) as a basis for emission standards under this subsection for new coke oven batteries that begin construction after the date of proposal of such standards, *the Jewell design Thompson non-recovery coke oven batteries and other non-recovery coke oven technologies*, and other appropriate emission control and coke production technologies, as to their effectiveness in reducing coke oven emissions and their capability for production of steel quality coke") (emphasis added).

ED_021114A_00008786-00062

technology review and a residual risk review for the Subparts addressed in the Final Rule.[8] The court ordered EPA to complete these reviews within 30 months by December 26, 2022, and later extended the deadline to May 23, 2024.

Throughout the proceedings, EPA maintained that it needed additional time due to the significant complexity of the rules governing coke ovens and coke oven batteries. It explained that it had "significant need for additional data and information in order to complete a robust risk and technology review for Subpart CCCCC sources and a similarly robust technology review for Subpart L sources."[9] EPA also decided to make the rulemaking significantly more complex by "expand[ing] the scope of the rulemaking to include the potential relisting of the chemical by-product plants under section 112 of the CAA and developing and proposing MACT standards for these chemical plants under CAA Section 112(d)," which would "require additional data collection as well."[10]

In June and July 2022, two years after the court's June 26, 2020 order, EPA issued two information collection requests (ICRs) to SunCoke and other affected sources.[11] It did not publish its Proposed Rule until August 16, 2023. Despite its complexity, EPA only allowed stakeholders 45 days to comment, despite the Proposed Rule including proposed amendments to two Subparts of the Code of Federal Regulations described by EPA as significantly complex. Because of the court's deadline, EPA was forced to deny all extension requests, including the extension requests from SunCoke, Coke Energy, LLC, United States Steel Corporation (U.S. Steel), and the Coke Oven Environmental Task Force (COETF).[12] Less than a year later, EPA published the Final Rule in July 2024 days after EPA filed a notice with the court on May 24, 2024 that the Final Rule was completed.[13]

The Final Rule reflects the hurried nature of the rulemaking compelled by the court-ordered deadline, and this Petition for Reconsideration provides an opportunity to fix the errors that would otherwise cause unnecessary and irreparable harm to an enormously important supplier to the American steel industry.

REQUESTED ACTIONS

I. SunCoke's Petition for Reconsideration and a Stay Pending Reconsideration Under Section 307 of the CAA

Under section 307(d)(7)(B) of the CAA, EPA must "convene a proceeding for reconsideration" if two elements are satisfied: (1) that it was either "impracticable" to raise the objection during the comment period, or the grounds for such objection arose after the period for public comment but

---

[8] *Citizens for Pennsylvania's Future v. Wheeler*, 469 F. Supp. 3d 920, 934 (N.D. Cal. 2020).

[9] Motion to Amend Order and Judgment, *Citizens for Pennsylvania's Future*, No. 3:19-cv-02004 (June 2, 2022), Dkt. No. 46.

[10] *Id.*

[11] EPA issued the two ICRs in June and July 2022.

[12] *See* SunCoke's extension request (Sept. 1, 2023), Docket ID EPA-HQ-OAR-2002-0085-0949; Cokenergy, LLC's extension request (Sept. 9, 2023), Docket ID EPA-HQ-OAR-2002-0085-0951; U.S. Steel's extension request (Aug. 29, 2023), Docket ID EPA-HQ-OAR-2002-0085-1578; COETF's extension request (Aug. 28, 2023), Docket ID EPA-HQ-OAR-2002-0085-1572.

[13] Notice, *Citizens for Pennsylvania's Future*, No. 3:19-cv-02004 (May 24, 2024), Dkt. No. 82.

ED_021114A_00008786-00063

within the time specified for judicial review; and (2) the objection is of central relevance to the outcome of the rule.[14] An objection is of central relevance if it "provides substantial support for the argument that the regulation should be revised."[15] EPA may grant a 90-day stay pending reconsideration of the Final Rule.

Here, EPA deprived stakeholders of sufficient notice and opportunity to comment and introduced new provisions or rationales in the Final Rule for which commenters had no notice and that were not logical outgrowths of what was proposed.[16] Section 307(d)(7)(B) of the CAA thus requires EPA to "convene a proceeding for reconsideration of the rule" and impart all the procedural rights that "would have been afforded had the information been available at the time the rule was proposed."[17]

SunCoke respectfully requests that EPA grant this Petition for Reconsideration and Stay Pending Reconsideration. An administrative stay of the effect of the Final Rule and all compliance deadlines is necessary and appropriate while EPA considers and addresses the numerous errors in the Final Rule resulting from the rushed rulemaking.

A. EPA failed to provide adequate opportunity to comment on this rulemaking, violating the APA.

It is indisputable that EPA was forced to rush this rulemaking to meet a federal district court's deadline, depriving EPA of its opportunity to thoughtfully consider all relevant information in this complex rulemaking proceeding. In turn, SunCoke was deprived of proper notice and adequate time to review and comment on the Proposed Rule, which is not permissible.[18]

Section 307(h) of the CAA provides: "It is the intent of Congress that, consistent with the policy of subchapter II of chapter 5 of Title 5, the Administrator in promulgating any regulation under this chapter, *including a regulation subject to a deadline*, shall ensure a reasonable period for public participation of at least 30 days, . . ."[19] The APA demands that agencies "give interested persons an opportunity to participate in the rule making through submission of written data, views, or arguments with or without opportunity for oral presentation."[20] Public participation is "crucial" to sound rulemaking because it "ensure[s] that agency regulations are tested via exposure to diverse public comment . . . to ensure fairness to affected parties, and . . . to give affected parties an opportunity to develop evidence in the record to support their objections to the rule and thereby

---

[14] 42 U.S.C. § 7607(d)(7)(B).
[15] *Coal. for Responsible Regulation, Inc. v. EPA*, 684 F.3d 102, 125 (D.C. Cir. 2012), *aff'd in part, rev'd in part on other grounds sub. nom. Util. Air Regulatory Grp. v. EPA*, 573 U.S. 302 (2014); *see also* 42 U.S.C. § 7607(d)(7)(B).
[16] *See Env't Integrity Project v. EPA*, 425 F.3d 992, 996 (D.C. Cir. 2005). "[I]f the final rule deviates too sharply from the proposal, affected parties will be deprived of notice and an opportunity to respond to the proposal." *Small Refiner Lead Phase-Down Task Force v. EPA*, 705 F.2d 506, 547 (D.C. Cir. 1983). "[A]mbiguous comments and weak signals from the agency g[i]ve petitioners no . . . opportunity to anticipate and criticize the rules or to offer alternatives. Under these circumstances, the . . . rules exceed the limits of a logical outgrowth." *Int'l Union, UMW v. MSHA*, 407 F.3d 1250, 1261 (D.C. Cir. 2005) (internal citations omitted).
[17] 42 U.S.C. § 7607(d)(7)(B).
[18] *Citizens for Pennsylvania's Future*, 469 F. Supp. 3d at 934.
[19] 42 U.S.C. § 7607(h) (emphasis added).
[20] 5 U.S.C. § 553(c).

ED_021114A_00008786-00064

enhance the quality of judicial review."[21] How much time that requires necessarily depends on the nature and complexity of the issues involved.

EPA announced that it was proposing to amend two rules at once: the NESHAP for Coke Ovens: Pushing, Quenching, and Battery Stacks (PQBS) (40 C.F.R. Part 63, Subpart CCCCC) and the NESHAP for Coke Oven Batteries (COB) (40 C.F.R. Part 63, Subpart L) and described the two Subparts being amended as "among the most complex of the nearly 200 source categories." [22] Despite the complexity, EPA went from Proposed Rule to Final Rule in less than one year. It did so solely because it had to meet the court-ordered deadline, but a court-imposed deadline does not excuse an agency from providing stakeholders sufficient time to develop data and analyze the effects of its proposed amendments — particularly where those amendments are likely to cost many millions of dollars.[23]

SunCoke and other stakeholders requested that EPA either correct and reissue the Proposed Rule or extend the comment period by 45 days.[24] They explained that extra time was needed for several reasons, including that: EPA sought comments on two rules at once; both rules were technically complex; and EPA had added to the dockets hundreds of new documents filled with technical information totaling nearly 35,000 pages, including a 114-page MACT Standard Calculations, Cost Impacts, and Beyond-the-Floor Cost Impacts for Coke Ovens Facilities memorandum and multiple supporting appendices.[25] EPA issued a denial of SunCoke's and all other petitioners' extension requests, stating only that it was "not planning to extend the public comment period," though we presume the denial was the result of the court order requiring EPA to publish a Final Rule by May 23, 2024.[26]

The technical complexity of the Final Rule is well-illustrated by the time EPA spent preparing the Proposed Rule. EPA began collecting and analyzing relevant data in 2016.[27] EPA issued CAA section 114 information collection requests (ICRs) to SunCoke and other affected sources over a period of six years. The ICRs included lengthy questionnaires and source test requests, which were time-consuming and costly for SunCoke and other affected sources to address. SunCoke alone spent around $1.5–1.6 million to respond to the ICRs.

While EPA spent seven years collecting information and developing the Proposed Rule, SunCoke and other interested stakeholders only had 45 days to consider and respond to its work. That includes EPA's list of proposed HAP and MACT floor limits, which EPA only uploaded to the docket when it published the Proposed Rule. The short lead time prevented SunCoke from fully evaluating the proposed emission limits and other aspects of the Proposed Rule before the close of

---

[21] *Daimler Trucks N. Am. LLC v. EPA*, 737 F.3d 95, 100 (D.C. Cir. 2013) (internal quotation and citation omitted).
[22] *Citizens for Pennsylvania's Future*, 469 F. Supp. 3d at 933; 88 Fed. Reg. 55858 ("Comments must be received on or before October 2, 2023.").
[23] 42 U.S.C. § 7607(h).
[24] *Id.*; *see also* Notice, *Citizens for Pennsylvania's Future*, No. 3:19-cv-02004 (May 24, 2024), Dkt. No. 82.
[25] *Id.*, Notice at 3; SunCoke comment letter, Att. A.
[26] SunCoke comment letter, Att. B (Letter from P. Lassiter, EPA, to K. Batten, SunCoke (Sept. 19, 2023), Docket ID EPA-HQ-OAR-2002-0085-1576).
[27] 88 Fed. Reg. at 55866.

ED_021114A_00008786-00065

the public comment period.[28] SunCoke commented as best it could, but simply could not address a number of critical issues in 45 days.[29]

EPA's decision to make the Final Rule effective as of the date of publication is another example of EPA prioritizing meeting the court deadline in *Citizens for Pennsylvania's Future* over providing an adequate notice and comment period and according stakeholders important procedural rights. Under section 553(d) of the APA, agencies cannot publish a substantive rule "less than 30 days before its effective date."[30] Agencies can make a rule immediately effective if they meet the "good cause" exception, but that exception does not apply here. The good cause exception is "narrowly construed and only reluctantly countenanced."[31] It is generally limited to "emergency situations, or where delay could result in serious harm."[32] Its use is appropriate "in the rare circumstance when ordinary procedures—generally presumed to serve the public interest—would in fact harm that interest."[33] In any case, EPA did not publish in the Final Rule its explanation for immediately finalizing the rule, which is another important statutory requirement.[34]

The Final Rule contains numerous errors and omissions reflecting the agency's rush to meet the deadline imposed by the court in *Citizens for Pennsylvania's Future*.[35] SunCoke and other regulated entities' procedural rights to notice and an opportunity to comment were collateral damage. EPA understood that it would take time for stakeholders to evaluate the Final Rule and the underlying technical basis for the new requirements but did not have the luxury of giving SunCoke and others the time they needed to do so.

B. The new MACT floor emission limits for SunCoke's HNR facilities are not "necessary," are based on limited and/or unreliable data, and are not achievable.

1. EPA's interpretation of the LEAN decision and disparate treatment of HAP is arbitrary and capricious.

EPA's inconsistent regulation of HAP in the Final Rule is arbitrary and capricious. In the Proposed Rule, EPA stated it "is required to address regulatory gaps, such as missing MACT standards for listed air toxics known to be emitted from the source category" under *Louisiana Environmental Action Network (LEAN) v. EPA*, 955 F.3d 1088 (D.C. Cir. 2020).[36] It cited *LEAN* as requiring

---

[28] The two dockets contained 2,300 documents, many of which are lengthy and complex compilations and analyses of emissions and modeling data that must be carefully reviewed for data accuracy and completeness. And many documents listed in the dockets as supporting materials were not available electronically from regulations.gov, in violation of CAA section 307(d)(3)(C). EPA cannot require the public to contact it directly to obtain missing documents and other missing information, while refusing stakeholders an extension on its 45-day timeframe.

[29] SunCoke comment letter, pp. 14–16.

[30] 5 U.S.C. § 553(d).

[31] *Nat. Res. Def. Council v. Abraham*, 355 F.3d 179, 204 (2d Cir. 2004); *Mack Trucks, Inc. v. EPA*, 682 F.3d 87, 93 (D.C. Cir. 2012).

[32] *Jifry v. FAA*, 370 F.3d 1174, 1179 (D.C. Cir. 2004) (internal citation omitted).

[33] *Mack Trucks*, 682 F.3d at 95.

[34] *See Env't Def. Fund v. EPA*, 515 F. Supp. 3d 1135, 1144 (D. Mont. 2021).

[35] *Citizens for Pennsylvania's Future*, 469 F. Supp. 3d 920.

[36] 88 Fed. Reg. at 55863.

ED_021114A_00008786-00066

MACT floor limits, also referred to as floor-based emission limits, for the 17 HAP and processes EPA identified in the Proposed Rule.[37]

SunCoke commented that *LEAN* does not require EPA to set MACT floor limits for every HAP, particularly those that are already controlled to an adequate margin of safety. It only requires that EPA "address" all HAP known to be emitted by a source category.[38] As SunCoke explained, the court in *LEAN* provides that "because the [CAA] necessitates section 112-compliant emission standards for each source category, and section 112(d)(6) requires EPA at least every eight years to review and revise emission standards 'as necessary,' EPA's section 112(d)(6) review of a source category's emission standard must *address* all listed air toxics the source category emits."[39] Put simply, it is not necessary to establish MACT floor-based standards where EPA found through its Risk and Technology Review (RTR) that risks due to the HAP emissions from coke ovens' PQBS are "acceptable"; that the existing PQBS rule "provides an ample margin of safety to protect public health"; and that there "are no developments in practices, processes or control technologies that necessitate revision of standards for this source category"[40] as it did here.

In the Final Rule, EPA rejected SunCoke's comments and adopted MACT floor limits for all 17 HAP and processes identified in the Proposed Rule, again citing the *LEAN* decision as requiring it.[41] However, EPA treated other HAP differently in the Final Rule. In the Final Rule, EPA identified eight HAP that it failed to include in the Proposed Rule – perhaps because EPA was rushing to meet the May 23, 2024 court deadline.[42] For the omitted HAP, EPA established a MACT floor work practice standard of "good combustion for three unregulated HAP (the organic HAP emissions of D/F, PAH, and VOHAP from battery stacks) and surrogacy determinations for the other five."[43] EPA determined that it could use work practice standards and surrogacy determinations, *instead of numeric MACT floor limits*, because "many of the test runs were BDL and seven of the eight had a majority of test runs BDL."[44]

But many of the tests for the other 17 HAP were also "below the detection limit." EPA does not explain why it read *LEAN* in the Proposed Rule to require MACT floor limits for all HAP, but not in the Final Rule. For the eight HAP it left out of the Proposed Rule, EPA determined that *LEAN* allowed it to use surrogates and work practices instead of the MACT floor limits it insisted were required for the17 HAP, which also present minimal risk.

The APA does not allow EPA to insist that *LEAN* requires it to establish MACT floor limits for 17 HAP, but does not require the same for eight other HAP, when the risk profile is the same.[45] "[D]eciding a case one way today and a substantially similar case another way tomorrow,"[46]

---

[37] 88 Fed. Reg. at 55707, 55876 n.25.
[38] SunCoke comment letter, pp. 26–27.
[39] *Id.*; *LEAN*, 955 F.3d at 1091 (emphasis added).
[40] 88 Fed. Reg. at 55858.
[41] 89 Fed. Reg. at 55711 ("*LEAN* thus requires that the EPA promulgate 'as many limits as needed' so that all pollutants from a source category are regulated.").
[42] *Id.*
[43] *Id.*
[44] 89 Fed. Reg. at 55707.
[45] *Doubleday Broad. Co. v. FCC*, 655 F.2d 417, 423 (D.C. Cir. 1981).
[46] *Id.*

ED_021114A_00008786-00067

without a reasonable explanation, is arbitrary and capricious.[47] EPA's varying interpretations of *LEAN* and different treatment of HAP is of central relevance, because it has led the agency to establish MACT floor limits for SunCoke's HNR facilities that are not only unnecessary, but also unachievable, as discussed in Sections I.B.2 through I.B.7 below.

Further, EPA's failure to include eight newly added HAP, and an explanation of its different approach to regulating them, in the Proposed Rule was in error. In doing so, SunCoke did not have an opportunity to address the new HAP surrogacy determinations and work practice standard that were inserted into the Final Rule or argue why EPA's disparate treatment of the newly regulated HAP was impermissible.

The MACT floor limits, work practices, and surrogacy determinations are clearly central to the Final Rule, particularly where SunCoke may not be able to meet them even if it invested many millions of dollars. For these reasons, EPA should reconsider the Final Rule under section 307(d)(7)(B) of the CAA and, during its reconsideration, allow SunCoke and other facilities to provide additional data refuting the achievability of the MACT floor limits. EPA must allow notice and comment on the eight HAP it omitted from the Proposed Rule and the different regulatory approaches it adopted.

2. *EPA should consider the cost, health and environmental, and energy considerations under CAA section 112(d)(2) when setting MACT floor emission limits.*

EPA takes the position that the CAA prevents it from taking costs into consideration when determining MACT floors.[48] At the same time, the agency claims that "all facilities should be able to meet the MACT floor limits developed for the previously unregulated HAP and unregulated sources of HAP without the installation of additional controls."[49] SunCoke will submit detailed declarations supporting its motion for a judicial stay describing the many millions of dollars it will spend on the design, and engineering, of new technology to meet the requirements of the Final Rule. EPA should have taken these costs into consideration when setting the new MACT floor limits.

EPA's practice of setting MACT floor-level controls based solely on emissions data from best performing sources is not the best reading of the statute. EPA should instead "tak[e] into consideration the cost of achieving such emission reduction, and any non-air quality health and environmental impacts and energy requirements," as Congress required in CAA section 112(d)(2). The notion advanced by EPA that section 112(d) actually prohibits the agency from considering costs and benefits when establishing MACT floors turns the plain statutory text on its head. EPA's current position is also contrary to the line of cases that touch on this issue, starting with *National Lime Association v. EPA*, 233 F.3d 625 (D.C. Cir. 2000), and is not based on a reasoned analysis of the plain language of the statute.

EPA should revisit its interpretation of section 112(d) and consider *all* of the relevant factors as required by Congress, including "the cost of achieving such emission reduction, and any non-air quality health and environmental impacts and energy requirements" when establishing "gap

[47] *Doubleday Broad.*, 655 F.2d at 423.
[48] 89 Fed. Reg. at 55710.
[49] *Id.*; *see also* 89 Fed. Reg. at 55717.

ED_021114A_00008786-00068

filling" MACT floors. The Supreme Court in *Loper Bright* recently instructed that "courts use every tool at their disposal to determine the best reading of the statute."[50] In light of *Loper Bright*, the agency should reconsider its decision not to consider the cost of achieving the emission reductions and any non-air quality health and environmental impacts and energy requirements in EPA's gap-filling review of the existing standards.[51]

3. EPA failed to consider data relevant to the MACT floor limits.

In response to the 2017 ICR, SunCoke submitted additional stack test data—including at least five stack tests completed in April 2012, June 2012, August 2014, April 2015, and June 2015 for its Middletown facility to EPA.[52] EPA had not considered these data in its determination of the proposed emission limits. SunCoke also submitted an analyses of the errors and omissions in the dataset used by EPA for the proposed emission limits.[53] In the Final Rule, EPA explained that, after issuing the Proposed Rule, the agency incorporated certain additional data into revised MACT floor calculations, including the June 2012 test data for the HRSG Bypass Stack and April 2015 test data for the main baghouse stack at SunCoke's Middletown facility.[54] EPA explains that it "reviewed the previous test reports submitted that were within five years prior to 2016 and that matched the requirements for testing in the CAA section 114 requests to add to the MACT data pool."[55] That explanation does not clarify why some of the data submitted by SunCoke were not incorporated into the final MACT floor calculations. For example, EPA did not incorporate at least some of the data provided by SunCoke.[56] EPA must consider the relevant data provided by SunCoke in its establishment of the MACT floor limits. Agencies "must examine the *relevant data* and articulate a satisfactory explanation for its action including a 'rational connection between the facts found and the choice made.'"[57] Here, it has failed to do so.

4. New MACT floor limits for pushing from existing sources are arbitrary and capricious for several reasons. (40 C.F.R. § 63.7290).

EPA's new MACT floor limits for mercury (Hg), acid gases (AG), hydrogen cyanide (HCN), and polycyclic aromatic hydrocarbons (PAH) from pushing at existing HNR facilities are unnecessary,

---

[50] *Id.* ("*Chevron* cannot be reconciled with the APA by presuming that statutory ambiguities are implicit delegations to agencies. That presumption does not approximate reality. A statutory ambiguity does not necessarily reflect a congressional intent that an agency, as opposed to a court, resolve the resulting interpretive question.").

[51] *Loper Bright Enterprises v. Raimondo*, 144 S. Ct. 2244, 2247 (2024).

[52] *See* Docket IDs EPA-HQ-OAR-2002-0085-1551; EPA-HQ-OAR-2002-0085-1552; EPA-HQ-OAR-2002-0085-1553; EPA-HQ-OAR-2002-0085-1554; EPA-HQ-OAR-2002-0085-1555.

[53] *See* Email and attachments from K. Batten, SunCoke, to D. Jones and C. French, EPA (Jan. 18, 2024), Docket ID EPA-HQ-OAR-2002-0085-1566.

[54] 89 Fed. Reg. at 55715.

[55] *Id.*

[56] *See* Docket IDs EPA-HQ-OAR-2002-0085-1552; EPA-HQ-OAR-2002-0085-1554; EPA-HQ-OAR-2002-0085-1555.

[57] *Motor Vehicle Mfrs. Ass'n v. State Farm Mut. Ins. Co.*, 463 U.S. 29, 43 (1983) (emphasis added) (quoting *Burlington Truck Lines v. United States*, 371 U.S. 156, 168 (1962)); *see also* EPA, Guidelines for MACT Determinations under Section 112(j) Requirements at 2-8 (Feb. 2002) ("It is not necessary for the MACT floor to be determined based on emissions information from every existing source in the source category or subcategory if such information is not available. The permitting authority, however, should check with EPA Regional Offices and EPA Headquarters for any available information that could be used in determining the MACT floor."), https://www3.epa.gov/ttn/atw/112j/guidance.pdf.

ED_021114A_00008786-00069

overly burdensome, lack scientific merit, and accomplish nothing in the way of emissions minimization.

The methods EPA used to establish the new pushing limits are arbitrary and capricious for the following reasons:

- EPA relied upon combined data from SunCoke's heat non-recovery plants and byproduct plants. Byproduct plants use dramatically different coking processes and emissions controls. In contrast, heat non-recovery plants have been declared by EPA as the maximum achievable control technology.[58] Conflating data from these two different processes is arbitrary and capricious.
- EPA not only used data from byproduct plants to set new pushing limits applicable to HNR facilities, EPA included data from *idled* byproduct plants as one of the "best performing sources." A source that is idled is not performing at all, so using data from a non-performing source is arbitrary and capricious.[59] Further, EPA confirmed that those idled plants permanently shut down before issuance of the Final Rule.[60]
- For heat non-recovery plants, EPA used HCN emission test data from an obsolete test method (2016 ICR test data from the SunCoke Middletown facility) that was collected using the Zinc Acetate method, which EPA earlier had abandoned due to its limited dynamic range of measurement.[61]
- For Hg, the emissions are too low to permit scientific measurement (at or below detection, within the noise of the test instrument) and the limit fails to consider the wide variability of Hg content in metallurgical coal (ranging from 0.008 to 0.360 parts per million). The variability in concentrations of Hg (and other HAP-related constituents) in emissions from these sources is directly proportional to the concentration of these constituents that naturally occur in raw materials (i.e., metallurgical coals) used in the HNR cokemaking process.
- With respect to HNR facilities, the emission of these HAP from pushing are de minimis. Pushing operations are intermittent (less than three hours per day) and emissions are less than one ton per year. EPA already set a PM limit on pushing prior to this rulemaking, which sufficiently minimizes pushing emissions, including emissions of Hg, AG, HCN, and PAH. EPA should have made surrogacy determinations, instead of establishing new MACT floor limits, to the extent that the *LEAN* decision required gap-filling. There is no reasonable basis for treating the HAP differently in the Final Rule.
- EPA's MACT floor limits for pushing are based on insufficient data.

Because the surrogacy determinations for the five newly regulated HAP were added after the close of the public comment period, SunCoke did not have an opportunity to comment on EPA's choice

[58] *See* SunCoke comment letter, p. 1, n.6.

[59] *See* SunCoke comment letter, p. 30.

[60] 89 Fed. Reg. at 55692 (confirming that Cleveland Cliffs' Follansbee, West Virginia, facility and Middletown, Ohio, facility permanently closed in 2022 and 2023, respectively).

[61] *Zinc Acetate Sampling Method for Hydrogen Cyanide*. N. Shappley, U.S. Environmental Protection Agency, Research Triangle Park, NC, and D. Maxwell, AECOM, Austin, TX. Presentation at the 41st Stationary Source Sampling and Analysis for Air Pollutants, Tucson, AZ, April 9–14, 2017. Docket IDs EPA-HQ-OAR-2002-0085 and EPA-HQ-OAR-2003-0051.

ED_021114A_00008786-00070

of a work practice standard or a surrogacy determination in lieu of a numeric emission limit for the miniscule emissions from pushing.

EPA must reconsider whether the new MACT floor emission limits from pushing at HNR plants (1) are legally required, (2) appropriately exclude emissions from ByP plants (as it did for fenceline monitoring), and (3) are based on valid emissions data. EPA must also consider whether, in light of the lack of data and small number of sources, it is more appropriate to limit the emissions through a work practice standard or a surrogacy determination, rather than a new MACT floor numeric emission limit, given that emissions are too low for valid detection methodologies. SunCoke identified these flaws in the Proposed Rule in its comments.[62]

5. *New MACT floor limits for HNR Main Stacks from existing HNR facilities are based on insufficient and unrepresentative data. (40 C.F.R. § 63.7297).*

The MACT floor emission limits that EPA set for HNR Main Stacks from existing HNR facilities are burdensome and accomplish nothing in the way of minimization of emissions. EPA nevertheless established new MACT floor emission limits for AG, Hg, PAH, and PM from Main Stacks. In doing so, EPA used only a limited subset of the available data (from the 2016 and 2022 ICRs), ignored relevant data (from tests conducted more than five years prior to the 2016 ICR), and included data that is not representative of emissions from SunCoke's facilities.[63]

The error was then compounded when EPA applied the upper prediction limit (UPL) statistical method. The UPL statistical method was applied to the limited dataset to account for variability and uncertainty in emissions data. The UPL calculation estimates the true average and true variance. While the estimation of the true average can be done with a small number of samples, the estimation of the variance requires a substantially larger number of samples — in particular, samples that cover the range of varying factors. EPA offered no explanation for its exclusion of relevant data in performing its calculations and setting the new MACT floor limits, which do not account for variability and uncertainty (e.g., normal coking time vs. extending coking time, or variability in raw material inputs, such as coal characteristics).

For example, the emission limits in the Final Rule are not technologically and economically achievable because they do not account for the significant variability of chlorine and mercury in coal. Coal is formed from organic materials. The levels of chlorine in a coal seam will generally depend on a geological formation's proximity to ancient seas. Mercury levels will generally depend on the coal seam's overlay materials and how the coal was formed from those materials. Not only will levels of these substances vary greatly from mine to mine, they even vary within the same coal seam at a particular mine.[64] To ensure that the new MACT floor emission limits can be met with existing controls, it is necessary to use test data representing the range of possible concentrations of chlorine and mercury, or otherwise to adjust the limits to account for the range of

[62] SunCoke comment letter, p. 28.

[63] 89 Fed. Reg. at 55715.

[64] Considering the existing challenges of meeting sulfur limits in the metallurgical coal market—including a very aggressive limit at the Jewell facility to meet a standard of 0.88% sulfur—imposing further constraints on our coal supply with restrictive standards for chlorine and mercury to meet emission limits would make coal sourcing impossible.

ED_021114A_00008786-00071

chlorine and mercury limits to ensure, as EPA contends, the limits can be met with existing controls.

As described in Section I.B.4, EPA must reconsider whether surrogacy determinations or work practice standards are more appropriate for newly regulated HAP than new numeric MACT floor emission limits for Main Stacks. Work practice standards and surrogate emission limits were raised by EPA in the Final Rule, which prevented SunCoke from commenting on this point during the public comment period.

Further, due to the inadequate notice and comment period discussed in Section I.A above, it was impracticable for SunCoke to conduct a full analysis of EPA's data issues and provide that analysis to EPA within the comment period. These data issues result in MACT floor limits that do not approximate the limits "achieved" by the best-performing five sources, and therefore do not comply with the CAA using EPA's interpretation of the rule's requirements.

EPA should reevaluate and revise these MACT floor limits, including addressing the issues described in this section. Establishing appropriate MACT floor emission limits is of central relevance to the rulemaking.

6. *New MACT floor emission limits for HRSG Bypass/Waste Heat Stacks from existing HNR facilities are based on insufficient and unrepresentative data and fail to differentiate between Main Stacks and Bypass Vent Stacks. (40 C.F.R. § 63.7298).*

The MACT floor emission limits that EPA set for HRSG Bypass/Waste Heat Stacks from existing HNR facilities are burdensome and, in the event that SunCoke is required to install environmental controls to meet those limits, would negate the purpose of Bypass Vent Stacks as passive safety devices.

EPA established new MACT floor emission limits for AG, formaldehyde, Hg, PAH, and PM from Bypass Stacks in the same manner as Main Stacks, using an incomplete data set that is not representative of HNR's operating conditions. A limited subset of available data and the application of the UPL (to the limited data set) cannot account for variability and uncertainty with such limited data and does not consider the variability of chlorine and mercury in coal.[65] And for Bypass Stacks, the variability of chlorine and mercury in coal has an even greater impact on emissions than it does for Main Stacks. Like Main Stacks, EPA offered no explanation for its exclusion of relevant data and the result was unreasonably low emission limits that are not representative of SunCoke emissions and cannot be met.[66] The additional stack test data submitted to EPA on May 21, 2024, included ByPass Stack data that EPA had not previously considered.

In applying the same methodology to Main Stacks and Bypass Vent Stacks, EPA ignored a very material difference between the two sources of emissions. In HNR coke ovens, Bypass Vent Stacks act as a passive failsafe safety device. In the event of loss of negative pressure in the common

[65] 89 Fed. Reg. at 55711–55712; for discussion of variability of Hg in coal, *see, e.g.*, Mercury in U.S. Coal—Abundance, Distribution, and Modes of Occurrence, U.S. Geological Survey (Sept. 2001), https://pubs.usgs.gov/fs/fs095-01/fs095-01.pdf.

[66] *See* SunCoke comment letter, pp. 33–34.

ED_021114A_00008786-00072

tunnel, the stack lids are opened and natural thermal buoyancy draft up the height of the stack restores the negative pressure. Additionally in case of loss of power, the stack lids are opened by passive counterweights. In any case, the oven's negative pressure is maintained by passive lid opening and passive draft and does not require active measures. The negative pressure keeps the volatile organic compounds (VOCs) inside the oven and protects nearby personnel from fire and chemical exposure. Further, the negative pressure continues to draw in air to fully combust the VOCs and protects the environment from HAP release and protects the downstream equipment from potential gas build up to explosive concentration levels.

The key operating principle to the Bypass Vent Stack is the passive draft. If any HAP control equipment is installed on the Bypass Vent Stack, then the pressure drop associated with the control device will interfere with the passive draft and necessitate installation of a booster flue gas fan which then negates the passive safety purpose of the Bypass Vent Stack. The mass rate emission of HAP from a Bypass Vent Stack can be reduced by improved up-time of the downstream systems (HRSGs and flue gas desulfurization system (FGD)), but the concentration of HAP in the stream cannot be reduced in a vent stack flue gas. Bypass Stacks are used only when emissions cannot be vented through the Main Stacks. Therefore, the only appropriate limit on a Bypass Vent Stack is a work practice standard on upstream HRSGs and FGD, which EPA did not consider.

More generally, as described in Section I.B.4, EPA must reconsider whether work practice standards or surrogacy determinations are more appropriate for emissions of unregulated HAP from Bypass Vent Stacks. Work practice standards and surrogate emission limits were raised by EPA in the Final Rule, which prevented SunCoke from commenting on this point during the public comment period.

EPA should reevaluate and revise these MACT floor limits, including addressing the issues described in this section. Establishing appropriate MACT floor emission limits is of central relevance to the rulemaking.

7. *If EPA does not revise the final MACT floor emission limits, it should offer a site-specific alternative standard consistent with its determination that no controls are required.*

As described in the sections above, there is data demonstrating that the new MACT floor emission limits cannot be met with existing controls, which is the foundation for EPA's rulemaking. If EPA will not revise the final MACT floor emission limits (by using all appropriate data, distinguishing between different sources with different operations and emissions, and evaluating the appropriateness of work practice versus surrogacy determinations versus numeric emission limits), EPA should take the protective steps of allowing regulated entities to apply for an alternative limit if the new MACT floor emission limit cannot be met with existing controls. An alternative limit was allowed in the Surface Coating of Metal Furniture MACT at 40 C.F.R. § 63.4890(b), and a suitable model could be developed for HNR emissions sources.

In the alternative, EPA must reconsider whether the limited number of sources, limited data, differences in operations, variability of coal, and other factors, warrant revising the new MACT floor limits upwards to ensure that the limits can be met with existing controls.

ED_021114A_00008786-00073

C. EPA must reconsider whether its reading of the Clean Air Act is the best possible reading.

In its September 2, 2021 memorandum entitled "Use of the Upper Prediction Limit for Calculating MACT Floors,"[67] EPA noted that it had filled gaps in interpreting the Clean Air Act to address ambiguities as it applied to MACT floor emission limits, in reliance on deference afforded the agency under *Chevron*.[68] In *Nat'l Ass'n of Clean Water Agencies*, the court explained that EPA has significant discretion in establishing the MACT floors, including how to account for variability.[69]

This is no longer the case. In June 2024, the Supreme Court overruled *Chevron*, which required courts to defer to an agency's interpretation of an ambiguous statute. In *Loper Bright,* the Supreme Court held that "[t]he Administrative Procedure Act requires courts to exercise their independent judgment in deciding whether an agency has acted within its statutory authority, and courts may not defer to an agency interpretation of the law simply because a statute is ambiguous."[70]

In light of that decision, "what value the MACT floors are supposed to represent" will now be based on the best reading of the statute without deference to the agency's interpretation. EPA must revisit a number of aspects of the Final Rule, including but not limited to the following: whether EPA adequately accounted for variability in applying the UPL; EPA's failure to consider the variability of coal and the operational variability over the coking cycle in establishing the limits (and the achievability of those limits); the impact of the limits established by EPA on safety devices (e.g., Bypass Vent Stacks) used to protect personnel and equipment; whether EPA should have established MACT floor emission limits for some sources when it established work practice and surrogacy determinations for others; and EPA's exclusion of relevant test data.

D. The deadlines for compliance with the new MACT floor emission limits are too short.

The new MACT floor emission limits for existing sources become effective on January 5, 2026, 18 months after the effective date of the Final Rule. As described throughout this Petition and in data provided to the agency in the docket for the rulemaking, available data exhibits substantial variability and shows that the MACT floor limits are not consistently achievable for all pollutants without additional controls, operational changes, or both.

A minimum three-year compliance schedule is needed because controls for these pollutants/sources have not been demonstrated for HNR facilities, either in the United States or internationally.

[67] Donna Lee Jones, U.S. Environmental Protection Agency, Office of Air Quality Planning and Standards, Research Triangle Park, North Carolina, Docket ID EPA-HQ-OAR-2002-0085.
[68] *Chevron U.S.A. Inc. v. Nat. Res. Def. Council, Inc.*, 467 U.S. 837 (1984), *overruled by Loper Bright*, 144 S. Ct. 2244.
[69] *See Nat'l Ass'n of Clean Water Agencies v. EPA*, 734 F.3d 1115, 1142–43 (D.C. Cir. 2013) ("EPA can decide what value the MACT floors are supposed to represent, as long as that decision is a reasonable interpretation of the statute.").
[70] *Loper Bright*, 144 S. Ct. at 2272.

ED_021114A_00008786-00074

- Controlling multiple pollutants and retrofitting controls into existing operations add complexity and time due to interactions of the requirements for control, including pollutant interactions, flow rates, chemistry, and temperatures.
- Developing first-of-a-kind applications to control HAP emissions requires testing to define the limits and potential issues; and some of these applications would increase CO_2 emissions, use more power, increase potential water-born pollutants, and create new waste streams.
- There is a general lack of confidence in any feasible control technologies for HCN. Vendors contacted thus far indicate that any potential solution for control of HCN in combustion stack or pushing emissions is not technically feasible.
- Any additional controls would require permitting from the local permitting agency; permitting would take 6 to 12 months after engineering is completed.
- Extensive testing, engineering, and physical modifications will be needed at each plant. Existing equipment would need to be modified and retrofitted to install new controls, e.g., water treatment.
- Engineering of equipment to condition flue gas streams will be needed.
- Adding controls on mobile hot cars, if an alternate test method is not approved, will involve unique engineering challenges compared to stationary sources.

EPA should reconsider the deadlines for compliance for the MACT floor limits, because SunCoke was impermissibly deprived of adequate time to review and comment on the Proposed Rule (*see* Section I.A), including the impracticability of EPA's proposed compliance deadlines for the MACT floor limits. Providing regulated entities like SunCoke a reasonable timeline for compliance is of central relevance.

E. Alternate emission limits and work practice standards should have been adopted.

In its rush to publish the Final Rule, EPA removed all exemptions from startup, shutdown and malfunction (SSM), but did not replace the SSM exemptions with alternative limits or work practice standards.

1. EPA erred in not responding to SunCoke's request for alternate limits during startup of the flue gas desulfurization system.

In the preamble to the Final Rule, EPA says that "[t]he commenters did not provide a description of specific situations where work practice standards, or any specific work practices, would be more appropriate than the numerical emissions standards we are finalizing in this rule (or standards that were already in the NESHAP) that would be appropriate during startup or shut down."[71] This statement is not accurate. SunCoke specified that "alternate limits" were necessary "for emissions from the Main Stacks during periods of startup and shutdown of the FGD because the proposed

[71] 89 Fed. Reg. at 55718.

ED_021114A_00008786-00075

limits in 40 C.F.R. § 63.7297 would otherwise be impossible to meet."[72] SunCoke described how the FGD system must be slowly heated to the minimum operating temperature before the baghouse, spray dry absorber, and carbon injection system can be placed into service and proposed application of the Bypass Stack emission limits set forth in 40 C.F.R. § 63.7298 (standards that were already in the NESHAP), because it would be impossible to meet the new emission limits in 40 C.F.R. § 63.7297 for HRSG main stacks until the minimum operating temperature is met and the FGD system is online.[73]

EPA also responded that it "expects control devices to be operating during startup and shutdown (SS); therefore no additional requirements should be needed for startup or shutdown," which conflicts with SunCoke's comment that controls, including the baghouse, spray dry absorber, and carbon injection system cannot be placed into service until the FGD reaches minimum operating temperature.[74]

This issue was also raised with EPA during a meeting on February 12, 2024, and in a follow-up communication to EPA on February 19, 2024, after the close of the public comment period, when SunCoke proposed additional work practice standards, including returning the FGD to full operation as expeditiously as possible and meeting the Bypass Vent Stack limits in the meantime.

In the Final Rule, EPA incorrectly stated that no alternate work practices had been proposed and that all controls would be operating during startup and shut down, both of which are in error, and should be reconsidered.

2. EPA Impermissibly Rejected Other Appropriate Work Practice Standards.

In its Final Rule, EPA removed all exemptions from emission limits during startup, shutdown, and malfunction, and did not propose any alternate limits and works practice standards as it had done in numerous other rulemakings. In the Proposed Rule, EPA asked for comment on whether any ***situations*** existed where separate standards, such as work practices, would be more appropriate during periods of startup and shutdown, rather than the current standards. In response, SunCoke identified specific ***situations*** where separate standards should be applied (Section I.E.1, startup of the FGD) and general ***situations***, where work practices would be more appropriate, situations identified in the startup, shutdown, and malfunction plan.[75]

EPA then rejected all of the comments and did not establish any alternate limits or work practice standards purportedly because the commenters did not identify specific ***work practices*** that would be more appropriate than the numerical emissions standards. In other words, EPA asked commenters to identify ***situations*** where alternate work practices would be needed and then rejected all of the comments because commenters did not identify "***specific work practices***."[76]

Because EPA specifically asked for comments on ***situations*** where alternate work practices would be more appropriate and SunCoke (and other commenters) responded by identifying ***situations***

[72] SunCoke comment letter, p. 51.
[73] *Id.*
[74] 89 Fed. Reg. at 55718; SunCoke comment letter, p. 51.
[75] *Id.*
[76] 89 Fed. Reg. at 55718.

ED_021114A_00008786-00076

where alternate work practices would be more appropriate, EPA cannot reject all of the comments and refuse to establish any work practice standards because commenters did not provide ***specific work practices***. Had EPA asked commenters to identify specific work practices that should be applied, SunCoke would have identified the following:

Common Tunnel

- 40 C.F.R. § 63.303(a)(1) requires monitoring and recording pressure in each oven or in each common battery tunnel once per day during pushing, charging, and coking to ensure that the ovens are operated under a negative pressure.
- Possible malfunctions: Pressure cells malfunction due to instrumentation failures, negatively affecting draft and resulting in positive pressure in common tunnels.
- Potential alternative limit: Visually observe relevant section of common tunnel to confirm absence of visible emissions from tunnel.

Pushing/Charging Machines

- For charging operations, the owner or operator shall implement, for each day of operation, the work practices specified in section 63.306(b)(6).[77]
- Requirement to continuously operate baghouse and maintain baghouse differential pressure within a certain range.
- Possible malfunctions: Failure of control system or electrical infrastructure components, causing baghouse to shut down; differential pressure outside of normal range.
- Possible startup concern: After PCM baghouse fabric filter cartridges are changed during routine maintenance, the fabric filter cartridges need to gather a layer of material to operate efficiently and keep the differential pressure within range.
- Potential alternative limit: Observe baghouse stack and hood PCM area for visible emissions greater than 20% over 6 minutes.

Flat Push Hot Car Machines

- 40 C.F.R. § 63.7290(f)(4) requires, for each multicyclone, maintaining the daily average pressure drop at or below the minimum level established during the initial performance test.
- Potential malfunctions: Loss of control system components or electrical service, failure of multiclone, differential pressure outside of normal range, fan amps outside of threshold values, failure of continuous monitoring system.
- Potential alternative limit: Observe hot car stack for visible emissions greater than 20% over six minutes.

[77] 40 C.F.R. § 63.303(b)(3).

EPA must reconsider this aspect of the Final Rule and seek feedback from commenters on specific work practices that should be adopted in light of the removal of exemptions from emission limits for startup, shutdown, and malfunction, since this request was not made in the Proposed Rule.

F. EPA's performance testing schedule in section 63.7321 requires redundant and impracticable testing.

In the Final Rule, EPA requires performance testing for particulate matter (PM) from capture systems and control devices applied to pushing emissions under 40 C.F.R. § 63.7321(a) "once every 5 years or at the beginning of each term of your title V operating permit, whichever is less." EPA revised the regulatory language in response to a comment in which the commenter noted that Title V permits for coke plants can take more than five years to be issued and requested that EPA establish an outside deadline of every five years.[78] In making this change, EPA failed to give notice to the regulated community that it was contemplating changing the timeframe for PM testing and did so without considering whether it could revise the performance testing requirement in a way that would reduce the costs of unnecessary and redundant testing. EPA must reconsider the deadline for PM performance testing under section 63.7321(a), taking into account the consequences of unduly burdensome and redundant performance testing. At a minimum, the testing under section 63.7321(a) and under the Title V permit should be aligned to ensure that the Final Rule does not trigger new, redundant testing requirements. This issue is of central relevance to the outcome of the Final Rule, because regulated entities like SunCoke must have an opportunity to comment on meaningful regulatory requirements.

Further, EPA has finalized a new section 63.7321(b), which requires testing "once every five years" for emissions from Bypass Vent Stacks. SunCoke would face significant challenges at some of its plants if required to comply with that provision. For example, some of SunCoke's HNR plants only conduct planned bypass venting every two years. SunCoke, therefore, would not be able to meet the performance testing schedule at 63.7321(b) unless it intentionally opened the Bypass Vent Stack for the sole purpose of testing, thereby allowing emissions that would not otherwise occur. SunCoke expects that EPA did not intend to promulgate a regulatory provision that requires a source to emit where it otherwise would not, particularly where there are reasonable alternatives.

As discussed in Section I.A, SunCoke was impermissibly deprived of adequate time to review and comment on the Proposed Rule, including the implications of EPA's proposed performance testing schedule under section 63.7321(b). EPA should reconsider the deadline for performance testing under section 63.7321(b) and allow for testing when Bypass Vent Stacks are already open due to planned bypass venting, rather than requiring plants to open Bypass Vent Stacks, and emit, for the sole purpose of testing. Providing regulated entities like SunCoke a reasonable means of compliance is of central relevance to the outcome of the Final Rule.

---

[78] 89 Fed. Reg. at 55722; *see also id.* (EPA acknowledging that the Title V permit cycle "can extend for many years beyond five years due to delays in permit reviews.").

G. The Final Rule adds redundant pressure monitoring requirements using Method 303A that are not authorized by the Clean Air Act, are unnecessary and unclear.

1. Redundant Monitoring Using Method 303/303A Is Not Supported by EPA's Technology Review.

Because EPA's review of the coke oven batteries is authorized solely as part of the periodic technology review, EPA's authority for requiring any changes to Subpart L is limited to CAA section 112(d)(6). Section 112(d)(6) authorizes EPA to "review, and revise as necessary (taking into account development in practices, processes, and control technologies), emissions standards promulgated under this section" every eight years. 42 U.S.C. § 7412(d)(6). EPA acknowledged in the Proposed Rule, and did not state otherwise in the Final Rule, that there have been no developments in "practices, processes, and control technologies that would reduce charging emissions from ByP or HNR facilities regulated under the source category." 88 Fed. Reg. 55883.

Accordingly, EPA lacked authority to add new redundant monitoring requirement for HNR using EPA Method 303A and should reconsider the requirement.

2. Method 303A performance testing is, according to EPA, unnecessary when operating coke ovens under negative pressure.

To monitor for emissions from coke oven doors, EPA previously required that HNR facilities either (1) meet the 0.0 percent leaking requirement, as determined using EPA Method 303A, *or* (2) conduct daily pressure monitoring in each oven or in each common battery tunnel to ensure that the ovens are operated under negative pressure. In the Final Rule, EPA is now requiring that HNR facilities do both. 40 C.F.R. § 63.303(a)(1).

Section 63.302(c), adopted previously with respect to ByP plant coke oven batteries, acknowledges that it is not necessary to determine the percent of leaking coke oven doors when ovens are operated under negative pressure:

> The emission limitations in paragraph (b) of this section do not apply to the owner or operator of a by-product coke oven battery that utilizes a new recovery technology, including but not limited to larger size ovens, *operation under negative pressure*, and processes with emission points different from those regulated under this subpart." 40 C.F.R. § 63.302(c) (emphasis added).

In requiring HNR facilities with coke ovens that operate under negative pressure to conduct daily Method 303A monitoring when ByP plants are not required to do so, is arbitrary and capricious and contrary to law, treating similarly situated entities differently. Accordingly, EPA should reconsider the new monitoring requirement.

3. Redundant Monitoring Will Not Result in Earlier Detection of Door Leaks.

In the preamble to the Final Rule, EPA indicated that it had not quantified any benefits associated with the Final Rule because the final limits could be met with existing controls but speculated that

ED_021114A_00008786-00079

new requirements may lead to earlier detection of excess HAP emissions.[79] That is not true with respect to the addition of Method 303A monitoring.

Under Method 303A, a certified observer walks "the length of the battery on the outside of the pusher machine and quench car tracks at a steady, normal walking pace, pausing to make appropriate entries on the door area inspection sheet."[80] In contrast, SunCoke employs multiple layers of monitoring, including the following:

- Electronic monitoring of the pressure in the common tunnel is conducted using a draft cell at the end of the common tunnel to confirm continuous operation under negative pressure;
- SunCoke employees monitor the coke ovens for door leaks throughout all stages of the coking cycle and adjust the ovens by reviewing electronic data and physically walking the coke oven batteries. Employees in the field and in the control room are in constant radio contact to implement any required fixes; and
- After charging, SunCoke checks each door for leaks, and if a door leak due to positive pressure is detected, it is immediately corrected by adjusting oven uptakes, dampers, and/or sole flues, and is then recorded, and reported as required under section 63.303(c).

SunCoke's existing monitoring system already accurately monitors for pressure and allows personnel to take action in a timely and safe manner when necessary. Adding duplicative monitoring requirements will add to SunCoke's monitoring burden without leading to earlier detection of excess HAP emissions. Accordingly, EPA must reconsider its decision to require redundant monitoring using Method 303A.

4. The Method 303A monitoring requirements are entirely unclear.

The requirements for performing daily oven pressure monitoring using Method 303A are also entirely unclear. Section 63.303(a)(1)(i) requires HNR facilities to determine compliance with the 0.0 percent leaking coke oven door standards "as determined by the procedures in Section 63.309(d)(1)" but 63.309(d)(1) describes how an enforcement agency would calculate a 30-run rolling average of the percent leaking coke oven doors using the observations from "each performance test." Section 63.309(d)(1) says:

> (d) Using the observations ***obtained from each performance test, the enforcement agency shall compute and record***, in accordance with the procedures and requirements of Method 303 or 303A in appendix A to this part, for each day of operations on which a valid emissions value (or set of values) is obtained:
>
> (1) The 30-run rolling average of the percent leaking coke oven doors, topside port lids, and offtake systems on each coke oven battery, using the equations in sections 12.5, 12.6, and 12.7 of Method 303 (or section 12 of Method 303A) in appendix A to this part; . . .

[79] 89 Fed. Reg. at 55686.
[80] Method 303A at Section 11.2.

ED_021114A_00008786-00080

(Emphasis added).

In the first instance, there is no requirement for a performance test in 40 C.F.R. §§ 63.303(a)(1)(i) or 63.309(d)(1) and the reference to an enforcement agency performing the calculation based on observations from each performance test make it unclear who is required to do the testing. There is also no methodology or frequency specified for monitoring. EPA did not cross-reference other relevant sections of 40 C.F.R. § 63.309 requiring a daily performance test (63.309(a)), specifying the method to be used to perform the test (section 63.309(a)(1)), or specifying training and certification requirements for observers (63.309(a)(2) and (3)), etc. Further, section 63.309(d)(1) references topside port lids, which HNR plants do not have, and does not account for the differences between the offtake systems on HNR plants and Byproduct plants.

It is also worth noting that EPA concluded that the cost of daily Method 303A monitoring would be $21,000 per year, per facility,[81] yet the Final Rule appears to contemplate daily (7-days a week) monitoring and the involvement of the owner or operator, a certified observer, and "the enforcement agency" to whom the regulated entity pays a quarterly inspection fee "to defray the costs of the daily performance tests." The requirements of the rule are unclear, but it appears that EPA has grossly underestimated the costs for daily performance testing and should reconsider the requirements to clarify the agency's intent. The agency's explanations in the Final Rule do not at all align with the regulatory text. If EPA maintains the new requirement for HNR facilities to comply with Method 303A, then SunCoke requests that EPA extend the compliance deadline for one year after the agency clarifies the monitoring requirements.

This issue is of central relevance because EPA has imposed a new requirement for HNR facilities and it is not clear how to comply.

H. EPA failed to provide a viable test method for HCN emissions from mobile hot cars.

In its comment letter, SunCoke noted that using either Method 320 or ASTM D6348 as the test method for HCN emissions from pushing (pursuant to the 40 C.F.R. § 63.7322(e)) would require the use of Fourier Transform Infrared Spectroscopy (FTIR), which is a relatively delicate analytical method requiring careful alignment of optical mirrors on mobile hot cars. SunCoke explained that hot cars ride on steel rails with limited suspension, are subject to high vibration and strong jolts, are susceptible to alignment errors caused by jostling and excessive vibrations, all of which adversely impact any measurements collected using FTIR and the reliability of those results. SunCoke also noted that space on the mobile hot cars is very limited, and it would be challenging to develop an application in which an instrument rack with FTIR equipment and calibration gas cylinders could fit on the hot cars.

EPA responded in the Response to Comments, acknowledging the difficulties of performing testing on "certain sources," specifically, that under certain circumstances, FTIR methods have interferences that prevent its use on certain sources. As a result, EPA approved alternative test methods (Methods 26 and 26A) for acid gases measurements, but EPA did not approve alternative test methods for HCN emissions.

---

[81] 89 Fed. Reg. at 55686.

ED_021114A_00008786-00081

> The *EPA agrees that under certain circumstances the FTIR methods, EPA Method 320 and ASTM D6348 (2020), may have interferences that prevent its use on certain sources.* The EPA is finalizing, as proposed, to allow the use of EPA Methods 26 or 26A in addition to EPA Method 320 and ASTM D6348 (2020) for determination of acid gases (40 CFR 63.7322(d)(1)(ii)).[82]

Therefore, for the measurement of acid gases on mobile hot cars, EPA approved an alternative method, but not for HCN. SunCoke raised this concern during a meeting with EPA on August 20, 2024, and EPA acknowledged that it had not approved an alternative test method for HCN but that SunCoke could propose an alternate test method:

> EPA Method 26 and 26A is not listed as alternatives for Method 320 for HCN per *63.7322(e)(1)*. The allowed methods to determine the concentration of HCN in stack gas are: (1) Method 320 in appendix A; and (2) voluntary consensus standard ASTM D6348–12 (Reapproved 2020) (incorporated by reference). We did not specify any alternative method, but *an alternative may be requested through 63.7(f)*.[83]

EPA's decision to provide an alternative test method for acid gases, acknowledges that an alternative test method is needed to measure HCN emissions from mobile hot cars. However, EPA did not provide one, leaving SunCoke with the obligation to test using a method (FTIR) that EPA has acknowledged is inappropriate or to develop its own method. The only other method of which SunCoke is aware is the zinc acetate method. EPA explained in its Summary of Coke Ovens Risk and Technology Review: Data Summary that "EPA abandoned the zinc acetate approach in mid-2017 due to its limited dynamic range of measurement, i.e., poor and inconsistent sample recovery."[84] It is not SunCoke's responsibility to step into the shoes of the regulators and develop a test method where none exists.

SunCoke is now in a position in which it is required to meet a certain HCN standard by January 5, 2026, without a prescribed method for doing so that would be technically feasible. Accordingly, EPA must reconsider this aspect of the rule and either waive testing (allow PM to be used as a surrogate for HCN) or develop a method for HCN testing.

SunCoke could not have anticipated that, despite EPA acknowledging in the Response to Comments that the FTIR methods cannot be used on certain sources, EPA still would not provide an alternative test method for HCN on pushing sources like mobile hot cars. It was, therefore, impracticable for SunCoke to raise this objection during the comment period. This objection is of "central relevance" to the outcome of the Final Rule, because it is arbitrary and capricious for EPA to establish a new MACT floor emission limit for HCN while requiring compliance testing that is not technically feasible.

[82] Response to Comments, Response 11-9, p. 185 (emphasis added), Docket ID EPA-HQ-OAR-2002-0085-1603.
[83] Email from D. Jones, EPA, to K. Batten, SunCoke, et al. (Aug. 21, 2024) (emphasis added).
[84] EPA Memorandum, Coke Ovens Risk and Technology Review: Data Summary, at 30, Table 13 (May 1, 2023), Docket ID EPA-HQ-OAR-2003-0051-0778.

ED_021114A_00008786-00082

I. EPA's failure to sufficiently lower the Method 23 sampling volume for mobile hot cars will cause safety and operational issues for SunCoke.

In the Proposed Rule, EPA proposed a minimum sample volume for Method 23 (PAH) of 140 dscf (dry standard cubic foot). SunCoke explained that the proposed sample volume was too high for the pushing tests.[85] While EPA agreed that a small volume allows a source to demonstrate compliance based upon the detection levels for pushing, EPA only lowered the sample volume to 105 dscf, which is not sufficient to address SunCoke's concerns associated with the length of time required for testing, specifically for the pushing process.[86] EPA also disagreed with SunCoke's evaluation of the amount of time required for testing and stated that "the longest duration of any test run during the CAA section 114 request was 21 hours."[87] But EPA clearly misunderstood SunCoke's comments because they state in their response "We also disagree with the commenter that a month would be required to complete three test runs. . . ."[88] SunCoke did not state that three test runs will require a month of testing. A clarification of SunCoke's comments and additional context is provided below.

Because pushing is a brief and intermittent activity that lasts between only two and four minutes for each oven, sampling must be conducted during the push of each oven on as many ovens as is necessary to achieve the specified sample volume. This means that to collect a sample volume of 105 dscf, each test run for PAH would have to span two days, as demonstrated in the 2017 ICR testing where for each test run of PAHs/DFs, approximately 90 dscf was collected on the first day of testing and the remaining volume (approximately 55 dscf) was collected on the second day of testing. Therefore, three test runs of PAH at the reduced volume of 105 dscf will still require six days of testing on the hot car. To this, we need to add nine days of testing for the other HAP (three days for Hg, three days for AG, and three days for HCN). If there are no production delays or testing issues, this is 15 straight days of testing on each hot car. This doesn't even consider the existing ongoing permit requirement to test PM on the hot car (derived from the existing MACT rule) every 2.5 years, which adds an extra three days of testing on each hot car. Therefore, it is very reasonable to expect that testing could take three weeks for each hot car based on the requirements in the Final Rule.

Ultimately, extended testing periods not only raise personnel safety concerns, but also serve to disrupt critical aspects of production and maintenance. SunCoke requests that EPA lower the Method 23 sample volume to 90 dscf or less to remedy these legitimate safety and operational concerns.

J. EPA did not respond to SunCoke's comments on the definition of "acceptable makeup water."

EPA did not respond to SunCoke's comments on the definition of "acceptable makeup water" in 40 C.F.R. § 63.7352.[89] Specifically, SunCoke requested that EPA also allow the use of "non-process wastewaters," as defined in 40 C.F.R. § 420.02(r), as acceptable makeup water for quenching.

[85] SunCoke comment letter, p. 35.
[86] Response to Comments, Response 11-10, p. 185.
[87] *Id.*
[88] *Id.*
[89] SunCoke comment letter, Att. H, pp. 1–2.

ED_021114A_00008786-00083

40 C.F.R. § 63.7295(a)(2). Non-process wastewaters are defined in the effluent limitation guidelines and standards for the Iron and Steel Manufacturing Plant Source Category as follows:

> [U]tility wastewaters (for example, water treatment residuals, boiler blowdown, and air pollution control wastewaters from heat recovery equipment; treated or untreated wastewaters from groundwater remediation systems; dewatering water for building foundations; and other wastewater streams not associated with a production process.

40 C.F.R. § 420.02(r). These wastewater streams are the same as or are better than several of the currently cited examples in section 63.7352, including process wastewater treated to meet effluent limitations guidelines in 40 C.F.R. part 420, production area clean-up water, and non-contact cooling water. In addition, recycling non-process wastewaters would result in conservation of water resources and reduce energy consumption, and the requirements for quenching set forth in section 63.7295 including the total dissolved solids (TDS) limits would continue to apply.

Accordingly, EPA should reconsider its decision not to revise the definition of "acceptable makeup water." SunCoke requests that EPA modify the definition as follows on the basis that the addition of non-process wastewater is the same as or better than other cited examples allowed in Subpart CCCCC:

> *Acceptable makeup water* means surface water from a river, lake, or stream; water meeting drinking water standards; storm water runoff and production area clean up water except for water from the by-product recovery plant area; process wastewater treated to meet effluent limitations guidelines in 40 CFR part 420; *non-process wastewater as defined in 40 CFR § 420.02(r)*; water from any of these sources that has been used only for non-contact cooling or in water seals; or water from scrubbers used to control pushing emissions.

(Emphasis added).

K. The Final Rule contains typographical and similar errors that must be corrected.

The Final Rule contains typographical and similar errors, in all likelihood a function of the court ordered deadline to finalize the rule. Typos and similar errors lead to confusion regarding compliance obligations. Therefore, ensuring that the Final Rule is free from typos and similar errors is central to the relevance of the Final Rule.

1. Inconsistent definitions of "coke oven battery"

The definitions of "coke oven battery" in Subparts L and CCCCC are inconsistent with each other. Subpart L defines a "coke oven battery" as "either a by-product or nonrecovery coke oven battery," 40 C.F.R. § 63.301, whereas Subpart CCCCC defines a "coke oven battery" as "a group of ovens connected by common walls, where coal undergoes destructive distillation to produce coke. A coke oven battery includes by-product and nonrecovery processes." 40 C.F.R. § 63.7352. We

ED_021114A_00008786-00084

request that EPA keep the "coke oven battery definition" in 40 C.F.R. § 63.301 (Subpart L) and change the definition in 40 C.F.R. § 63.7352 (Subpart CCCCC) to match.

2. Inconsistent definitions of "pushing"

The definition of "pushing" is inconsistent in Subparts L and CCCCC. Subpart L defines "pushing" as, for the purposes of section 63.305 (alternative standards for coke oven doors equipped with sheds), "the coke oven operation that commences when the pushing ram starts into the oven to push out coke that has completed the coking cycle and ends when the quench car is clear of the coke side shed." 40 C.F.R. § 63.301. Subpart CCCCC defines "pushing" as "the process of removing the coke from the oven. Pushing begins with the first detectable movement of the coke mass and ends when the quench car enters the quench tower." 40 C.F.R. § 63.7352. These definitions do not accurately reflect the pushing process at SunCoke's HNR plants.

EPA should use the definition of "pushing" below, which SunCoke provided in Attachment H to its comment letter (EPA-HQ-OAR-2002-0085-0968). This definition accurately describes the operation of the flat push hot car at SunCoke's HNR plants and accounts for the facts that (1) the flat push hot car does not enter the quench tower; and (2) the quench car, which receives the coke from the flat push hot car, generally remains inside the quench tower.

> "Pushing means the process of removing the coke from the oven. Pushing using a quench car begins with the first detectable movement of the coke mass and ends when the quench car enters the quench tower. Pushing using a flat push hot car begins with the first detectable movement of the coke mass and ends when the flat push hot car completes its travel, locks into a stationary position adjacent to the quench tower, and lines up with the quench car."

3. Reversed emission limits for acid gases

The final emission limits for total acid gases under section 63.7298(c) are 0.095 gr/dscf for existing HNR coke oven batteries and 0.12 gr/dscf for new HNR coke oven batteries. Those limits should be reversed. This change will make the limits consistent with Table 7 of the Final Rule. 89 Fed. Reg. at 55709.

4. Ambiguous definition of a "battery waste heat flues"

The definition of "battery waste heat flues" must be clarified. Subpart CCCCC includes a new definition for "battery waste heat flues" in section 63.7352, but the definition does not make clear that is applies only to byproduct and not HNR facilities.

5. Ambiguous work practice standard

The Final Rule includes a new requirement in section 63.7300(c)(4) to identify and implement "good combustion practices" for "maintaining the proper and efficient combustion within battery waste heat flues." The Final Rule does not specify that the work practice standard applies to byproduct and not HNR facilities. But it is clear from the Final Rule's preamble, the supporting materials, and the equipment to be regulated (*i.e.*, battery waste heat flues) that the new work practice standard applies solely to ByP facilities. The preamble states that the work practice

ED_021114A_00008786-00085

standard applies "during ByP waste heat combustion in battery flues," 89 Fed. Reg. at 55708. And Table 5 under 40 CFR part 63, subpart CCCCC specifically limits the work practice standard to "ByP battery (combustion) stacks." Moreover, HNR facilities do not operate "battery waste heat flues." To avoid unnecessary confusion among state regulatory agencies and the regulated community, section 63.7300(c)(4) should be clarified to specify that the new work practice standard is limited to byproduct facilities.

6. Discrepancy in number of test runs required for initial compliance

Under the Final Rule, section 63.7322(c)(2) sets the number of test runs required to determine compliance with a process-weighted mass rate of HCN (lb/ton of coke) from a control device applied to pushing emissions and battery stacks. The Final Rule requires facilities to "[c]ollect a minimum of eight spectra for each of *six runs (or hours)* evenly spaced over the test period" (emphasis added). But only "[*t*]*hree valid test runs* are needed to comprise a performance test" (emphasis added). So, it is unclear whether three or six runs is sufficient to comply with section 63.7322(c)(2). Three runs should be sufficient and would be consistent with other sections using Method 320.

7. Inconsistent pushing limits

Section 63.7326(a) establishes what regulated parties must do to demonstrate initial compliance with the emission limits from a control device applied to pushing emissions. Paragraphs (a)(2) through (a)(5) identify pushing emission limits for Hg, AG, HCN and PAH respectively, but these limits do not match the limits provided in section 63.7290(b) through (c) and in Table 7 of the Final Rule 5.1E-07 lb/ton. 89 Fed. Reg. at 55708. The limit in section 63.7326(a) should match the limit provided in section 63.7290 and Table 7.

8. Cross reference error in PAH emission limits

The Final Rule's references to "§§ 63.7290(b) through (d)" should be changed to "§§ 63.7290(b) through **(e)**" in sections 63.7282 and 63.7283. Section 63.7290(c) provides the PAH emission limits for capture systems and control devices applied to pushing emissions. See attachment A for the corrections (in red) required to fix the typo throughout section.

9. Cross reference error in recordkeeping requirements

40 C.F.R. § 63.311(f)(1)(v) requires keeping "[r]ecords to demonstrate compliance with the work practice requirements for oven uptake damper monitoring and adjustments in § 63.303(c)(1)(iv)." But section 63.303(c)(1)(iv) does not exist. The relevant recordkeeping requirement is in paragraph section 63.303(c)(1).

II. Stay Pending Reconsideration

While EPA is reconsidering a rule pursuant to section 307(d)(7)(B), the CAA permits EPA to stay "the effectiveness of the rule" . . . for a period not to exceed three months."[90] This stay gives the Agency time to reconsider its position and review the Final Rule's requirements without imposing

[90] 42 U.S.C. § 7607(d)(7)(B).

unnecessary compliance costs on regulated entities. EPA may also use a stay pending reconsideration to avoid any confusion in the regulated industry from EPA implementing and then quickly revising its regulatory requirements. Staying the effective date of the rule until the agency completes its reconsideration process avoids any concerns about regulatory whiplash.

SunCoke respectfully requests that EPA exercise its full authority to stay the effectiveness of the Final Rule pending reconsideration. The Final Rule imposes compliance obligations on SunCoke and its facilities that would require immediate and significant costs to comply by the Final Rule's compliance deadline. Staying the Final Rule during reconsideration will avoid imposing these compliance costs prematurely and avoid confusion among facility personnel from learning the Final Rules' potentially unnecessary requirements. A stay would afford EPA the time needed to fully reconsider its Final Rule without imposing costs on the regulated industry in the meantime.

III. Request for Stay Pending Judicial Review Pursuant to Section 705 or for EPA to Amend the Final Rule

Pursuant to 5 U.S.C. § 705, SunCoke respectfully requests that EPA stay the Final Rule pending judicial review on the grounds that EPA exceeded its statutory authority, failed to follow procedures required by the APA and CAA for agency rulemaking, did not adequately consider costs or assess benefits, and did not adequately respond to all significant comments. While judicial review is pending, section 705 of the APA allows EPA to stay the effective date of a final rule if it "finds that justice so requires." SunCoke requests that EPA make such a finding here. Alternatively, SunCoke requests that EPA amend the Final Rule pursuant section 553(e).[91] Where, as here, there are several overarching and interrelated objections made to a rule, EPA may properly amend the Final Rule to address those concerns and rectify its procedural violations.

EPA may stay the effective date of the Final Rule, July 5, 2024, if it "finds that justice so requires." EPA and courts have applied the four-part test for preliminary injunctions to determine whether "justice so requires" a stay of agency action pending judicial review. Under that standard, the agency must consider and moving parties must demonstrate: (1) a likelihood of success on the merits of the judicial challenge, (2) irreparable harm to the moving party if the stay is not granted, (3) the potential for harm to others if the stay is granted, and (4) whether the public interest weighs in favor of granting the stay. Once an applicant satisfies the first two factors, the traditional stay inquiry calls for assessing the harm to the opposing party and weighing the public interest. Factors (3) and (4) merge, however, when the government is the opposing party.[92]

As explained below, each of these factors weighs in favor of staying this Final Rule until the resolution of judicial review.

[91] *See* 5 U.S.C. § 553(e) ("Each agency shall give an interested person the right to petition for the issuance, amendment, or repeal of a rule."); *Nat'l Ass'n of Homebuilders v. EPA*, 682 F.3d 1032, 1037 (D.C. Cir. 2012) (denying petition for review of EPA's repeal of a recently amended rule because "[a]n agency's view of what is in the public interest may change, either with or without a change in circumstances.") (citation and internal quotation marks omitted).
[92] *Nken v. Holder*, 556 U.S. 418, 435 (2009).

ED_021114A_00008786-00087

L. SunCoke is likely to succeed on the merits.

1. SunCoke's petition for a stay pending review is likely to be granted on the merits.

As set forth above in Section I, EPA denied SunCoke and other stakeholders adequate notice and opportunity. The CAA requires EPA to provide "a reasonable period for public participation of at least 30 days."[93] The APA requires agencies to provide "a reasonable opportunity to comment and submit data in support of, or in opposition to, the rules proposed."[94] Because both statutes demand a reasonable opportunity to comment, cases addressing APA's standard should also apply in the CAA context.

Courts are not blind to the complexity of a rulemaking when determining whether a comment period is sufficient. For example, in *Centro Legal de la Raza v. Executive Office for Immigration Review*, the court concluded that the plaintiffs were likely to succeed on their claim that a 30-day comment period was insufficient under the APA on a final rule that changed the procedures and regulations governing immigration courts.[95] Because the rule was technical and procedural in nature, the court considered 30 days insufficient because of "COVID-19 pandemic and the numerous other concurrent regulatory changes to the immigration system."[96] The court issued a nationwide injunction of the rule.

The D.C. Circuit agreed with the rationale set forth in *Centro Legal de la Raza*, explaining that a 30-day comment period is viewed as "generally the *shortest time* period for interested persons to meaningfully review a proposed rule and provide informed comment."[97] Thirty days is "cut[ting] the comment period to the bone").[98] In fact, two Executive Orders state that agencies should "generally" or "in most cases" provide *at least 60 days for comments*.[99] Agencies are also directed to provide "timely online access to the rulemaking docket on regulations.gov, including relevant scientific and technical findings, in an open format that can be easily searched and downloaded."

EPA did not follow these directives. Not only did it not provide the recommended comment period of "at least 60" days, EPA only provided 45 days for the public to address amendments to *two separate rules* — rules that regulate "among the most complex of the nearly 200 source categories," as well as a large volume of highly technical documents.[100] EPA could have sought another extension to meet the court's May 23, 2024 deadline, but it chose not to. Instead, it opted to limit the

---

[93] 42 U.S.C. § 7607(h).
[94] 5 U.S.C. § 553; *see also Action For Children's Television v. FCC*, 564 F.2d 458, 471 (D.C. Cir. 1977).
[95] *Centro Legal de la Raza v. Executive Office for Immigration Review*, 524 F. Supp. 3d 919 (N.D. Cal. 2021).
[96] *Id.* at 920.
[97] *Catholic Legal Immigration Network, Inc. v. Executive Office for Immigration Review*, Not Reported in Fed. Supp. 2021 WL 3609986, at *3 (D.D.C. Apr. 4, 2021) (citing *Nat'l Lifeline Ass'n v. FCC*, 921 F.3d 1102, 1117 (D.C. Cir. 2019) (holding "two-week period . . . was not an adequate period for eliciting meaningful comments"); *see also Petry v. Block*, 737 F.2d 1193, 1202 (D.C. Cir. 1984) (describing a 30-day period as "cut[ting] the comment period to the bone").
[98] *Petry v. Block*, 737 F.2d 1193, 1202 (D.C. Cir. 1984).
[99] *See* Exec. Order 13,563, Improving Regulation and Regulatory Review, 76 Fed. Reg. 3821 (Jan. 18, 2011); Exec. Order 12,866, Regulatory Planning and Review, 58 Fed. Reg. 51735 (Sept. 30, 1993) (emphasis added).
[100] 88 Fed. Reg. 55858 ("Comments must be received on or before October 2, 2023."); *Citizens for Pennsylvania's Future*, 469 F. Supp. 3d at 933.

ED_021114A_00008786-00088

comment period so that SunCoke and others could not address critical issues in the Proposed Rule. Due to the short comment period, SunCoke was forced to submit additional comments and data after the close of the comment period, including data that EPA refused to address.

2. The decision violated the CAA and the APA.

EPA's decision to establish 17 numerical MACT floor emission limits, despite its acknowledgement that those limits are not required to address any residual risk associated with HAP emissions from the PQBS source category, is arbitrary and capricious.

EPA found through its Risk and Technology Review (RTR) that risks due to the HAP emissions from coke ovens' PQBS are "acceptable"; that the existing PQBS rule "provides an ample margin of safety to protect public health"; and that there "are no developments in practices, processes or control technologies that necessitate revision of standards for this source category.[101] Yet EPA nonetheless proposed new MACT floor limits under CAA sections 112(d)(2) and 112(d)(3) for the stated purpose of complying with its interpretation of *LEAN*, 955 F.3d 1088 despite the fact that these new limits will have crippling effects on companies like SunCoke, forcing the installation of many millions of dollars in new technology.[102]

In its comments on the Proposed Rule, SunCoke objected to EPA's proposed MACT floor emission limits on the basis that they were inconsistent with EPA's RTR findings for the PQBS source category.[103] SunCoke explained that, contrary to EPA's interpretation of *LEAN*, the agency is not required to set numeric MACT floor emission limits when it has already determined that risks are acceptable pursuant to CAA section 112(f)(2).

EPA rejected SunCoke's comment, explaining that "[t]he Court in *LEAN* did not consider the relationship of risk review under CAA section 112(f)(2) and technology review under CAA section 112(d)(6) . . . ." In EPA's view, *LEAN* requires that the EPA promulgate 'as many limits as needed' so that all pollutants from a source category are regulated."[104] The agency further argued that:

> EPA has an independent statutory authority and obligation to conduct the technology review separate from the EPA's authority to conduct a residual risk review. The EPA's finding that there is an ample margin of safety under the residual risk review in no way obviates the EPA's obligation to require more stringent standards under the technology review where developments warrant such standards.[105]

EPA had other options. It could have considered surrogate emission limits or work practice standards for the 17 previously unregulated HAP. In fact, EPA implicitly recognized its authority to do that in the Final Rule, when EPA set a MACT work practice standard for three HAP (the organic

[101] 88 Fed. Reg. 55858.
[102] 88 Fed. Reg. at 55863 ("The EPA is required to address regulatory gaps, such as missing MACT standards for listed air toxics known to be emitted from the source category. *Louisiana Environmental Action Network (LEAN) v. EPA*, 955 F.3d 1088 (D.C. Cir. 2020)."); *id.* at 55876 n.25 (citing to *LEAN* as support for its proposal of MACT standards).
[103] SunCoke comment letter, p. 25.
[104] 89 Fed. Reg. at 55711.
[105] 89 Fed. Reg. at 55710.

ED_021114A_00008786-00089

HAP emissions of D/F, PAH, and VOHAP from battery stacks) and surrogate standards and process combinations for five other HAP. EPA did this after realizing that it failed to propose standards for those eight previously unregulated HAP in the Proposed Rule. That EPA set numerical MACT floor limits (which SunCoke will not be able to meet) for some HAP and process combinations while establishing surrogates and work practice standards for others without sufficient explanation is arbitrary and capricious.

EPA's interpretation of *LEAN* is not entitled to deference. Nor is EPA's interpretation of law, as the Court's decision in *Loper Bright* makes clear. [106] When EPA's overly expansive interpretation of *LEAN* leads it to impose unnecessary and ill-informed MACT floor limits on an industry (heat/non-recovery cokemaking) that EPA recognizes adequately control HAP emissions, its decision is arbitrary and capricious. "[A]s a general matter, EPA has stated that where we determine that existing standards are adequate to protect public health with an ample margin of safety and prevent adverse effects, it is unlikely that EPA would revise MACT standards merely to reflect advances in air pollution control technology."[107] The same should be true for a rule where EPA found that "[t]here are *no measurable air quality impacts* from this rule that can be guaranteed," and it cannot "quantif[y] any benefits associated with this final rule, because all covered facilities are expected to already have HAP emissions levels that are below the final limits."[108]

SunCoke is likely to prevail on the merits for several other reasons. EPA's inconsistent designation of MACTs, coupled with its failure to consider SunCoke's analyses of the errors and omissions in the dataset used by EPA for the proposed emission limits was arbitrary and capricious.[109] EPA's disparate treatment of the 17 HAP included in the Proposed Rule versus the eight new HAP in the Final Rule is arbitrary and capricious. "[D]eciding a case one way today and a substantially similar case another way tomorrow," without a reasonable explanation, is arbitrary and capricious.[110] In fact, EPA's decision to add eight new HAP in the Final Rule also violates basic APA requirements. EPA's failure to consider the cost of achieving emissions reductions, as well as any non-air quality health and environmental impacts and energy requirements when setting MACT floor-level controls based solely on emissions data from best performing sources violates CAA section 112(d)(2).

For these reasons and the others set forth in this Petition, SunCoke's petition is likely to succeed on the merits.[111]

---

[106] 144 S. Ct. 2244.

[107] 72 Fed. Reg. 5510, 5532–33 (Feb. 6, 2007).

[108] 89 Fed. Reg. at 55723 (emphasis added).

[109] *See* Email and attachments from K. Batten, SunCoke, to D. Jones and C. French, EPA (Jan. 18, 2024), Docket ID EPA-HQ-OAR-2002-0085-1566.

[110] *Doubleday Broad. Co. v. FCC*, 655 F.2d 417, 423 (D.C. Cir. 1981).

[111] 42 U.S.C. § 7607(d)(l) states that the "provisions of section 553 through 557 and section 706 of title 5 [the APA] shall not, except as expressly provided in this subsection, apply to actions to which this subjection [307(d)] applies." *See Sierra Club v. Jackson*, 833 F. Supp. 2d 11, 23–26 (D.D.C. 2012). Notwithstanding the Petition for Reconsideration, SunCoke reserves the right to bring any argument in a judicial proceeding that it raised with reasonable specificity during the period for public comment.

ED_021114A_00008786-00090

M. SunCoke will suffer irreparable harm absent a stay or amendment of the Final Rule.

An agency may grant a stay under section 705 to "maintain the status quo" and "allow judicial review of the underlying regulation to proceed in a just manner."[112] EPA can also amend a Final Rule pursuant to section 553(e) of the APA. Absent a stay to preserve the status quo or amendment, judicial review of the Final Rule cannot proceed in a just manner.

The Final Rule will cause SunCoke irreparable harm because EPA incorrectly assumed that the Final Rule will not require SunCoke to install new controls in order to comply. EPA relied on that assumption to analyze the cost impacts, calculate the compliance deadlines, and make other decisions in the Final Rule. But EPA's assumption is wrong. SunCoke will have to expend approximately *a half a billion dollars* in new technologies, which will require at least three years to design, engineer, and install. SunCoke cannot meet EPA's deadline, which will put it out of compliance as of December 5, 2025.[113]

The Supreme Court recently validated the principle that non-recoverable expenditures constitute irreparable harm in *Ohio v. EPA*.[114] There, a number of states challenged EPA's implementation of a federal implementation plan (FIP) for 23 states, in lieu of their proposed state implementation plans. The States involved stressed that "complying with the FIP during the pendency of this litigation would require them to incur "hundreds of millions[,] if not billions of dollars" in costs that are "nonrecoverable."[115] Other courts, including the D.C. Circuit, have also "recognized that financial injury can be irreparable where no adequate compensatory or other corrective relief will be available at a later date, in the ordinary course of litigation."[116] "[C]omplying with a regulation later held invalid almost always produces the irreparable harm of nonrecoverable compliance cost."[117]

SunCoke easily meets the standard for irreparable harm. For the reasons explained below, EPA should stay the effect of the compliance deadlines or amend the Final Rule.

---

[112] *Bauer v. DeVos*, 325 F. Supp. 3d 74, 106–07 (D.D.C. 2018) (internal quotation marks omitted).

[113] SunCoke will provide detailed declarations with its motion for judicial stay demonstrating that the Final Rule will cause it to spend many millions of dollars to comply with the Final Rule, if SunCoke is able to at all.

[114] 144 S. Ct. 2040 (2024) (finding that injuries to the States' sovereign interests and the extraordinary costs of complying with EPA's regulations were sufficient to balance the government's interests).

[115] *Ohio*, 144 S. Ct. at 2053 (citing *Thunder Basin Coal Co. v. Reich*, 510 U.S. 200, 220–221 (1994) (Scalia, J., concurring in part and concurring in judgment) ("Because each side has strong arguments about the harms they face and equities involved, our resolution of these stay requests ultimately turns on the merits and the question who is likely to prevail at the end of this litigation."); *Rest. L. Ctr. v. U.S. Dep't of Lab.*, 66 F.4th 593, 597 (5th Cir. 2023) ("[T]he nonrecoverable costs of complying with a putatively invalid regulation typically constitute irreparable harm.").

[116] *In re NTE Conn., LLC*, 26 F.4th 980, 990–91 (D.C. Cir. 2022) (cleaned up); *see also Alabama Ass'n of Realtors v. Dep't of Health & Hum. Servs.*, 594 U.S. 758, 765 (2021) (explaining that the loss of rent payments with no guarantee of eventual recovery would subject landlords to irreparable harm).

[117] *See Louisiana v. Biden*, 55 F.4th 1017, 1034 (5th Cir. 2022) (citing *Texas v. EPA*, 829 F.3d 405, 433 (5th Cir. 2016)).

ED_021114A_00008786-00091

1. SunCoke will expend vast sums installing new controls to meet MACT floor limits.

EPA takes the position that "[r]equiring the consideration of costs in setting the MACT floor would conflict with the plain language of CAA."[118] Under *Loper Bright*, that interpretation is not entitled to deference. But even assuming EPA's interpretation of the statute is correct, it increases the need to ensure in the first instance that EPA (1) has considered all the data and (2) properly wields legal authority to set the MACT floors. That is especially true where, as here, EPA is establishing floors for multiple HAP emission limits for the first time. This drives SunCoke to develop first of a kind applications to control these HAP emissions. When the EPA does not or cannot consider the costs of the regulation it imposes on stakeholders, a regulate-now-and-determine-legality-later approach is certain to inflict irreparable harm. The D.C. Circuit has stayed one of EPA's new rules when it was based on bad data and industry would be irreparably harmed complying with "expensive" regulations before the error could be corrected.[119]

Installing additional controls to meet the requirements of the Final Rule will be exorbitantly "expensive."[120] As an initial matter, SunCoke must spend significant time and money evaluating how to comply with the new floor limits. This would require substantial testing to collect the data that EPA did not in its rulemaking regarding the sources and the emissions, as well as engineering, modifying additional equipment, and other efforts. Because of the agency's truncated timeline—and because EPA forgot to include new HAP surrogate limits and work practice standards in the Proposed Rule SunCoke has not yet been able to determine the total cost of installing the new controls. As SunCoke explained in its comments, the rule as proposed would severely impact SunCoke's Jewell coke plant, costing it at least $474.9 million in capital investments and $66 million (not $4.7 million) in annual costs, if it is feasible to install the necessary controls at all.[121]

SunCoke has a year of testing before it can know whether it can meet many of these limits. In the case of HH1 Hg, SunCoke will need a year of testing because of unknown issues it can have, based on its experience installing PAC at Granite City Operations and Middle Town Operations. Testing potentially impacts the SO_3/FGD operation requiring a second spray dry absorber and an expanded baghouse costing over an extra $15-20 million. Beyond the costs associated with identifying and developing these new controls, SunCoke will incur yet more costs by limiting production during installation SunCoke will inevitably suffer opportunity costs during this downtime. The D.C. Circuit has held that revenues forever lost because of unauthorized agency action amount to irreparable harm.[122]

All told, these errors will cost SunCoke many millions of dollars. SunCoke can never expect to recover these costs, no matter the outcome of the litigation pending before the D.C. Circuit.

[118] 89 Fed. Reg. at 55710.
[119] *Portland Cement Ass'n v. EPA*, 665 F.3d 177, 189 (D.C. Cir. 2011).
[120] *Id.*
[121] SunCoke will submit detailed declarations explaining the financial impact of the new controls required to ensure compliance with SunCoke's motion for a judicial stay.
[122] *In re NTE Conn.*, 26 F.4th at 990–91.

ED_021114A_00008786-00092

2. Meeting EPA's 18-month compliance deadline is impossible.

When EPA established 17 new HAP emission limits—purportedly based on MACT—it wrongly concluded that SunCoke could comply with the new floor emission limits with its existing controls.[123] This conclusion was not supported by the data.[124] SunCoke has exceeded the new limits. EPA's overconfidence in SunCoke's ability to comply with the new emission limits caused the agency to commit a cascade of costly errors. For example, in overestimating SunCoke's ability to comply, EPA underestimated the time SunCoke needs to achieve full compliance with the new limits (assuming full compliance is even possible). The expedited timeline, in turn, needlessly increases SunCoke's costs to comply with the new limits, which EPA significantly underestimated in the first place.

It is impossible for SunCoke to meet the 18-month compliance deadline imposed by EPA. Contrary to EPA's conclusion that no new technology needs to be installed to meet the Final Rule's emission limits, meeting the requirements of the Final Rule will require engineering, design, and installation of brand new, state of the art technology. No matter how much SunCoke spends, the work of designing, engineering, and installing the new technology cannot be done in the 18-month timeline. Assuming compliance is even feasible, EPA overestimated SunCoke's ability to comply with the new emission limits and underestimated the amount of time that SunCoke needs to comply. EPA gave SunCoke only "18 months after publication of the final rule."[125] This places SunCoke in the difficult position of having to *immediately* design, engineer, and install new controls, at exorbitant cost, or risk enforcement in 18 months.

For SunCoke to use HH1 Hg controls, for example, it would need to significantly expand the scope of its controls. The cost of the basic carbon injection system $3 million. That FGD is smaller and has more challenges. SunCoke knows that upgrades and modifications to its existing system would need to be made before SunCoke could put in carbon injection and have it function without compromising operation and SO2 control. SunCoke does not know what upgrades and modifications would be, but it believes they would cost far more than $3M for the carbon injections system.

Even if the court ultimately concludes that EPA lacked legal authority to set the new MACT floor limits, the ruling could offer little more than cold comfort to SunCoke. By the time SunCoke could obtain a favorable ruling, it would have already spent the time and money designing and installing the required, expensive controls. That time and money is unrecoverable. And installation of such controls would benefit nobody in light of EPA's determination that the existing PQBS rule "provides an ample margin of safety to protect public health."[126] EPA should grant a § 705 stay to avoid inflicting unnecessary, irreparable harm on SunCoke.

---

[123] *See* 89 Fed. Reg. at 55707 ("Based on the data we had at proposal, we expected all sources could meet the 17 new MACT floor limits without additional controls."); *id.* at 55710 ("[B]ased on the data submitted to the EPA by the industry, all facilities should be able to meet the MACT floor limits developed for the previously unregulated HAP and unregulated sources of HAP without the installation of additional controls.").

[124] *See* 89 Fed. Reg. at 55710 ("Commenters who raised claims of exorbitant costs to meet the new MACT floors did not provide any additional data contradicting the EPA's findings; thus, the EPA does not find any support for these claims."). SunCoke collected additional data, but EPA did not consider it.

[125] 89 Fed. Reg at 55721.

[126] *Id.* at 55685.

ED_021114A_00008786-00093

N. Temporarily Staying the Rule Will Not Harm Anyone and the Public Interest Supports Staying the Rule or Amending It.

EPA concedes in the Final Rule that there will be no harm to the public from staying the effect of the Final Rule or the Final Rule's compliance dates. EPA states:

- "The EPA has not quantified *any benefits* associated with this final rule because all covered facilities are expected to already have HAP emissions levels that are below the final limits, based on facility data available to the EPA."[127]
- "[W]e conclude that the current [MACT] standards in the PQBS NESHAP provide an ample margin of safety to protect public health and are finalizing no changes based on the risk review."[128]
- "The potential public health benefits associated with such prevention are difficult to estimate, given that they correspond to *hypothetical scenarios of emissions beyond those indicated by current facility data*, and are thus not quantified in EPA's analysis."[129]
- "We did not identify any potential cost-effective controls or other measures to reduce risk further under our CAA section 112(f) risk review."[130]

In short, EPA cannot quantify "*any benefits*" associated with the Final Rule and that the only potential health benefits are based on hypothetical emissions—not those supported with any data. And the only possible public benefit is hypothetical—"EPA *anticipates* that the final rule's new requirements will increase the likelihood of facilities successfully detecting any HAP emissions in excess of the specified thresholds, allowing for earlier corrective action."[131]

SunCoke is unaware of any time EPA has promulgated a Final Rule that will cost facilities many millions of dollars to comply with (assuming they can) that does not have any quantifiable public interest. Those admissions obviously raise serious questions about the arbitrary and capricious nature of EPA's rulemaking. But for purposes of staying the effect of the Final Rule, there is little to no public interest that a stay will harm.

EPA will likely argue that a stay of the Final Rule could result in years of delays, delaying the effective date of the new monitoring requirements for years after the current July 7, 2025 deadline.[132] But that delay will not cause any public harm because all of the covered facilities already have "HAP emissions levels that are below the final limits."[133] EPA also claims in the Final Rule that "we expect facilities will be able to comply with these limits without the need for any new controls or operating costs."[134] If EPA is right, a stay will not injure the public interest because all

---

[127] 89 Fed. Reg. at 55686.
[128] *Id.*
[129] *Id.*
[130] *Id.* at 55689.
[131] *Id.*
[132] *See, e.g.*, Response in Opposition to the Applications for Stay at *12, *Ohio v. EPA*, Nos. 23A349, 23A350, 23A351 (S. Ct. Oct. 30, 2023).
[133] 89 Fed. Reg. at 55686.
[134] *Id.* at 55696.

ED_021114A_00008786-00094

the measures that are required are already installed. Therefore, staying implementation of the Final Rule's requirements pending judicial review cannot cause any harm to anyone.

In fact, the public interest favors imposing the stay. If the Final Rule is not amended by EPA, the entire coke industry will suffer a devastating blow and coke plants may be forced to shut down in the face of crippling costs of compliance. The coke industry serves a key function in society, facilitating the production of strong, lightweight steel that is necessary to produce electric vehicles, bridges, critical infrastructure, and defense equipment needed for national security. SunCoke is the proud employer of over 900 individuals, with its 40 percent of its entire workforce comprised of United Steelworkers, and many of SunCoke's plants are in economically disadvantaged areas where jobs are scarce. For these reasons alone, EPA must grant a stay pending judicial review or amend the Final Rule.

Agencies have voluntarily stayed the effect of a rule, not only because of the compliance costs, but because doing so would be efficient for all parties and to prevent the expenditure of exorbitant compliance costs on the regulated community. The Securities and Exchange Commission, for example, recently stayed the effect a rule that will require registrants to provide extensive climate-related information in their registration statements and annual reports.[135] The Commission explained:

> [A] stay of the Final Rules meets the statutory standard. Among other things, given the procedural complexities accompanying the consolidation and litigation of the large number of petitions for review of the Final Rules, a Commission stay will facilitate the orderly judicial resolution of those challenges and allow the court of appeals to focus on deciding the merits. Further, a stay avoids potential regulatory uncertainty if registrants were to become subject to the Final Rules' requirements during the pendency of the challenges to their validity.[136]

The basis for the SEC's decision applies equally here. A number of stakeholders will be challenging the Final Rule, and their cases will likely be consolidated. In the absence of EPA action, the parties will need to seek a stay from the D.C. Circuit, which will distract the court from focusing on the merits. And without a stay, SunCoke and others will be forced to undertake costly measures to conduct tests, develop new technologies, and install controls.

EPA should stay the effect of the compliance dates pending judicial review or amend the Final Rule for the same reasons. EPA vastly underestimates the costs SunCoke will incur, and § 705 has the express purpose of "prevent[ing] irreparable injur[ies]."[137] EPA also has the authority under Section 553 to amend the Final Rule, at least with respect to the compliance dates. Under traditional equitable principles, so long as "the threatened harm is more than de minimis, it is not so

[135] U.S. Securities and Exchange Commission, Release Nos. 33-1128034-99908, File No. S7-10-22, Order Issuing Stay, *In re: In the Matter of the Enhancement and Standardization of Climate-Related Disclosures for Investors* (Apr. 4, 2024), https://www.sec.gov/files/rules/other/2024/33-11280.pdf.
[136] *Id.* at 2–3.
[137] 5 U.S.C. § 705.

ED_021114A_00008786-00095

much the magnitude but the irreparability that counts."[138] SunCoke is certain to incur significant, unrecoverable costs attempting to comply with the Final Rule before judicial review comes to an end.

CONCLUSION

For the reasons described above, SunCoke urges EPA to convene a proceeding for reconsideration of the Final Rule pursuant to Clean Air Act section 307(d)(7)(B) and to stay the effective date and all compliance deadlines pending reconsideration. In the alternative, EPA should modify or rescind the Final Rule so that EPA can develop statistically reliable data and allow all stakeholders sufficient time to address the technical complexities of the Rule. SunCoke further requests that EPA stay the effective date of the Final Rule pending judicial review, pursuant to APA section 705.

[138] *Enter. Int'l, Inc. v. Corporacion Estatal Petrolera Ecuatoriana*, 762 F.2d 464, 472 (5th Cir. 1985) (internal quotation omitted).

ED_021114A_00008786-00096

Typo carried throughout § 63.7282 and § 63.7283.

§ 63.7282(d) An affected source at your coke plant is new if you commenced construction or reconstruction of the affected source on or after July 3, 2001. An affected source is reconstructed if it meets the definition of "reconstruction" in § 63.2. This paragraph (d) does not apply to the emission limitations listed in §§ 63.7290(b) through (dc), 63.7296(c) through (f), 63.7297(a) through (d), and 63.7298(a) through (e) for capture systems and control devices applied to pushing emissions, battery stacks, HNR HRSG main stacks, and HNR HRSG bypass/waste heat stacks, respectively.

(e) An affected source at your coke plant is existing for the emissions limitations listed in §§ 63.7290(b) through (dc), 63.7296(c) through (f), 63.7297(a) through (d), and 63.7298(a) through (e) for capture systems and control devices applied to pushing emissions, battery stacks, HNR HRSG main stacks, and HNR HRSG bypass/waste heat stacks, respectively if you commenced construction or reconstruction of the affected source before August 16, 2023.

(f) An affected source at your coke plant is new for the emissions limitations listed in §§ 63.7290(b) through (dc), 63.7296(c) through (f), 63.7297(a) through (d), and 63.7298(a) through (e) for capture systems and control devices applied to pushing emissions, battery stacks, HNR HRSG main stacks, and HNR HRSG bypass/waste heat stacks, respectively if you commenced construction or reconstruction of the affected source on or after August 16, 2023.

§ 63.7283(a) If you have an existing affected source, you must comply with each emission limitation, work practice standard, and operation and maintenance requirement in this subpart that applies to you no later than April 14, 2006. This paragraph does not apply to the emission limitations listed in §§ 63.7290(b) through (dc), 63.7296(c) through (f), 63.7297(a) through (d), and 63.7298(a) through (e) for capture systems and control devices applied to pushing emissions, battery stacks, HNR HRSG main stacks, and HNR HRSG bypass/waste heat stacks, respectively.

(b) If you have a new affected source and its initial startup date is on or before April 14, 2003, you must comply with each emission limitation, work practice standard, and operation and maintenance requirement in this subpart that applies to you by April 14, 2003. This paragraph does not apply to the emission limitations listed in §§ 63.7290(b) through (dc), 63.7296(c) through (f), 63.7297(a) through (d), and 63.7298(a) through (e) for capture systems and control devices applied to pushing emissions, battery stacks, HNR HRSG main stacks, and HNR HRSG bypass/waste heat stacks, respectively.

(c) If you have a new affected source and its initial startup date is after April 14, 2003, you must comply with each emission limitation, work practice standard, and operation and maintenance requirement in this subpart that applies to you upon

initial startup. This paragraph does not apply to the emission limitations listed in §§ 63.7290(b) through (dc), 63.7296(c) through (f), 63.7297(a) through (d), and 63.7298(a) through (c) for capture systems and control devices applied to pushing emissions, battery stacks, HNR HRSG main stacks, and HNR HRSG bypass/waste heat stacks, respectively.

(d) With regard to the §§ 63.7290(b) through (dc), 63.7296(c) through (f), 63.7297(a) through (d), and 63.7298(a) through (c) emission limitations for capture systems and control devices applied to pushing emissions, battery stacks, HNR HRSG main stacks, and HNR HRSG bypass/waste heat stacks, respectively . . .

TAB C

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

American Coke and Coal Chemicals Institute, et al.,

Petitioners,

v.

Environmental Protection Agency and Michael S. Regan, Administrator,

Respondents.

No. 24-1287
(and consolidated cases)

DECLARATION OF JOHN QUANCI IN SUPPORT OF MOTION FOR STAY PENDING REVIEW FILED BY SUNCOKE ENERGY, INC.

I, John Quanci, declare as follows:

1. I am the Vice President of Technology and Chief Technology Officer for SunCoke Energy, Inc. ("SunCoke"). I have worked for SunCoke since 2010. In my role, I am responsible for the evaluation, monitoring, and continuous improvement of plant operations. I evaluate capital projects related to the heat recovery cokemaking process at SunCoke's plants—including the development of new technologies to reduce emissions from the process.

2. I earned my bachelor's degree in chemical engineering from the Cooper Union for the Advancement of Science and Art in 1984. I

earned my master's and doctorate degrees in chemical engineering from Princeton University in 1986 and 1988, respectively.

3. Prior to my time at SunCoke, I was the Director of Corporate Technology within Sunoco's Corporate Engineering & Technology organizations. I have more than 35 years of experience in process research, development, plant optimization, plant manufacturing, rebuilding/turning around of plants, and taking new technologies from ideation through to full production.

4. I am a registered engineer, and I have more than 95 issued United States patents on heat recovery/nonrecovery cokemaking—related to coke plant operation, optimization, repair, environmental improvement, and control.

5. I am deeply familiar with all aspects of the operations of each of SunCoke's facilities: SC-Vansant-VA ("JWO") (in operation since 1969), SC-EastChicago-IN ("IHO") (in operation since 1998), SC-FranklinFurnace-OH ("HHO" or "HH1" (in operation since 2005) and "HH2" (in operation since 2008)),[1] SC-GraniteCity-IL ("GCO") (in operation since 2009), and SC-Middletown-OH ("MTO") (in operation

[1] This facility is divided into two units, HH1 and HH2.

since 2011).

6. For these reasons, I have personal knowledge of the facts and information in this declaration.

SunCoke's Unique Heat Recovery Process Provides Environmental Advantages.

7. Coke is an essential ingredient in the blast furnace production of steel. Maintaining a strong domestic steel industry is critical to national defense, the health of the nation's infrastructure, and many manufacturing industries.

8. Metallurgical coke is produced by the destructive distillation of coal in coke ovens. There are only 11 active coke facilities in the United States—6 of these are byproduct recovery (ByP) facilities and 5 are heat and/or nonrecovery (HNR) facilities. Heat recovery facilities use the waste heat from coke oven gas to produce steam in on-site heat recovery steam generators (HRSG) which is then used to make electricity (which is considered green electricity and green process steam since it is recovered from waste heat). SunCoke owns all five of the HNR facilities, and all but one of the facilities (JWO) use HRSGs, producing both coke for the steel industry and process steam/electricity.

9. Unlike HNR facilities, ByP facilities recover chemicals from coke oven gas in an on-site chemical plant. Another important difference between ByP and HNR facilities is that the ByP ovens operate under *positive* pressure, whereas HNR facilities' ovens operate under *negative* pressure. Because HNR facilities operate under negative pressure, they have very low fugitive emissions.

10. EPA has recognized that SunCoke's cokemaking process is the most environmentally friendly way to make coke, and it has adopted SunCoke's heat-recovery cokemaking process as the industry maximum achievable control technology ("MACT"). *See, e.g.*, 66 Fed. Reg. 35326, 35328–29 (Jul. 3, 2001); 42 U.S.C. § 7412(d)(8)(A).

EPA Finalized a Rule that Established 17 Numerical MACT Floor Limits for Previously Unregulated HAPs.

11. On August 16, 2023, EPA published a proposed rule that would amend two National Emissions Standards for Hazardous Air Pollutants (NESHAP) for the coke ovens industry. 88 Fed. Reg. 55858, 55858 (August 16, 2023) (The Proposed Rule).

12. On October 2, 2023, SunCoke submitted comments to EPA on the agency's Proposed Rule. Attached as Exhibit A to this Declaration is a true and correct copy of SunCoke's comments on the Proposed Rule

submitted to EPA.

13. On July 5, 2024, EPA finalized the rule. 89 Fed. Reg. 55684, 55689 (July 5, 2024) (The Final Rule). The Final Rule establishes 17 new MACT floor emission limits for previously unregulated Hazardous Air Pollutants (HAPs), 1 work practice standard, and 5 HAP surrogacy standards. Thirteen of the MACT emissions standards apply to SunCoke's operations.

14. Each of the SunCoke plants is unique in some fashion, which means the MACT floor limits have different implications for each facility. For example, with the exception of HH1 and IHO, all of SunCoke's plants are equipped with either a powdered activated carbon (PAC) injection system or a hydrated PAC to control emissions of mercury.

15. In the Final Rule, EPA concluded that all the new MACT floor limits could be met with existing controls and, as a result, the Final Rule provided only 18 months for regulated facilities to achieve compliance—December 5, 2025.

The Final Rule Is Based on Multiple Errors and Omissions.

16. In setting the new MACT floor limits, EPA made numerous errors including: (1) ignoring relevant data clearly demonstrating that the limits cannot be met with existing controls; (2) failing to account for variability in coal (the raw material); (3) failing to account for operational differences among SunCoke's plants; (4) failing to account for differences in controls between SunCoke's facilities; (5) using a methodology for calculating emissions with a too-limited data set; (6) adopting numeric emission limits, rather than work practice standards or surrogacy determinations for sources with emissions where no data exists or emissions are near or below detection; and (7) setting limits without regard to technical achievability. All these errors result in limits that are not achievable using existing controls.

17. Due to the Final Rule's deadline for compliance with the new MACT floor limits, and the substantial evidence that the new limits cannot be met with existing controls, SunCoke is forced to immediately perform testing. It must begin to design, engineer, procure and install controls—at exorbitant cost to the company—while this case is pending before this Court. SunCoke must do all this despite the fact that EPA

concluded that SunCoke could meet the new limits with existing controls. As a result, SunCoke will suffer severe and irreparable harm without a stay.

EPA Ignored Relevant Data When Setting the Numerical MACT Floor Standards.

18. When calculating the MACT floor limits for the Proposed Rule, EPA used *only* the data that it collected from two EPA-issued Information Collection Requests (ICRs) in 2016 and 2022, claiming that it was all the available data. *See* 89 Fed. Reg. at 55712 ("The data used for the proposed MACT limits were all the data that were available to the EPA at that time. The EPA used these data to calculate the proposed limits.").

19. Based solely on data from the two EPA-issued ICRs, EPA concluded that "all sources could meet the 17 new MACT floor limits without additional controls." 89 Fed. Reg. at 55707.

20. Dissatisfied with the limited dataset that EPA employed, and recognizing that many of the new limits could not be met with existing controls, SunCoke provided EPA with data dating "from 2006 through 2022." 89 Fed. Reg. at 55713. As SunCoke explained in its comments,

these data "better accounted for test-to-test and plant-to-plant variations." Ex. A at 33–34.

21. Contrary to EPA's expectations, SunCoke's data reveal that *multiple* SunCoke facilities cannot meet the MACT floor limits.

22. Here are two examples from only *one* facility's main stack to illustrate the point.

a. In March of 2022, a trial was conducted at the main stack of SunCoke's facility, HH1, to ascertain its particulate matter emissions. The relevant MACT floor is 4.90E-03 gr/dscf. Here are the measurements taken from the trial: (1) 4.10E-03, (2) 5.26E-03, and (3) 6.43E-03. The test result was 5.26E-03, which is 107% of the Final Rule's MACT floor. So if the Final Rule were in effect in 2022, HH1 would have exceeded the PM limit for its main stack.

b. In January of 2006, a trial was conducted at the main stack of HH1 to ascertain its mercury emissions. The Final Rule's MACT floor is 3.00E-06 gr/dscf for main stack mercury emissions. These are the measurements obtained from the trial: (1) 5.08E-06, (2) 4.89E-06, and (3) 4.33E-06. The test

result was 4.77E-06, which is 159% of the MACT floor limit. So if the Final Rule were in effect in 2006, HH1 would have failed.

23. Although EPA did incorporate some of the additional data that SunCoke provided during the notice and comment period, it did not consider all the data. According to EPA, it chose to consider only data "within five years prior to 2016 . . . that matched the requirements for testing in the CAA section 114 requests." 89 Fed. Reg. at 55715. In doing so, EPA ignored relevant data demonstrating that the new limits cannot be met with existing controls.

24. By ignoring relevant data, EPA significantly overestimated SunCoke's ability to comply with the numerical MACT floor limits. In overestimating SunCoke's ability to comply, EPA underestimated the time SunCoke needs to achieve full compliance with the new limits. EPA also significantly underestimated SunCoke's costs of compliance. And it did not consider employing work practice standards or surrogate limits in lieu of numeric emission limits, despite testing results in the parts per billion or at or below detection.

The Data EPA Used Were Insufficient to Calculate the MACT Floor Limits.

25. Even based on its limited dataset, EPA's conclusion that SunCoke's facilities can meet the new numerical MACT floor emissions limits without any additional controls is unsupportable. To draw this conclusion, EPA had to assume that all SunCoke's facilities with a main stack, for example, could satisfy the new MACT floor limit for mercury merely because *one* of SunCoke's facilities (IHO) met the limit (though not by much). EPA's assumption is baseless. As discussed, SunCoke has data showing that HH1's main stack *failed* to meet the MACT floor limit for mercury emissions. That is not surprising. Different SunCoke facilities are equipped with different controls and therefore perform differently. So EPA was wrong to assume that all of SunCoke's facilities' main stacks could perform as well IHO's main stack.

26. EPA also did not consider other important factors that can alter how a facility performs on a given day, such as the naturally occurring variability of the coal that SunCoke puts into its ovens. The coal that SunCoke purchases has variable concentrations of different chemicals, including mercury. Change in the coal mercury levels will change the amount of mercury emissions at a plant like HH1, which is

not equipped with mercury controls, such as a PAC injection system.

27. EPA's lack of data is compounded by another problem. In the Final Rule, EPA admitted that setting numerical MACT floor limits for emissions with test runs consistently below the detection limit (BDL) "is not economically and technically feasible." 89 Fed. Reg. at 55707–08. Yet it did exactly that here. For example, EPA adopted MACT floor limits for acid gases in SunCoke's HRSG main stacks and polycyclic aromatic hydrocarbons (PAHs) for SunCoke's pushing operations—even though these HAPs tested "below the detection limit" 50% of the time. 89 Fed. Reg. at 55707. In the pushing category, mercury tested BDL 40% of the time. This means EPA had even *fewer* data to work with when setting the MACT floor limits.

28. To calculate the MACT floors, EPA applied its UPL statistical method to its limited dataset to account for variability and uncertainty in emissions data. The UPL calculation estimates the true average and true variance. Estimating the true average is possible with a small number of samples, but the same is not true of the estimation of the variance, which requires a substantially larger number of samples. Specifically, samples that cover the range of varying factors are required

to accurately predict the UPL limit. EPA offered no explanation for its exclusion of relevant data—including facilities with different controls and variation driven by coal sourcing variation—in performing its calculations and setting the new MACT floor limits.

SunCoke Must Conduct Testing and Install Additional Controls to Meet the Requirements of the Final Rule.

29. As explained above, EPA ignored relevant data and employed inapt data when it set the new MACT floor limits. With the wrong inputs, EPA's analysis yielded limits that were incorrect. This places SunCoke in a difficult position.

30. As an initial matter, SunCoke's biggest difficulty is its current lack of data. Although SunCoke is sure its facilities cannot meet some of the limits, considering the lack of data available, SunCoke simply does not know whether its facilities can meet many of the new limits.

31. The cost of a full dataset for all the plants is estimated to be $1.3 million and would take about one year. A second dataset is also necessary to adequately capture variation driven by seasonal effects and coal sourcing variation, and this will cost another $1.3 million and require almost another year of testing. This does not include the cost of SunCoke personnel—who would be needed to assist with obtaining and

analyzing the data. This will push the cost of the necessary testing to nearly $3 million.

32. SunCoke has already begun to incur nonrecoverable testing costs. SunCoke has retained AECOM—a consulting firm with expertise in source testing, environmental compliance evaluations, and environmental engineering—to complete the following work:

a. First, AECOM has provided significant technical assistance to SunCoke, including data analysis (based on the available data) about whether each of SunCoke's plants will be able to meet the numeric emission limits in the Final Rule.

b. Second, AECOM continues to assist SunCoke in developing a testing survey of all the HAPs, sources, and plants in SunCoke's fleet. It will likely execute the field trials to identify which of SunCoke's plants will need additional controls installed.

c. Third, for SunCoke's plants that cannot meet the numeric emission limits in the Final Rule, or that are at significant risk of failing those limits, AECOM will also assist in

designing, engineering, and validating feasible and practicable emissions controls (where such controls exist).

33. Based on the data currently available, and despite EPA's assertions to the contrary, it is clear that SunCoke *must* install at least some controls to meet the new MACT floor limits.

34. One example that conclusively demonstrates this fact is, as discussed, SunCoke has data showing that its HH1 facility's main stack fails to meet the MACT floors for *mercury* and *particulate matter* emissions.

35. As discussed, unlike some other SunCoke plants, HH1 has no mercury controls—such as a PAC or a hydrated PAC. SunCoke does not yet know whether bringing HH1 into compliance with the new MACT floor for mercury main stack emissions is as simple as adding a hydrated PAC system at a cost of about $4 million ($3 million for equipment and $1 million for additional testing), which would be the absolute minimum cost to control the mercury emissions. SunCoke might also need more expensive equipment to ensure that the newly installed hydrated PAC does not degrade HH1's ability to control other pollutants—such as sulfur dioxide. In that event, an extra spray dryer absorber, a baghouse, and a

slaker, would be necessary—which together would increase the cost to over $59 million to successfully install mercury controls at HH1.

36. To control the particulate matter emissions from HH1's main stack, SunCoke will need to spend least $37 million—and perhaps as much as $54 million depending on whether the extra mercury controls are necessary. (Installing the extra mercury controls would bring down the cost of controlling the particulate matter emissions from $54 million to $37 million because, among other reasons, there are some common equipment between the two pollution control technologies).

37. In short, at the bare minimum, SunCoke must spend $3 million on testing, $4 million on mercury controls, and $37 million on particulate matter controls (though, as discussed, this number is $54 million if only $4 million of mercury controls are necessary). So to conduct testing and ensure that HH1's main stack is in compliance with the Final Rule for these two HAPs by December 5, 2025, SunCoke must pay at least $61 million ($3 million for testing + $4 million for mercury controls/testing + $54 million for particulate matter controls). But the cost to conduct testing and to correct HH1's main stack mercury and particulate matter emissions could easily balloon to as much as *$99*

million ($3 million for testing + $59 million for mercury controls/testing + $37 million for particulate matter controls) depending on whether more equipment is needed. These are necessary costs to control only *two* HAPs from *one* source for *one* SunCoke facility.

If Further Testing Reveals More Failures, the Projected Costs of Installing Additional Controls Are Exorbitant.

38. To determine what SunCoke needs to do to bring its facilities into compliance, I have separated the results of the limited data into five groups: (1) **clear fails**, which necessitate additional controls; (2) **marginal passes**, which likely necessitate additional controls to maintain a comfortable margin of compliance; (3) **passes, but an insufficient amount of data** to feel confident in the results of the testing; (4) **no data**; and (5) **clear passes**, requiring no further controls.

39. As discussed, based on the **clear fail** category, SunCoke must immediately spend, at minimum, $62 million to bring its facilities into compliance with the new MACT floor emission limits. For the reasons provided above, more testing may reveal significant additional costs in this category, which could increase to $99 million.

40. Depending on what future testing reveals, SunCoke will also need to install additional controls wherever the data show that emissions

are near numerical MACT floors (i.e., the **marginal passes** category described above). SunCoke has data showing that *many* of its facilities are meeting the new MACT floor limits, but not with a comfortable margin of error.

a. For example, in June of 2017, a trial was conducted on the main stack of SunCoke's facility, MTO, to ascertain its PAH emissions. The Final Rule's MACT floor for main stack PAH emissions is 4.80E-07 gr/dscf. Here are the measurements that were obtained from the trial: (1) 3.05E-07, (2) 4.48E-07, and (3) 3.16E-07. The test result was 3.56E-07, which is 74% of the MACT floor limit. So if the Final Rule were in effect in 2017, MTO would have passed—but only marginally. This is only one example of a marginal pass.

41. SunCoke is uncomfortable operating anywhere close to the edge of noncompliance. Correcting all marginal passes in all SunCoke's facilities—based on the limited data currently available—could require expenditures of up to $260,000,000.

42. If testing reveals that additional controls are needed for emissions that currently appear to satisfy the MACT floor limits (i.e, the

pass, but an insufficient amount of data category), or where there is simply no data at all (i.e., the **no data** category), I anticipate that SunCoke may need to spend as much as $874,000,000 to bring its facilities into compliance.

43. All told, depending on what additional testing reveals, SunCoke could be required to spend $1,200,000,000 to bring its facilities into compliance.

44. To design, test, and install such significant controls would require at least 6–7 years. And it is not clear that SunCoke could obtain the supplies it would need—which could further extend the compliance timeline.

45. To be clear, it is not known at this time whether SunCoke will be forced to spend such exorbitant sums. But this places SunCoke in an untenable position because the compliance deadline of December 5, 2025, is not far away. Without more testing, SunCoke cannot justify spending hundreds of millions of dollars on additional controls. Without those controls, however, it might fall into noncompliance and incur severe penalties in December 2025.

46. Any money SunCoke spends bringing its facilities into compliance is lost forever. SunCoke can never expect EPA to cover any of SunCoke's costs for testing or additional controls—even if a court eventually vacates the Final Rule. And any additional controls would not benefit the coke production process in any way.

Complying with Some Limits Is Simply Impossible.

47. In some instances, for safety reasons, SunCoke will *never* be able to comply with the new MACT floor limits for the bypass vent stacks.

48. According to SunCoke's data, there are particulate matter failures at *four* of its six plants, marginal passes for mercury and acid gas, and a lack of data for PAHs and formaldehyde.

49. Here are just two examples:

a. In November of 2020, a trial was conducted at the bypass vent stack of SunCoke's facility, IHO, to ascertain its particulate matter emissions. The MACT floor is 3.20E-02 gr/dscf. Here are the measurements obtained: (1) 4.54E-02, (2) 1.43E-01, (3) 4.48E-02, and (4) 2.79E-02. The test result was 6.52E-02, which is 204% of the Final Rule's MACT floor limit. So if the

Final Rule were in effect in 2020, IHO would have exceeded the particulate matter limit for its bypass vent stacks.

b. Similarly, in October of 2021, a trial was conducted at the bypass vent stack of HH1 to ascertain its particulate matter emissions. Here are the measurements obtained: (1) 3.23E-02, (2) 5.97E-02, and (3) 4.94E-02. The test result was 4.72E-02 gr/dscf, which is 147% of the Final Rule's MACT floor. So if the Final Rule were in effect in 2021, IHO would have exceeded the PM limit for its bypass vent stacks.

50. *There are no controls that can be applied to correct these failures.* As discussed, a heat recovery coke oven normally operates under negative pressure (under vacuum) when in operation. The negative pressure is pulled by a set of induced draft fans, which require power to run. The operation of a heat recovery coke oven/battery under negative pressure stops volatile matter and flue gases from leaking out of the ovens and system.

51. If the system fails for any reason, including power loss, the facility's flue gas must be released in a safe manner or else the pressure build-up will find a path to exit the gas handling system, creating a

severe fire hazard. In other words, if the induced draft fans are shut down or out of commission from a power failure or other failure, the whole system—including the ovens—would have positive pressure. When under positive pressure, the volatile matter at the oven can be released from the doors, air-inlets, or other openings. The uncontrolled release path would likely put plant personnel at a safety risk, cause an environmental release, and potentially damage plant equipment.

52. The vent stack is the means to maintain negative pressure even during a power failure. Generally, bypass stacks are held closed by powered pistons and negative pressure on the ovens is maintained by other means. If the pistons ever cease operating, the by-pass stacks open automatically. When open, the resulting draft creates negative pressure. A passive safety device is crucial for personnel safety around the ovens. But if any control is applied to the vent stack, the natural draft will be blocked and the back pressure will cause the dangerous and damaging uncontrolled release.

53. In any event, applying a control to the vent stack would be futile because controls require power to run. As discussed, one of the central purposes of the vent stack is to maintain negative pressure in the

event of a power loss. If there is no power, the controls on the vent stack would not function to prevent emissions.

54. If SunCoke were to install a full back-end control system on the vent stacks to comply with any of the new MACT vent stack limits, the new pathway (post-treatment) would be a new main stack by definition. So the vent stack limits would not apply. Instead, the new main stack limits would come into play. And SunCoke would need to create additional bypass vent stacks to ensure negative pressure can always be maintained. And then the same problems would apply to the new bypass vent stacks. Thus, for safety reasons, compliance with the new limits is impossible.

SunCoke Supplies Coke to the Steel Industry and Serves the Public Interest.

55. The United States steel industry depends on SunCoke to supply it with a significant portion of the Country's blast furnace coke and foundry coke. Blast furnace coke is used by steelmakers to produce strong, lightweight steel that is necessary for automobiles (including electric vehicles), infrastructure such as pipelines and bridges, defense equipment, and more. Foundry coke, which SunCoke produces solely at JWO, is used to produce auto parts (e.g., brakes and engine parts),

railroads, municipal/water infrastructure (e.g., piping, fire hydrants, and manhole covers), military equipment (e.g., vehicles, gear, and firearm parts).

56. Without steel, the United States economy and its infrastructure would collapse. SunCoke produces approximately 40% of the entire domestic coke supply used by the domestic steel industry. SunCoke is the largest independent blast furnace coke producer in North America, with an annual 4.2 million tons of coke production capacity. JWO is one of only two domestic foundry coke producers, and it supplies a significant amount of foundry coke in the United States market. If SunCoke could not produce its coke, the existing United States blast furnaces would be forced to find a foreign source of coke, most likely from China, to replace SunCoke's much cleaner coke. SunCoke is such a substantial supplier of coke to the United States steel industry that there is no way that SunCoke's blast furnace coke could be replaced by any domestic supplier.

57. SunCoke has the youngest, most advanced fleet of cokemaking facilities in the United States. The average age of the SunCoke facility is 23 years—which compares favorably to the average

age (45 years) of all other United States/Canadian ByP cokemaking facilities. In fact, in the past ten years, many coke plants owned by SunCoke's competitors have closed their doors because of deteriorating facilities and environmental challenges.

58. SunCoke provides approximately 900 well-paying jobs in the United States. Forty percent of SunCoke's workforce belongs to the United Steelworkers' Union.

59. For the reasons described above, it is my opinion that if this Final Rule is not stayed and corrected, it will financially cripple the coke industry, likely cause shutdowns of some cokemaking facilities, and thereby severely impair the production of blast furnace steel in the United States.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury, under the laws of the United States, that the foregoing is true and correct to the best of my knowledge.

Dated on September 30, 2024

By: John F. Quanci

John Quanci

Delete Archive Report Reply Reply all Forward Zoom

FW: Presidential Exemption: Coke MACT RTR Rule (2024): U. S. Steel's Clairton, PA Facility

US Steel ...RTR.pdf

[redacted]
To: AirAction
Tue 4/1/2025 7:45 AM

US Steel Request for Preside...
1,007 KB

From: [redacted]@epa.gov>
Sent: Tuesday, April 1, 2025 7:08 AM
To: [redacted]@epa.gov>; [redacted]@epa.gov>
Subject: FW: Presidential Exemption: Coke MACT RTR Rule (2024): U. S. Steel's Clairton, PA Facility

FYI

[redacted]

From: DeLibero, Matthew J <MJDeLibero@uss.com>
Sent: Monday, March 31, 2025 5:00 PM
To: AirAction <AirAction@epa.gov>; Zeldin, Lee <Zeldin.Lee@epa.gov>
Cc: [redacted]@epa.gov>; [redacted]@epa.gov>; [redacted]@epa.gov>; Tardif, Abigale (Abbie) <Tardif.Abigale@epa.gov>; Szabo, Aaron <Szabo.Aaron@epa.gov>; schwab.justin@epa.gov; Dzurinko, Mike G <MDzurinko@uss.com>; Hardin, Christopher W <CWHardin@uss.com>; Jeffrey, Mark A <MJeffrey@uss.com>; Tunno, Brett J <BJTunno@uss.com>; Woodwell, Tishie W <TWoodwell@uss.com>
Subject: Presidential Exemption: Coke MACT RTR Rule (2024): U. S. Steel's Clairton, PA Facility

Caution: This email originated from outside EPA, please exercise additional caution when deciding whether to open attachments or click on provided links.

To Whom It May Concern,

Please see the attached request from U.S. Steel for a Presidential Exemption for the Coke MACT for U.S. Steel's Clairton, PA Facility. Let us know if you have any questions.

Best Regards,

United States Steel

March 31, 2025

Hon. Lee M. Zeldin
Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Ave., NW
Washington, DC 20460

VIA E-MAIL
airaction@epa.gov

Dear Administrator Zeldin:

Re: Request for Clean Air Act Section 112(i)(4) Presidential Exemption from National Emission Standards for Hazardous Air Pollutants for Coke Ovens: Pushing, Quenching, and Battery Stacks, and Coke Oven Batteries; Residual Risk and Technology Review, and Periodic Technology Review, 89 Fed Reg. 55684 (July 5, 2024) ("Coke RTR Rule")
United States Steel Corporation – Mon Valley Works, Clairton Coke Plant

United States Steel Corporation (U. S. Steel) respectfully requests a Presidential Exemption for the compliance with the National Emission Standards for Hazardous Air Pollutants for Coke Ovens: Pushing, Quenching, and Battery Stacks, and Coke Oven Batteries; Residual Risk and Technology Review, and Periodic Technology Review, 89 Fed. Reg. 55684 (July 5, 2024) (the "Coke RTR Rule") for its Clairton Coke Plant in Clairton, Pennsylvania. Among other things, the Coke Ovens Rule promulgated new and revised National Emission Standards for Hazardous Air Pollutants (NESHAP) for the Coke Ovens: Pushing, Quenching, and Battery Stacks (PQBS) source category (40 C.F.R. Part 63 Subpart CCCCC) and the Coke Oven Batteries (COB) source category (40 C.F.R. Part 63 Subpart L). As specifically noted herein, technology to implement these requirements are not available and it is in the national security interests of the United States that such an exemption be granted.

On March 12, 2025, EPA announced that it was taking appropriate action to advance President Trump's initiative of "Powering the Great American Comeback." As part of that effort, EPA indicated that it was reconsidering the Coke RTR rule as well as several other rules; and advised that "any source interested in a Presidential Exemption, should provide their recommendations to EPA by March 31, 2025;" and that sources need only provide why technology is unavailable and why it is the national security interests of the United States to provide the exemption. In response to that announcement, and consistent with our previously submitted petition for judicial review, petition for administrative stay and reconsideration, and request for extension pursuant to Clean Air Act Section 112(i)(3)(B), U. S. Steel is submitting its request for a Presidential Exemption pursuant to Clean Air Act Section 112(i)(4) for the Coke RTR for its Clairton plant, the largest coke plant in North America, located in Clairton, Pennsylvania.

EXECUTIVE SUMMARY

U. S. Steel is respectfully requesting a two-year Clean Air Act § 112(i)(4) Presidential Exemption from all of the 2024 Coke MACT amendments -the Coke RTR Rule- because, as U. S. Steel has clearly shown in prior submissions to EPA, no coke plant is actually meeting the HAP limits; nor does any coke plant employ technology that demonstrates the limits can consistently be met. Furthermore, even outside the coke industry, no technology exists that has demonstrated that the limits can consistently be met. U. S. Steel's efforts to comply with the 2024 amendments to the Coke RTR Rule would result in significant, adverse financial and operational impacts to the company and the domestic steel industry. Without a Presidential Exemption, U. S. Steel's and the domestic steel industry's ability to provide for the critical infrastructure, investments and national security would be significantly compromised.

EXEMPTION REQUEST

The President has the authority to grant exemptions from NESHAP emissions standards of up to two years pursuant to Clean Air Act (CAA) § 112(i)(4) and 40 C.F.R. § 63.6(j).

U. S. Steel is requesting a two-year Presidential Exemption, with the possibility to extend the period for additional periods if necessary and appropriate as authorized under the Clean Air Act, of the following Coke RTR Rule compliance requirements for U. S. Steel's Mon Valley Works Clairton Coke Plant, 400 State Street, Clairton, Pennsylvania 15025:

1. July 7, 2025, compliance date to begin fenceline monitoring (*see* § 63.314);

2. July 7, 2025, compliance date to begin complying with the revised limits for allowable leaks from coke oven battery doors, lids, and offtakes and related reporting (*see* § 63.302(a)(4), § 63.302(d), § 63.304(b)(8), and § 63.311(h); and

3. January 5, 2026, and July 7, 2026, compliance dates to begin complying with MACT standards for sources in the PQBS NESHAP and related reporting (*see* § 63.7283(d), § 63.7341(f), and § 63.7300(c)(4)).

A two-year Presidential Exemption of these compliance dates is necessary and appropriate to prevent irreparable harm to the domestic metallurgical coal and domestic steel industry and is supported for the reasons provided below.

BACKGROUND

In CAA § 112(i)(4), Congress gave exclusive authority to the President to "exempt any stationary source from compliance with any standard or limitation under this section [Clean Air Act Section 112] for a period of not more than 2 years if the President determines that the technology to implement such standard, which has been recognized as including "unavailable in time for

installation and operation,"[1] is not available and that it is in the national security, which includes economic security,[2] interests of the United States to do so. An exemption under this paragraph may be extended for 1 or more additional periods, each period not to exceed 2 years. The President shall report to Congress with respect to each exemption (or extension thereof) made under this paragraph." While the provision has very little precedent in being exercised, if there were ever a time to exercise such authority, the time to do so is now with respect to the Coke RTR rule as the Coke RTR rule, without such an exemption and if left in place, would result in materially adverse consequences on U. S. Steel and domestic steel industry. These consequences would significantly and harmfully alter domestic steel production as well as the United States' infrastructure, investments and economic security landscape which as the current and prior administrations have determined that the domestic steel industry is a key, vital component.

While the President has broad authority in issuing such exemptions and while not controlling to issuing Presidential Exemptions, we note that in implementing extensions under Clean Air Act Section 112(i)(3)(B), EPA has broadly construed "standards" to include compliance measures. (See 66 Fed. Reg. 16318, 16328 (Mar. 23, 2001) Such "other compliance measures" include, among other things, "… obtaining or implementing technology hardware or software systems and process changes to accommodate pollution prevention or other emission reduction measures." *Id.*

U. S. Steel, individually, and as part of the American Coke and Coal Chemicals Institute (ACCCI) and Coke Oven Environmental Task Force (COETF), submitted comments on the proposed Coke RTR Rule and filed petitions for administrative reconsideration and applications for stay of the final Coke RTR Rule urging EPA to reconsider numerous aspects of the Coke Ovens Rule and to stay the effective date pending promulgation of replacement regulations.[3] These comments, petitions, and applications are incorporated into this request by reference. In addition, these concerns are subject to petitions for judicial review with the United States Court of Appeals for the District of Columbia Circuit.

We appreciate EPA's recent granting reconsideration of the Coke RTR Rule. Granting the Presidential Exemption is critical to prevent disruption of the domestic steel industry and is appropriate while EPA reconsiders the Coke RTR Rule.

---

[1] 90 Fed. Reg. 6,773, 6,774 (Jan. 17, 2025).

[2] *See* America First Investment Policy, https://www.whitehouse.gov/presidential-actions/2025/02/america-first-investment-policy/ (Feb. 21, 2025) ("Economic security is national security.")

[3] *See* U. S. Steel Petition for Reconsideration and Stay of the National Emission Standards for Hazardous Air Pollutants for Coke Ovens: Pushing, Quenching, and Battery Stacks, and Coke Oven Batteries; Residual Risk and Technology Review, and Periodic Technology Review (Sept. 3, 2024); and American Coke and Coal Chemicals Institute (ACCCI) and Coke Oven Environmental Task Force (COETF) Petition for Reconsideration and Stay of the National Emission Standards for Hazardous Air Pollutants for Coke Ovens: Pushing, Quenching, and Battery Stacks, and Coke Oven Batteries; Residual Risk and Technology Review, and Periodic Technology Review (Sept. 3, 2024).

TECHNOLOGY IS UNAVAILABLE

A. Fenceline Monitoring Requirements

For the reasons set forth in U. S. Steel's and the ACCCI/COETF petitions for reconsideration, the fenceline monitoring benzene action level in the Coke Ovens Rule is overly stringent and is not based on modeling showing the correct highest benzene concentration at the facility fenceline using allowable (vs. actual) emissions.

To implement the fenceline monitoring requirements, new currently undeveloped emission controls and new leak detection/repair programs must be evaluated, designed and installed to comply with the action level. The technology that would be used to comply with the fenceline monitoring requirements and action level are not known and, therefore, are unavailable at this time. Due to the complex nature of coke facilities, this potentially involves engineering suitable capture and control systems at multiple locations. Identifying these locations and engineering controls for them takes much longer than one year, and may involve permitting new emission controls, which would delay installation of controls. In addition, additional time is needed to install the benzene fenceline monitoring and meteorological stations. Siting the monitoring locations, specifically the locations around the non-source category operations will take additional time to determine the delta c. In addition, for the reasons set forth in the ACCCI/COETF and U. S. Steel petitions for reconsideration, the fenceline monitoring benzene action level in the Coke RTR Rule, which is not health-based, was incorrectly determined, is overly stringent, and is not based on modeling showing the correct highest benzene concentration at the facility fenceline using allowable (vs. actual) emissions.

In further support of the Presidential Exemption, additional compliance time beyond one year is also needed to develop (and for EPA to approve) the facility-specific monitoring plans, which are a compliance measure technology, that are required under the rule. Thus, the technology to implement the requirements is not available. Identifying specific source contributors to each fenceline monitoring location poses significant challenges due to the closely located sources (e.g., coke batteries, byproduct recovery plant, storage tanks, marine barges, etc.) within a coke facility, which is unlike more widely spaced sources common in the petroleum refinery sector.

Likewise, "root cause" investigations required by the Coke RTR Rule add significant time and complexity, considering the many miles of piping and thousands of valves and flanges at a coke facility. Projects to reduce benzene emissions further include redesign, fabrication, and installation or modification of process vessels, tar decanters, gas blanketing and vapor collection systems, replacing sections of coke oven gas piping, and redesign of tar and light oil loadout systems to reduce allowable fugitive emissions or leak rates.

Because the Clairton plant is complex and has numerous "non-categorical" operations – which fall outside the scope of the requirements, the standard fenceline monitoring requirements are not appropriate or feasible. It will take U. S. Steel more time to generate sufficient data and

information necessary to determine any sources of benzene and to implement any additional controls or operational modifications to reduce benzene emissions as well as to develop a site-specific monitoring plan. Furthermore, because EPA is given 120-days to review and approve any site-specific monitoring plan, and there may be additional time needed to respond to any inquiries, a Presidential Exemption from this standard is appropriate and necessary.

The technology to appropriately install and implement real-time monitors is not currently available for the Clairton plant. The Final Rule failed to address multiple issues with real-time monitors, including the technical feasibility of locating and installing real-time monitors, the difficulty using real-time benzene monitor data and the 2-week average benzene monitor data at the fenceline to determine an appropriate delta c, the complexity of using these monitors at coke facilities, and the cost of installing and operating monitors. U. S. Steel had no opportunity to raise objections to this change or to provide information on the feasibility and reasonableness of requiring real-time monitors for these purposes. These provisions were not proposed and are not a logical outgrowth of the proposed coke RTR rule. Had EPA provided this opportunity, U. S. Steel would have provided information on the cost and infeasibility of real-time monitors, demonstrating that the use of real-time monitoring requirement for the purposes of the Coke RTR Rule is not appropriate or feasible.

B. Unsupported and Arbitrary Revised Standards for Coke Oven Battery Doors, Lids, and Offtakes

The Coke RTR Rule lowered allowable leak limits for coke battery doors, lids, and offtakes and for the first time imposes more stringent leak rate allowables for coke battery doors on a single facility (U. S. Steel – Clairton Plant) based on annual coke production. However, U. S. Steel and industry commenters informed EPA that there have been no improvements or other changes in leak control practices in the industry, which means that facilities cannot consistently meet the revised leak rate allowables without additional time to develop and install controls or measures that would be needed to achieve compliance.

For coke oven doors, more time is needed to perform technical evaluations to identify ways to reduce door leaks to comply with the new limits. This may include replacing door machines, rebuilding or replacing oven doors, and redesigning door-jamb cleaning mechanisms, all of which are means to control leaks around coke oven doors. The time needed to engineer, fabricate, and install two new door machines could take 5-6 years to complete and costs approximately $20 million. The time to rebuild or replace oven doors on a typical battery with 82 doors is up to three years to engineer, fabricate, and install.

For coke battery lids and offtakes, more time is needed to research and trial ways to reduce leaks to comply with the revised limits. Control methods include redesigning or replacing lids or developing different sealing materials. The time needed to engineer, fabricate, and install replacement lid and offtake components is a minimum of 2-3 years to complete.

In the Coke RTR Rule, EPA removed startup, shutdown and malfunction (SSM) provisions that are important to U. S. Steel's Clairton Plant's ability to meet the existing limits. For example, with the loss of beneficial carbon in the battery during SSM events, stack, charging

and potentially other emissions are adversely affected. In addition, during certain SSM events, flares must be used, which EPA already has recognized as a necessary practice. Any limits must include allowances for SSM events; or alternatively, have SSM-specific work practice requirements in lieu of the MACT limits.

Finally, while in 2020, EPA determined that no technology developments warranted any technology changes to the existing MACT standards, in 2024, EPA did an about-face, and without identifying any specific technology developments, unlawfully lowered the acceptable leak rates for coke plants simply because in response to information collection requests, some facilities, including most significantly, U. S. Steel's Clairton plant, provided data that was better than the existing leak rate limits. This unlawful action was further exacerbated as applied to U. S. Steel, since it singled out the Clairton plant, and arbitrarily and capriciously imposed an even lower door leak rate that only applies to the Clairton plant based upon coke production rates without identifying any technology or practice development in use by U. S. Steel just that it's leak rates were the lowest. When U. S. Steel commented on this absurdity, EPA simply threw up its hands and asserted that, "there is a strong basis to infer" that larger facilities are more effective at employing work practices. U. S. Steel respectfully notes that "more effective at employing work practices" is not a technological development. Even more astonishing, in response to the comments, EPA tries to boldly, but inappropriately, shift the burden on U. S. Steel by responding that commenters have not suggested an alternative basis on why the data at Clairton are better than other sources. The "inferences" asserted by EPA are not a sound or legal basis for setting more stringent standards under its authority under Section 112(d)(6) of the Clean Air Act. EPA has an obligation to support its basis and determinations with facts with a nexus to the standards – and not simply impose lower standards because a certain source or sources in implementing a program to comply with the existing MACT standards perform better than others.

C. New Improper, Incorrect MACT Standards for the PQBS Source Category

The Coke RTR Rule includes 18 new MACT standards covering multiple hazardous air pollutants (HAP). However, the technology to control these HAP at these sources is not available because no such technology has been demonstrated to control and meet the Coke RTR Rule HAP limits for the coke byproduct recovery industry, either in the US or internationally.

The 18-month compliance period (i.e., January 5, 2026) provided in the Coke RTR Rule was based on EPA's incorrect and unsupported assumption that the only thing sources subject to the Coke RTR Rule would need to do to comply with the new limits would be to test to confirm EPA's assumption that facilities *can meet* all of the new MACT limits. EPA failed to address specific concerns and data submitted by U. S. Steel and other commenters showing that facilities *cannot meet* the new standards without costly and time-consuming projects to install additional control equipment and other measures. EPA slightly revised some of the final MACT limits compared to EPA's original proposal. However, the Hg MACT limit is unchanged; and EPA did not address data submitted by commenters showing raw material (i.e., coal) and process variability that affect emissions.

Facilities that cannot meet these unachievable standards need much longer than 18 months to complete the testing, engineering, fabrication, and installation of controls and other equipment, assuming compliance with the new MACT standards is even feasible. A Presidential Exemption is warranted for several reasons:

- No technologies employed at any coke facility have demonstrated the ability to meet the new MACT standards.

- Contrary to the Clean Air Act, the Coke RTR Rule imposes requirements that no source, domestically or globally, is known to actually achieve.

- Contrary to the Clean Air Act and EPAs obligations, EPA failed to consider the Coke RTR Rule's impacts to the domestic coke and integrated iron and steel industry and the nation's economic security and national growth interests

- Because the Coke RTR Rule is based upon insufficient data, attempts to continuously comply with the new limits will require the addition of controls. Furthermore, even with the installation of and operation of additional controls, continuous compliance with the new limits remains uncertain as there are no proven controls at this time. The estimated cost effectiveness of controls for the by-product coke industry would be unprecedented and exorbitant. Because the new limits are not based upon proven technologies as Congress intended and as EPA has historically done to comply with Section 112 of the Clean Air Act, U. S. Steel must incur substantial unrecoverable costs in its attempt to design and implement controls that will attempt to consistently meet the new limits in an impossible time period resulting in irreparable harm to U. S. Steel. Contrary to EPA's claim that no coke plant would be required to put on controls to meet the new MACT limits, data in EPA's possession suggests that continuous compliance cannot be met without modifications at coke facilities.

- Sources, including the Clairton plant, need to generate additional data to better account for raw material and process variability. The MACT floor datasets are too limited, are not representative of the coke industry, and do not adequately reflect variability in operating conditions (e.g., normal coking time vs. extending coking time) or variability in raw material inputs, such as coal characteristics. As a result, no technology is available that has demonstrated that the new limits are achievable under all reasonably foreseeable conditions. To address these issues, U. S. Steel and other commenters suggested that EPA include a process to address such variability when determining the MACT standards as EPA did with the Brick MACT by including an intra-quarry variability (IQV) factor when developing the MACT standards. In promulgating the Coke RTR Rule, EPA rejected these comments and did not include a variability factor when setting the MACT standards.

- Controlling multiple pollutants and retrofitting controls into existing equipment and operations adds complexity and time due to interactions of the requirements for control, including pollutant interactions, flow rates, chemistry, and temperatures.

- There is a general lack of confidence that there is any feasible control technology for hydrogen cyanide (HCN). Air pollution control vendors indicate that any potential solution for control of HCN is not technically feasible for coke battery combustion stack or pushing emissions.

- Any additional controls would require permitting, which takes 6-12 months after engineering is completed.

- The coke battery underfiring system is naturally drafted, with the underfire gas stream predominantly located underground. Added equipment such as heat exchangers, sorbent injection systems, etc., result in static pressure loss, necessitating installation of an induced draft fan. The impacts of added fans and equipment need to be studied to ensure adequate heating of the batteries, as well as enough physical space to install additional equipment, which may not be feasible. This poses obstacles and engineering challenges for any new add-on equipment, which could include construction of a new battery combustion stack.

- Changes to the underfiring system requires coke battery outages, during which purchased natural gas is needed to keep the battery hot. All coke production would cease; and battery refractory brick and other equipment could suffer unanticipated damage, which takes more time and expense to correct. Furthermore, for a plant like U. S. Steel's Clairton plant, outages will require staggering across batteries to prevent upset conditions at downstream processes.

- Limited available physical space within coke oven battery areas requires vertical construction, adding complexity and time to all related construction, and may be infeasible altogether.

- Adding controls on mobile pushing emission control devices involves unique engineering challenges compared to stationary sources.

- As noted above, EPA failed to appropriately address SSM events in setting the MACT limits and requirements. U. S. Steel believes a work practice requirement in lieu of hard limits is appropriate to account for SSM events.

Unfortunately, U. S. Steel's concerns as provided in comments submitted to EPA as well as those raised with the Office of Management and Budget before the Coke RTR Rule was finalized were almost entirely ignored. First, during the rule development, EPA grossly underestimated the cost impacts of the rule to the domestic steel industry Second, the compliance schedule required by EPA is woefully inadequate. In addition, EPA cherry-picked data to be used in the derivation of limits and requirements, and, most astonishingly, excluded valid data as the process fell short of EPA's statutory obligation and precedent in setting MACT floors.

Given numerous concerns regarding the feasibility in implementing the new Coke RTR Rule requirements and the fact that technology to achieve the standards in the Coke RTR Rule is unavailable, industry commenters, including U. S. Steel, requested a full three-year compliance

schedule to implement the Coke RTR Rule because that time is necessary for facilities to, among other things, better determine process and raw material variability impacts on emissions, evaluate additional emission controls and to assess technical feasibility and to test, engineer, permit, fabricate, and install the new equipment and other controls before the date compliance is required. Additional compliance time would also be needed to retrofit new equipment into existing facilities with limited space and to allow facilities to streamline and consolidate compliance testing of battery stacks and pushing emission control devices with other required source testing. The Presidential Exemption is necessary to account for these factors and to prevent irreparable harm to the domestic steel industry; and is appropriate as EPA reviews petitions for reconsideration.

THE EXEMPTION IS IN THE INTEREST OF NATIONAL SECURITY

A. The Clairton Plant is Vital to the Production of Steel at U. S. Steel

U. S. Steel's Clairton plant is the largest coke plant in North America. The Clairton plant is an essential operation of U. S. Steel and is critical for U. S. Steel to produce steel. The Clairton Plant operations have a tremendous impact on the local, regional, and national economy. The Clairton Plant employs approximately 1,400 highly skilled United Steelworker union-represented and non-represented employees. Since the Clairton Plant is the nation's largest producer of coke and coal chemicals, its operations have a multiplier effect in supporting thousands of additional steel plant, chemical, energy, transportation, and supplier jobs, not only in the Clairton area in Allegheny County, and the Southwestern Pennsylvania region, but also across the United States.

B. U. S. Steel Contributes to the Economic Security of the United States, and Economic Security is National Security

U. S. Steel is a leading steel manufacturer in the United States and Europe. U. S. Steel has over 22,000 dedicated employees and produces over 1,000 grades of steel. For more than 100 years, while consistently meeting new challenges, U. S. Steel has been a vital part of America's history, economy, and infrastructure. U. S. Steel's operations located throughout the United States include, among others, coke production, taconite production and integrated iron and steel production, which contribute to the U.S. economy and key industries.

Continued domestic coke production, including the production by U.S. Steel, is critical to national infrastructure investments and national economic growth. The domestic steel industry is responsible for over $520 billion in economic output, supporting over 2 million jobs. It generates over $56 billion in tax revenues annually. U. S. Steel specifically supplies steel to the U.S. transportation and automotive sectors, including major U.S. automakers; the construction sector; containers and packaging sector; appliances and electrical equipment sector; and oil, gas, and petrochemicals sector. For these industries – which are critical to U.S. economic security – U. S. Steel provides high quality domestically produced steel. U. S. Steel is also a major contributor to the communities in which it operates – including, among others, those in Alabama, Arkansas, Pennsylvania, Indiana, Illinois, and Michigan – directly and indirectly supporting jobs and economic growth, which underpin the United States' economic security. As stated in the

President's America First Investment Policy, "economic security is national security." Consistent with this, the Federal government has determined that the steel industry is "critical to minimum operations of the *economy* and *government*."[4]

In the case of steel, the history of U.S. Government actions to ensure the continued viability of the domestic steel industry demonstrates that, across decades and Administrations, there has been consensus that domestic steel production is vital to our national interest. The overall security of the nation is dependent upon a strong economy and investments in industry and infrastructure. All of these goals are supported by the steel industry, and it needs to have protection from the proposed rules until such time as a proper review can take place.

The unprecedented and exorbitant costs that U. S. Steel would need to incur to attempt to comply with the Coke RTR Rule would risk U. S. Steel losing viable commercial production capabilities and will jeopardize the domestic industry's ability to meet the full spectrum of infrastructure and investment needs. Ensuring that U. S. Steel and other steel producers are able to continue to produce steel in the market for U.S. commercial and infrastructure needs is necessary to grow the U. S. market and economy.

The Coke RTR Rule, as well as the other rules affecting the domestic steel industry, will result in unprecedented costs which will jeopardize the long-term operations of U. S. Steel (and other steel producers.) If U. S. Steel is not financially viable to invest in the latest technologies, facilities, and long-term research and development, nor retain skilled workers while attracting a next-generation workforce, it will be unable to support the nation's infrastructure, economy and commercial needs.

C. Cumulative Burden

In 2024, EPA promulgated three new steel sector rules[5] resulting in dozens of new emission limits and work practices materially impacting the domestic iron and steel critical operations in the United States. A Presidential Exemption is necessary to prevent significant direct adverse impacts and irreparable harm to domestic steel production and infrastructure.

The promulgation of these three rules, simultaneously with other recent significant EPA actions, including most notably, the lowering of the PM2.5 NAAQS and the adoption of the

---

[4] Department of Commerce, Bureau of Export Administration; *The Effect of Imports of Iron Ore and Semi-Finished Steel on the National Security*, October 2001

[5] The three rules at issue are:

1) National Emission Standards for Hazardous Air Pollutants: Integrated Iron and Steel Manufacturing Facilities (EPA-HQ-EPA-OAR-2002-0083), April 3, 2024, *Federal Register*, (89 Fed. Reg. 23294)
2) National Emission Standards for Hazardous Air Pollutants for Coke Ovens: Pushing, Quenching, and Battery Stacks, and Coke Oven Batteries, (EPA HQ OAR 2002 0085 and EPA HQ OAR 2003 0051), July 5, 2024, *Federal Register*, (89 Fed. Reg. 55684); and
3) National Emission Standards for Hazardous Air Pollutants: Taconite Iron Ore Processing Amendments (EPA-HQ-OAR-2017-0664), March 6, 2024, *Federal Register*, (89 Fed. Reg. 16408).

overreaching Good Neighbor Rule, harm the competitiveness of the domestic steel industry and jeopardizes the domestic steel industry's ability to support the economy, growth and critical needs of the nation. These rules, individually and collectively, result in marginal, if any, benefits, yet result in unprecedented capital expenditures of billions of dollars for the domestic steel industry. These draconian, job-killing, unlawful rules were promulgated notwithstanding that EPA determined that the existing MACT regulations provide acceptable risks with an ample margin of safety.

In addition, it is significant to note that in 2020 EPA previously completed its statutory obligation to determine risks and to review technological developments for the taconite and integrated iron and steel categories and determined that no significant revisions to these rules were necessary. However, in 2024, EPA unilaterally reversed course and mandated that the industry comply with dozens of new limits and requirements that will require hundreds of millions if not billions in capital expenditures and even then compliance with some of the new limits cannot be assured as the limits are based upon insufficient data and are based upon unproven, untested technologies for the limits imposed. If left in place, the domestic steel industry may be left to choose between prematurely shuttering mills, resulting in job losses and irreparable harm to their local communities, or making huge investments to develop technologies that have no proven application in the steel sector. In short, these rules stand to paralyze an industry that currently leads the world in the pathway to clean steel production. These rules, if left in place, would further skew the market to the benefit of foreign manufacturers and state-owned enterprises in particular, Chinese state-owned steel producers, which dominate the global steel industry – and which are held to less stringent environmental standards.

Without a Presidential Exemption, the Coke RTR Rule would create significant, unprecedented burdens for domestic metallurgical coke production and steel industry as well as manufacturers and negatively impact the workforce, who are a vital part of the U.S. economy. In addition, the Coke RTR Rule would substantially raise costs to consumers across the country and would likely cause harm to the domestic economy and supply of materials for infrastructure and growth.

The importance of avoiding these harms to the coke and steel industry is emphasized in a December 6, 2023 letter from eight U.S. Senators – including then-Senator JD Vance – to EPA warning that the Coke Ovens Rule and two other rules aimed at the steel sectors "… would dramatically undermine the domestic steel industry and national security while driving production overseas likely resulting in no net reduction in emissions from the steel industry globally."[6]

Likewise, in a June 14, 2024 letter six U.S. Senators – again including then-Senator Vance urged EPA to reconsider the Coke Ovens Rule and two other rules aimed at the steel industry, warning that "… the steel industry will be forced to proceed with planning and spending for unproven technologies and work practices while the final provisions of the rules remain uncertain. Given that these regulations will impact nearly every aspect of the integrated

[6] Letter from U.S. Senators Vance, Brown, Braun, Manchin, Casey, Klobuchar, Capito, and Young to Administrator Regan, p. 1 (Dec. 6, 2023) (Att. A).

iron and steelmaking process, it is imperative that EPA grant both the petitions for reconsideration and requests for stay of the rules."[7] Similar concerns were raised in a letter to EPA from Congress Members Crawford and Mrvan of the Congressional Steel Caucus.[8]

Without a Presidential Exemption, the Coke RTR Rule would require immediate actions by U. S. Steel that unfairly burden U. S. Steel, impose actions that are either unsafe, unlawful, impossible, impractical and/or are ineffective; and require U. S. Steel to spend tens of millions if not hundreds of millions of dollars on unproven technologies, thereby impacting its ability to support the nation's growing economy, infrastructure needs, and continued thriving national investments.

CONCLUSION

Thank you for the opportunity to provide this Request for a Presidential Exemption. The bases of granting an exemption are well grounded in the facts that support a clear finding that the technologies to implement the Coke RTR Rule are not available, and because of the financial and infrastructure implications, it is in the interest of national security to grant the request. Furthermore, while not a factor specifically listed as a basis for the exemption, it is important to note that granting the request will not result in any unacceptable risks to the public or the environment as EPA has determined that the integrated iron and steel source category presents acceptable risks with an ample margin of safety with the present controls, and requirements and limits already in effect to which U. S. Steel consistently demonstrates compliance. If you have questions or need additional information, please contact me (412) 233-1200.

Sincerely,



Matthew J. DeLibero
U. S. Steel Mon Valley Works
Director Environmental, Reliability, & Operational Excellence

cc: A. Szabo, EPA OA
J. Schwab, EPA OA
A. Tardif, EPA OAR
[redacted], EPA OAR
[redacted], EPA OAQPS

[7] Letter from U.S. Senators Vance, Brown, Braun, Casey, Klobuchar, and Young to Administrator Regan, p. 2 (June 14, 2024) (Att. B).
[8] Letter from Congressmen Crawford and Mrvan to Administrator Regan, p. 1 (Dec. 18, 2023) (Att. C).

[redacted] EPA OAQPS
M. Dzurinko, USS
C. Hardin, USS
M. Jeffrey, USS
B. Tunno, USS
T. Woodwell, USS

ATTACHMENT A

United States Senate

WASHINGTON, DC 20510

December 6, 2023

The Honorable Michael S. Regan
Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue NW
Washington, D.C. 20460

Dear Administrator Regan:

We write to you today regarding the U.S. Environmental Protection Agency's (EPA) three proposed rules related to steel manufacturing and related supply chains. We have serious concerns with these proposed rules because they would dramatically undermine the domestic steel industry and national security while driving production overseas likely resulting in no net reduction in emissions from the steel industry globally. Reducing the emission of harmful air pollutants should be done based upon sound science and with proven technology that is both technically and economically feasible. The irony is that the United States' steel industry is world's cleanest major producer of steel[1]. American steel manufacturers take seriously their commitment to protecting the environment; however, rules that drive production overseas are bad for our economy, bad for national security, and bad for the environment.

These rules:

1) National Emission Standards for Hazardous Air Pollutants: Integrated Iron and Steel Manufacturing Facilities (EPA-HQ-EPA-OAR-2002-0083), 2) National Emission Standards for Hazardous Air Pollutants for Coke Ovens: Pushing, Quenching, and Battery Stacks, and Coke Oven Batteries. (EPA HQ OAR 2002 0085 and EPA HQ OAR 2003 0051), and 3) National Emission Standards for Hazardous Air Pollutants: Taconite Iron Ore Processing Amendments (EPA-HQ-OAR-2017-0664), if finalized as proposed, would require billions of dollars in capital investments and increased annual operating costs for the U.S. steel industry.

We support reducing harmful air pollution. We also support rules that are durable, realistic, and based upon proven technology and reflect a consensus view among stakeholders on how to best improve public health while protecting good paying jobs and supporting industries essential to our national and economic security. These rules fail to meet those standards.

As you move forward with these rulemakings, we urge you to take an inclusive approach – working directly with major stakeholders in developing technically-sound final rules that achieve further emissions reductions while not harming the competitiveness of our American steel companies. Written properly, regulations can help American steel manufacturers lead the world in clean steel production. Poorly written rules undermine domestic manufacturing and promote reliance upon inputs made by foreign manufacturers manufacturers that pollute more than their American counterparts. Regulations that cost

[1] "Steel Climate Impact - An International Benchmarking of Energy and CO_2 Intensities." Found at: https://www.bluegreenalliance.org/wp-content/uploads/2022/04/Steelclimateimpact-benchmarkingreport7April2022.pdf

American jobs, undermine national security, and are likely to result in no net reduction in emissions globally must be rejected.

Sincerely,

Sherrod Brown
United States Senator

J.D. Vance
United States Senator

Mike Braun
United States Senator

Joe Manchin
United States Senator

Robert P. Casey, Jr.
United States Senator

Amy Klobuchar
United States Senator

Shelley Moore Capito
United States Senator

Todd Young
United States Senator

ATTACHMENT B

United States Senate

WASHINGTON, DC 20510

June 14, 2024

The Honorable Michael S. Regan
Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue NW
Washington, D.C. 20460

Dear Administrator Regan:

We write to you today regarding three U.S. Environmental Protection Agency (EPA) rules that together threaten the economic competitiveness of the American integrated steel industry. We urge EPA to grant the petitions filed by the domestic integrated steel industry seeking administrative reconsiderations and stays of all three final rules until the EPA can complete a comprehensive review of each rule through the administrative reconsideration process.

Working together, EPA and industry have achieved notable reductions in environmental impacts to air, water, and land over the past 50 years. The steel industry in the U.S. is the world's cleanest major producer of steel and is already subject to more environmental regulation than its global competitors, resulting in a cleaner environment. While we appreciate EPA's efforts to address concerns raised by multiple stakeholders – including steel companies, the United Steelworkers (USW), coke producers, and numerous Members of Congress – throughout the rulemaking process, we remain concerned that the final rules contain flaws that will undermine the domestic steel industry and national security while driving production overseas. We are specifically concerned about the following three rules:

- National Emission Standards for Hazardous Air Pollutants: Taconite Iron Ore Processing (EPA-HQ-OAR-2017-0664)
- National Emission Standards for Hazardous Air Pollutants: Integrated Iron and Steel Manufacturing Facilities (EPA-HQ-OAR-2002-0083)
- National Emission Standards for Hazardous Air Pollutants for Coke Ovens: Pushing, Quenching, and Battery Stacks, and Coke Oven Batteries (EPA–HQ–OAR–2002–0085 and EPA HQ OAR 2003 0051).

A failure to get these regulations right will not only have a negative impact on domestic steel production and American steelworkers, but it will also likely fail to achieve a net reduction in emissions from the steel industry globally. In fact, emissions will likely rise as production moves to countries, like China, with far less stringent rules and regulations. By granting the requested administrative reconsideration and stay of the rules, the EPA and industry can build on their shared track record of success and continue to work together in a constructive manner to achieve durable rules that both protect the environment and our domestic integrated steel industry.

Throughout the rulemaking process, EPA worked to address technical and analytical flaws with these rules raised by multiple stakeholders. The modifications incorporated into the final rules in response to stakeholder feedback were important steps in the right direction, but we remain concerned they did not go far enough in addressing fundamental flaws with the rules. Further modifications are needed to address new information provided to EPA by stakeholders to ensure the rules are achievable by the industry, as required by the Clean Air Act, and that the regulations do not induce unintended consequences, such as loss of domestic steelmaking capacity and jobs. Given all that is at stake in terms of our country's advanced steel manufacturing capabilities and the good-paying, middle class union jobs the steel industry sustains, it is critically important that these rules are technically and economically feasible and do not undermine the competitiveness of the industry.

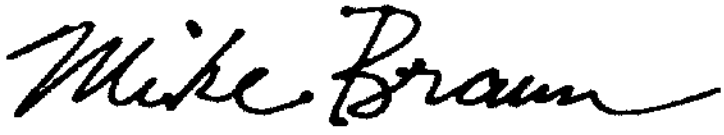
A stay of these rules will allow EPA to continue to work with industry stakeholders, including domestic companies and the USW, to obtain a complete and thorough understanding of the new information, equipment, and processes and ensure regulations moving forward are sound policy. Absent a stay, the steel industry will be forced to proceed with planning and spending for unproven technologies and work practices while the final provisions of the rules remain uncertain. Given that these regulations will impact nearly every aspect of the integrated iron and steelmaking process, it is imperative that EPA grant both the petitions for reconsideration and requests for stay of the rules.

We urge EPA to grant the industry's petitions for reconsideration and stay requests to ensure that these regulations both safeguard our environment and preserve production capacity and jobs in our strategically important integrated iron and steel sector. Thank you for your work to date with us on these important matters.

Sincerely,



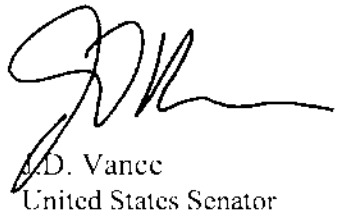
Sherrod Brown
United States Senator



Mike Braun
United States Senator



Robert P. Casey, Jr.
United States Senator



J.D. Vance
United States Senator



Amy Klobuchar
United States Senator



Todd Young
United States Senator

cc: Janet McCabe, Deputy Administrator, U.S. Environmental Protection Agency

ATTACHMENT C

Congress of the United States
House of Representatives
Washington, DC 20515

December 18, 2023

The Honorable Michael S. Regan
Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue NW
Washington, D.C. 20460

Dear Administrator Regan:

As Chairman and Vice Chairman of the Congressional Steel Caucus, we write to express our concerns regarding the proposed rules below from the U.S. Environmental Protection Agency (EPA):

- National Emission Standards for Hazardous Air Pollutants: National Emission Standards for Hazardous Air Pollutants: Taconite Iron Ore Processing Amendments (EPA-HQ-OAR-2017-0664)
- Integrated Iron and Steel Manufacturing Facilities (EPA-HQ-EPA-OAR-2002-0083)
- National Emission Standards for Hazardous Air Pollutants for Coke Ovens: Pushing, Quenching, and Battery Stacks, and Coke Oven Batteries (EPA–HQ–OAR–2002–0085 and EPA– HQ–OAR–2003–0051).

The American steel industry and its manufacturing workforce produces the world's cleanest steel, made possible by years of substantial investments into climate initiatives. According to the American Iron and Steel Institute, the steel industry has reduced its energy intensity per ton of production by 35 percent and carbon dioxide emissions intensity by 37 percent in the past three decades. We also would highlight that these efforts will continue to be augmented by research and technology investments being made under current law.

We are grateful for your efforts to assist in the implementation of these laws and want to ensure that the proposed rules do not hinder the ability of the American steel industry to make robust investments into these important environmental initiatives.

Industry leaders have shared with us that these rules, as drafted, pose a threat to the competitiveness of steel producers and tens of thousands of good-paying union jobs. Our understanding is that these rules do not consider current technology capabilities and economic feasibility and may jeopardize the industry's ability to meet other environmental initiatives and health requirements for workers. We also are concerned that any action to diminish the ability of the American steel industry to meet the demands of our economy will be manufactured by

foreign-made and illegally subsidized steel entities that do not meet our current environmental, labor, and accountability standards.

As you move forward, we would strongly encourage you to more openly communicate with steel industry experts and other stakeholders to ensure that proposed requirements are based on proven technology and robust scientific data. It is essential to ensure that proposed rules are technically feasible, financially reasonable, and continue protecting the livelihoods, health, and safety of workers and steel-producing communities throughout our nation.

Sincerely,

Eric A. "Rick" Crawford
Member of Congress
Chair, Congressional Steel Caucus

Frank Mrvan
Member of Congress
Vice-Chair, Congressional Steel Caucus

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF THE DISTRICT OF COLUMBIA

TEXAS ENVIRONMENTAL JUSTICE ADVOCACY SERVICES
900 North Wayside Dr.
Houston, Texas 77023;

AIR ALLIANCE HOUSTON
2520 Caroline St.
Houston, Texas 77004;

CONCERNED CITIZENS OF ST. JOHN
389 E 26th St.
Reserve, Louisiana 70084;

ENVIRONMENTAL JUSTICE HEALTH ALLIANCE FOR CHEMICAL POLICY REFORM
28 Vernon Street, Suite 434
Brattleboro, Vermont 05301;

ENVIRONMENTAL DEFENSE FUND
257 Park Ave S,
New York, New York 10010;

ENVIRONMENTAL INTEGRITY PROJECT
888 17th St. NW, Suite 810
Washington, D.C. 20006;

LOUISIANA ENVIRONMENTAL ACTION NETWORK
P.O. Box 66323
Baton Rouge, Louisiana 70896;

NATURAL RESOURCES DEFENSE COUNCIL, INC.
40 West 20th Street, 11th Floor
New York, New York 10011;

RISE ST. JAMES LOUISIANA
8581 Hwy 18
St. James, Louisiana 70086; *and*

SIERRA CLUB

Case No. 1:25-cv-3745

2101 Webster St., Suite 1300
Oakland, California 94612;

Plaintiffs,

v.

DONALD TRUMP, President of the United States, in his official capacity;

U.S. ENVIRONMENTAL PROTECTION AGENCY; *and*

LEE ZELDIN, Administrator of the U.S. Environmental Protection Agency, in his official capacity;

Defendants.

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

1. On July 17, 2025, President Donald Trump issued a proclamation purporting to exempt 50[1] chemical manufacturing plants from requirements to monitor and control emissions of hazardous air pollutants like ethylene oxide and chloroprene for two years. *Regulatory Relief for Certain Stationary Sources to Promote American Chemical Manufacturing Security*, 90 Fed. Reg. 34,587 (July 23, 2025) ("HON Proclamation") (Ex. 1). EPA had issued these requirements in its 2024 updates to its hazardous air pollutant standards for more than 200 facilities that manufacture synthetic organic chemicals and polymers and resins in a new rule (known as the "HON Rule").[2] By imposing more stringent requirements to prevent and control toxic air

[1] President Trump's Proclamation listed 52 facilities. Based on a review of EPA facility records, two of those appear to be duplicates.

[2] "HON" stands for "Hazardous Organics NESHAP." "NESHAP" stands for "national emissions standards for hazardous air pollutants," the hazardous air pollutant standards issued under 42 U.S.C. § 7412. The HON Rule covers the synthetic organic chemical manufacturing industry and two groups of polymers and resins manufacturers.

ED_021114A_00011999-00002

pollutant emissions, the updated HON Rule is estimated to reduce the number of people facing elevated cancer risk from HON emissions by 96 percent.

2. President Trump's HON Proclamation, soon after a request from industry trade groups, unilaterally sweeps away those protections for nearly one-quarter of all HON Rule-regulated facilities, giving facilities in states from Louisiana to Michigan a free pass to continue to pollute and put communities at risk for an additional two years. By granting these exemptions, President Trump has allowed facilities to delay controls for toxic pollutants including ethylene oxide—a known carcinogen linked to lymphoma, leukemia, and breast cancer. He has allowed facilities to forgo leak monitoring and repair requirements that would help timely detect and stop toxic emissions from leaky pumps and vents. He has allowed facilities to postpone updating their operational practices to prevent and minimize toxic emissions during maintenance activities. And he has allowed facilities to forgo fenceline monitoring that would identify when toxic emissions escape a facility's boundaries and poison neighboring communities.

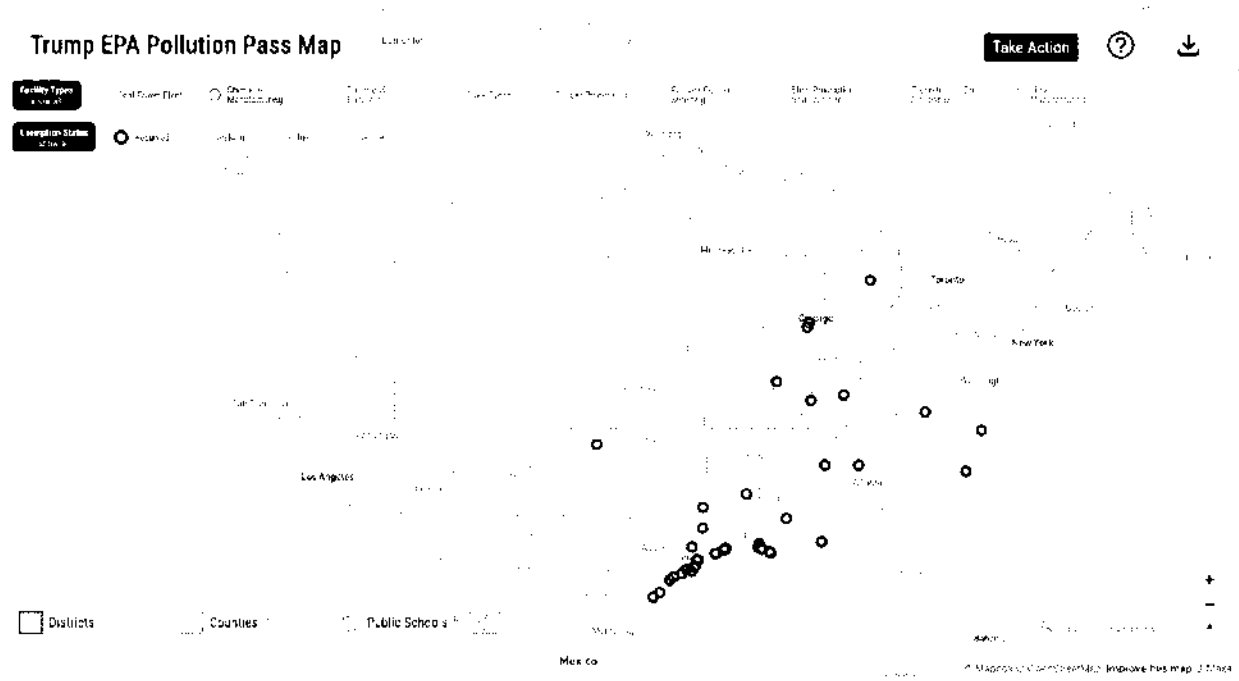


Image from https://www.edf.org/maps/epa-pollution-pass/ (last accessed Oct. 22, 2025)

3. The President granted these sweeping exemptions by seizing on a narrow and, until this year, never-before-used provision of the Clean Air Act, 42 U.S.C. § 7412(i)(4). That provision allows the President to exempt a source from a hazardous air pollutant standard for up to two years only if "the technology to implement" the relevant standard is "not available" and if exempting the source "is in the national security interests of the United States." 42 U.S.C. § 7412(i)(4). Neither of those predicates are met here.

4. In the fifty-five years since Congress enacted Section 7412(i)(4), no President had ever used that exemption authority. In just the first six months of his term, President Trump has done so five times for a total of 170 facilities. Besides the HON Proclamation, President Trump has issued proclamations exempting nearly one-third of U.S. coal-fired power plants from mercury and other air toxics standards, nearly half of commercial medical sterilizers from ethylene oxide standards, and the entire taconite iron-ore processing industry from mercury standards.

5. President Trump's sweeping HON Proclamation grossly exceeds the bounds of the Section 7412(i)(4) exemption authority. The Proclamation exempts nearly one-quarter of HON-regulated facilities from complying with any part of the Rule without any standard- or facility-specific analysis to show that any of the 50 specific facilities meets the statutory standard. In fact, many of the 2024 HON Rule's requirements cannot be reasonably understood as turning on any "technological availability," as required to invoke the Section 7412(i)(4) exemption. Rather, they are operational practices and prohibitions that reduce dangerous emissions from existing equipment and processes. For other requirements, the air pollution control technology needed to comply with the standards is widely available in the industry—and indeed already in use by many of the facilities that received exemptions.

ED_021114A_00011999-00004

6. The scope, content, and context of the Proclamation show it for what it really is: a pretext to relieve polluters from working to comply with the 2024 HON Rule while EPA works administratively to repeal those critical protections. Congress explicitly prohibited that sort of delay pending administrative reconsideration. 42 U.S.C. § 7607(d).

7. The Proclamation violates the Clean Air Act and exceeds the President's lawful authority. Plaintiffs ask the Court to enter appropriate relief declaring the Proclamation unlawful and invalid and enjoining EPA and its Administrator from implementing or giving effect to it.

JURISDICTION AND VENUE

8. This Court has subject matter jurisdiction under 28 U.S.C. § 1331 because this is a civil action arising under laws of the United States, including the Clean Air Act.

9. Venue is proper in this Court under 28 U.S.C. § 1391(e) because Plaintiff Environmental Integrity Project resides in this judicial district, because Defendants reside in this judicial district, and because a substantial part of the events giving rise to the claim occurred in this judicial district.

10. The Court has authority to enter a declaratory judgment and to provide injunctive relief pursuant to Rules 57 and 65 of the Federal Rules of Civil Procedure; the Declaratory Judgment Act, 28 U.S.C. §§ 2201-2202; the All Writs Act, 28 U.S.C. § 1651; and the Court's inherent equitable powers.

PARTIES

The Plaintiffs

11. Plaintiff Louisiana Environmental Action Network ("LEAN") is a nonprofit organization based in Louisiana. LEAN is an environmental justice network of community members that advocate for environmental justice and protection from toxic pollution in

ED_021114A_00011999-00005

Louisiana. Through public education, advocacy, and community organizing, LEAN educates communities about the environmental impacts of industry and development, and empowers them to advocate for protecting human health and the environment.

12. Plaintiff Environmental Justice Health Alliance for Chemical Policy Report ("EJHA") is a national network of grassroots environmental and economic justice organizations and advocates in communities that are disproportionately impacted by toxic chemicals from legacy contamination, ongoing exposure to polluting facilities, and health-harming chemicals in household products. EJHA has over a dozen member community-based environmental justice organizations in ten states. EJHA's member organizations represent communities in areas impacted by hazardous air pollutant emissions, including emissions from HON-regulated facilities. EJHA's mission is to support its affiliate member organizations to achieve a just transition to a pollution-free economy that leaves no community or worker behind.

13. Plaintiff Air Alliance Houston ("AAH") is a nonprofit organization based in Texas. AAH works to reduce air pollution in the Houston region to protect public health and environmental integrity by conducting applied research on air pollution, educating the community about the sources and harms of air pollution, and advocating for improvements at the local, state, and national levels. AAH works closely with constituents to provide the training and technical assistance they need to address air pollution in their daily lives.

14. Plaintiff Concerned Citizens of St. John ("CCSJ") is a nonprofit organization based in St. John the Baptist Parish, Louisiana. CCSJ advocates for community health and safety by working to reduce pollution and to protect the air, water, and soil in Louisiana. CCSJ also works to educate the residents of St. John Parish about environmental pollution and health risks.

ED_021114A_00011999-00006

15. Plaintiff RISE St. James Louisiana is a nonprofit, grassroots, and faith-based organization based in Louisiana. RISE St. James advocates for racial and environmental justice in St. James Parish, Louisiana and in other river parishes impacted by toxic pollution.

16. Plaintiff Texas Environmental Justice Advocacy Services ("t.e.j.a.s.") is a nonprofit organization with its headquarters in Houston, Texas. T.e.j.a.s. promotes environmental protection and environmental justice through education, policy development, community outreach, and legal action to ensure that everyone, regardless of race or income, is entitled to live in a clean environment.

17. Plaintiff Environmental Defense Fund ("EDF") is a nonprofit environmental organization dedicated to finding practical solutions to critical environmental problems through the use of science, economics, policy, and law. EDF regularly collects and publishes data that highlights harm from petrochemical and industrial air pollution, including mapping reported air toxic emissions from petrochemical facilities alongside health risk levels, to provide information to communities and policymakers. *See, e.g.*, Petrochemical Air Pollution Map, https://www.clearcelllab.org/pollutionmap. EDF has offices throughout the United States, including in the District of Columbia. As a membership-based organization, EDF currently has more than 330,000 members, in all 50 states and the District of Columbia. These members have a strong interest in protecting human health and the environment from pollution.

18. Plaintiff Environmental Integrity Project ("EIP") is a nonprofit, nonpartisan organization based in Washington, D.C. that empowers communities and protects public health and the environment by investigating polluters, holding them accountable under the law, and strengthening public policy on toxic air pollution and other environmental health issues. EIP works for more effective enforcement of environmental laws.

19. Plaintiff Natural Resources Defense Council ("NRDC") is a national nonprofit environmental membership organization with hundreds of thousands of members nationwide. NRDC's purpose is to safeguard the Earth — its people, its plants and animals, and the natural systems on which all life depends. Part of NRDC's core mission is to improve air quality and safeguard public health by combating hazardous air pollutant emissions.

20. Plaintiff Sierra Club is a nonprofit corporation with its headquarters located in Oakland, California. The Sierra Club is a national membership organization dedicated to the protection of public health and the environment and regularly advocates for policies that protect clean air. It has chapters in Alabama, Arkansas, Florida, Georgia, Illinois, Indiana, Kentucky, Louisiana, Michigan, Mississippi, North Carolina, Texas, and Virginia, and more than 600,000 members residing in all 50 states, the District of Columbia, and Puerto Rico.

The Defendants

21. Defendant Donald Trump is the President of the United States. He resides and conducts his duties in Washington, D.C. He is sued in his official capacity.

22. Defendant U.S. Environmental Protection Agency ("EPA") is a federal agency of the United States. EPA is headquartered in Washington, D.C.

23. Defendant Lee Zeldin is the Administrator of the U.S. Environmental Protection Agency. He resides and conducts his duties in Washington, D.C. He is sued in his official capacity.

ED_021114A_00011999-00008

LEGAL BACKGROUND

The Clean Air Act's Program to Address Hazardous Air Pollution

24. Clean Air Act Section 112, 42 U.S.C. § 7412, establishes the framework for EPA's regulation of "hazardous air pollutants" from stationary sources, including industrial facilities.

25. "Hazardous air pollutants" for Section 7412 purposes are a group of 188 air pollutants determined by Congress and EPA to be particularly harmful to human health. Ethylene oxide, benzene, 1,3-butadiene, ethylene dichloride, vinyl chloride, and chloroprene are hazardous air pollutants.

26. Section 7412 requires EPA to regulate hazardous air pollutants by issuing emissions standards for categories and subcategories of stationary sources of such pollutants. Emissions standards must require the maximum degree of reduction that EPA deems "achievable," taking into consideration cost and any non-air quality health and environmental impacts and energy requirements. *Id.* § 7412(d)(2), (3)(A)-(B).

27. After EPA establishes Section 7412 standards for a source category, the Clean Air Act requires EPA to perform recurring reviews to ensure that the standards adequately address risks to health and welfare from hazardous air emissions and that they reflect advancements in technology and practice that allow sources to achieve even greater emission reductions. These reviews are often done together and are known as the "residual risk and technology review."

28. In a technology review, EPA must "review, and revise" the Section 7412 standards "as necessary (taking into account developments in practices, processes, and control technologies)." *Id.* § 7412(d)(6).

29. In a risk review, EPA determines whether unacceptable risk to public health remains, or is likely to remain, from hazardous air pollutant emissions even after the application

of Section 7412 standards. If unacceptable risk remains, EPA must promulgate additional standards that eliminate the unacceptable risk, "provide an ample margin of safety to protect public health," and prevent "an adverse environmental effect." *Id.* § 7412(f)(2)(A).

30. Congress also prescribed strict compliance schedules for Section 7412 standards. Residual risk-based emissions standards "shall become effective upon promulgation" for new sources, or 90 days after the effective date for existing sources. *Id.* § 7412(f)(3). EPA may waive compliance for up to two years only if it determines "such period is necessary for the installation of controls and that steps will be taken during the period of the waiver to assure that the health of persons will be protected from imminent endangerment." *Id.* § 7412(f)(4)(B).

31. For standards revised as the result of a technology review, EPA must require existing sources to comply "as expeditiously as practicable," and no later than three years after the effective date. *Id.* § 7412(i)(3)(A). EPA may grant a source up to one additional year to comply only where "such additional period is necessary for the installation of controls." *Id.* § 7412(i)(3)(B).

Clean Air Act Procedural Requirements

32. The Clean Air Act sets out rulemaking requirements that apply to "the promulgation or revision of any . . . emission standard or limitation under section 7412(d)." *Id.* § 7607(d)(1)(C). EPA must establish a rulemaking docket, publish a notice of proposed rulemaking in the Federal Register, and provide a statement of basis and purpose for the rule that includes the factual data on which the proposed rule is based, the methodology used in obtaining and analyzing the data, and the major legal interpretations and policy considerations underlying the proposed rule. *Id.* § 7607(d)(3). EPA must also provide, along with the proposal, any

ED_021114A_00011999-00010

comments by the Scientific Review Committee and the National Academy of Sciences and all data, information, and documents. *Id.*

33. The Clean Air Act also requires EPA to allow any person to submit written comment, and to provide an opportunity for oral presentation of data, views, or arguments, on a proposed rule. *Id.* § 7607(d)(5); *see also id.* § 7607(h). In promulgating a final rule, EPA must provide a statement of basis and purpose as required at the proposal stage and must explain major changes from the proposed to final rule. *Id.* § 7607(d)(6)(A). EPA must also provide a response to each of the significant comments, criticisms, and new data submitted during the comment period. *Id.* § 7607(d)(6)(B). EPA may not base a promulgated rule on "any information or data which has not been placed in the docket as of the date of such promulgation." *Id.* § 7607(d)(6)(C).

34. The Clean Air Act also provides procedures for reconsidering a promulgated rule. The EPA Administrator can "convene a proceeding for reconsideration of the rule" but must "provide the same procedural rights as would have been afforded" in the original proceeding. *Id.* § 7607(d)(7)(B). The Act states, however, that reconsideration "shall not postpone the effectiveness of the rule," except that the Administrator or a reviewing court may stay the effectiveness of the rule "for a period not to exceed three months." *Id.* Section 7607(d)(7)(B) is the sole authority EPA has to stay a rule after its effective date has passed. *See Clean Air Council v. Pruitt*, 862 F.3d 1, 9 (D.C. Cir. 2017).

Presidential Exemption Provision

35. Section 7412(i)(4) of the Clean Air Act authorizes the President, in narrowly prescribed circumstances, to "exempt any stationary source from compliance" with hazardous air pollutant standards promulgated under Section 7412, "for a period of not more than 2 years if the

President determines [1] that the technology to implement such standard is not available and [2] that it is in the national security interests of the United States to do so." 42 U.S.C. § 7412(i)(4).

36. The President may extend the original exemption "for 1 or more additional periods, each period not to exceed 2 years." *Id.*

FACTUAL AND PROCEDURAL BACKGROUND

Synthetic Organic Chemical Manufacturing Industry NESHAP

37. In 1994, EPA promulgated the first hazardous air pollutant standards for synthetic organic chemical manufacturing industry ("SOCMI") processes at 40 C.F.R. part 63, subparts F, G, H, and I. 59 Fed. Reg. 19,402 (Apr. 22, 1994). EPA completed a residual risk and technology review for the HON Rule in 2006. 71 Fed. Reg. 76,603 (Dec. 21, 2006).

38. The SOCMI source category comprises any facility engaged in manufacturing processes that produce synthetic organic chemicals. Those chemicals are primarily used to manufacture plastics, as well as rubbers, paints, adhesives, and pesticides. Demand for synthetic organic chemicals is driven by the growth of automotive and packaging sectors in emerging economies like India, Brazil, Vietnam, and Thailand.

39. Emissions from SOCMI facilities are a major driver of cancer risk for millions of Americans. EPA estimated that emissions from the SOCMI source category alone is responsible for one excess cancer case every 6 months. EPA estimated that approximately 50,000,000 people live within 50 kilometers of SOCMI facilities, and that more than 7 million of those are estimated to have cancer risk above EPA's presumptively "unacceptable" rate of 100-in-1 million because of those facilities' emissions.

40. EPA's estimates are based on modeled emissions from SOCMI facilities based on facilities' reported emissions. Studies have shown that actual hazardous emissions are often

ED_021114A_00011999-00012

higher. One study in Louisiana's "Cancer Alley," an 85-mile stretch along the Mississippi River between Baton Rouge and New Orleans that is home to more than 100 petrochemical manufacturers and refineries, found that pollution levels outside the property lines of ethylene oxide-emitting facilities were 10 times higher than EPA estimates.

Polymers and Resins NESHAP

41. In 1995, EPA established the first standards for certain polymer and resins manufacturing processes at 40 C.F.R. part 63, subpart W, known as the Group II Polymers and Resins NESHAP ("P&R II NESHAP"). 60 Fed. Reg. 12,670 (Mar. 8, 1995). EPA completed a residual risk and technology review for the P&R II NESHAP in 2008. 73 Fed. Reg. 76,220, 76,223 (Dec. 16, 2008).

42. In 1996, EPA established the first standards for various elastomer manufacturing processes at 40 C.F.R. part 63, subpart U, known as the Group I Polymers and Resins NESHAP ("P&R I NESHAP"). 61 Fed. Reg. 46,906 (Sep. 5, 1996). EPA completed a residual risk and technology review for those standards in 2008 and 2011. 73 Fed. Reg. at 76,223; 76 Fed. Reg. 22,566 (Apr. 21, 2011).

43. EPA estimated that of the approximately 1,000,000 people live within 50 kilometers of the Denka facility, a neoprene manufacturer that emits chloroprene, 690,000 are estimated to have a cancer risk at or above 1-in-1 million from primarily the chloroprene emitted from Denka's source category emissions, with 2,000 people estimated to have a cancer risk above 100-in-1 million.

The HON Risk & Technology Review

44. In 2010, EPA for the first time published a cancer potency for chloroprene, a pollutant emitted by the P&R I sources producing neoprene, in its Integrated Risk Information

System ("IRIS"). This cancer potency estimate was not available when EPA conducted its initial residual risk and technology review for P&R I source categories in 2008. 88 Fed. Reg. at 25,090. As a result, EPA's initial risk assessment and hazardous air pollutant standards treated chloroprene as presenting zero risk. Chloroprene is a likely human carcinogen that increases the risks of multiple cancers in addition to increasing the risk of non-cancer nervous system, immune system, and respiratory harms.

45. In 2016, EPA updated its IRIS assessment for ethylene oxide, a pollutant emitted by the SOCMI source category. The updated IRIS assessment showed that ethylene oxide was a significantly more potent carcinogen than previously known. Exposure to even small amounts of ethylene oxide increases the risk of lymphoid cancer, such as non-Hodgkin lymphoma, myeloma, and lymphocytic leukemia, as well as breast cancer. Ethylene oxide exposure is also linked to respiratory, nervous system, and hormone disruption. Children are more susceptible to health effects from ethylene oxide exposure.

46. That change in EPA's understanding of health risks led the Agency to determine that it was necessary to conduct an updated residual risk review for the SOCMI and P&R I source categories, in addition to the technology review required under 42 U.S.C. § 7412(d)(6).

47. In its final Residual Risk Assessment for SOCMI sources, EPA found the cancer risks in communities adjacent to HON facilities are "unacceptable," driven in large part by those facilities' ethylene oxide emissions.

48. Without the requirements of the 2024 HON Rule, approximately 83,000 people living within 50 kilometers of SOCMI sources are exposed to "unacceptable" cancer risk above 100-in-1 million, and over 7 million people are exposed to excess cancer risk of 1-in-1 million.

The highest cancer risk from HON sources is 2,000-in-1 million — approximately 20 times higher than the level of risk that EPA considers presumptively "unacceptable."

49. In addition to ethylene oxide and chloroprene, EPA identified at least eight additional hazardous air pollutants emitted by SOCMI sources contributing to risks above 1-in-1-million — which the Agency described as risk "drivers" — including acrylonitrile, ethylene dichloride, naphthalene, vinyl chloride, benzene, hydrazine, acrylamide, and nickel.

50. Even after implementing the controls required by the 2024 Rule, EPA estimates that several pollutants other than ethylene oxide will cause roughly 40 percent of the remaining cancer risk from SOCMI sources. 89 Fed. Reg. 42,957 (May 16, 2024).

51. In its final Residual Risk Assessment for P&R I neoprene production sources, EPA determined that the maximum individual lifetime cancer risk was 500-in-1-million before implementing the requirements of the 2024 Rule, and that 690,000 people living within 50 kilometers of the neoprene production source would be exposed to lifetime cancer risks greater than 1-in-1-million.

52. EPA also conducted a technology review for the SOCMI and P&R source categories. EPA determined that developments in practices, processes, and control technologies warranted revisions to standards for heat exchange systems, storage vessels, and process vents in one or more of the SOCMI and both P&R source categories. EPA promulgated several new requirements to reflect those developments. 89 Fed. Reg. at 42,948-49.

The 2024 HON Rule

53. EPA finalized the 2024 HON Rule in May 2024. 89 Fed. Reg. at 42,932. The 2024 HON Rule became effective on July 15, 2024.

54. EPA found that the 2024 HON Rule would reduce hazardous air pollutant emissions by 6,230 tons per year, and reduce the number of local residents facing elevated cancer risks from HON emissions by 96 percent.

55. Though EPA was not able to monetize the benefits from these reductions, EPA found the rule's reductions of volatile organic compound emissions and ozone would yield at least $77 to $690 million (using a 3 percent discount rate). 89 Fed. Reg. at 43,060.

56. The 2024 HON Rule was projected to impose about $455 million in total capital costs across all regulated sources.

57. The total annual cost of the rule is about $168 million.

58. The annual cost represents less than 0.1 percent of the value of the U.S. synthetic organic chemical manufacturing industry, which was valued at $168 billion in 2022.

59. The 2024 HON Rule established a variety of requirements applicable to different chemical manufacturing process units ("CMPUs"). Different HON facilities have different arrays of CMPUs, and thus are subject to different combinations of requirements from the 2024 HON Rule. For example, facilities that do not use or emit ethylene oxide would not be required to comply with ethylene oxide-specific requirements.

60. Different HON facilities emit different arrays of hazardous organic air pollutants.

61. For instance, the Formosa Plastics facility in Baton Rouge, Louisiana, is a plastics and resins manufacturer that emitted at least 21 hazardous air pollutants in 2024, including benzene, chloroprene, dioxins, and vinyl chloride.

62. The Westlake Vinyls facility in Geismar, Louisiana, is a plastics and resins manufacturer that emitted at least 29 hazardous air pollutants in 2024, including benzene, chloroprene, dioxins, ethylene oxide, and vinyl chloride.

63. The Citgo Petroleum Corporation Lemont Refinery is a petroleum refinery that emitted at least 34 hazardous air pollutants in 2024, including benzene and 1,3-butadiene.

64. The 2024 HON Rule standards can be grouped and summarized as follows:

65. *Ethylene oxide control requirements:* The 2024 HON Rule requires facilities that use, store, or emit ethylene oxide to reduce ethylene oxide emissions from process vents and storage vessels by either (1) venting the ethylene oxide to a control device that reduces ethylene oxide by a certain amount (for example, greater than or equal to 99.9 percent by weight), or (2) venting the ethylene oxide to a flare that meets preexisting performance, operation, and maintenance requirements. *See* 40 C.F.R. §§ 63.113(j) (process vents), 63.119(a)(5) (storage vessels). The Rule also sets new standards for wastewater containing ethylene oxide, including certain control measures and a prohibition on disposing of such wastewater through any heat exchange system. *Id.* § 63.104(k). The Rule prohibits bypassing air pollution controls for equipment that carries ethylene oxide and makes an atmospheric release from a pressure relief device a violation of the standard. *See* 89 Fed. Reg. at 42,957, 43,017; 40 C.F.R. § 63.165(e)(3)(v)(D). The compliance deadline for these provisions is July 15, 2026. 40 C.F.R. § 63.100(k)(11).

66. *Fenceline monitoring and corrective action requirements:* The 2024 HON Rule requires facilities that use, store, or emit one or more of benzene, 1,3-butadiene, chloroprene, ethylene dichloride, ethylene oxide, and vinyl chloride to sample along the facility's property boundary (known as the "fenceline"). 40 C.F.R. § 63.184. The Rule provides standardized

sampling procedures for each of the pollutants. *See id.* § 63.184(b), (c). The Rule also creates an "action level": if the samples show concentrations of any of the six pollutants above a certain concentration, the facility's owner or operator must take specified actions to identify the root cause of the exceedance and take corrective action, including actions to prevent future exceedances. *Id.* § 63.184(d)(3), (e), (f). The compliance deadline for fenceline monitoring is July 15, 2026, and the compliance deadline for corrective action is July 15, 2027. *Id.* § 63.100(k)(12).

67. *Leak detection and repair requirements:* The 2024 HON Rule requires facilities to implement new leak detection and repair requirements for certain equipment in ethylene oxide service to more quickly identify and correct leaks. These requirements include more frequent monitoring, with a lower leak concentration requiring repair, shorter deadlines to repair leaks, and limitations on any delay of repair. *See, e.g.*, 40 C.F.R. §§ 63.104(g)(6), 63.174(a)(3), (b)(3)(vi), (d) (g)(3), § 63.171(f). The compliance deadline for these requirements is July 15, 2026. *Id.* § 63.100(k)(11). The 2024 HON Rule also requires facilities to implement new leak detection and repair requirements for heat exchange systems generally, and the compliance deadline for those requirements is July 15, 2007, *id.* § 63.100(k)(10).

68. *Work practice standards:* The 2024 HON Rule establishes work practice standards for pressure relief devices and maintenance activities designed to prevent or minimize hazardous air pollutant emissions during maintenance activities or upsets. For instance, the Rule requires facilities with pressure relief devices that vent to the atmosphere to implement three release prevention measures such as routine inspection and maintenance programs or operator training; to monitor pressure relief devices and take corrective action if there are emissions. 40 C.F.R. § 63.165(c)(3)(i)-(iii). The Rule also prescribes how and when operators can open process

equipment, including recordkeeping requirements and restrictions on the amount of ethylene oxide released from maintenance vents, and standards for maintenance on storage vessels. *See id.* §§ 63.113(k), 63.119(b)(7) (work practice standards during planned routine maintenance of a fixed roof and an internal floating roof used for storage vessel compliance with total organic HAP emission control requirements). The compliance deadline for these provisions is July 15, 2027. *Id.* § 63.100(k)(10).

69. *Bypass prohibition:* The 2024 HON Rule prohibits owners and operators of HON facilities from bypassing an air pollution control device at any time, and provides that in most instances bypassing a control device is a violation of the applicable emission standard. 40 C.F.R. §§ 63.114(d)(3) (process vents), 63.119(e)(7) (storage vessels), 63.127(d)(3) (transfer racks), 63.148(f)(4) (vapor collection systems and closed vent systems). The compliance deadline for these provisions is July 15, 2027. *Id.* § 63.100(k)(10).

70. *Operating and monitoring requirements for flares:* The Rule sets revised operating and monitoring requirements for flares used as air pollution control devices. *See, e.g., id* §§ 63.108, 63.508. The Rule's requirements mirror and cross-reference the flare requirements promulgated in EPA's 2015 hazardous air pollutant rules for refineries. These revisions include a requirement that facilities operate at a minimum and monitor the net heating value of gases at the flare combustion zone, taking into account any "assist" steam or air added to the stream. The Rule also requires the use of certain methodologies to determine compliance. *See id.* §§ 63.108(a), (c), 63.508(a).

71. EPA determined that existing HON sources could comply with the requirements of the HON Rule within the statutory timeframes of two years (for section 7412(f) ethylene oxide requirements) and three years (for section 7412(d) technology-based requirements) by

July 15, 2026, and July 15, 2027, respectively. 89 Fed. Reg. at 42,953-55. Each of these is the maximum compliance timeframe allowed under the statute. EPA also determined that HON sources could comply with fenceline monitoring requirements within two years, and fenceline monitoring root cause analysis and corrective action requirements within three years. *Id.* at 42,954.

72. On January 31, 2025, the industry trade groups American Chemistry Council and the American Fuel and Petrochemical Manufacturers filed a petition for reconsideration of the HON Rule, requesting a broad rollback of the Rule's standards. The industry groups also requested that EPA "provide interim relief . . . while EPA takes regulatory action or addresses the more detailed issues" in the reconsideration petition. Among the options for interim relief suggested by the industry groups was that EPA "should request that the President provide national security exemptions under § 112(i)(4)."

73. Less than two months later, on March 12, 2025, in a press event billed as "the greatest day of deregulation our nation has seen," EPA announced that it would "reconsider" the 2024 HON Rule and 31 other regulations protecting human health and the environment. EPA, News Release, *EPA Launches Biggest Deregulatory Action in U.S. History* (Mar. 12, 2025), https://perma.cc/EXL5-FAMQ (last visited Oct. 21, 2025).

74. Along with its press release, EPA published a "fact sheet" about its planned reconsideration of the HON Rule and seven other recent hazardous air pollutant rules. That fact sheet included an invitation that "[a]ny source interested in a Presidential exemption" from any of the eight rules, "should provide their recommendations to EPA by March 31, 2025." EPA, *Oil and Gas Regulations: Powering the Great American Comeback Fact Sheet* 3, https://perma.cc/L8UM-RN3K (last visited Oct. 21, 2025). The Fact Sheet further explained,

"Sources need only provide why technology is unavailable and why it is in the national security interests of the United States to provide the exemption." *Id.*

75. Following up on its invitation to request exemptions, on or about March 24, 2025, EPA posted a new webpage announcing it had established "an electronic mailbox"—airaction@epa.gov "to allow the regulated community to request a Presidential Exemption under section 112(i)(4)." EPA, *Clean Air Section 112 Presidential Exemption Information* (last updated Apr. 14, 2025), https://perma.cc/WKL5-44FC (last visited Oct. 21, 2025). EPA asked that requests be submitted "by March 31, 2025," a week after the webpage was posted. *Id.*[3]

76. EPA did not solicit any information from the public, or provide any opportunity for public comment.

77. Facility owners and operators across multiple source categories sent exemption requests to that email inbox. Many requests urged the President to interpret the statutory considerations of technological availability and national security to encompass the cost of compliance and economic "security" and development. The industry trade groups American Chemistry Council and the American Fuel and Petrochemical Manufacturers also submitted a request for a blanket two-year exemption from the HON rule for all covered facilities.

The HON Proclamation

78. On July 17, 2025, President Trump issued a proclamation exempting a list of HON-regulated facilities from "those aspects of the HON Rule that were promulgated under section 112 of the Clean Air Act, 42 U.S.C. 7412 for a period of 2 years beyond the HON Rule's relevant compliance dates." 90 Fed. Reg. at 34,587. The HON Proclamation cited "authority

[3] EPA has since removed much of the information in an April 14, 2025 update to the webpage. *See* EPA, *Clean Air Act Section 112 Presidential Exemption Information,* https://perma.cc/WKL5-44FC (last visited Oct. 21, 2025).

vested in [the President] by the Constitution and the laws of the United States, including section 112(i)(4) of the Clean Air Act, 42 U.S.C. 7412(i)(4)." *Id.* The HON Proclamation stated that it "applies to all compliance deadlines established under the HON Rule applicable to the stationary sources listed in Annex I, with each such deadline extended by 2 years from the date originally required for such deadline." *Id.*

79. The Exemption Proclamation included what it referred to as two "determinations."

80. First, the Exemption Proclamation purported to "determine" that "[t]he technology to implement the HON Rule is not available," stating that "[s]uch technology does not exist in a commercially viable form sufficient to allow implementation of and compliance with the HON Rule by the compliance dates in the HON Rule." *Id.* at 34,588.

81. Second, the Exemption Proclamation purported to determine that "[i]t is in the national security interests of the United States to issue this Exemption for the reasons stated in paragraphs 1 and 3 of this proclamation." *Id.* Paragraph 1 asserted that "[m]aintaining a robust domestic chemical industry is vital to safeguarding the supply chains that underpin our economy and to reducing the Nation's dependence on foreign control over materials critical to national resilience." *Id.* at 34,587. Paragraph 3 asserted that "[t]he HON Rule imposes substantial burdens on chemical manufacturers already operating under stringent regulations," and posited that "the timeline for compliance" with the HON Rule "would require shutdowns or massive capital investments before any proven pathway to compliance exists" and would "weaken key supply chains, increase dependence on foreign producers, and impair our ability to respond effectively in a time of crisis." *Id.*

82. The Exemption Proclamation and "Annex I" were published in the Federal Register on July 23, 2025. *Id.* at 34,587-91.

83. The Exemption Proclamation included no facility-, standard-, or technology-specific determinations. Instead, the Exemption Proclamation broadly and conclusory purported to "determine" that the technology to implement the 2024 HON Rule (in its entirety) was not available and that exemptions are in the national security interests of the United States.

84. For example, the HON Proclamation purports to exempt from ethylene oxide standards facilities that do not emit ethylene oxide, and thus to which the ethylene oxide control requirements do not apply.

85. The HON Proclamation purports to exempt from fenceline monitoring requirements facilities that have successfully implemented fenceline monitoring, either due to consent decree requirements or the requirements of other hazardous air pollutant standards.

86. The HON Proclamation purports to exempt from ethylene oxide control requirements facilities that already have air pollution control devices and/or flares that would meet those standards.

87. The HON Proclamation purports to exempt facilities from requirements for which "technology" is not needed to "implement" the standards, such as more frequent leak monitoring.

88. The HON Proclamation purports to exempt from the HON standards facilities that have or are in the process of retiring their HON-regulated units.

89. The HON Proclamation's indiscriminate exemptions apply without any consideration of whether the facilities have the technology and operational capability to implement the 2024 HON Rule's standards.

Technology to implement the Rule's requirements is widely available

90. The Proclamation's unsupported determinations are unambiguously contradicted by factual evidence, including EPA's own findings and record for the 2024 HON Rule.

91. *Ethylene oxide control requirements*: Technology to implement the ethylene oxide control requirements is widely available.

92. For example, for the requirement to control emissions from process vents using ethylene oxide, the Rule allows facilities a range of options, including that they may use a control device that reduces ethylene oxide to by greater than or equal to 99.9 percent by weight or may simply use a flare operating in compliance with the revised operating and monitoring requirements. *See* 40 C.F.R. § 63.113(j).

93. Air pollution control devices that are capable of meeting the standards are commercially available and feasible to implement.

94. Flares that are capable of meeting the standards are commercially available and feasible to implement. Many exempted facilities already possess and operate flares capable of meeting the standards.

95. The exempted facilities either do not need any technology to implement aspects of these standards, already have in place the technology necessary to implement other aspects of the standards, or can obtain the widely commercially available and technically feasible technology to implement other aspects of these standards.

96. The same air pollution control devices or flares needed to comply with the control requirements of the 2024 HON Rule are widely used by owners and operators of equipment and processes that are subject to similar ethylene oxide standards imposed in 2020 by the

ED_021114A_00011999-00024

Miscellaneous Organic Chemical Manufacturing hazardous air pollutant standards (known as the "MON Rule").

97. Many facilities regulated by the MON Rule are co-located with equipment and processes regulated by the HON Rule. On information and belief, only 14 of the exempted facilities would be subject to the ethylene oxide control requirements of the 2024 HON Rule. On information and belief, 9 of those 14 exempted facilities are subject to the MON Rule. As discussed below, EPA assumed for certain HON facilities co-located with MON facilities that "the HON facility likely upgraded at least one HON flare already." It is therefore likely that many of the exempted facilities already have the required control technology in place.

98. Technology to implement the 2024 HON Rule's ethylene oxide wastewater controls is available.

99. The controls for wastewater streams in ethylene oxide service can be implemented with a device called a steam stripper, a technology and a method that has been available since at least 1992, when EPA analyzed the effectiveness of steam stripping to remove organic pollutants from wastewater streams in the original HON rulemaking.

100. HON-regulated facilities already use the technological controls necessary to comply with the wastewater requirements on non-ethylene oxide wastewater streams.

101. *Fenceline monitoring*: Technology to implement the fenceline monitoring requirement is available.

102. The majority of exempted facilities would only be required to use passive diffusive tube monitors to comply with the fenceline monitoring requirements for benzene, chloroprene, 1,3-butadiene, and ethylene dichloride. Fenceline monitoring with passive diffusive

tube monitors has been successfully implemented in the petroleum refineries source category since 2018.

103. Many refineries are co-located with HON-regulated processes. On information and belief, of the 39 exempted facilities that would be required by the 2024 HON Rule to conduct passive fenceline monitoring for at least one pollutant, 10 of these facilities are already conducting this very same passive fenceline monitoring consistent with the standards for the refineries source category.

104. The monitoring technology used by refineries since 2018 is the same technology that the 2024 rule requires for measuring benzene, chloroprene, 1,3-butadiene, and ethylene dichloride. Under the 2024 HON Rule, the majority of HON-regulated sources, including the majority of exempted facilities, would be required to conduct only the passive diffusive tube monitoring.

105. Some facilities would be required to use canister sampling technique Method 327 to comply with the fenceline monitoring requirements for ethylene oxide and vinyl chloride. On information and belief, only 17 of the 50 exempted facilities would be required to use canister monitoring under Method 327.

106. Canister sampling using Method 327 is an available technology.

107. Canister sampling has been an EPA-approved method since at least 1989. The differences between Method 327 and its immediate precursor (Method TO-15A) have to do with "Best Practices" and "enhanced [quality assurance/quality control]," 89 Fed. Reg. at 43,008, not a change in the underlying sampling technology.

108. In developing the 2024 Rule, EPA requested fenceline monitoring data from eleven HON facilities. EPA required that these facilities use a modified Method TO-15 for

certain pollutants, in effect requiring what would become Method 327. The subject facilities were able to comply.

109. Today, multiple laboratories in the United States are offering Method 327 services. Canister sampling using Method 327 is an available technology.

110. *Leak detection and repair requirements:* Technology to implement the 2024 Rule's leak detection and repair requirements is available.

111. The technology to monitor heat exchange systems employs common sampling and analysis methods. As such, the Rule does not require facilities to install or implement any new technology.

112. For connectors in ethylene oxide service, the Rule simply requires facilities to conduct the same kind of leak detection practices using the same devices or equipment that facilities had already conducted pursuant to the previous HON requirements, but on a more frequent basis and with quicker repair based on a lower leak concentration. The updated requirements apply narrowly to a subset of facilities subject to the Rule—just those that use ethylene oxide, which EPA estimated only to be 15 existing facilities at the time.

113. *Work practice standards*: Technology to implement work practice standards is available.

114. The work practice standards for pressure relief devices, storage vessels, and other equipment are implemented through routine inspection and maintenance, operator training, and

the use of widely available devices including flow indicators, level indicators, temperature indicators, pressure indicators.

115. *Bypass prohibition*: The bypass prohibition requirements do not require facilities to install or implement any new technological controls; it simply prohibits facilities from bypassing the controls that currently exist.

116. *Flare operating and monitoring standards*: Technology to comply with the Rule's flare operating and monitoring requirements is widely available.

117. For many exempted facilities, the necessary technology to comply with the flare operating and monitoring standards is already in place.

118. The 2024 HON Rule incorporates by reference the flare operating and monitoring requirements established in the 2015 Refineries Rule, which have long been in effect. *See* 40 C.F.R. §§ 63.108(a), 63.508(a). Many exempted facilities are also regulated under that Refineries Rule.

119. There is no need to install new technology to implement many of the flare operating and monitoring requirements. Certain of the revised operating and monitoring requirements do not necessitate additional equipment, or such equipment is already in place at exempted facilities. For example, the requirement for facilities to use a shorter averaging time is

important for the purposes of compliance, but only requires different calculations and not different equipment.

120. EPA estimated that only about half of HON-regulated operators may need to make some upgrades to better monitor and operate their existing flares.

121. Even where the installation of new monitoring equipment may be required, all of this technology is readily available and already in use.

122. Refineries have complied with the flare operating and monitoring requirements since 2019, and other types of petrochemical facilities—such as MON and ethylene production have complied since 2023. Of the exempted facilities, 12 are co-located with refineries, 21 are co-located with units subject to the MON rule, and three are co-located with ethylene production units. A total of 29 exempted facilities are therefore co-located with one or more of these other units.

123. In the 2024 HON Rule, EPA assumed that HON-regulated facilities that are co-located with MON or ethylene production sources had likely upgraded at least one of their HON-regulated flares already. Many of the exempted facilities, therefore, likely already have the technology required to implement the standard in place.

The Court's equitable authority to review ultra vires Executive action

124. The Exemption Proclamation exceeds the President's statutory authority because, by granting sweeping exemptions to one quarter of regulated sources without making facility-, standard-, or technology-specific determinations, the Proclamation exceeds the bounds of the President's Section 7412(i)(4) authority.

125. The Proclamation effectively amends the compliance dates of EPA's 2024 Rule, an action outside the bounds of Section 7412(i)(4). Section 7412(i)(4) is a narrow exemption

applicable in specific statutorily defined circumstances; it does not give the President authority to amend EPA standards. Only EPA may amend those standards and only after notice and comment rulemaking.

126. Case law in this Circuit generally allows for review of presidential actions to ensure conformity with statutory requirements, provided that "the authorizing statute or another statute places discernible limits on the President's discretion." *Mountain States Legal Found. v. Bush*, 306 F.3d 1132, 1136 (D.C. Cir. 2002) (citing, *inter alia*, *Chamber of Com. of the U.S. v. Reich*, 74 F.3d 1322, 1331 (D.C. Cir. 1996)).

127. The statutory provision at issue, Section 7412(i)(4), provides such discernable limits on the President's discretion by requiring a determination that, for specific facilities, "technology to implement" a standard "is not available" and that the exemption "is in the national security interests of the United States." 42 U.S.C. § 7412(i)(4).

128. The Court has the power to review the Proclamation to discern whether the President's exercise of statutory authority was unlawful because the necessary factual predicate required by the Clean Air Act is not present, and because the HON Proclamation unlawfully exercises authority not conveyed by Section 7412(i)(4), contrary to Congress's explicit restrictions on stay regulations and compliance deadlines. The Court therefore has the power to declare the HON Proclamation is unlawful and *ultra vires*.

STANDING

129. Plaintiffs' members live, work, and recreate in areas affected by the excess pollution that is and will be emitted from the exempted facilities. Plaintiffs' members are harmed

by breathing air pollution from the exempted facilities and are concerned that exposure to hazardous air pollutants from the exempted facilities could have harmful impacts on their health.

130. Plaintiffs' members stood to benefit from the ethylene oxide requirements, which were slated to go into effect July 15, 2026. Exempted facilities are now able to emit toxic air pollution at higher levels than otherwise would have been allowed, for years beyond the Rule's mandate. Plaintiffs' members are harmed by the excess emissions that will result from the HON Proclamation exemptions.

131. Plaintiffs' members also stood to benefit from the leak detection and repair requirements, maintenance work practice standards, and other requirements that were slated to go into effect July 15, 2027. Exempted facilities are now not required to comply with operational practices, monitoring, and prohibitions that would reduce the emission of toxic air pollutants. Plaintiffs and plaintiffs' members are harmed by the excess emissions that will result from the HON Proclamation exemptions.

132. Exposure to ethylene oxide, chloroprene, vinyl chloride, benzene, 1,3-butadiene, and other hazardous air pollutants emitted by exempted facilities causes adverse health effects.

133. On average, census blocks containing the exempted HON-regulated facilities face cancer risks of 71 per million, compared to national cancer risk average of 28 per million. In some affected communities, the cancer risk is 300 or 400 per million, 10 to 14 times greater than the national average. In these communities, 38 percent of cancer risk can be attributed to industrial pollutant sources like HON-regulated facilities, as opposed to the national average of just 2 percent attributable to industrial pollution sources.

134. Plaintiffs' members also stood to benefit from reduced exposure to the pollutants subject to the fenceline monitoring requirements, also slated to go into effect July 15, 2026.

Facilities subject to the fenceline monitoring requirements would have to take corrective action that would reduce hazardous air pollutant emissions. The exemptions remove those requirements and increase the likelihood of hazardous pollutant exposures in the communities surrounding the exempted facilities. Plaintiffs and their members are harmed by increased exposure to hazardous air pollutants as a result of the HON Proclamation.

135. The HON Rule fenceline monitoring provisions also require facilities to submit quarterly fenceline emissions reports to EPA, which EPA then makes available to the public. The HON Proclamation exempts Annex I facilities from fenceline monitoring requirements. Those exemptions deny Plaintiffs and their members the emissions information those reports would provide.

136. Some Plaintiffs and their members would use such information to raise public awareness of air pollution and to further Plaintiffs' and their members' advocacy, education, and outreach efforts to reduce air pollution and protect public health. Plaintiffs and their members will be deprived of information they would have used to evaluate their pollution exposure and health risks in areas affected by emissions from the exempted facilities. That information would also allow some Plaintiffs to make educated decisions about how they engage in advocacy to reduce air pollution. Plaintiffs and Plaintiffs' members are therefore harmed by the HON Proclamation exemptions.

137. For example, Plaintiff EJHA works to provide organizing, capacity, and technical support to communities and enhance the public's understanding of the health and safety implications of hazardous chemicals. In collaboration with the Coalition to Prevent Chemical Disasters, EJHA launched and now maintains an online tracker that tracks incidents involving hazardous chemicals. EJHA also offers information and analysis based on publicly reported

ED_021114A_00011999-00032

facility emissions information to educate and support its member affiliate organizations to build grassroots power to remedy and redress the health and safety legacy of chemical pollution in their affiliates' communities.

138. For example, EJHA has created facility profiles from emissions data for specific facilities of concern in EJHA affiliate communities. EJHA has used facility emissions data to support affiliates in commenting on facility air permits, including for some HON facilities. EJHA has used facility emissions data to contribute to comments on the 2024 HON Rule and other EPA rulemakings that address chemical facilities. EJHA uses facility emissions data to provide affiliate members with information to advocate within their home communities, and to connect affiliates' localized pollution concern to federal policy.

139. EJHA also convenes and facilitates a joint working group on hazardous facilities with the environmental health network Coming Clean. Several EJHA member organizations participate regularly in the Hazardous Facilities Team, which supports information sharing between place-based environmental justice groups working on local issues and campaigns related to the impacts of hazardous facilities (including HON facilities) in their neighborhoods and provides a space for translating local needs into federal policy. The Team works collaboratively to advance federal policies that will support local needs and establish a more protective "floor" of protections from hazardous facilities at the federal level to protect all communities across the country. Reducing exposure to and cancer and other health effects harms from hazardous air pollutants like ethylene oxide, chloroprene, 1,3-butadiene and dioxins has been a top priority of this Team since its inception.

140. EJHA's affiliate members have members in communities like Westlake, Louisiana, Louisville, Kentucky, and Houston, Texas, which are home to facilities that received

ED_021114A_00011999-00033

exemptions under the HON Proclamation. Because of the exemptions, EJHA will be deprived of emissions information that would allow it to support its member organizations and effectively advocate in furtherance of its mission.

141. EJHA has advocated extensively for fenceline monitoring in the HON Rule and other NESHAP rules, as well as in other policy spaces. EJHA believes fenceline monitoring data (particularly when made available in real time) is critical to community members' ability to take action to protect themselves and their families in times of chemical release and other pollution incidents. Several EJHA affiliate member organizations have as a core tenet of their local work and mission providing community members accurate pollution information and emergency planning and preparedness training in the absence of prevention requirements at the federal level or adequate emergency preparedness and communication at the local level. There is also reason to expect that the 2024 HON Rule's fenceline monitoring requirements would help to prevent catastrophic chemical disasters in EJHA affiliate members' communities by providing earlier warning of a malfunction or other issues before they become a disaster.

142. Jim Vandenbosch is a member of NRDC. He lives less than three miles from the Citgo Petroleum Corporation Lemont Refinery, which received an exemption under the HON Proclamation. The Lemont Refinery emits, among other hazardous air pollutants, 1, 3-butadiene and benzene. Mr. Vandenbosch regularly smells a strong chemical odor from the direction of the refinery and has observed plumes and fires coming from the facility. As a result of the HON Proclamation, the Lemont Refinery will emit more hazardous air pollutants during the two-year exemption period. Mr. Vandenbosch is concerned about the health risk of exposure to the hazardous air pollutant emissions from the Lemont Refinery.

143. Sharon Cayette Lavigne is the Director/Founder and a member of RISE St. James. She is a lifelong resident of St. James, Louisiana. Ms. Lavigne lives and regularly visits areas near numerous Louisiana facilities that have received exemptions under the HON Proclamation. These include the Denka Performance Elastomer facility in St. John the Baptist Parish, and the DuPont Specialty Products Pontchartrain Site in St. John the Baptist Parish; and the BASF North Geismar site, BASF Geismar site, Shell Geismar chemical plant, Westlake Vinyls plant, and Rubicon Geismar plant in Ascension Parish. These five facilities in Ascension Parish are located directly across the Mississippi River from where one of Ms. Lavigne's granddaughters lives. Another of Ms. Lavigne's granddaughters attends Southern University Laboratory School which is 3.7 miles from the Formosa Plastics Plant in Baton Rouge. Ms. Lavigne is concerned about her own and family members' exposure to the hazardous air pollutant emissions from these facilities that will continue for an additional two years due to the HON Proclamation. Ms. Lavigne is specifically concerned for these facilities' effects on her own health, as she already has health issues including autoimmune hepatitis. Because of the HON Proclamation, Ms. Lavigne is concerned that these facilities will not have to comply with fenceline monitoring requirements or the more stringent controls of the HON Rule and will emit more hazardous air pollutants during the two-year exemption period.

144. Diana LeBlanc is a resident of Port Allen, Louisiana and a member of LEAN. Ms. LeBlanc lives and spends time near the Dow facility in Plaquemine, Louisiana and the Formosa facility in Baton Rouge, both of which received exemptions under the HON Proclamation. Ms. LeBlanc suffers from asthma and an immune deficiency disorder, and she is concerned that hazardous air pollution from these facilities will worsen these conditions and expose her and her family to other health risks, including cancer.

145. Concerned Citizens of St. John and Environmental Defense Fund member Letitia Taylor lives in St. John the Baptist parish in Louisiana, about one mile from Denka Performance Elastomer's neoprene plant, which received an exemption under the HON proclamation. While producing neoprene, the Denka facility emits chloroprene, a dangerous chemical. Due to the HON proclamation, the Denka facility will be allowed to continue to emit hazardous air pollutants during the two-year extension. Ms. Taylor is concerned about the impacts of Denka's emissions on her and her family's health, and she spends less time outdoors due to these concerns.

146. Melanie Oldham is a Sierra Club member and lives five miles from the exempted BASF facility in Freeport, Texas. Ms. Oldham suffers from frequent coughs and colds and is concerned about the impacts of the air pollution from the BASF Freeport facility, among other facilities, on her health. She avoids spending time outdoors, and enjoys the time she does spend outdoors less, as a result of these concerns.

147. Jennifer Hadayia is the Executive Director of Air Alliance Houston, an organization dedicated to reducing the public health impacts of air pollution in the Houston area. Ms. Hadayia lives in Houston, Texas, and regularly travels throughout Harris County for work and to visit family. As a result, Ms. Hadayia spends time near HON facilities, including the exempted Celanese Clear Lake and Ineos Styrolution facilities in Pasadena, Texas. Ms. Hadayia is concerned about the impact of these facilities' pollution on her health.

148. Ana Parras is the co-founder and executive co-director of t.e.j.a.s. Ms. Parras lives approximately halfway between the Houston Ship Channel and downtown Houston, near many HON facilities, including the exempted Celanese Clear Lake and INEOS Styrolution facilities in Pasadena. Ms. Parras suffers from hypersensitivity pneumonitis, a respiratory condition that

ED_021114A_00011999-00036

makes it difficult to breathe. Ms. Parras is concerned about the impacts of the exempted facilities' emissions on her health. Ms. Parras and t.e.j.a.s. participated in the rulemaking process underlying the HON Rule, as well as litigation defending the rule against industry legal challenges. Ms. Parras is concerned that the exemptions will delay compliance with the HON Rule's fenceline monitoring requirements at nearby facilities. Without these fenceline monitoring requirements, t.e.j.a.s. will not be able to fully inform its constituents about potential exposure level, diminishing its ability to educate and conduct outreach to its constituents. The exemption for compliance with the fenceline monitoring requirements would also delay pollution reductions and deprive Ms. Parras, her family, and T.e.j.a.s.'s constituents of the health protections that fenceline monitoring would provide.

CLAIMS FOR RELIEF

COUNT ONE:
Unlawful Executive Action in Violation of the Clean Air Act
(Nonstatutory Review for Violations of Federal Law by Federal Officials; Against All Defendants)

149. Plaintiffs incorporate by reference Paragraph 1-148.

150. The President has limited authority to exempt stationary sources from duly promulgated hazardous air pollutant regulations solely by virtue of the authority delegated by Congress in 42 U.S.C. § 7412(i)(4). The President lacks any independent authority under the U.S. Constitution to issue the exemptions.

151. Section 7412(i)(4) permits the President to exempt a source from a hazardous air pollutant standard only if "the technology to implement such standard is not available" and if an exemption is in the national security interests of the United States.

152. Whether technology to implement a standard is or is not available is a discrete, yes-or-no factual inquiry that limits the President's discretion to grant exemptions.

153. Section 7412(i)(4) establishes a judicially manageable standard with clear and precise limits of the sort federal courts routinely construe to determine whether officials have acted consistent with law.

154. There is no statutory basis for the President's indiscriminately broad determinations that technology to implement the 2024 HON Rule is not available or that granting exemptions from that Rule is in the national security interests of the United States. The President patently misconstrued the statutory terms "technology" and "not available" in purporting to exercise the Section 7412(i)(4) exemptions authority.

155. The HON Proclamation's purported determination that technology needed to implement the various diverse standards of the 2024 HON Rule is not available for various diverse HON-regulated facilities is a conclusory statement without specific findings as to any specific standard, any specific technology, or any specific facility.

156. Technology to implement the 2024 HON Rule is in fact available. The relevant technologies to implement each aspect of the 2024 HON Rule standards are in widespread use among chemical manufacturers regulated by the HON Rule and similar regulated sources.

157. Other requirements of the 2024 HON Rule do not require facilities to obtain or deploy any new "technology" within the meaning of Section 7412(i)(4). For instance, leak monitoring requirements simply require more frequent monitoring of the same type the exempted sources are already required to undertake. Similarly, maintenance work practice standards simply require different operational practices to prevent and minimize emissions during maintenance activities facilities already undertake.

ED_021114A_00011999-00038

158. The purported determination that technology to implement the standards is not available is unambiguously contradicted by factual evidence. The HON Proclamation's cursory and conclusory statements to the contrary cannot be credited.

159. The President's purported determination that the technology to implement the 2024 HON Rule is not available rests on an unlimited, untenable interpretation and application of the authority conveyed by Section 7412(i)(4) of the Clean Air Act.

160. The President patently misconstrued the statutory term "national security" in purporting to exercise the Section 7412(i)(4) exemptions authority.

161. National security concerns "only those activities of the Government that are directly concerned with the protection of the Nation from internal subversion or foreign aggression, and not those which contribute to the strength of the Nation only through their impact on the general welfare." *Cole v. Young*, 351 U.S. 536, 544 (1956).

162. The HON Proclamation's purported determination that it is in the national security interests of the United States to issue the exemption is a conclusory statement that reveals no specific consideration whether the varied chemical products produced by exempted sources—including chemicals used for artificial sweeteners, cleaning agents, dyes and textiles, household and personal care products, pesticides, and plastic packaging have any national security nexus.

163. The HON Proclamation's purported determination that it is in the national security interests of the United States to issue the exemption is a conclusory statement without specific findings that the purported compliance burdens on any specific facility threatens national security.

164. The President's overly broad interpretation of "national security" is inconsistent with the statute.

165. Because the President grossly exceeded the bounds of his statutory authority by purporting to exempt stationary sources from standards for which the technology to implement is available and the exemptions do not further national security interests, the HON Proclamation is plainly in excess of the President's delegated powers and contrary to the statute's specific limitations on those powers. The President's action is contrary to the Clean Air Act and is ultra vires.

166. The Court possesses inherent equitable power to "grant injunctive relief . . . with respect to violations of federal law by federal officials." *Armstrong v. Exceptional Child Ctr., Inc.*, 575 U.S. 320, 326-27 (2015). Congress has nowhere foreclosed review of the interpretation and application of 42 U.S.C. § 7412(i)(4). There is no alternative statutory procedure for review of Plaintiffs' claim.

167. Because the Exemption Proclamation violates the Clean Air Act and is ultra vires, EPA actions implementing or giving effect to the proclamation likewise violate the Clean Air Act and are ultra vires.

COUNT TWO:
Ultra vires, de facto rulemaking without statutory authority
(Nonstatutory review of action in excess of statutory authority by federal officer; against all Defendants)

168. Plaintiffs incorporate by reference the allegations of Paragraphs 1-167.

169. Congress required EPA to provide for existing sources' compliance with hazardous air pollutant standards "as expeditiously as practicable," and set concrete boundaries on EPA's flexibility to set compliance deadlines "in no event later than 3 years after the effective date of such standard." 42 U.S.C. § 7412(i)(3)(A).

ED_021114A_00011999-00040

170. Congress gave EPA and state permitting authorities discrete, limited authority to grant an existing source "up to 1 additional year to comply" with standards promulgated under subsection (d) "if such additional period is necessary for the installation of controls." 42 U.S.C. § 7412(i)(3)(B).

171. Congress further conferred discrete, limited authority on EPA to stay the effectiveness of rules, including hazardous air pollutant standards, for no more than three months. 42 U.S.C. § 7607(d)(7)(B).

172. Congress directed EPA to provide for public notice and comment on EPA actions to revise hazardous air pollutant standards, their compliance dates, or to grant source-specific deadline extensions. 42 U.S.C. § 7607(d)(5), (h).

173. The exemption authority conveyed in Section 7412(i)(4) must be construed congruously with the authorities and limitations Congress enacted in Sections 7412 and 7607.

174. EPA and the President are bound by the Clean Air Act's duties with respect to implementing Section 7412(i)(4), following rulemaking procedures, and being bound by lawfully adopted regulations.

175. Reading Section 7412(i)(4) to authorize exemptions for a large swath of the regulated source category, from every single standard and other requirement of a rule, without facility- or standard-specific justification tied to the statutory factors, is contrary to the context, purpose, and structure of the Clean Air Act. The HON Proclamation's extremely broad sweep reflects an interpretation of the Section 7412(i)(4) authority that would swallow and render superfluous statutory limits.

176. The content, context, and scope of the HON Proclamation demonstrates that the Proclamation is not an "exemption" within the meaning of Section 7412(i)(4).

ED_021114A_00011999-00041

177. The HON Proclamation is functionally a rulemaking and/or stay pending reconsideration granted without observance of the procedural and substantive limitations Congress enacted in Section 7412 and 7607 of the Clean Air Act. The Proclamation was issued without observance of the statutory requirements for rulemaking or for granting a stay pending reconsideration.

178. EPA invited requests for presidential exemptions explicitly in the context of its announced reconsideration of the 2024 HON Rule and seven other hazardous air pollutant rules. *See* supra ¶¶ 53, 54. EPA has stated that the exemptions are offered "while EPA reconsiders" the underlying rule. *See* EPA, Clean Air Act Section 112 Presidential Exemption Information, https://perma.cc/NPT5-RAQY (last accessed Oct. 20, 2025).

179. The President indiscriminately granted exemptions from all compliance obligations of the 2024 HON Rule, without particularized consideration of the specific standards, technologies or practices needed to comply, or facilities and their particular products and processes, all of which is necessary to determine whether technology is not available to implement the standards and whether an exemption is in the national security interests of the United States.

180. The HON Proclamation's purported exercise of Section 7412(i)(4) exemption authority is in fact an exercise of rulemaking and/or stay authority despite the President lacking such power. The Clean Air Act gives only EPA that authority and only after following certain procedures in certain circumstances.

181. The sweeping HON Proclamation exceeds the narrow bounds of Section 7412(i)(4) to achieve improper goals prohibited by other provisions of the Clean Air Act. In granting compliance relief that far exceeds the Section 7412(i)(4) authority, the President

ED_021114A_00011999-00042

bypassed and contravened the statutory requirements on rulemaking and reconsideration to accomplish sweeping compliance exemptions unauthorized by law and in excess of the President's statutory authority.

182. The HON Proclamation is beyond the authority conveyed by the Clean Air Act and is *ultra vires*.

183. Because the HON Proclamation is beyond the Clean Air Act authority and ultra vires, EPA actions implementing or giving effect to the proclamation are similarly ultra vires.

RELIEF REQUESTED

WHEREFORE Plaintiffs request that the Court:

A. Declare that the HON Proclamation is unlawful and invalid and that the Annex I sources remain subject to the 2024 HON Rule as promulgated;

B. Issue injunctive relief:

i. prohibiting EPA and Administrator Lee Zeldin from implementing, relying on, or giving effect to the HON Proclamation, including through implementation of the Clean Air Act's Title V operating permit program; and

ii. directing EPA to promptly notify, in writing, the operators of facilities listed in Annex I and relevant state, local, and/or Tribal permitting authorities that the HON Proclamation is unlawful and invalid, and that any facilities that the HON Proclamation purported to exempt may not lawfully delay or avoid compliance with the deadlines promulgated by the 2024 Rule by relying on the HON Proclamation.

C. Awarding Plaintiffs their fees and costs of litigation as authorized by law;

D. Granting such other relief as the Court deems just and proper.

ED_021114A_00011999-00043

Dated: October 22, 2025

Respectfully submitted,

/s/ Sarah A. Buckley
Sarah A. Buckley (Va. Bar No. 87350), *pro hac vice pending*
Natural Resources Defense Council, Inc.
1152 15th St. NW, Suite 300
Washington, D.C. 20005
sbuckley@nrdc.org
Tel: (202) 836-9555

Counsel for Plaintiffs Natural Resources Defense Council and Environmental Justice Health Alliance for Chemical Policy Reform

Adam Kron (D.C. Bar No. 992135)
Kathleen Riley (D.C. Bar No. 1618580)
Deena Tumeh (D.C. Bar No. 488201)
Earthjustice
1001 G St. NW, Ste. 1000
Washington, D.C. 20001
akron@earthjustice.org
kriley@earthjustice.org
dtumeh@earthjustice.org
Tel: (202) 794-8039

Counsel for Plaintiffs Texas Environmental Justice Advocacy Services, Air Alliance Houston, Concerned Citizens of St. John, Louisiana Environmental Action Network, RISE St. James Louisiana, and Sierra Club

Abel Russ (D.D.C. Bar No. 1007020)
Environmental Integrity Project
888 17th St. NW, Suite 810
Washington, DC 20006
aruss@environmentalintegrity.org
Tel: (802) 482-5379

Counsel for Plaintiff Environmental Integrity Project

Rosalie Winn (Colorado Bar No. 52662),
pro hac vice pending
Environmental Defense Fund
2060 Broadway, Suite 300
Boulder, CO 80302
rwinn@edf.org
Tel: (303) 447-7212

Samantha Liskow, (New York Bar No. 5545140), *admission pending*
Environmental Defense Fund
257 Park Avenue South
New York, NY 10010
sliskow@edf.org
Tel: (212) 616-1247

Counsel for Plaintiff Environmental Defense Fund

Message

From: Jackson, Ryan [Ryan_Jackson@americanchemistry.com]
Sent: 7/14/2025 5:16:25 PM
To: Szabo, Aaron [Szabo.Aaron@epa.gov]; Tardif, Abigale (Abbie) [Tardif.Abigale@epa.gov]; Abboud, Michael [abboud.michael@epa.gov]
CC: Litkenhaus, Colleen [clitkenhaus@dow.com]; Jenkins, Tyler [tyler.jenkins@basf.com]; Sago, Brett [bsago@eastman.com]; Brent J Perry (US) [bperry1@eastman.com]; Sharma, Navika [Navika_sharma@huntsman.com]; Gundersen, Kevin [kevin_gundersen@huntsman.com]
Subject: HON presidential exemption request letters
Attachments: HON Presidential Exemption final.pdf

Caution: This email originated from outside EPA, please exercise additional caution when deciding whether to open attachments or click on provided links.

Aaron, Abbie, and Michael, I wanted to forward further support for the presidential exemption process EPA established for this particular means of regulatory relief.

This is something we are conducting outreach on presently and wanted to ensure that you have a copy.

Thank you for the process and the support.

RJ

American Chemistry Council

Ryan Jackson
Vice President, Federal Affairs
O: (202) 249 6718 C: (202) 679 1469
ryan_jackson@americanchemistry.com
700 2nd Street NE | Washington, DC | 20002
www.americanchemistry.com

---------- This message may contain confidential information and is intended only for the individual named. If you are not the named addressee do not disseminate, distribute or copy this email. Please notify the sender immediately by email if you have received this email by mistake and delete this email from your system. E-mail transmission cannot be guaranteed to be secure or error-free as information could be intercepted, corrupted, lost, destroyed, arrive late or incomplete, or contain viruses. The sender therefore does not accept liability for any errors or omissions in the contents of this message which arise as a result of email transmission. American Chemistry Council, 700 – 2nd Street NE, Washington, DC 20002, www.americanchemistry.com





July 14, 2025

The Honorable Donald J. Trump
President of the United States
The White House
Washington, D.C. 20500

Dear President Trump,

We write to bring to your attention the urgent need for action on requests submitted earlier this year for Presidential Exemptions under the Clean Air Act to provide relief from unnecessary and ineffective obligations imposed by EPA's 2024 rule *New Source Performance Standards for the Synthetic Organic Chemical Manufacturing Industry and National Emission Standards for Hazardous Air Pollutants (NESHAP) for the Synthetic Organic Chemical Manufacturing Industry (SOCMI) and Group I & II Polymers and Resins Industry* (the "HON Rule").

The HON Rule imposes numerous requirements that restrict the nation's ability to manufacture chemicals that are critical to the economy, public health, and national security. In particular, the HON Rule places unprecedented restrictions on the manufacture and use of ethylene oxide, which is a vital building block for industries ranging from energy production and semi-conductor manufacturing to medical device sterilization, automobiles, agriculture, and food processing.

Your Administration correctly recognized that the HON Rule was flawed and granted reconsideration in March 2025. However, this announcement did not stay the HON Rule's requirements. Instead, it was included on a short list of regulations to be evaluated for Presidential Exemptions under section 112(i)(4) of the Clean Air Act.[1] That provision grants you the authority to "exempt any stationary source from compliance … for a period of not more than 2 years" if you determine "that the technology to implement such standard is not available and that it is in the national security interests of the United States to do so."[2]

In response, we and others submitted petitions requesting Presidential Exemptions from the HON Rule at the end of March. As our petitions explain, the requirements for this exemption are easily satisfied here. The HON Rule imposes obligations to implement technology that is not readily available in the allotted timeframe, others that ignore standard industry safety and operating practices, and still others that impose tremendous costs with limited benefits. Simultaneously, the Rule threatens the ability of industry to

[1] https://www.epa.gov/stationary-sources-air-pollution/clean-air-act-section-112-presidential-exemption-information.

[2] 42 U.S.C. § 7412(i)(4).

maintain a domestic supply of chemicals, including ethylene oxide, that are vital to "critical sectors"[3] of the economy, including energy storage and energy production, and many other industries that directly impact national security interests.

The time pressure posed by the HON Rule was always significant. Now it is dire. Absent immediate relief, the HON Rule's requirements will threaten shutdowns, imperil jobs, require irreversible commitments to unwarranted projects, and damage supply chains for vital chemicals. The result will be immediate and lasting injury to the nation's domestic supply and the United States' strategic position in the global supply of these essential building blocks for numerous products and industries.

We are confident your decisive action can avoid this harm. We will continue to work with EPA to develop a long-term solution to the many problems with the HON rule. But that reconsideration effort will take far too long to avoid a lasting impact on our industry. The requested exemptions can avoid this imminent harm while giving EPA the time needed to develop a rule that continues to protect the environment and support the domestic supply of chemicals that boost our nation's economy.

Mr. President, we ask that you grant the requested extensions to allow the time needed to ensure the revision to this rule provides the right balance of protection for the environment and the economy.

We appreciate your attention to this matter and would welcome the opportunity to meet with you or your staff to address any questions regarding the petitions.

Respectfully Submitted,

Jim Fitterling
Chair and CEO
Dow

Peter Huntsman
President and CEO
Huntsman Corporation

Heather Remley
President and CEO
BASF Corporation

Mark Costa
President and CEO
Eastman Chemical Company

[3] *See* "Substances Critical to National Security." Department of Defense Briefing for the Committee on Armed Services of the U.S. House of Representatives. Pursuant to House Report 118-529, accompanying H.R. 8070, National Defense Authorization Act for Fiscal Year 2025. February 2025.

cc:

The Honorable Doug Burgum,
Secretary of the Interior and Co-Chairman of the White House Energy Dominance Council
The Honorable Chris Wright,
Secretary of Energy and Co-Chairman of the Whtie House Energy Dominance Council
The Honorable Lee Zeldin,
Administrator of the U.S. Environmental Protection Agency

Message

From: Jackson, Ryan [Ryan_Jackson@americanchemistry.com]
Sent: 7/14/2025 5:16:25 PM
To: Szabo, Aaron [Szabo.Aaron@epa.gov]; Tardif, Abigale (Abbie) [Tardif.Abigale@epa.gov]; Abboud, Michael [abboud.michael@epa.gov]
CC: Litkenhaus, Colleen [clitkenhaus@dow.com]; Jenkins, Tyler [tyler.jenkins@basf.com]; Sago, Brett [bsago@eastman.com]; Brent J Perry (US) [bperry1@eastman.com]; Sharma, Navika [Navika_sharma@huntsman.com]; Gundersen, Kevin [kevin_gundersen@huntsman.com]
Subject: HON presidential exemption request letters
Attachments: HON Presidential Exemption final.pdf

You don't often get email from ryan_jackson@americanchemistry.com. Learn why this is important

Caution: This email originated from outside EPA, please exercise additional caution when deciding whether to open attachments or click on provided links.

Aaron, Abbie, and Michael, I wanted to forward further support for the presidential exemption process EPA established for this particular means of regulatory relief.

This is something we are conducting outreach on presently and wanted to ensure that you have a copy.

Thank you for the process and the support.

RJ

American Chemistry Council

Ryan Jackson
Vice President, Federal Affairs
O: (202) 249 6718 C: (202) 679 1469
ryan_jackson@americanchemistry.com
700 2nd Street NE | Washington, DC | 20002
www.americanchemistry.com

---------- This message may contain confidential information and is intended only for the individual named. If you are not the named addressee do not disseminate, distribute or copy this email. Please notify the sender immediately by email if you have received this email by mistake and delete this email from your system. E-mail transmission cannot be guaranteed to be secure or error-free as information

could be intercepted, corrupted, lost, destroyed, arrive late or incomplete, or contain viruses. The sender therefore does not accept liability for any errors or omissions in the contents of this message which arise as a result of email transmission. American Chemistry Council, 700 – 2nd Street NE, Washington, DC 20002, www.americanchemistry.com

HUNTSMAN

Enriching lives through innovation

October 31, 2025

Via Email
Aaron Szabo
Assistant Administrator
Abigale Tardif
Principal Deputy Assistant Administrator
Office of Air and Radiation (6103A)
Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, DC 20460

RE: EPA HON, PEPO, and CMAS Rulemakings

Dear Mr. Szabo and Ms. Tardif,

On behalf of Huntsman Corporation, I want to thank you for making time last week to discuss EPA's suite of chemicals industry rules, including the Agency's reconsideration of the HON and the proposed rules for polyether polyols production ("PEPO") and chemical manufacturing area sources ("CMAS"). As we discussed, these rules present an unprecedented burden on the Nation's chemicals industry, which the President identified as "vital to America's growing industrial strength and emergency readiness" in his July 17, 2025 Proclamation providing regulatory relief for certain stationary sources. Given the importance of these rulemakings, we very much appreciate the Administration's focus on getting these rules right and your personal work overseeing those efforts.

As we also discussed, we are concerned that the rules still contain deficiencies that cannot be adequately corrected within the time remaining to finalize the PEPO and CMAS rules and we believe we presented you and this Administration with a path forward to secure additional time under the consent decrees to ensure that the many competing interests can be adequately addressed. Thus, we are now going – as you suggested – to the Office of the General Counsel to discuss that pathway and options to extend the pending deadlines. The additional time this would give all the parties, together with your continued oversight, is critical to ensure the rules remain environmentally protective while avoiding unnecessary burdens, unintended side-effects, and legal deficiencies.

As we do that, I also thought it made sense to again highlight three key foundational elements that still need to be resolved in Huntsman's view. These are not intended to be an exhaustive list of all the changes needed in the rulemakings but definitive direction from your Office on these three key elements would properly influence other provisions in the rulemaking and place the rule on better footing to defend against inevitable legal challenges.

Legal Authority under CAA §112. First, support is needed to ensure the final rules align with EPA's legal authority. We understand and appreciate that EPA no longer plans to conduct additional residual risk reviews under CAA §112(f)(2) but rather is focused on completing technology reviews under CAA §112(d)(6). That provision allows changes to existing standards only to the extent "necessary" in light of technological developments. It imposes a two-step process before amending a NESHAP: (1) determine whether there has been a technical development; and (2) if so, assess whether that development makes regulation "necessary" in

HUNTSMAN CORPORATION
10003 Woodloch Forest Drive, The Woodlands, Texas 77380, USA Tel.:
+1-281-719-6000 Fax: +1-281-719-6416 www.huntsman.com

light of the benefits, costs, environmental impacts, and safety implications of a revision. Focusing the rulemaking process on these two determinations is vital to ensuring that the final rules are legally defensible, properly tailored, and practically feasible.

Necessary Data Corrections. Second, the rules must be based on the best available information. This means updating EPA's past findings to reflect data corrections, process changes, and improvements since 2017. Many of these are already in the record. For example, Huntsman's Conroe, Texas site was identified as the highest risk facility in the draft PEPO rule based on incorrect data. Huntsman submitted test results and modeling that demonstrate the risks from PEPO units at Conroe are an order of magnitude lower than assumed in the draft rule, and well below the risk threshold typically used. During the last Trump Administration, EPA accepted this same information for Huntsman Conroe when finalizing the MON rule. An accurate factual foundation that reflects operating reality is an essential building block of defensible rules.

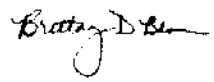
Decision on Accuracy of the IRIS Value. Third, all the rules assume that EPA's Integrated Risk Information System ("IRIS") value for ethylene oxide is the sole metric for measuring risk. We continue to have deep concerns with that value but, perhaps more importantly, with the Agency's refusal to consider any contrary information on ethylene oxide risk. Given their critical importance, these rules must reflect the best available science and that means ensuring a scientifically valid, balanced risk assessment that is based on consideration of the full range of available toxicology information.

The final point I wanted to re-emphasize is the odd and irrational sequencing of the three rules being forced on the Agency by consent decrees. As we all understand and discussed last week, the proposed CMAS and PEPO rules draw extensively from the HON Rule. They rely on the same science, use the same definitions, and cross-reference many of the same limits and requirements. There is no doubt that the changes being made to HON during reconsideration will directly impact CMAS and PEPO but the artificial and court-imposed deadlines in the consent decrees will force the Agency to issue the "following" CMAS and PEPO rules *before* the underlying HON rule is revised due to the upcoming Consent Decree deadlines. Unless EPA has the opportunity to address HON first, regulating out of sequence threatens to trigger significant confusion, time consuming additional rulemaking/reconsideration work for the Agency and extended legal debate.

Thank you again for your time last week and for your continued attention to this matter. The reconsideration and revision of these complex and interconnected rules is a substantial undertaking that Huntsman is committed to partnering with EPA to support. With your leadership, I am confident the final result will be rules that ensure environmental protection, adhere to the requirements of the Clean Air Act, and reflect the best available facts and science.

Huntsman welcomes the opportunity to speak with you and your staff about these issues further as efforts proceed.

Sincerely,



Brittany D Benko
Huntsman Corporation
Senior Vice President, Environmental, Health & Safety and Manufacturing Excellence & Engineering

****

cc: Peter Huntsman, President and CEO Huntsman Corporation
David Stryker, Executive Vice President, General Counsel and Corporate Secretary
Cory R. Thornton, Senior Counsel, Environmental, Health and Safety

Clean Air Act §112 Extensions and Exemptions

Extensions Granted by EPA or State Permitting Authorities

Under 42 U.S.C. § 7412(i)(3)(B), EPA or state permitting authorities may grant, on a facility-specific basis, an extension of up to one year of the compliance deadline for any standards issued under Section 112(d) of the Clean Air Act "if such additional period is necessary for the installation of controls." EPA has historically interpreted the phrase "necessary for the installation of controls" broadly. For example, when EPA issued the "Mercury and Air Toxics Standard" (MATS) rule in 2012, it said that state permitting authorities:

> have the discretion to use this extension authority to address a range of situations in which installation schedules may take more than 3 years including: staggering installations for reliability reasons or other site-specific challenges that may arise related to source-specific construction, permitting, or labor, procurement or resource challenges.

77 Fed. Reg. 9304 (Feb. 12, 2013) at 9410. EPA has issued regulations to implement this provision in 40 CFR 63.6(i)(4) (14). Among other things, the regulations generally require facilities seeking such extensions to submit an application at least 120 days before the existing compliance deadline. It is not uncommon for states to grant such extensions, and it appears that there are no reported cases in which such facility-specific extensions have been challenged in court.

Presidential Exemptions

Under 42 U.S.C. § 7412(i)(4), the President has separate authority to grant specific facilities two-year exemptions from Section112 requirements if he determines that (1) the technology to meet the requirements is not available (2) granting such an exemption is in the national security interests of United States. Unlike the EPA's administrative extension, a Presidential exemption may be renewed for additional two-year periods and fully suspend the application of Section 112 standards during the exemption period.

Conclusion

EPA's authority to grant one-year compliance extensions under 42 U.S.C. § 7412(i)(3)(B) operates entirely independently from the President's authority to issue national-interest exemptions. A one-year extension given by EPA or a state permitting authority is an administrative tool designed to give existing sources limited extra time to install required pollution controls or complete compliance measures, and it does not suspend or waive the underlying standards. Nothing in the statute links the two provisions or conditions one on the other, meaning that EPA may issue a one-year extension regardless of whether a Presidential exemption is sought or even available.

Message

From: Edwards, Holt [holt.edwards@bracewell.com]
Sent: 3/9/2026 4:59:41 PM
To: Tardif, Abigale (Abbie) [tardif.abigale@epa.gov]
CC: Brazauskas, Joseph [joseph.brazauskas@bracewell.com]
Subject: Follow Up on HWC RTR from CKRC
Attachments: CKRC Key HWC RTR Issues 3-9-26.pdf

You don't often get email from holt.edwards@bracewell.com. Learn why this is important

Caution: This email originated from outside EPA, please exercise additional caution when deciding whether to open attachments or click on provided links.

Hey Abbie,

It was good running into you at Acqua on Saturday. I hope your meal was as good as ours was.

If you recall from our meeting on the HON Rule, we mentioned at the end that we also represented the Cement Kiln Recycling Coalition. CKRC represents cement kiln operators that combust hazardous waste, converting it into fuel for cement production. As you can imagine, they are very interested in the HWC RTR that is under consideration and set to be finalized by late May. They had some concerns with the proposed rule that we flagged for you at the end of our meeting, and we wanted to follow up with a short summary of what those concerns were. These were the same concerns we raised in a meeting with Nate Tisa earlier this year.

Please take a look at the attached document and let me know if you have any questions. I'd also note that CKRC met with OCAP on Friday and discussed these concerns, so your team (Rachel Smoak) should be aware of these already.

Thanks!
Holt

HOLT EDWARDS
Principal
holt.edwards@bracewell.com | download v-card
T: +1.202.828.5863 | F: +1.800.404.3970

BRACEWELL LLP
2001 M Street NW, Suite 900 | Washington, D.C. | 20036-3310
bracewell.com | profile | LinkedIn | Twitter

CONFIDENTIALITY STATEMENT
This message is sent by a law firm and may contain information that is privileged or confidential. If you received this transmission in error, please notify the sender by reply e-mail and delete the message and any attachments.

Cement Kiln Recycling Coalition: Priority Concerns with EPA's Proposed Hazardous Waste Combustor (HWC) NESHAP Risk and Technology Review

Overview & Background

- The Cement Kiln Recycling Coalition represents 11 cement plants with 14 cement kilns unique in the industry. These kilns manufacture cement and recovery energy from hazardous waste derived fuel. These kilns play a significant role in EPA's hazardous waste management program by reducing the volume of hazardous waste incinerated, treated and landfilled, or treated and deep well injected.
- In the HWC RTR, EPA proposes work practices for hydrogen fluoride (HF) and MACT standards for hydrogen cyanide (HCN) for our industry. That approach is wrong, and has serious, unnecessary consequences.
- CKRC filed extensive comments on the proposed HWC RTR, and discussed its main concern with Nate Tisa on February 4, 2026: EPA's misuse of the D.C. Circuit's *Louisiana Envtl. Action Network (LEAN)* decision in its Clean Air Act Section 112(d)(6) technology reviews.
  - The Biden EPA treated *LEAN* as a mandate to regulate all previously unregulated pollutant, regardless of context.
  - However, in *LEAN*, the court held that EPA's duty under CAA Section 112(d)(6), at least every eight years, to review and revise emission standards "as necessary," means that the agency "must address all listed air toxics the source category emits."

1. EPA has proposed HF work practice standards for cement kiln based on a fraction of measurements clearly contaminated by calibration gases. No HF measurements were above the detection limit after waiting for residual impacts of calibration gases to clear.

- Most importantly, cement kilns have no HF emissions because they naturally scrub HF, trapping it in the clinker product; therefore, there is no work practice cement kilns can follow that would "minimize" emissions because HF emissions do not form. In addition, imposing onerous work practices designed for incinerators will expose cement kilns to enforcement risk for a pollutant not emitted.
- EPA must follow the science and conclude HWC cement kilns do not emit HF. EPA proposed no HF standards for another type of HWC where there are no emissions and should have done the same for cement kilns.

2. EPA has proposed HCN standards despite acknowledging there is no feasible control technology applicable to cement kilns and without properly considering long-term variability in HCN emissions. Neither industry nor EPA understands HCN formation in cement kilns and repeat testing of non-HWC cement kilns has already shown significant variability over time. Future HCN testing is likely to show some existing kilns cannot meet the proposed standard and will be forced to shut down since no control technology may be applied.

- The new kiln standard is also problematic because EPA set it based on measured emissions from a kiln type that will never be constructed in the future; all newly built kilns have shifted to more thermally efficient technology required under the New Source Performance Standards. The new HCN standard would eliminate future U.S. investment in constructing new HWC cement kilns because of the impossibility of meeting both the HCN MACT standard and NSPS limits.
- EPA must alleviate the HCN issues by establishing regulations that permit a HWC cement kiln to establish an alternative, site-specific, health-based emission limit (HBEL) for HCN under Section 112(d)(4) using existing regulations in 40 CFR 63.1215 as a guide.
- Section 112(d)(4) allows EPA to avoid unwarranted over-regulation by tailoring the stringency of an emission limit to the health risks associated with the particular hazardous air pollutant. EPA has not commonly used its HBEL authority, but it is an available statutory flexibility that EPA should use as appropriate and that is warranted here.
- CKRC's comments and others make the strong technical case for why HCN is a threshold pollutant, including citing to studies that EPA could leverage to show HCN has not been found to be carcinogenic, genotoxic or mutagenic.
- CKRC performed air modeling to demonstrate just how conservative the proposed MACT floors are in terms of risk. When considering site-specific cement kiln characteristics, a HBEL emission limit could be 3x to 12x the existing source MACT floor without approaching 60% of established health thresholds (highly conservative). In addition, allowing for a site-specific HBEL for new sources is the only way a new HWC cement kiln could be constructed in the future.

Message

From: Bennett, Parker [Bennett.Parker@epa.gov]
Sent: 7/22/2025 3:16:27 PM
To: [redacted]epa.gov]; Barja, Jaide [Barja.Jaide@epa.gov]; [redacted]
[redacted]@epa.gov]
Subject: RE: Huntsman-HON Rule

Ok, so there's not much we can tell them then.

From: [redacted]@epa.gov>
Sent: Tuesday, July 22, 2025 11:14 AM
To: Barja, Jaide <Barja.Jaide@epa.gov>; Bennett, Parker <Bennett.Parker@epa.gov>; [redacted]
[redacted]@epa.gov>
Subject: RE: Huntsman-HON Rule

Just heard back from OAR congressional team (consistent message with Jaide's note below):

From OAR Ex. 5 Deliberative Process (DP)

Ex. 5 Deliberative Process (DP)

[redacted]
Senior Advisor
EPA Office of Congressional Affairs
US EPA
[redacted]

From: Barja, Jaide <Barja.Jaide@epa.gov>
Sent: Tuesday, July 22, 2025 10:34 AM
To: [redacted]@epa.gov>; Bennett, Parker <Bennett.Parker@epa.gov>; [redacted]
[redacted]@epa.gov>
Subject: RE: Huntsman-HON Rule

I'd spoken to Alex Dominguez about this issue in past to ask if EPA oversaw it and Ex. 5 Deliberative Process (DP)
Ex. 5 Deliberative Process (DP)

From: [redacted]@epa.gov>
Sent: Tuesday, July 22, 2025 10:32 AM
To: Bennett, Parker <Bennett.Parker@epa.gov>; [redacted]@epa.gov>
Cc: Barja, Jaide <Barja.Jaide@epa.gov>
Subject: RE: Huntsman-HON Rule

Ex. 5 Deliberative Process (DP)

Checking with OAR now.

[redacted]
Senior Advisor
EPA Office of Congressional Affairs
US EPA

[redacted]

From: Bennett, Parker <Bennett.Parker@epa.gov>
Sent: Tuesday, July 22, 2025 10:29 AM
To: [redacted]@epa.gov>; [redacted]@epa.gov>
Cc: Barja, Jaide <Barja.Jaide@epa.gov>
Subject: FW: Huntsman-HON Rule

Flagging this, can we get an update on what is happening with these Presidential Exemptions? Does EPA handle them?

From: Olvera, Jacqueline <Jacqueline.Olvera@mail.house.gov>
Sent: Tuesday, July 22, 2025 10:14 AM
To: Bennett, Parker <Bennett.Parker@epa.gov>
Subject: Huntsman-HON Rule

> **Caution:** This email originated from outside EPA, please exercise additional caution when deciding whether to open attachments or click on provided links.

Hi Bennett,

Hope you are well! Huntsman who has a facility in our district applied for a Presidential Exemption under the Clean Air Act to provide relief imposed by a 2024 EPA rule known as the HON Rule. The administration included it on a short list of regulations to be evaluated for Presidential Exemptions.

Huntsman applied for an exemption for a few of their facilities, including in Conroe, TX which is in our district. It is our understanding that the exemption process is being handled by the National Energy Dominance Council (NEDC). We wanted to see if there's an update you all can share regarding the status. Any guidance is helpful!

Thank you,
Jackie

Jackie Olvera
Legislative Director
Congressman Morgan Luttrell (TX-08)
444 Cannon HOB | 202-225-4901

Message

From: Bennett, Parker [Bennett.Parker@epa.gov]
Sent: 7/22/2025 6:11:24 PM
To: Dominguez, Alexander [dominguez.alexander@epa.gov]; Szabo, Aaron [Szabo.Aaron@epa.gov]; Tardif, Abigale (Abbie) [Tardif.Abigale@epa.gov]
CC: Talmage, Sarah [Talmage.Sarah@epa.gov]; Barja, Jaide [Barja.Jaide@epa.gov]
Subject: Rep. Luttrell - Huntsman HON Rule

Hi Air Team,

I wanted to flag this request for you from Rep. Luttrell.

> "Hope you are well! Huntsman who has a facility in our district applied for a Presidential Exemption under the Clean Air Act to provide relief imposed by a 2024 EPA rule known as the HON Rule. The administration included it on a short list of regulations to be evaluated for Presidential Exemptions.
>
> Huntsman applied for an exemption for a few of their facilities, including in Conroe, TX which is in our district. It is our understanding that the exemption process is being handled by the National Energy Dominance Council (NEDC). We wanted to see if there's an update you all can share regarding the status. Any guidance is helpful!"

Is there any update we would be able to give them or is it not possible at this time?

Best,
Parker

Parker C. Bennett
Deputy Associate Administrator for House Relations
Office of Congressional and Intergovermental Relations
U.S. Environmental Protection Agency
Office: (202) 658-0534

STEVE COHEN
9TH DISTRICT, TENNESSEE
2268 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC 20515

TELEPHONE: (202) 225-3265
FAX: (202) 225-5663

ODELL HORTON FEDERAL BUILDING
167 NORTH MAIN STREET
SUITE 369
MEMPHIS, TN 38103

TELEPHONE: (901) 544-4131
FAX: (901) 544-4329

WWW.COHEN.HOUSE.GOV

Congress of the United States
House of Representatives
Washington, DC 20515-4209

COMMITTEE ON THE JUDICIARY

COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE

COMMISSION ON SECURITY AND COOPERATION IN EUROPE (U.S. HELSINKI COMMISSION)

March 31, 2025

The Honorable Lee Zeldin
Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Ave NW
Washington, DC 20460

Dear Administrator Zeldin,

I am writing to request a comprehensive list of companies that have a headquarters or facility within Tennessee's Ninth Congressional District that have requested a Presidential Exemption under the Clean Air Act, as outlined by the EPA on March 24, 2025.

Several communities in Memphis, and especially in Southwest Memphis, have long endured the cumulative effects of industrial pollution, resulting in higher rates of respiratory illness, cancer and other chronic health conditions. The potential for companies operating in these areas to obtain exemptions from critical environmental safeguards under the Clean Air Act would further exacerbate these public health disparities and increase the risk of long-term environmental harm.

In addition to the names of any companies that operate within Tennessee Ninth Congressional District that requested this exemption, please also include the details of their exemption request, including any emissions standards or limitations subject to the request, facility(ies) and/or affected sources, the length of compliance period being requested, any explanation why the technology to implement the standard is not available, and any explanation why an extension is in the national security interests of the United States. Please also include which of these companies, if any, expressed an intention to submit proprietary information.

I would also like to know how your agency plans to announce which companies are granted a presidential exemption and which applied but were denied. I expect all of this information to be made easily available to the public, as the Trump Administration repeatedly states that it is the "most transparent administration in history."

Given the existing concerns and the pressing need for stronger protections, I believe it is imperative for the community to understand which companies may be seeking to circumvent current regulations.

I appreciate your attention to this urgent request and look forward to receiving the information about requests to be exempted from the Clean Air Act by the close of this business week.

As always, I remain,

Most sincerely,

Steve Cohen

Steve Cohen
Member of Congress

Message

From: [redacted]@epa.gov]
Sent: 12/19/2025 6:01:55 PM
To: L'Estrange, Chloe [LEstrange.Chloe@epa.gov]; Johnson, Demarion [Johnson.Demarion@epa.gov]; Bennett, Parker [Bennett.Parker@epa.gov]; Barja, Jaide [Barja.Jaide@epa.gov]
CC: [redacted]@epa.gov]; [redacted]@epa.gov]
Subject: FOR HOUSE AND SENATE TEAM REVIEW - Responses to Sen. Daines and Rep. Tonko Letters on CAA 112 Presidential Exemptions
Attachments: 25-03383-AO--IOD__Incoming March 28 2025_Tonko et al.pdf; 25-03397-AO--IOD_Incoming March 31 2025 Daines +3.pdf; 25-03397-AO--IOD_Draft Response_Daines CLEAN.docx; 25-03383-AO--IOD_Draft Response_Tonko CLEAN.docx

House and Senate Team:

We're sharing draft responses to letters from Sen. Daines and Rep. Tonko regarding Presidential Exemptions from standards under the CAA S. 112. The incoming letters and clean copies of both responses are attached:

- Sen Daines +3 letter (dated 3/31/2025) in support of a company request for a two-year exemption from the NESHAP Coal- and Oil-Fired Electric Utility Steam Generating Units Review of the Residual Risk and Technology Review- MATS Rule.

- Rep. Tonko (dated 3/28/2025) letter requesting information on all companies that have requested Presidential Exemptions under CAA S. 112.

REVIEWED BY: OAR IO (Szabo and Schwab), Amir, Laura, Carolyn

Congress of the United States
Washington, DC 20515

March 28, 2025

The Honorable Lee Zeldin
Administrator
Environmental Protection Agency (EPA)
1200 Pennsylvania Ave. NW
Washington, DC 20460

Dear Administrator Zeldin:

I was appalled to learn that EPA has invited regulated entities to apply for exemptions in lieu of complying with existing standards for hazardous air pollutants required pursuant to Section 112 of the Clean Air Act. The invitation for mass-exemptions to these standards flies in the face of Congressional intent and could have serious public health consequences, which appear not to have been given any consideration in your exemption process.

As you know, Section 112 of the Clean Air Act seeks to protect human health and the environment from hazardous air pollutants. This class of emissions includes many dangerous pollutants, including asbestos, benzene, hydrogen chloride, and mercury, which are known to cause cancer and other serious health impacts.

Standards developed pursuant to Section 112 are informed by public processes, which include robust scientific and public health analysis of the risks of air pollution. These processes also consider technologies and techniques that industrial sources can adopt to mitigate those risks, often relying upon existing, cost-effective solutions already in use by regulated entities. It is astonishing that these standards, which take years to develop, could be undone simply by a polluter sending a template email to the agency responsible for protecting the public from dangerous air pollution.

While Section 112 standards have been developed through these robust processes, EPA's public comments indicate that exemptions will be granted based on the arbitrary whims of President Trump, which may include actions to benefit his political supporters, regardless of the potential public health and environmental harms to those that live and work near exempted facilities. EPA and the regulated community should expect that Congress and the American people will closely scrutinize any exemptions granted through this process.

While Section 112(i)(4) of the Clean Air Act is clear that the President must report to Congress on the issuance of any exemption, the American people have an immediate right to know which entities are pursuing exemptions and how those exemptions may affect the air they breathe. With that in mind, I request the following information for each regulated entity seeking an exemption through this process not later than Monday, April 7, 2025:

ED_021114D_00000479-00001

1. the name of each regulated entity requesting an exemption;
2. the specific emissions standard or limitation subject to the request;
3. the location of any facility or affected source subject to the request;
4. the length of time sought to delay compliance for each request; and
5. an explanation for why
   A. the technology necessary to implement the standard is not available; and
   B. the exemption would be in the national security interests of the United States.

I look forward to your response to ensure appropriate transparency of EPA's Section 112 exemption process.

Sincerely,

Paul D. Tonko
Member of Congress

ED_021114D_00000479-00002

Congress of the United States

Washington, DC 20515

March 31, 2025

The Honorable Lee Zeldin
Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460

Dear Administrator Zeldin,

We write in support of NorthWestern Energy and Talen Montana's request for a two-year Presidential Exemption from the "National Emission Standards for Hazardous Air Pollutants: Coal- and Oil-Fired Electric Utility Steam Generating Units Review of the Residual Risk and Technology Review" (MATS Rule). We appreciate President Trump's Executive Orders to Power the Great American Comeback and an exemption from this overreaching Biden era rule will allow for continued operation of the Colstrip Steam Electric Station (Colstrip) that is a critical baseload power source for Montana.

We previously criticized the Biden administration's Environmental Protection Agency (EPA) on this MATS Rule laying out how this ill-conceived rule oversteps congressionally delegated authority and threatens grid reliability. In fact, the Biden EPA admitted that 42% of the burden of the MATS Rule would fall on Colstrip making it clear that this rule specifically targeted this plant. In order to come into compliance with the MATS Rule, Colstrip would be required to install new fabric filters (baghouses) in addition to its current wet venturi scrubbers. This combination is untested and would come with a significant cost of $500 million for the upgrades making this both technologically and economically "unavailable". Additionally, it is possible that construction would not be completed and operational in time for the MATS Rule's compliance deadlines also making the technology "unavailable" from a timing standpoint. All of this endangers the economic viability of the plant, which if closed, would undermine the region's electric grid as there is insufficient time to plan and construct adequate replacement generation.

Without Colstrip, consumers would bear the burden of higher energy costs and grid unreliability, and its closure would stymie economic development in the region. President Trump, through Executive Order 14156, declared a "national energy emergency" and the Senate on February 26, 2025, voted to affirm that action. This emergency encompasses both energy necessary for military preparedness and defense industries but also for the economic security of the country.

We request that you approve this two-year exemption request to prevent negative impacts on Montana's electric reliability and the increased costs for consumers. Thank you for your work to ensure American energy dominance.

Sincerely,

STEVE DAINES
United States Senator

TROY DOWNING
Member of Congress

TIM SHEEHY
United States Senator

RYAN K. ZINKE
Member of Congress

Message

From: [redacted]@epa.gov]
Sent: 12/23/2025 5:06:50 PM
To: joshua_sizemore@daines.senate.gov; jaana_syme@daines.senate.gov; joshua_jamison@sheehy.senate.gov; sam.havard1@mail.house.gov; spencer.talley@mail.house.gov; ben.vansickle@mail.house.gov; john.bockmier@mail.house.gov
CC: Bennett, Parker [Bennett.Parker@epa.gov]; Barja, Jaide [Barja.Jaide@epa.gov]; L'Estrange, Chloe [LEstrange.Chloe@epa.gov]; Johnson, Demarion [Johnson.Demarion@epa.gov]; [redacted]@epa.gov]
Subject: EPA Letter Response: Colstrip Steam Electric MATS Exemption
Attachments: Daines et al_Colstrip MATS Exemption_Response.pdf

Please find attached EPA's response to your members' March 31, 2025, letter in support of NorthWestern Energy and Talen Montana's request for a two-year Presidential Exemption.

[redacted]
Congressional Liaison
Office of Congressional Affairs
Air, Land, and Cross-Cutting Division

Message

From: Barja, Jaide [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=383F27B5D1174E8495FC681E26350DF6-63ADBE74-BA]
Sent: 7/22/2025 2:31:26 PM
To: Bennett, Parker [Bennett.Parker@epa.gov]; Olvera, Jacqueline [Jacqueline.Olvera@mail.house.gov]
CC: Talmage, Sarah [Talmage.Sarah@epa.gov]
Subject: RE: Huntsman-HON Rule

Jackie!! ☺ So good to hear from you. We'll work on finding out for you

From: Bennett, Parker <Bennett.Parker@epa.gov>
Sent: Tuesday, July 22, 2025 10:28 AM
To: Olvera, Jacqueline <Jacqueline.Olvera@mail.house.gov>
Cc: Talmage, Sarah <Talmage.Sarah@epa.gov>; Barja, Jaide <Barja.Jaide@epa.gov>
Subject: RE: Huntsman-HON Rule

Hi Jackie,

Thank you for reaching, confirming receipt on our end.

We'll try to get you an update as soon as we can.

Best,
Parker

Parker C. Bennett
Deputy Associate Administrator for House Relations
Office of Congressional and Intergovermental Relations
U.S. Environmental Protection Agency
Office: (202) 658-0534

From: Olvera, Jacqueline <Jacqueline.Olvera@mail.house.gov>
Sent: Tuesday, July 22, 2025 10:14 AM
To: Bennett, Parker <Bennett.Parker@epa.gov>
Subject: Huntsman-HON Rule

Caution: This email originated from outside EPA, please exercise additional caution when deciding whether to open attachments or click on provided links.

Hi Bennett,

Hope you are well! Huntsman who has a facility in our district applied for a Presidential Exemption under the Clean Air Act to provide relief imposed by a 2024 EPA rule known as the HON Rule. The administration

included it on a short list of regulations to be evaluated for Presidential Exemptions.

Huntsman applied for an exemption for a few of their facilities, including in Conroe, TX which is in our district. It is our understanding that the exemption process is being handled by the National Energy Dominance Council (NEDC). We wanted to see if there's an update you all can share regarding the status. Any guidance is helpful!

Thank you,
Jackie

Jackie Olvera
Legislative Director
Congressman Morgan Luttrell (TX-08)
444 Cannon HOB | 202-225-4901

Congress of the United States

Washington, DC 20515

April 11, 2025

The Honorable Lee Zeldin
Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Ave NW
Washington, DC 20460

Dear Administrator Zeldin,

We are writing to request a comprehensive list of companies that have requested a Presidential Exemption under the Clean Air Act, as outlined by the Environmental Protection Agency (EPA) on March 24, 2025.[1] Given the EPA's mission to protect human health and the environment, the Administration's expressed commitment to transparency[2][3][4], and your own written and oral testimony to the Senate Environment and Public Works Committee during your confirmation hearing[5], we believe it is imperative that the EPA disclose which companies are seeking to circumvent current environmental regulations.

We request that you expeditiously provide the names of all companies that requested a presidential exemption under the Clean Air Act and the details of their exemption request, including 1) any emissions standards or limitations subject to the request, facility(ies) and/or affected sources, 2) the length of compliance period being requested, 3) their explanation why the technology to implement the standard is not available, and 4) their explanation why an extension is in the national security interests of the United States. Please also include which of these companies, if any, expressed an intention to submit proprietary information.

We would also like to know how your agency plans to evaluate and announce which companies are granted a presidential exemption and which applied but are denied. We expect all of this information to be made easily available to the public, as the Trump Administration repeatedly states that it is the "most transparent administration in history."

Please respond to the above requests for information and documents by no later than April 18, 2025. We appreciate your attention to this critical issue of transparency and look forward to receiving the information about the corporations seeking to be exempted from the rules and regulations of the Clean Air Act.

Sincerely,

Steve Cohen
Member of Congress

Edward J. Markey
United States Senator

[1] https://www.epa.gov/stationary-sources-air-pollution/clean-air-act-section-112-presidential-exemption-information
[2] https://www.whitehouse.gov/briefings-statements/2025/01/press-briefing-by-press-secretary-karoline-leavitt/
[3] https://www.whitehouse.gov/remarks/2025/02/press-briefing-by-press-secretary-karoline-leavitt-deputy-chief-of-staff-stephen-miller-national-economic-council-director-kevin-hassett-and-national-security-advisor-mike-waltz/
[4] https://www.whitehouse.gov/articles/2025/02/sunday-shows-most-transparent-administration-in-history/
[5] https://www.epw.senate.gov/public/index.cfm/2025/1/hearing-on-the-nomination-of-the-honorable-lee-m-zeldin-to-be-administrator-of-the-environmental-protection-agency

Jared Huffman
Member of Congress

Jeffrey A. Merkley
United States Senator

Mike Quigley
Member of Congress

Chris Van Hollen
United States Senator

Donald S. Beyer Jr.
Member of Congress

Bernard Sanders
United States Senator

Sean Casten
Member of Congress

Cory A. Booker
United States Senator

Mike Levin
Member of Congress

Martin Heinrich
United States Senator

Troy A. Carter, Sr.
Member of Congress

Ron Wyden
United States Senator

André Carson
Member of Congress

Eleanor Holmes Norton
Member of Congress

John Garamendi
Member of Congress

LaMonica McIver
Member of Congress

Alexandria Ocasio-Cortez
Member of Congress

Nanette Diaz Barragán
Member of Congress

Laura Friedman
Member of Congress

Melanie Stansbury
Member of Congress

Rashida Tlaib
Member of Congress

Nikema Williams
Member of Congress

Ro Khanna
Member of Congress

Nydia M. Velázquez
Member of Congress

Delia C. Ramirez
Member of Congress

Shri Thanedar
Member of Congress

Betty McCollum
Member of Congress

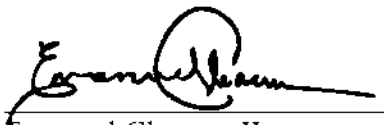
Maxine Waters
Member of Congress



Cleo Fields
Member of Congress



Maxine Dexter
Member of Congress



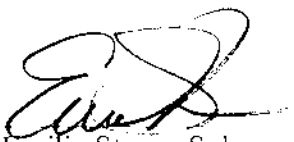
Emanuel Cleaver, II
Member of Congress



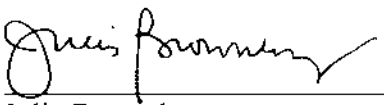
Valerie P. Foushee
Member of Congress



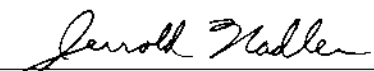
Becca Balint
Member of Congress



Emilia Strong Sykes
Member of Congress



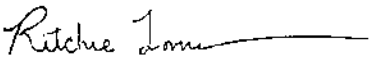
Julia Brownley
Member of Congress



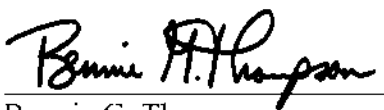
Jerrold Nadler
Member of Congress



Veronica Escobar
Member of Congress



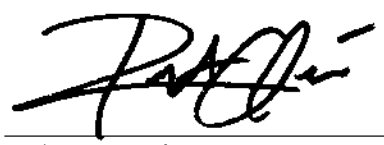
Ritchie Torres
Member of Congress



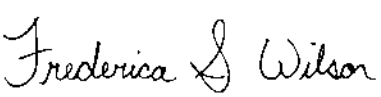
Bennie G. Thompson
Member of Congress



Raul Ruiz, M.D.
Member of Congress



Robert Garcia
Member of Congress



Frederica S. Wilson
Member of Congress

Bonnie Watson Coleman
Member of Congress

Bradley Scott Schneider
Member of Congress

Diana DeGette
Member of Congress

Jan Schakowsky
Member of Congress

Janelle S. Bynum
Member of Congress

James P. McGovern
Member of Congress

Jill Tokuda
Member of Congress

Yassamin Ansari
Member of Congress

Summer L. Lee
Member of Congress

David Scott
Member of Congress

Jonathan L. Jackson
Member of Congress

Pramila Jayapal
Member of Congress

Lloyd Doggett
Member of Congress

Wesley Bell
Member of Congress

MARK TAKANO
Member of Congress

Kevin Mullin
Member of Congress

Deborah K. Ross
Member of Congress

IN THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

AIR ALLIANCE HOUSTON, et al., Petitioners, v. UNITED STATES ENVIRONMENTAL PROTECTION AGENCY and LEE ZELDIN, Administrator, U.S. Environmental Protection Agency, Respondents.	Case No. 25-1143

PETITION FOR REVIEW

Pursuant to Clean Air Act Section 7607(b)(1), 42 U.S.C. § 7607(b)(1); Federal Rule of Appellate Procedure 15(a); and D.C. Circuit Rule 15(a)(1), Air Alliance Houston, Center for Biological Diversity, Citizens for Pennsylvania's Future, Clean Air Council, Dakota Resource Council, Downwinders at Risk, Environmental Defense Fund, Environmental Integrity Project, Environmental Law & Policy Center, Montana Environmental Information Center, Natural Resources Defense Council, Inc., and Sierra Club hereby petition this Court for review of a final action taken by Respondents United States Environmental Protection Agency and Lee Zeldin, Administrator, United States Environmental Protection Agency, promulgating a list of electric generating units to which

Presidential Proclamation 10914, titled "Regulatory Relief for Certain Stationary Sources To Promote American Energy," would apply.

That final action, entitled "Annex I Stationary Sources List," was published by EPA on April 14, 2025, at https://www.epa.gov/system/files/documents/2025-04/regulatory-relief-for-certain-stationary-annex-1.pdf and subsequently published alongside Proclamation 10914 in the Federal Register on April 21, 2025, 90 Fed. Reg. 16779 (Annex I). A copy of EPA's final action is attached to this petition.

DATED: June 12, 2025

Respectfully submitted,

/s/ Chloe H. Kolman

Sean H. Donahue
Chloe H. Kolman
Donahue, Goldberg & Herzog
1008 Pennsylvania Ave., SE
Washington, DC 20003
Tel: (202) 277-7085
sean@donahuegoldberg.com
chloe@donahuegoldberg.com

Surbhi Sarang
Richard Yates
Tomás Carbonell
Environmental Defense Fund
2060 Broadway St., Ste. 300
Boulder, Colorado 80302
Tel: (303) 440-4901
ssarang@edf.org
ryates@edf.org
tcarbonell@edf.org

Counsel for Petitioner Environmental Defense Fund

Nicholas Morales
James Pew
Earthjustice
1001 G Street NW, Suite 1000
Washington, DC 20001
Tel: (202) 667-4500
nmorales@earthjustice.org
jpew@earthjustice.org

Counsel for Petitioners Air Alliance Houston, Clean Air Council, Downwinders at Risk, Montana Environmental Information Center, and Sierra Club

Patton Dycus
Environmental Integrity Project
888 17th St. NW, Suite 810
Washington, DC 20006
(202) 296-8800
pdycus@environmentalintegrity.org

Counsel for Petitioner Environmental Integrity Project

Sarah Buckley (D.C. Cir. Bar No. 56677)
Natural Resources Defense Council
1152 15th Street NW, Suite 300
Washington, DC 20005
(202) 836-9555
sbuckley@nrdc.org

Katherine Desormeau (D.C. Cir. Bar No. 53097)
Natural Resources Defense Council
111 Sutter Street, 21st Floor
San Francisco, California 94104
(415) 875-6100
kdesormeau@nrdc.org

Counsel for Petitioner Natural Resources Defense Council

Brian H. Lynk (D.C. Bar No. 459525)
Environmental Law & Policy Center
740 15th Street, NW, Suite 700
Washington, DC 20005
(240) 461-4241
blynk@elpc.org

Counsel for Petitioners Environmental Law & Policy Center and Dakota Resource Council

Shaun A. Goho
Hayden Hashimoto
Clean Air Task Force
114 State Street, 6th Floor
Boston, MA 02109
617-624-0234
sgoho@catf.us

Counsel for Petitioner Citizens for Pennsylvania's Future

Ryan Maher
Center for Biological Diversity
1411 K Street, NW, Suite 1300
Washington, DC 20005
(781) 325-6303
rmaher@biologicaldiversity.org

Counsel for Petitioner Center for Biological Diversity

IN THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

AIR ALLIANCE HOUSTON, et al., Petitioners, v. UNITED STATES ENVIRONMENTAL PROTECTION AGENCY and LEE ZELDIN, Administrator, U.S. Environmental Protection Agency, Respondents.	Case No. 25-1143

RULE 26.1 DISCLOSURE STATEMENT

Pursuant to Federal Rule of Appellate Procedure 26.1 and D.C. Circuit Rule 26.1, Air Alliance Houston makes the following disclosures:

Non-Governmental Corporate Party to this Action: Air Alliance Houston

Parent Corporations: None.

Publicly Held Company that Owns 10% or More of Party's Stock: None.

Party's General Nature and Purpose: Petitioner Air Alliance Houston is a nonprofit organization that works to improve air quality and public health through research, education, and advocacy. Air Alliance Houston's mission is to reduce the public health impacts of air pollution in Harris County and Houston, Texas, and the surrounding region.

Pursuant to Federal Rule of Appellate Procedure 26.1 and D.C. Circuit Rule 26.1, Center for Biological Diversity makes the following disclosures:

Non-Governmental Corporate Party to this Action: Center for Biological Diversity

Parent Corporations: None.

Publicly Held Company that Owns 10% or More of Party's Stock: None.

Party's General Nature and Purpose: Petitioner Center for Biological Diversity ("CBD") is a national 501(c)(3) nonprofit conservation organization. CBD's mission is to ensure the preservation, protection, and restoration of biodiversity, native species, ecosystems, public lands and waters, and public health through science, policy, and environmental law.

Pursuant to Federal Rule of Appellate Procedure 26.1 and D.C. Circuit Rule 26.1, Citizens for Pennsylvania's Future makes the following disclosures:

Non-Governmental Corporate Party to this Action: Citizens for Pennsylvania's Future

Parent Corporations: None.

Publicly Held Company that Owns 10% or More of Party's Stock: None.

Party's General Nature and Purpose: Citizens for Pennsylvania's Future is a nonprofit organization that works to aid the transition to a clean energy economy in

Pennsylvania and beyond; to protect our air, water, and land; and to empower citizens to build sustainable communities for future generations.

Pursuant to Federal Rule of Appellate Procedure 26.1 and D.C. Circuit Rule 26.1, Clean Air Council makes the following disclosures:

Non-Governmental Corporate Party to this Action: Clean Air Council

Parent Corporations: None.

Publicly Held Company that Owns 10% or More of Party's Stock: None.

Party's General Nature and Purpose: Petitioner Clean Air Council ("CAC") is a nonprofit, membership-based organization dedicated to protecting and defending everyone's right to a healthy environment, including everyone's right to breathe clean air. CAC is headquartered in Philadelphia, Pennsylvania, with offices in Philadelphia and Pittsburgh, Pennsylvania, and Wilmington, Delaware.

Pursuant to Federal Rule of Appellate Procedure 26.1 and D.C. Circuit Rule 26.1, Dakota Resource Council makes the following disclosures:

Non-Governmental Corporate Party to this Action: Dakota Resource Council

Parent Corporations: None.

Publicly Held Company that Owns 10% or More of Party's Stock: None.

Party's General Nature and Purpose: Dakota Resource Council ("DRC") is a nonprofit, grassroots community organizing group that works on conservation and

family farm issues across North Dakota and promotes sustainable use of its natural resources.

Pursuant to Federal Rule of Appellate Procedure 26.1 and D.C. Circuit Rule 26.1, Downwinders at Risk makes the following disclosures:

Non-Governmental Corporate Party to this Action: Downwinders at Risk

Parent Corporations: None.

Publicly Held Company that Owns 10% or More of Party's Stock: None.

Party's General Nature and Purpose: Downwinders at Risk is a nonprofit corporation organized and existing under the laws of the State of Texas, with its headquarters located in Dallas, Texas. Downwinders at Risk is a diverse grassroots citizens group dedicated to promoting environmental justice through protecting public health from air pollution and promoting good governance in North Texas.

Pursuant to Federal Rule of Appellate Procedure 26.1 and D.C. Circuit Rule 26.1, Environmental Defense Fund makes the following disclosures:

Non-Governmental Corporate Party to this Action: Environmental Defense Fund

Parent Corporations: None.

Publicly Held Company that Owns 10% or More of Party's Stock: None.

Party's General Nature and Purpose: Environmental Defense Fund ("EDF") is a 501(c)(3) non-profit environmental organization dedicated to finding practical

solutions to critical environmental problems through the use of law, policy, science, and economics.

Pursuant to Federal Rule of Appellate Procedure 26.1 and D.C. Circuit Rule 26.1, Environmental Integrity Project makes the following disclosures:

Non-Governmental Corporate Party to this Action: Environmental Integrity Project

Parent Corporations: None.

Publicly Held Company that Owns 10% or More of Party's Stock: None.

Party's General Nature and Purpose: Environmental Integrity Project ("EIP") is a non-profit, nonpartisan organization based in Washington, D.C. that empowers communities and protects public health and the environment by investigating polluters, holding them accountable under the law, and strengthening public policy on toxic air pollution and other environmental health issues.

Pursuant to Federal Rule of Appellate Procedure 26.1 and D.C. Circuit Rule 26.1, Environmental Law & Policy Center makes the following disclosures:

Non-Governmental Corporate Party to this Action: Environmental Law & Policy Center

Parent Corporations: None.

Publicly Held Company that Owns 10% or More of Party's Stock: None.

Party's General Nature and Purpose: Environmental Law & Policy Center ("ELPC") is a Midwest-based not-for-profit public interest organization dedicated to action and advocacy for improving environmental quality including air quality — and protecting natural resources.

Pursuant to Federal Rule of Appellate Procedure 26.1 and D.C. Circuit Rule 26.1, Montana Environmental Information Center makes the following disclosures:

Non-Governmental Corporate Party to this Action: Montana Environmental Information Center

Parent Corporations: None.

Publicly Held Company that Owns 10% or More of Party's Stock: None.

Party's General Nature and Purpose: Petitioner Montana Environmental Information Center ("MEIC") is a membership-based nonprofit dedicated to protecting public health and the natural environment in Montana.

Pursuant to Federal Rule of Appellate Procedure 26.1 and D.C. Circuit Rule 26.1, Natural Resources Defense Council, Inc., makes the following disclosures:

Non-Governmental Corporate Party to this Action: Natural Resources Defense Council, Inc.

Parent Corporations: None.

Publicly Held Company that Owns 10% or More of Party's Stock: None.

Party's General Nature and Purpose: Petitioner Natural Resources Defense Council ("NRDC") is a national non-profit environmental membership organization with hundreds of thousands of members nationwide. NRDC's purpose is to safeguard the Earth – its people, its plants and animals, and the natural systems on which all life depends.

Pursuant to Federal Rule of Appellate Procedure 26.1 and D.C. Circuit Rule 26.1, Sierra Club makes the following disclosures:

Non-Governmental Corporate Party to this Action: Sierra Club

Parent Corporations: None.

Publicly Held Company that Owns 10% or More of Party's Stock: None.

Party's General Nature and Purpose: Sierra Club is a nonprofit corporation with its headquarters located in Oakland, California. The Sierra Club is a national membership organization whose mission is to explore, enjoy, and protect the planet; to practice and promote the responsible use of the earth's ecosystems and resources; to educate and enlist humanity to protect and restore the quality of the natural and human environment; and to use all lawful means to carry out those objectives.

DATED: June 12, 2025

Respectfully submitted,

/s/ Chloe H. Kolman
Sean H. Donahue
Chloe H. Kolman
Donahue, Goldberg & Herzog

1008 Pennsylvania Ave., SE
Washington, DC 20003
Tel: (202) 277-7085
sean@donahuegoldberg.com
chloe@donahuegoldberg.com

Surbhi Sarang
Richard Yates
Tomás Carbonell
Environmental Defense Fund
2060 Broadway St., Ste. 300
Boulder, Colorado 80302
Tel: (303) 440-4901
ssarang@edf.org
ryates@edf.org
tcarbonell@edf.org

Counsel for Petitioner Environmental Defense Fund

Nicholas Morales
James Pew
Earthjustice
1001 G Street NW, Suite 1000
Washington, DC 20001
Tel: (202) 667-4500
nmorales@earthjustice.org
jpew@earthjustice.org

Counsel for Petitioners Air Alliance Houston, Clean Air Council, Downwinders at Risk, Montana Environmental Information Center, and Sierra Club

Patton Dycus
Environmental Integrity Project
888 17th St. NW, Suite 810
Washington, DC 20006
(202) 296-8800
pdycus@environmentalintegrity.org

Counsel for Petitioner Environmental Integrity Project

Sarah Buckley (D.C. Cir. Bar No. 56677)
Natural Resources Defense Council
1152 15th Street NW, Suite 300
Washington, DC 20005
(202) 836-9555
sbuckley@nrdc.org

Katherine Desormeau (D.C. Cir. Bar No. 53097)
Natural Resources Defense Council
111 Sutter Street, 21st Floor
San Francisco, California 94104
(415) 875-6100
kdesormeau@nrdc.org

Counsel for Petitioner Natural Resources Defense Council

Brian H. Lynk (D.C. Bar No. 459525)
Environmental Law & Policy Center
740 15th Street, NW, Suite 700
Washington, DC 20005
(240) 461-4241
blynk@elpc.org

Counsel for Petitioners Environmental Law & Policy Center and Dakota Resource Council

Shaun A. Goho
Hayden Hashimoto
Clean Air Task Force
114 State Street, 6th Floor
Boston, MA 02109
617-624-0234
sgoho@catf.us

Counsel for Petitioner Citizens for Pennsylvania's Future

Ryan Maher
Center for Biological Diversity
1411 K Street, NW, Suite 1300
Washington, DC 20005
(781) 325-6303
rmaher@biologicaldiversity.org

Counsel for Petitioner Center for Biological Diversity

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing Petition for Review and Rule 26.1 Disclosure Statement have been served by United States first-class mail this 12th day of June, 2025, upon the following:

Administrator Lee Zeldin
U.S. Environmental Protection Agency
Office of the Administrator – 1101A
1200 Pennsylvania Avenue, NW
Washington, D.C. 20460

Pamela Bondi
Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, D.C. 20530

U.S. Environmental Protection Agency
Correspondence Control Unit
Office of General Counsel - 2311
1200 Pennsylvania Avenue, NW
Washington, D.C. 20460

Respectfully submitted,

/s/ Chloe H. Kolman
Chloe H. Kolman

ATTACHMENT

ANNEX 1

1. Rausch Creek Generation LLC
   i. Affected Facility/Source: Rausch Creek Generation Fluidized Bed Boiler(031)

2. San Miguel Electric Cooperative
   i. Affected Facility/Source: San Miguel Cooperative, Inc. in Christine, TX

3. City Utilities of Springfield
   i. Affected Facility/Source: John Twitty Energy Center

4. Olympus Power LLC
   i. Affected Facility/Source: Northampton Generating Station Generating Unit 1

5. Associated Electric Cooperative
   i. Affected Facility/Source:
      a. New Madrid Power Plant Unit 1 and Unit 2 Coal Fired Cyclone Boilers;
      b. Thomas Hill Energy Center Unit 1 and Unit 2 Coal Fired Cyclone Boilers and Unit 3 Pulverized Coal Fired Tangential Boiler

6. Panther Creek Power
   i. Affected Facility/Sources: Panther Creek Pyropower Unit (031) and Pyropower Unit 2 (032)

7. Scrubgrass Reclamation Company LP
   i. Affected Facility/Source: Scrubgrass Generating Plant/Venango Number 2 CFB Boiler (031), Number 2 CFB Boiler (032)

8. Olympus Power LLC
   i. Affected Facility/Source: Walleye Power, LLC Bay Shore Unit 1

9. Western Farmers Electric Cooperative
   i. Affected Facility/Source: Hugo Generating Station HU-UNIT 1

10. Seward Generation
    a. Affected Facility/Source: Seward Generation Station

11. Ebensburg Power Company (EPC)
    a. Affected Facility/Source: EPC Generating Station

12. Colver Green Energy Generation LLC
    a. Affected Facility/Source: Colver Green Facility

13. Talen Montana, LLC and NorthWestern Energy
    a. Affected Facility/Source: Colstrip Steam Electric Station Units 3 and 4

14. Sunflower Electric Power Corporation
    a. Affected Facility/Source: Holcomb Station

15. East Kentucky Power Cooperative
    a. Affected Facility/Source: Spurlock Station and Cooper Station

16. Schuylkill Energy Resources
    a. Affected Facility/Source: St. Nicholas Cogeneration Project

17. Ri-Corp Development Inc, Gilberton Power Company
    a. Affected Facility/Source: John B. Rich Memorial Power Station CFB Boiler 1 (CU031) and CFB Boiler 2 (CU032)

18. Dominion Energy
    a. Affected Facility/Source: Mount Storm Power Station

19. Basin Electric
    a. Affected Facility/Source:
        a. Leland Olds Station Units 1 and 2;
        b. Laramie River Station Units 1, 2, and 3;
        c. Antelope Valley Station Units 1 and 2;

d. Dry Fork Station Unit 1

20. Tennessee Valley Authority
    a. Affected Facility/Source:
        a. Cumberland Fossil Plant;
        b. Gallatin Fossil Plant;
        c. Shawnee Fossil Plant;
        d. Kingston Fossil Plant

21. American Bituminous Power Partners
    a. Affected Facility/Source: Grant Town Power Plant Boiler #1A and Boiler #1B

22. Minnkota Power Cooperative, Inc.
    a. Affected Facility/Sources: Milton R. Young Station Unit 1 and Unit 2

23. Big Rivers Electric Corporation
    a. Affected Facility/Source: D.B. Wilson Station

24. Monongahela Power Company "MonPower"
    a. Affected Facility/Source: Harrison Power Station and Fort Martin Power Station

25. Choctaw Generation Limited Partnership, LLLP
    a. Affected Facility/Source: Red Hills Generating Facility

26. Rainbow Energy Center
    a. Affected Facility/Source: Coal Creek Station

27. Cleco Power LLC
    a. Affected Facility/Source: Brame Energy Center Unit 2

28. Golden Valley Electric Association
    a. Affected Facility/Source: Healy Power Plant Unit 1 and Unit 2

29. Keystone-Conemaugh Projects, LLC
    a. Affected Facility/Source:

a. Conemaugh Station Unit 1 and Unit 2
b. Keystone Station Unit 1 and Unit 2

30. Hallador Power Company
a. Affected Facility/Source: Merom Generating Station

31. Arizona Electric Power Cooperative
a. Affected Facility/Source: Apache Generating Station

32. Dynegy Midwest Generation
a. Affected Facility/Source: Baldwin Power Plant Unit 1 and Unit 2

33. Miami Fort Power Company
a. Affected Facility/Source: Miami Fort Power Plant Unit 1 (B015) and Unit 2(B016)

34. Coleto Creek Power
a. Affected Facility/Source: Coleto Creek Power Station

35. Kincaid Generation
a. Affected Facility/Source: Kincaid Power Plant Unit 1 and Unit 2

36. Luminant Generation Company
a. Affected Facility/Source: Martin Lake Steam Electric Station Unit 1, Unit 2, and Unit 3

37. Illinois Power Generating Company
a. Affected Facility/Source: Newton Power Station Unit 1

38. Oak Grove Management Company
a. Affected Facility/Source: Oak Grove Steam Electric Station

39. Otter Tail Power Company
    a. Affected Facility/Sources: Big Stone Plant and Coyote Station

40. NRG Energy
    a. Affected Facility/Source:
        a. W.A Parish Generating Station;
        b. Plum Point Generation Station;
        c. Powerton Electric Generating Station;
        d. Limestone Generating Station

41. GSP Merrimack LLC
    a. Affected Facility/Source: Merrimack Station in Bow, New Hampshire

42. Entergy Louisiana
    a. Affected Facility/Source: RS Nelson Plant Unit 6

43. Ameren Missouri
    a. Affected Facility/Source: Labadie Energy Center and Sioux Energy Center

44. Southern Company
    a. Affected Facility/Source:
        a. Barry Steam Electric Generating Facility Unit 5;
        b. Miller Steam Electric Generating Facility Unit 1, Unit 2, Unit 3, and Unit 4;
        c. Bowen Steam Generator Unit 1, Unit 2, Unit 3, and Unit 4;
        d. Scherer Steam Generator Unit 1, Unit 2, and Unit 3;
        e. Plant Daniel Electric Generating Unit 1 and Unit 2

45. Mount Carmel Cogen Inc.
    a. Affected Facility/Source: Mount Carmel Cogen Power Plant

46. Oklahoma Gas and Electric
    a. Affected Facility/Source:
        a. Sooner Unit 1;
        b. Sooner Unit 2;
        c. Muskogee Unit 6;
        d. River Valley Common Stack CS 1

47. Entergy Arkansas LLC
    a. Affected Facility/Source: White Bluff Steam Electric Station Unit 1

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

CLEANAIRE NC
933 Louise Ave.
Charlotte, North Carolina 28204;

SUSTAINABLE NEWTON
P.O. Box 146
Oxford, Georgia 30054;

VIRGINIA INTERFAITH POWER & LIGHT
P.O. Box 26059
Richmond, Virginia 23260;

NATURAL RESOURCES DEFENSE COUNCIL, INC.
40 West 20th Street, 11th Floor
New York, New York 10011;

Plaintiffs,

v.

DONALD TRUMP, President of the United States, in his official capacity;

U.S. ENVIRONMENTAL PROTECTION AGENCY; *and*

LEE ZELDIN, Administrator of the U.S. Environmental Protection Agency, in his official capacity;

Defendants.

Case No. 1:26-cv-233

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

1. On July 17, 2025, President Donald Trump issued a proclamation granting 40 commercial sterilizers—industrial facilities that use the cancer-causing pollutant ethylene oxide to sterilize goods including medical devices and dried food products a two-year exemption from strengthened emission standards. Regulatory Relief for Certain Stationary Sources to

Promote American Security with Respect to Sterile Medical Equipment, 90 Fed. Reg. 34,747 (July 23, 2025) (hereinafter "Sterilizers Proclamation") (Ex. 1). Many commercial sterilizers are located in residential areas, quietly emitting a colorless but extremely toxic chemical next to homes, schools, places of worship, and other public facilities.

2. U.S. Environmental Protection Agency ("EPA") estimated that 8.5 million people living near medical sterilizers have an elevated cancer risk of 1-in-1 million, and that such facilities could pose a lifetime cancer risk as high as 6000-in-1 million. National Emission Standards for Hazardous Air Pollutants: Ethylene Oxide Emissions Standards for Sterilization Facilities Residual Risk and Technology Review, 89 Fed. Reg. 24,090, 24,117 (Apr. 5, 2024) (the "EtO Rule"). This is sixty times higher than EPA's own threshold for what constitutes "unacceptable risk," making sterilization facilities among the most dangerous sources regulated under the Clean Air Act. *Id.* at 24,097. The cancer risk estimates using allowable emissions—the maximum amount of ethylene oxide these facilities are permitted to emit are even higher: 62 million people with an elevated risk of 1-in-1 million, an 8000-in-1 million lifetime cancer risk from all facilities, and a risk eighty times higher than EPA's "unacceptable risk" threshold. *Id.* at 24,095.

3. Ethylene oxide was added to EPA's carcinogen list in 2016 with an assessment warning that ethylene oxide "was 30 times more carcinogenic to people who continuously inhale it as adults and 50 times more carcinogenic to those who are exposed since birth than the agency

ED_021114D_00001579-00002

previously thought."[1] A 2021 ProPublica analysis concluded that ethylene oxide is the "biggest contributor to excess industrial cancer risk from air pollutants nationwide."[2]

4. To address these unacceptable health risks, including cancer risks, in 2024 EPA strengthened the hazardous air pollutant standards for the 90 commercial sterilizer facilities that use ethylene oxide in an action known as the "EtO Rule." The EtO Rule requires facilities to control building leaks, strengthen existing controls, and install continuous emissions monitoring systems, which is projected to reduce sterilizers' ethylene oxide emissions by 90% nationwide, and the number of people with a cancer risk of 1-in-1 million by approximately 92%.

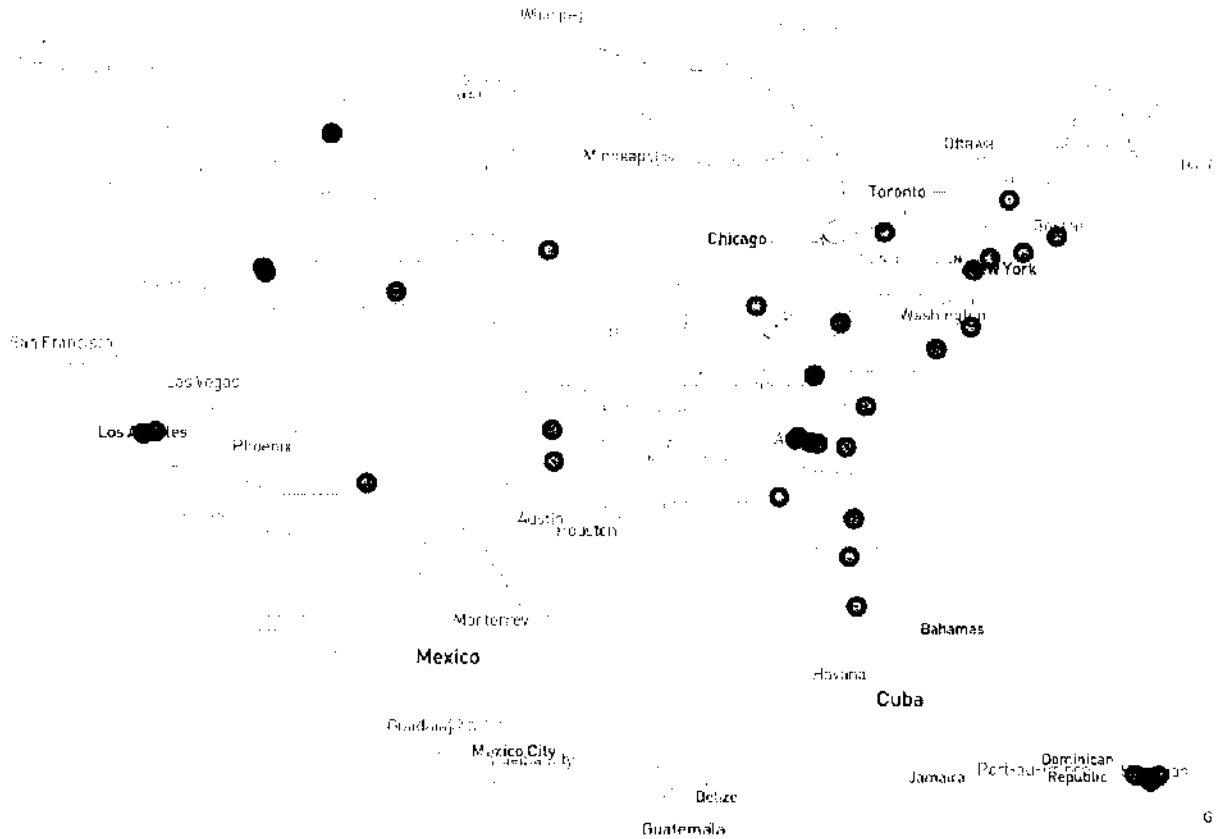
5. President Trump's Sterilizers Proclamation unilaterally sweeps away these protections and gives about 45% of commercial sterilizers, from Georgia to Massachusetts and Puerto Rico to California, a free pass to continue to pollute at high levels and put communities at risk for an additional two years. By granting these exemptions, President Trump allows facilities to delay more stringent emissions controls and to forgo continuous emissions monitoring and quarterly reporting, which would provide accountability and transparency for toxic emissions leaking into neighboring communities.

---

[1] Kiah Collier & Maya Miller, *A Plant That Sterilizes Medical Equipment Spews Cancer-Causing Pollution on Tens of Thousands of Schoolchildren*, ProPublica (Dec. 27, 2021), https://perma.cc/Z3KH-E3SE.

[2] Lylla Younes et al., *Poison in the Air*, ProPublica (Nov. 2, 2021), https://perma.cc/TN5Z-ZCLM.

Map 1: Exempted Sterilizers Map, EDF, https://perma.cc/Y6Q7-AFXR.



6. The President granted these sweeping exemptions by seizing on a narrow and, until this year, never-before-used provision of the Clean Air Act. This provision allows the President to exempt a source from a hazardous air pollutant standard for up to two years only if "the technology to implement" the relevant standard is "not available" and if exempting the source "is in the national security interests of the United States." 42 U.S.C. § 7412(i)(4).

7. But in the Sterilizers Proclamation, President Trump's "determinations" are pure pretext. Although the Proclamation states that complying with the EtO Rule requires "emissions-control technologies that do not exist in a commercially viable form," several of the exempted facilities have reported that they are already utilizing emissions controls that meet the standard in the EtO Rule. 90 Fed. Reg. 34,747. And although the Proclamation cites the need to protect the

"supply [of] sterilized medical equipment," *id.*, one of the exempted facilities sterilizes *only* spices and food products, not medical equipment.

8. In the fifty-five years since Congress enacted Section 7412(i)(4), no President had exercised this exemption authority. In 2025 alone, President Trump invoked it seven times, exempting more than 180 facilities. In addition to the Sterilizers Proclamation, President Trump issued proclamations exempting nearly one-third of U.S. coal-fired power plants from mercury and other air toxics standards, 50 chemical manufacturers from ethylene oxide and other hazardous air pollutant standards, one of two copper smelters from toxic metals standards, and the entire taconite iron-ore processing and coke production industries.

9. President Trump's sweeping Sterilizers Proclamation grossly exceeds the bounds of the Section 7412(i)(4) exemption authority. It exempts about 45% of commercial sterilizers from complying with the EtO Rule in its entirety without any standard- or facility-specific analysis showing that any of the 40 specific facilities cannot meet the statutory standard. The technology needed to comply with the EtO Rule is widely available throughout the industry—and is indeed already in use at many of the facilities that received exemptions.

10. The Sterilizers Proclamation operates to suspend compliance with the EtO Rule while EPA works to repeal these critical Clean Air Act protections. Congress explicitly prohibited that sort of delay of Clean Air Act standards pending administrative reconsideration. 42 U.S.C. § 7607(d)(1)(C).

11. The Sterilizers Proclamation violates the Clean Air Act and exceeds the President's lawful authority. Plaintiffs ask the Court to enter appropriate relief declaring the Proclamation unlawful and invalid and enjoining EPA and its Administrator from implementing or giving effect to it.

ED_021114D_00001579-00005

JURISDICTION AND VENUE

12. This Court has subject matter jurisdiction under 28 U.S.C. § 1331 because this is a civil action arising under laws of the United States, including the Clean Air Act.

13. Venue is proper in this Court under 28 U.S.C. § 1391(e)(1) because Defendants reside in this judicial district, and because a substantial part of the events giving rise to the claim occurred in this judicial district.

14. The Court has authority to enter a declaratory judgment and to provide injunctive relief pursuant to Rules 57 and 65 of the Federal Rules of Civil Procedure; the Declaratory Judgment Act, 28 U.S.C. §§ 2201 2202; the All Writs Act, 28 U.S.C. § 1651; and the Court's inherent equitable powers.

PARTIES

The Plaintiffs

15. Plaintiffs are nonprofit organizations working to reduce air pollution and have members who are harmed by the exemptions' removal of protections mandated by the EtO Rule.

16. Plaintiff Natural Resources Defense Council ("NRDC") is a national nonprofit environmental membership organization with hundreds of thousands of members nationwide. NRDC's purpose is to safeguard the Earth its people, its plants and animals, and the natural systems on which all life depends. Part of NRDC's core mission is to improve air quality and safeguard public health by combating hazardous air pollutant emissions. NRDC has many members that live, work, and recreate within six miles of facilities that received exemptions, including the Cosmed facility in Erie, Pennsylvania, the LivaNova facility in Arvada, Colorado, the Covidien facility in North Haven, Connecticut, and the Sterigenics facility in Ontario,

California. The Sterilizers Proclamation will directly harm these members by depriving them of the protections mandated by the EtO Rule.

17. Plaintiff CleanAIRE NC ("CleanAIRE") is a 501(c)(3) nonprofit organization headquartered in Charlotte, North Carolina. CleanAIRE works to protect the health of all North Carolinians through community-centered strategies to address air pollution, environmental injustice, and climate change. CleanAIRE advocates for clean air, partners with schools, healthcare systems and community organizations to educate the public on the health impacts of air pollution, conducts Health Impact Assessments, and operates air-monitoring programs to identify and address health risks from air pollution. CleanAIRE has many members who live within six miles of the Charlotte Sterigenics facility which received an exemption. The Sterilizers Proclamation will directly harm these members by depriving them of the protections mandated by the EtO Rule.

18. Plaintiff Sustainable Newton is a grassroots, community-based 501(c)(3) nonprofit organization founded by and serving residents of Newton County, Georgia. Sustainable Newton partners with residents, businesses, and government officials to implement climate solutions in Newton County. The precursor to the Sustainable Newton Environmental Hazards Committee was founded in 2019 and formed in direct response to a commercial ethylene oxide sterilizer located in Newton County. Through this committee, Sustainable Newton advocates on behalf of residents and workers for relief from environmental hazards, including ethylene oxide emissions, through increased transparency, improved air quality monitoring, and implementation of the most protective public safety measures. Sustainable Newton has several members within six miles of the Becton-Dickinson commercial sterilizer facility which received an exemption,

and these members are directly impacted by the loss of protections that the EtO Rule would have provided.

19. Plaintiff Virginia Interfaith Power & Light ("VA Interfaith Power & Light") is a 501(c)(3) nonprofit organization operating in the state of Virginia. VA Interfaith Power & Light is dedicated to collaborating with people of faith and conscience to grow healthy communities by advancing climate and environmental justice. Bringing faith communities within Virginia together to mobilize a moral response to climate change by educating leaders and advocating for just environmental policies and laws to ensure access to fresh air, clean water, and equitable energy burden for all Virginians. Virginia Interfaith Power & Light partners with faith leaders, private and state agencies, state and federal legislators, as well as frontline communities, to support their efforts to mitigate the health and economic impacts of air and water pollution, in addition to the "heat island effect." VA Interfaith Power & Light serves members and congregations located within six miles of two ethylene oxide sterilizers located in Richmond, including Sterilization Services of Virginia, which received an exemption. These congregations and members are directly affected by the loss of protections the EtO Rule would have provided. These congregations and members are directly affected by the loss of protections the EtO Rule would have provided.

The Defendants

20. Defendant Donald Trump is the President of the United States. He resides and conducts his duties in Washington, D.C. He is sued in his official capacity.

21. Defendant EPA is a federal agency of the United States whose mission is to protect human health and the environment, and responsibilities include issuing and enforcing

ED_021114D_00001579-00008

hazardous air pollutant standards, including the EtO Rule at issue here. EPA is headquartered in Washington, D.C.

22. Defendant Lee Zeldin is the EPA Administrator. He resides and conducts his duties in Washington, D.C. He is sued in his official capacity.

LEGAL BACKGROUND

The Clean Air Act's Program to Address Hazardous Air Pollution

23. Clean Air Act Section 112, 42 U.S.C. § 7412, establishes the framework for EPA's regulation of "hazardous air pollutants" from stationary sources, including industrial facilities such as commercial sterilizers.

24. "Hazardous air pollutants," as defined by Clean Air Act Section 7412, are a group of 188 air pollutants determined by Congress and EPA to be particularly harmful to human health. Ethylene oxide is one such hazardous air pollutant. 42 U.S.C. § 7412(b)(1).

25. Section 7412 requires EPA to regulate hazardous air pollutants by issuing emissions standards for categories and subcategories of stationary sources of such pollutants. Emissions standards must require the maximum degree of reduction that EPA deems "achievable," taking into consideration cost as well as any non-air quality health and environmental impacts and energy requirements. *Id.* § 7412(d)(2), (3)(A) (B).

26. After EPA establishes Section 7412 standards for a source category, the Clean Air Act requires EPA to perform recurring reviews to ensure that the standards adequately address risks to health and welfare from hazardous air pollutant emissions and that they reflect advancements in technology and practice that allow sources to achieve even greater emission reductions. This process occurs in two separate reviews, often performed together, and which are referred to as the "residual risk and technology review."

27. As part of the technology review, EPA must "review, and revise" the Section 7412 standards "as necessary (taking into account developments in practices, processes, and control technologies)." *Id.* § 7412(d)(6).

28. As part of the risk review, EPA determines whether unacceptable risk to public health remains, or is likely to remain, from hazardous air pollutant emissions even after the application of Section 7412 standards. If unacceptable risk remains, EPA must promulgate additional standards that eliminate the unacceptable risk, "provid[ing] an ample margin of safety to protect public health," and preventing "an adverse environmental effect." *Id.* § 7412(f)(2)(A).

29. Congress prescribes strict compliance schedules for Section 7412 standards. Residual risk-based emissions standards "shall become effective upon promulgation" for new sources, or 90 days after the effective date for existing sources. *Id.* § 7412(f)(3) (4)(A). EPA may waive compliance for up to two years only if it determines "such period is necessary for the installation of controls and that steps will be taken during the period of the waiver to assure that the health of persons will be protected from imminent endangerment." *Id.* § 7412(f)(4)(B).

30. For standards revised as part of a technology review, EPA must require existing sources to comply "as expeditiously as practicable," and no later than three years after the effective date. *Id.* § 7412(i)(3)(A). EPA may grant a source up to one additional year to comply only where "such additional period is necessary for the installation of controls." *Id.* § 7412(i)(3)(B).

Clean Air Act Procedural Requirements

31. The Clean Air Act sets out specific rulemaking requirements for "the promulgation or revision of any . . . emission standard or limitation under section 7412(d)." *Id.* § 7607(d)(1)(C). EPA must establish a rulemaking docket, publish a notice of proposed

ED_021114D_00001579-00010

rulemaking in the Federal Register, and provide a statement of basis and purpose for the rule that includes the factual data on which the proposed rule is based, the methodology used in obtaining and analyzing the data, and the major legal interpretations and policy considerations underlying the proposed rule. *Id.* § 7607(d)(3).

32. The Clean Air Act also requires EPA to allow any person to submit written comment, and to provide an opportunity for oral presentation of data, views, or arguments, on a proposed rule. *Id.* § 7607(d)(5); *see also id.* § 7607(h). In promulgating a final rule, EPA must provide a statement of basis and purpose as required at the proposal stage and must explain any major changes from the proposed to final rule. *Id.* § 7607(d)(6)(A). EPA must also provide a response to each of the significant comments, criticisms, and new data submitted during the comment period. *Id.* § 7607(d)(6)(B). EPA may not base a promulgated rule on "any information or data which has not been placed in the docket as of the date of such promulgation." *Id.* § 7607(d)(6)(C).

33. The Clean Air Act also establishes specific procedures for reconsidering a promulgated rule. The EPA Administrator can "convene a proceeding for reconsideration of the rule" but must "provide the same procedural rights as would have been afforded" in the original proceeding. *Id.* § 7607(d)(7)(B). The Act further provides that reconsideration "shall not postpone the effectiveness of the rule," except that the Administrator or a reviewing court may stay the effectiveness of the rule "for a period not to exceed three months." *Id.* Section 7607(d)(7)(B) is the sole source of authority to stay a rule after its effective date has passed. *See Clean Air Council v. Pruitt*, 862 F.3d 1, 9 (D.C. Cir. 2017).

Presidential Exemption Provision

34. Section 7412(i)(4) of the Clean Air Act authorizes the President, in narrowly prescribed circumstances, to "exempt any stationary source from compliance" with hazardous air pollutant standards promulgated under Section 7412, "for a period of not more than 2 years if the President determines [1] that the technology to implement such standard is not available and [2] that it is in the national security interests of the United States to do so." 42 U.S.C. § 7412(i)(4).

35. The President may extend the original exemption "for 1 or more additional periods, each period not to exceed 2 years." *Id.*

FACTUAL AND PROCEDURAL BACKGROUND

National Emission Standards for Hazardous Air Pollutants for Commercial Sterilizers

36. The ethylene oxide commercial sterilization industry consists of facilities operating a sterilization process that uses ethylene oxide to sterilize or fumigate materials, including medical equipment, spices, and other miscellaneous products. 89 Fed. Reg. at 24,097.

37. In 1994, EPA promulgated the first hazardous air pollutant standards for the ethylene oxide commercial sterilization industry at 40 C.F.R. part 63, subpart O. National Emission Standards for Hazardous Air Pollutants for Ethylene Oxide Commercial Sterilization and Fumigation Operations, 59 Fed. Reg. 62,585 (Dec. 6, 1994). EPA completed a residual risk and technology review for that industry in 2006, making no changes to the 1994 standards. Ethylene Oxide Emissions Standards for Sterilization Facilities, 71 Fed. Reg. 17,712 (Apr. 7, 2006).

The 2024 Risk and Technology Review

38. In 2016, EPA updated its Integrated Risk Information System ("IRIS") assessment for ethylene oxide. IRIS is EPA's flagship human health assessment program, designed to

ED_021114D_00001579-00012

identify and characterize health hazards of chemicals from environmental exposures with the goal of protecting public health. The updated 2016 IRIS ethylene oxide assessment was published for public comment and extensively peer-reviewed by expert review panels, EPA scientists, other federal agencies, and the White House. The assessment concluded that ethylene oxide is a significantly more potent carcinogen than previously understood. Exposure to even low amounts of ethylene oxide increases the risk of lymphoid cancers, such as non-Hodgkin's lymphoma, myeloma, and lymphocytic leukemia, as well as breast cancer. Ethylene oxide exposure is also linked to respiratory, nervous system, and hormone disruption.

39. Children have greater susceptibility to the cancer risks posed by ethylene oxide exposure than adults because ethylene oxide has a mutagenic mode of action, and children's bodies and immune systems are still developing. *See* 89 Fed. Reg. at 24,149. As a result, the potency of ethylene oxide is tenfold higher for infants and children from birth up to 2 years of age, and threefold higher for 2- to 16-year-olds, than it is for adults. Therefore, young children exposed to ethylene oxide during the first years of life have very high and unacceptable cancer risks. A delay of two years to reduce ethylene oxide exposures can have adverse lifelong consequences for individuals exposed during the earliest years of life.

40. Based on this updated scientific understanding of the health risks posed by ethylene oxide, EPA assessed the emissions and risks from commercial sterilization facilities and found that ethylene oxide emissions from specific emission sources in the sterilization process are major contributors to the cancer risks associated with ethylene oxide. In its final Residual Risk Assessment, EPA estimated that cancer risks from these facilities reach as high as 6,000-in-1 million, with more than 8 million people nationwide estimated to have a cancer risk at or above 1-in-1 million due to commercial sterilizer emissions.

ED_021114D_00001579-00013

41. These EPA estimates are for actual, not allowable commercial sterilizer emissions. Allowable emissions are the maximum amount that commercial sterilizers are allowed to emit under Clean Air Section 112(d). 89 Fed. Reg. 24,117. Using allowable emissions, EPA estimates that cancer risks would increase to 8,000-in-1 million, with 62 million people nationwide estimated to have a cancer risk at or above 1-in-1 million, with 260,000 people nationwide estimated to have a cancer risk above 100-in-1 million. *Id.* at 24,118.

42. EPA further found that children that live, play or attend school or daycare near sterilization facilities are more vulnerable to ethylene oxide's cancer-causing effects due to increased susceptibility, increased exposure and longer remaining lifespans over which cancer can develop. *Id.* at 24,149.

43. Approximately 4 million children aged 0 to 17 live within six miles of a commercial sterilization facility. *Id.* Without the EtO Rule, EPA estimated that approximately 1.25 million children would face increased lifetime cancer risks greater than 1-in-1 million. *Id.*

44. EPA also conducted a technology review under Clean Air Act Section 112(d)(6) to evaluate developments in practices, processes, and control technologies for the commercial sterilization industry since the prior review in 2006. *Id.* at 24,097–98.

45. EPA finalized the EtO Rule in April 2024. *Id.* at 24,090. The EtO Rule became effective on April 5, 2024. *Id.*

EtO Rule Strengthened Emissions Standards

46. The EtO Rule establishes emissions control requirements for multiple emissions sources at commercial sterilization facilities. These requirements are designed to achieve ethylene oxide emissions reductions necessary to address remaining health risks with an ample margin of safety.

47. The revised standards require additional controls for previously uncontrolled or under-controlled emission points, including sterilization chamber vents ("SCVs"), aeration room vents ("ARVs"), chamber exhaust vents ("CEVs"), and certain fugitive room air emissions (classified as "Group 1" and "Group 2" room air emissions). *Id.* at 24,104–05. EPA also required all facilities with room air emissions to implement a permanent total enclosure consistent with EPA Method 204. *Id.* at 24,105. And EPA required most facilities to install a continuous emissions monitoring system ("CEMS"). *Id.* at 24,101.

48. EPA identified several proven and widely implemented control technologies—including catalytic oxidizers and gas-solid reactors that were already in use at some commercial sterilization facilities. *See id.* at 24,120–24. EPA concluded that these controls were cost-effective in light of the magnitude of health risk reductions achieved. *See id.* at 24,125–27.

49. *Sterilization Chamber Vents*: The EtO Rule imposes standards for sterilization chamber vents that require facilities with such emission sources to achieve a specified percentage of ethylene oxide reduction depending on the volume of ethylene oxide usage at the facility. For instance, the largest facilities, where ethylene oxide usage is at least 30 tons per year, must achieve a 99.99% emission reduction. *Id.* at 24,192–93; *see also* Tbl. 1 to Subpart O of Part 63, Title 40.

Source	Status	Ethylene Oxide Usage (tons per year)	Emission Reduction (%)
Sterilization Chamber Vent	Existing/New	> 30	99.99
		≥ 10 and < 30	99.90
		≥ 1 and < 10	99.80
		< 1	99.00

50. *Aeration Room Vents*: The EtO Rule also imposes standards for aeration room vents, requiring facilities with aeration room vents to achieve a specified percentage of ethylene

oxide reduction depending on the volume of ethylene oxide usage at the facility. For instance, the largest facilities that use at least 30 tons per year of ethylene oxide must achieve a 99.90% emission reduction. 89 Fed. Reg. at 24,193; *see also* Tbl. 2 to Subpart O of Part 63, Title 40.

Source	Status	Ethylene Oxide Usage (tons per year)	Emission Reduction (%)
Aeration Room Vent	Existing	> 30	99.90
		> 10 and < 30	99.60
		< 10	99.00
	New	> 10	99.90
		< 10	99.00

51. *Chamber Exhaust Vents*: The EtO Rule further imposes standards for chamber exhaust vents, requiring facilities with chamber exhaust vents to achieve a specified percentage of ethylene oxide reduction, depending on the volume of ethylene oxide usage at that facility. For instance, the largest area source facilities that use at least 60 tons per year of ethylene oxide must achieve a 99.90% emission reduction. 89 Fed. Reg. at 24,193–94; *see also* Tbl. 3 to Subpart O of Part 63, Title 40.

Source	Facility Type	Status	Ethylene Oxide Usage (tons per year)	Emission Reduction (%)
Chamber Exhaust Vent	Major Source	Existing/New	Any	99.94
	Area Source	Existing/New	≥ 60	99.90
			< 60	99.00

52. Emissions at sterilization chamber vents, aeration chamber vents, and chamber exhaust vents may be controlled using a range of air pollution control devices ("APCDs"). These include wet scrubbers (such as acid-water scrubbers and Glygen absorber units), catalytic oxidizers, combination balancers and catalytic oxidizers, thermal oxidizers, and dry-bed scrubbers (gas-solid reactors).

53. *Room Air Emissions*: The EtO Rule also imposes standards for Group 1 and Group 2 room air emissions, based on a facility's ethylene oxide usage and whether it is a new or existing facility. 89 Fed. Reg. 24,194 95; *see also* Tbl. 4 & Tbl. 5 to Subpart O of Part 63, Title 40. Group 1 room air emissions are defined "as emissions from indoor EtO storage, EtO dispensing, vacuum pump operations, and pre-aeration handling of sterilized material," while Group 2 room air emissions are defined as "emissions from post-aeration handling of sterilized material." 89 Fed. Reg. 24,099. Group 1 and Group 2 room air emissions may be controlled with APCDs including acid water scrubbers, dry-bed scrubbers, combination water balancer and catalytic oxidizer, catalytic oxidizers, and cascading air systems.

Source	Facility Type	Status	Ethylene Oxide Usage (tons per year)	Emission Reduction (%)
Group 1 Room Air Emissions	Major Source	Existing/New	Any	97.00
	Area Source	Existing/New	≥ 40	98.00
			< 40	80.00
Group 2 Room Air Emissions	Major Source	Existing/New	Any	86.00
	Area Source	Existing	> 20	98.00
			≥ 4 and < 20	80.00
			< 4	Reduce to 1 ppm in each chamber before opening
		New	> 20	98.00
			< 20	80.0

54. *Permanent Total Enclosure*: Group 1 room air emissions at all facilities and Group 2 room air emissions at facilities using more than 4 tons per year of ethylene oxide must also be captured within a "permanent total enclosure." 89 Fed. Reg. at 24,194 95; *see also* Tbl. 4 & Tbl. 5 to Subpart O of Part 63, Title 40. A permanent total enclosure captures and contains all exhaust air from relevant room air activities including storage, dispensing, vacuum pumps, and pre- and post-aeration handling—under negative pressure and directs all captured air to an add-

on control device. 89 Fed. Reg. at 24,104, 24,174. Room air emissions captured in a permanent total enclosure must then be routed to an add-on air pollution control device that removes ethylene oxide at the required efficiency. *Id.*

55. *Continuous Emissions Monitoring*: Commercial sterilizers using more than 100 pounds (0.05 tons) per year of ethylene oxide must install continuous emissions monitoring systems. *Id.* at 24,101; *see also* 40 C.F.R. § 63.364. Continuous emissions monitoring systems provide a direct measure of ethylene oxide concentration or ethylene oxide emission rate in the gas stream it is analyzing, allowing detection of fluctuations in ethylene oxide concentration that other methods would miss. Facilities must submit continuous emissions monitoring system data reports on a quarterly basis, with a minimum of 90% data availability, to EPA's Central Data Exchange's Compliance and Emissions Data Reporting Interface. 89 Fed. Reg. at 24,101. Once submitted, EPA "will make all information submitted through CEDRI available to the public," 40 C.F.R. § 63.366(b), (c), such as through EPA's WebFIRE data repository. *WebFIRE: WebFIRE Report Search and Retrieval*, EPA, https://perma.cc/2EDT-KKY1.

Public Health Benefits of the EtO Rule and Cancer Risk Reductions

56. EPA determined that the EtO Rule would reduce ethylene oxide emissions from commercial sterilizers by more than 90% and reduce the number of people with a potential cancer risk greater than or equal to 1-in-1 million from sterilization facilities by approximately 92%. 89 Fed. Reg. at 24,095, 24,137.

57. EPA found that the EtO Rule would reduce the number of children facing lifetime cancer risks from sterilization facilities of more than 1-in-1 million from 1.25 million children to 162,300 children. The number of children facing risks of greater than 100-in-1 million would drop from 4,300 children to zero children. *Id.* at 24,149.

ED_021114D_00001579-00018

58. EPA identified that emissions from the Sterilization Services of Virginia facility in Henrico, Virginia presented elevated cancer risks as high as 1,000-in-1 million. *Henrico, Virginia (Sterilization Services of Virginia)*, EPA, https://perma.cc/3ANB-925N.[3]

59. Emissions from the Cosmed facility in Erie, Pennsylvania presented elevated cancer risks as high as 300-in-1 million. *Erie, Pennsylvania (Cosmed Group LLC/Erie)*, EPA, https://perma.cc/7F8L-ZRSG.

60. In Linden, New Jersey, emissions from the Cosmed facility presented cancer risks as high as 2,000 in 1 million. *Linden, New Jersey (ETO Sterilization-Plant #2)*, EPA, https://perma.cc/EPY9-MEQS.

61. EPA estimated that the total capital investment costs of compliance with the EtO Rule across all U.S. commercial sterilization facilities is approximately $313 million, with a total annual cost of $74 million. 89 Fed. Reg. at 24,137. EPA analyzed business impacts and found that the average cost-to-sales ratio is about eight percent for all entities, and 0.2 percent for large entities specifically in comparison to revenues at the ultimate parent company level. *Id.* at 24,137 38.

62. Averaged across all 88 facilities, the upper-bound estimate of total capital investment costs and of total annual costs would be $3.56 million and $840,000 per facility, respectively, although EPA estimated that costs would vary depending on the individual facility's pre-existing controls. *Id.* at 24,125 26. Further, EPA stated that "the industry has demonstrated the capability to install controls on multiple facilities simultaneously without interfering with medical supply chains." *Id.* at 24,138.

[3] EPA warns that the risk information provided at this link is no longer current because, "in a number of cases, commercial sterilizers have made improvements or changes to operation that have reduced risks to residents" citing the "final amendments" to the EtO Rule. *See, e.g.*, *Henrico, Virginia (Sterilization Services of Virginia)*, EPA, https://perma.cc/3ANB-925N.

ED_021114D_00001579-00019

63. Based on this evidence, EPA concluded that existing commercial sterilizers could comply with the requirements of the EtO Rule within the statutory timeframes of two years (for Section 7412(f) ethylene oxide requirements) and three years (for Section 7412(d) technology-based requirements)—by April 6, 2026, and April 6, 2027, respectively. *Id.* Each of these dates represents the maximum compliance timeframe allowed under the statute.

EPA Announces Reconsideration, Solicits Exemption Requests

64. On March 12, 2025, in a press event billed as "the greatest day of deregulation our nation has seen," EPA announced that it would "reconsider" the EtO Rule and 31 other regulations protecting human health and the environment. News Release, EPA, EPA Launches Biggest Deregulatory Action in U.S. History (Mar. 12, 2025), *available at* https://perma.cc/EX15-FAMQ.

65. Along with its press release, EPA published a "fact sheet" about its planned reconsideration of the EtO Rule and seven other recent rules protecting people from hazardous air pollutants. That fact sheet included an invitation to industrial facilities that "[a]ny source interested in a Presidential exemption" from any of the eight rules, "should provide their recommendations to EPA by March 31, 2025." Fact Sheet, EPA, Oil and Gas Regulations: Powering the Great American Comeback at 3, *available at* https://perma.cc/E8UM-RN3K. The fact sheet further explained, "[s]ources need only provide why technology is unavailable and why it is in the national security interests of the United States to provide the exemption." *Id.*

66. Following up on its invitation to industrial facilities to request exemptions, on or about March 24, 2025, EPA posted a new webpage announcing it had established "an electronic mailbox" airaction@epa.gov "to allow the regulated community to request a Presidential Exemption under section 112(i)(4)." *Clean Air Section 112 Presidential Exemption Information*,

EPA, https://perma.cc/WKL5-44FC. EPA asked that requests be submitted "by March 31, 2025," a week after the webpage was posted. *Id.*

67. EPA did not solicit any input from the public or provide any opportunity for public comment.

68. Facility owners and operators across multiple source categories sent exemption requests to that email inbox. Many exemption requests from commercial sterilizers were identical submissions devoid of facility-specific information, copying and pasting a letter submitted by the Ethylene Oxide Sterilization Association ("EOSA"). The letter submitted by EOSA, and attached to many of the facilities' exemption requests, urged the President to grant a blanket two-year compliance exemption for all facilities subject to the EtO Rule based on alleged technological unavailability and national security considerations.

The Sterilizers Proclamation

69. On July 17, 2025, President Trump issued a proclamation purporting to exempt a list of commercial sterilizers "from compliance with the EtO Rule for a period of 2 years beyond the EtO Rule's relevant compliance dates." 90 Fed. Reg. at 34,747.

70. The Sterilizers Proclamation cited to "authority vested in [the President] by the Constitution and the laws of the United States, including section 112(i)(4) of the Clean Air Act, 42 U.S.C. 7412(i)(4)." *Id.*

71. The Sterilizers Proclamation stated that it "applies to all compliance deadlines established under the EtO Rule applicable to the stationary sources listed in Annex I, with each such deadline extended by 2 years from the date originally required for such deadline." *Id.*

72. The Sterilizers Proclamation included what it referred to as two "determinations." *Id.*

73. First, the Sterilizers Proclamation purported to "determine" that "[t]he technology to implement the EtO Rule is not available," claiming that "[s]uch technology does not exist in a commercially viable form sufficient to allow implementation of and compliance with the EtO Rule by the compliance dates set forth in the EtO Rule." *Id.* at 34,747–48.

74. Second, the Sterilizers Proclamation purported to determine that "[i]t is in the national security interests of the United States to issue this Exemption for the reasons stated in paragraphs 1 and 3 of this proclamation." *Id.* at 34,748. Paragraph 1 asserted that "[t]he continued utilization of ethylene oxide by commercial sterilization facilities is essential to ensuring that our Nation provides its sick and injured with the best outcomes possible an objective that is at the forefront of the Federal Government's responsibility to the American people." *Id.* at 34,747. Paragraph 3 asserted that "[b]y requiring compliance with standards premised on the application of emissions-control technologies that do not exist in a commercially viable form, the EtO Rule risks making critical sterile medical devices unavailable to care for patients in our civilian and military medical systems." *Id.*

75. The Sterilizers Proclamation and "Annex I" were published in the Federal Register on July 23, 2025. *Id.* at 34,749–51.

76. The Sterilizers Proclamation included no facility-, standard-, or technology-specific determinations. Instead, it broadly and conclusorily asserts that the technology to implement the EtO Rule (in its entirety) is not available and that granting exemptions is in the national security interests of the United States.

ED_021114D_00001579-00022

Technology to Implement the EtO Rule's Requirements Is Widely Available and Already in Use

77. Technology to implement the standards in the EtO rule is available. The Sterilizers Proclamation's unsupported determinations to the contrary are contradicted by the public record, including EPA's own factual findings in the EtO Rule.

78. Controls necessary to meet the standards for sterilization chamber vents, aeration room vents, and chamber exhaust vents are commercially available from manufacturers and are well-established in the commercial sterilization industry. *See* 89 Fed. Reg. at 24,138.

79. Controls necessary to meet the Group 1 and Group 2 room air emission standards are commercially available from manufacturers and are well-established in the commercial sterilization industry. *See id.* at 24,138.

80. Ethylene oxide continuous emissions monitors are readily available for purchase and use by commercial sterilization facilities. *Id.* at 24,132. These devices are technically feasible for use in the commercial sterilization industry and are already in use and demonstrated in the field. *Id.*

81. Permanent total enclosure relies on existing technologies that are commercially available from manufacturers and are well-established in the commercial sterilization industry. *See id.* at 24,138. Permanent total enclosures are already in use in the industry and have been demonstrated feasible for commercial sterilization facilities. *See id.* at 24,132.

82. In 2024, EPA estimated that 7 out of a total of 88 commercial sterilizer facilities "already met the emission standards and will not need to install additional emission controls" to comply with the EtO rule. *Id.* at 24,138.

83. EPA also concluded that many facilities already achieved compliance with one or more of the final EtO Rule standards, as summarized in the Table below. *See id.* at 24,138.

ED_021114D_00001579-00023

84. For instance, EPA found that 66 of 88 facilities appeared to already be in compliance with revised sterilization chamber vent standards. *Id.*

85. EPA found that 26 of 55 facilities with aeration room vent emissions points appeared to already be in compliance with revised aeration room vent standards. *Id.*

86. EPA found that 20 of 40 facilities with chamber exhaust vents appeared to already be in compliance with revised chamber exhaust vent standards. *Id.*

Table 1 - 89 Fed. Reg. at 24,138, Tbl. 22

TABLE 22—APPARENT COMPLIANCE STATUS WITH FINAL RULE AND COMPLIANCE TIMEFRAMES

Emission source	Facility EtO use	Number of facilities with this affected source	Number of facilities appearing to achieve final standard[1]	Compliance timeframe
SCV	At least 30 tpy	38	19	Two years
	At least 10 but less than 30 tpy.	9	9	Two years
	At least 1 but less than 10 tpy.	18	16	Two years
	Less than 1 tpy	23	22	Three years.
ARV	At least 30 tpy	36	12	Two years
	At least 10 but less than 30 tpy	5	5	Three years.
	At least 1 but less than 10 tpy.	10	7	Three years.
	Less than 1 tpy	4	2	Three years
CEVs at major source facilities	N/A	0	N/A	Three years.
CEVs at area source facilities	At least 60 tpy	25	12	Two years
	Less than 60 tpy	15	8	Three years
Group 1 room air emissions at major sources	N/A	0	N/A	Three years.
Group 1 room air emissions at area sources	At least 40 tpy	36	16	Two years
	Less than 40 tpy	38	7	Three years.
Group 2 room air emissions at major sources	N/A	1	0	Three years.
Group 2 room air emissions at area sources	At least 20 tpy	44	17	Two years
	At least 4 but less than 20 tpy	13	1	Two years.
	Less than 4 tpy	27	27	Three years

[1] The phrase "appearing to achieve" is used (as opposed to "achieving") to account for uncertainties in the data. A notable example is the SCVs where, for a given facility, the emission reduction on the first evacuation may not high enough to ensure that the standard is being met across all evacuations. Another uncertainty is the fraction of EtO going to each emission stream. In some instances, there is facility-specific information available, and in others, there is no information available and default fractions are applied as a result.

87. EPA further estimated that only 28 of the 88 commercial sterilization facilities would need to implement permanent total enclosure requirements and install additional abatement devices. *Id.*

88. The Sterilizers Proclamation purports to exempt from the EtO Rule even facilities that already possess and operate control technologies needed to meet the applicable standards.

89. For example, two Sterigenics facilities in Los Angeles, California, located on Gifford Avenue and E. 50th Street received exemptions under the Sterilizers Proclamation. 90 Fed. Reg. at 34,749.

90. Under the EtO Rule, the Sterigenics Gifford Avenue and E. 50th Street facilities are subject to a 99.99% emission reduction standard for sterilization chamber vents.

91. In response to an EPA information request, the Sterigenics Gifford Avenue facility reported annual air emissions data indicating that it was already achieving a 99.99% or greater emission reduction at its sterilization chamber vent in 2019. That emission reduction is sufficient to comply with the EtO Rule.

92. In April 2024, the Sterigenics E. 50th Street facility was granted a permit to construct a new air pollution control system designed to meet a control efficiency of 99.99% or greater emission reduction, which likewise would also comply with the EtO Rule.

93. In January 2023, both the Sterigenics Gifford Avenue and E. 50th Street facilities were issued permits to construct permanent total enclosures.

94. The facilities subsequently notified the South Coast Air Quality Management District that permanent total enclosures for both buildings have been constructed. *Id.*

95. The permanent total enclosures constructed at both facilities satisfy the requirements of the EtO Rule.

96. Another exempted Sterigenics facility located at 2971 Olympic Industrial Drive in Atlanta, Georgia, is required to meet the following emission reductions: 99.99% for its sterilization chamber vent; 99.90% for its aeration room vent; 99.90% for its chamber evacuation vent; and 98.00% for its Group 1 and 2 room air emissions.

97. Stack testing conducted in 2022 shows that the facility was already complying with, and exceeding, the EtO Rule emission reduction standards. Measured emission reductions were 99.99997% for at least three sterilization chamber vents; 99.96% for aeration room vent; 99.95% for chamber evacuation vent; and 98.24% for Group 1 and 2 room air emissions.

98. The Atlanta Sterigenics facility has also installed a continuous emissions monitoring system which passed an annual relative accuracy test audit report since installation.

99. By 2020, the Atlanta Sterigenics facility had installed a permanent total enclosure and passed a permanent total enclosure test.

100. Other exempted facilities similarly possess requisite control technologies or have demonstrated the ability to achieve compliance with the EtO Rule. For example, EPA's docket shows that at least 24 facilities that received exemptions as a result of the Sterilizers. Proclamation would comply with one or more of the standards established in the EtO Rule.

101. For example, the Trinity Sterile facility in Salisbury, Maryland, was already achieving 99.99% emission reduction at both its sterilization chamber vent and aeration room vent.

102. The Cook Incorporated facility in Ellettsville, Indiana, reported data in response to an EPA information request that indicated that, in 2020, it was already achieving 99.99% emission reduction at its sterilization chamber vents, 99.90% emission reduction at its aeration room vents; and 99.99% emission reduction at two chamber exhaust vents. These destruction removal efficiencies are sufficient to comply with the EtO Rule.

103. Sterilization Services of Georgia, in Atlanta, Georgia, has consistently met or exceeded a sterilization chamber vent emission reduction of 99.99% since 2022; is exceeding a chamber exhaust vent emission reduction of 99.90% (tested at 99.997% in 2023); is exceeding a

Group 1 room air emissions emission reduction of 98.00% (tested at 98.90% in 2023); and passed a permanent total enclosure test in 2021 and 2022.

104. The Sterilizers Proclamation purports to exempt from continuous emissions monitoring facilities that already possess and operate continuous emissions monitoring technologies.

105. For example, multiple exempted facilities in Georgia and Florida installed continuous emissions monitoring systems between 2023 and 2025, including air pollution control devices. And at least all of the exempted facilities in Georgia also passed required annual emissions audits.

106. The Sterilizers Proclamation even purports to grant an exemption, issued for the stated purpose of "promot[ing] American security with respect to sterile medical equipment," to a facility that does not sterilize medical equipment, but instead sterilizes spices, food, and pet foods. 90 Fed. Reg. 34,747.

107. The Cosmed Linden facility in Linden, New Jersey received an exemption. 90 Fed. Reg. 34,750.

108. The Cosmed Linden facility does not sterilize medical equipment. It sterilizes agricultural commodities such as spices and nuts. *Linden, New Jersey (ETO Sterilization-Plant #2)*, EPA, https://perma.cc/EPY9-MEQS.

109. The Sterilizers Proclamation's indiscriminate exemptions apply without any consideration of whether the facilities have the technology and operational capability to implement the EtO Rule's standards.

The Court's Equitable Authority to Review Ultra Vires Executive Action

110. The Sterilizers Proclamation exceeds the President's statutory authority because, by granting sweeping exemptions to one quarter of regulated sources without making facility-, standard-, or technology-specific determinations, the Proclamation exceeds the bounds of the President's Section 7412(i)(4) authority.

111. The Proclamation unlawfully alters the compliance dates established by the EtO Rule, thereby exceeding the scope of authority conferred under Section 7412(i)(4). Section 7412(i)(4) authorizes only narrow exemptions under specific statutorily defined circumstances; it does not give the President authority to amend EPA standards or their compliance deadlines. Amendments to such standards may only be made by EPA and only after notice and comment rulemaking.

112. This Circuit has held that presidential actions are subject to judicial review to ensure conformity with statutory requirements where "the authorizing statute or another statute places discernible limits on the President's discretion." *Mountain States Legal Found. v. Bush*, 306 F.3d 1132, 1136 (D.C. Cir. 2002) (citing, *inter alia*, *Chamber of Com. v. Reich*, 74 F.3d 1322, 1331 (D.C. Cir. 1996)).

113. The statutory provision at issue here, Section 7412(i)(4), provides such discernible limits on the President's discretion by requiring a determination that, for specific facilities, "technology to implement" a standard "is not available" *and* that the exemption "is in the national security interests of the United States." 42 U.S.C. § 7412(i)(4).

114. The Court therefore has authority to review the Sterilizers Proclamation to determine whether the President's exercise of statutory authority complied with the statutory conditions on that authority.

ED_021114D_00001579-00028

115. Indisputable facts demonstrate that the President was applying an unreasonable construction of the statutory conditions under which he may exercise the Section 7412(i)(4) exemption authority.

116. Because a necessary factual predicate required by the Clean Air Act—that the technology to implement "is not available" is not present, the Sterilizers Proclamation unlawfully exercises authority not conveyed by Section 7412(i)(4).

117. The Court has the power to declare the Sterilizers Proclamation unlawful and ultra vires. *Am. Forest Res. Council v. United States*, 77 F.4th 787, 796 (D.C. Cir. 2023); *Mass. Lobstermen's Ass'n v. Ross*, 945 F.3d 535, 540 (D.C. Cir. 2019); *Chamber of Com. v. Reich*, 74 F.3d 1322, 1327–28 (D.C. Cir. 1996).

STANDING

118. Plaintiffs and their members live, work, and recreate in areas where they are exposed to increased air pollution and ethylene oxide emitted from the exempted facilities. Exposure to ethylene oxide emitted by exempted commercial sterilizer facilities causes adverse health effects, including elevated cancer risks.

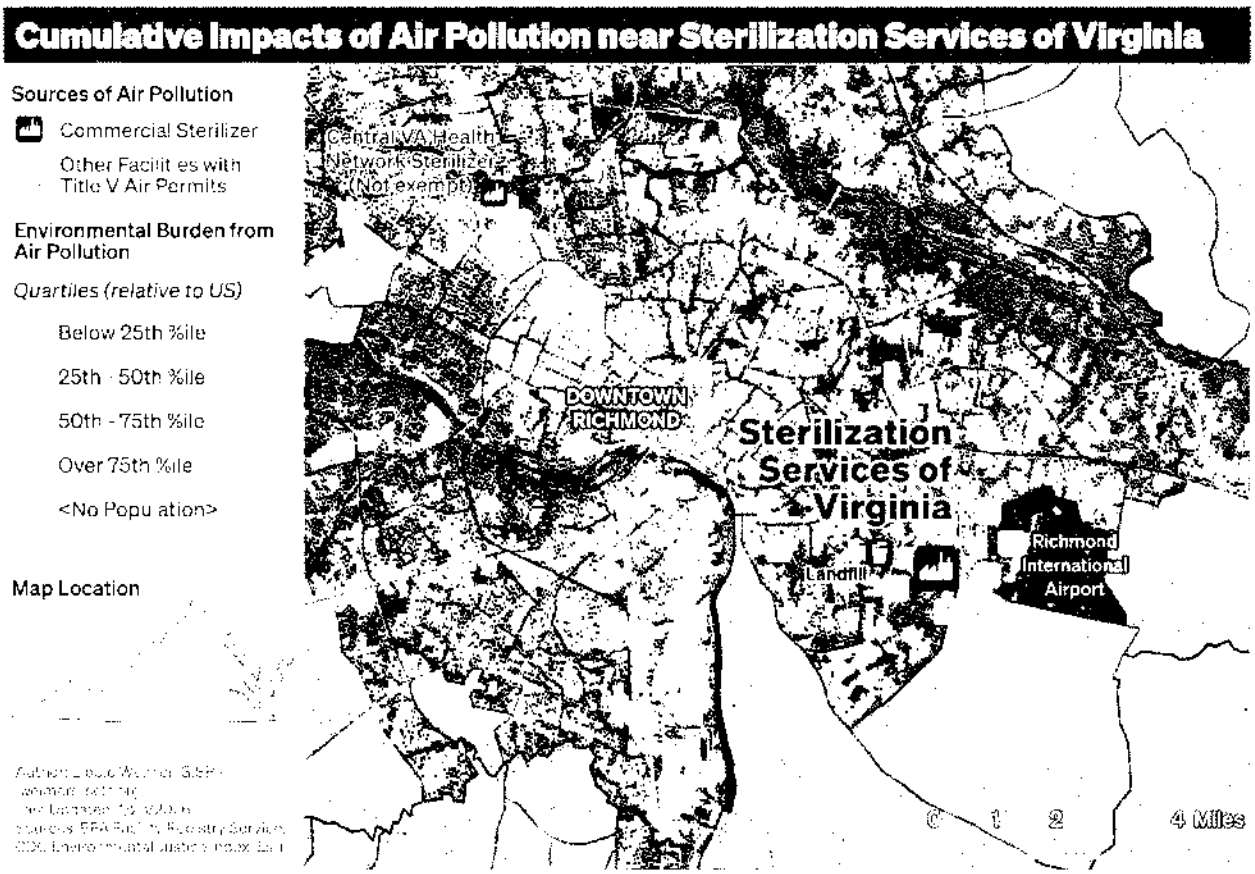
119. EPA has determined that ethylene oxide is far more carcinogenic than previously understood and that long-term exposure, even at very low concentrations, can significantly increase lifetime cancer risk particularly for people living, working, or recreating near commercial sterilizers. EPA's risk assessments show that ethylene oxide emissions can drive cancer risks at the census-tract level far above levels EPA considers acceptable, disproportionately burdening nearby residential communities, schools, and childcare centers.

120. In Richmond, Virginia, there are two sterilizers less than ten miles apart, including the exempted Sterilization Services of Virginia. The following map depicts the location of both

ED_021114D_00001579-00029

sterilization facilities in the Richmond metropolitan area, other facilities with Title V Air Permits, a landfill, and the Richmond International Airport. The map shows that these pollution sources are located in areas identified as experiencing environmental burdens above the 75th percentile.

Map 2: Sterilization Services of Virginia



121. Ethylene oxide emissions from Sterilization Services of Virginia contribute to elevated cancer risks, with a maximum excess cancer risk level of 1,000 additional cases per 1 million people. In 2022 alone, the facility reported releasing 13,821 pounds of ethylene oxide.

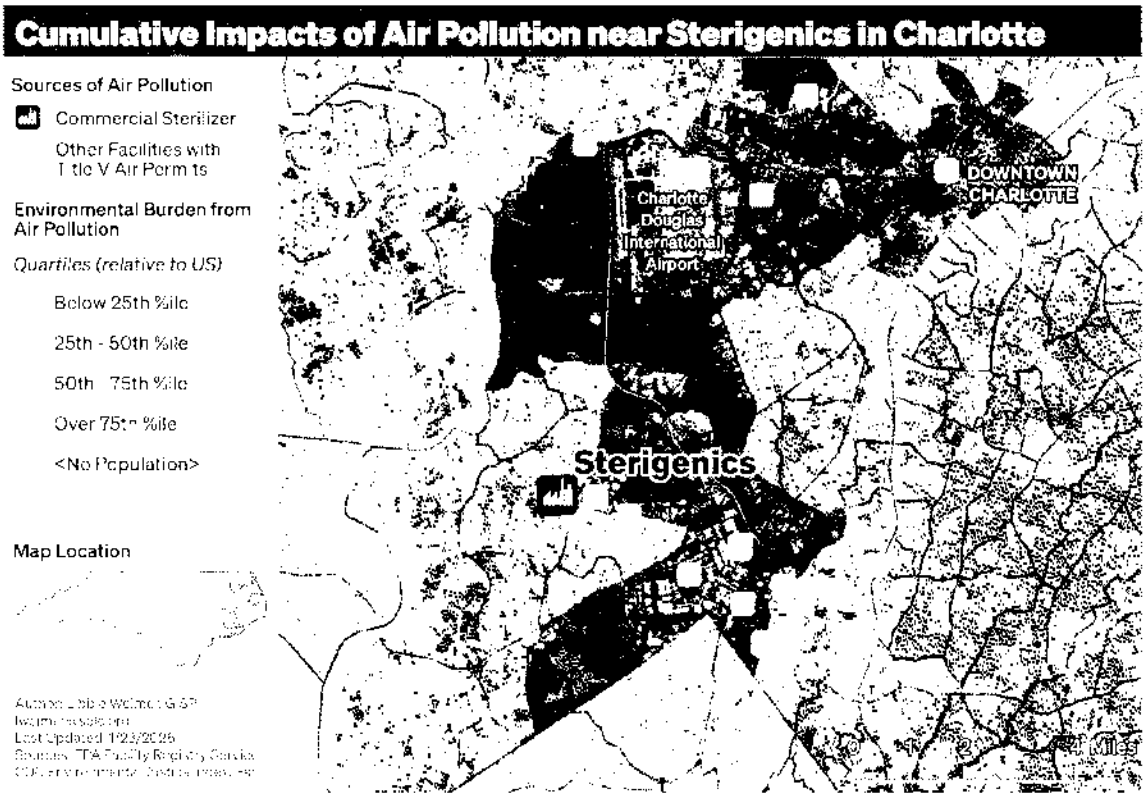
122. There are approximately 109,000 people and nearly 100 schools and childcare centers within five miles of the Sterilization Services of Virginia, including members, staff, and member congregations of Plaintiff Virginia Interfaith Power & Light. Within this five-mile radius, people of color make up three-quarters of the population, about 25 percent higher than

countywide average. *Id.* The proportion of people with low income is also 10 percent higher around the facility than the county average. *Id.*

123. In 2019, Sterilization Services of Virginia alone had a Risk-Screening Environmental Indicators ("RSEI") score of 3,367,796. RSEI is an EPA metric that estimates the relative potential human health risk from toxic chemical releases based on the quantity released, chemical toxicity, and population exposed. This score reflects a level of potential human health risk roughly 10,000 times the potential risk posed by all pollution sources combined in the entire state of Vermont. Tim Cywinski, Sierra Club, Air Toxins and Health Risk in Virginia 21 (2022), available at https://perma.cc/YA98-78QM (using data derived from EasyRSEI Dashboard, EPA, https://perma.cc/4K3L-UBVD).

124. Plaintiff CleanAIRE has several members and staff living near the exempted Sterigenics facility. The following map depicts the location of Sterigenics sterilizer in Charlotte, as well as nearby sources of air pollution, including facilities operating under Title V permits, and the Charlotte Douglas International Airport. The map shows that these pollution sources are in areas identified as experiencing environmental burdens in the 50th–75th percentile range and in areas exceeding the 75th percentile.

Map 3: Sterigenics in North Carolina



125. Plaintiffs and their members stood to benefit from the emissions reductions required by the EtO Rule, scheduled to go into effect on April 6, 2027. As a result of the Sterilizers Proclamation, these facilities are now able to emit ethylene oxide at higher levels than otherwise permitted for years beyond the EtO Rule's compliance schedule. Plaintiffs' members are harmed by the excess emissions that will result from these exemptions.

126. Plaintiffs' members also stood to benefit from the continuous emissions monitoring requirements that are scheduled to go into effect on April 6, 2027. As a result of the unlawful Sterilizers Proclamation, exempted facilities are no longer required to implement continuous emissions monitoring and submit quarterly reports of continuous emissions monitoring data to EPA, which EPA in turn makes available to the public. Plaintiffs and their members are harmed both by the increased exposure to ethylene oxide, as well as by the loss of

emissions information that those reports would provide. The withheld emissions data would have allowed Plaintiffs and their members to evaluate their exposure and health risks, as well as to support advocacy, education, and outreach efforts to reduce air pollution and protect public health, which are core to their missions.

127. For example, CleanAIRE and its members would have used such information to raise public awareness of air pollution and to further their advocacy, education, and outreach efforts to reduce air pollution and protect public health.

128. Plaintiffs and their members will be deprived of information they would have used to evaluate their pollution exposure and health risks in areas affected by emissions from the exempted facilities. That information would also allow those Plaintiffs to make educated decisions about how they engage in advocacy to reduce air pollution.

129. Where facilities are no longer required to continuously monitor emissions, malfunctions and spikes will go undetected and unreported. Plaintiffs and Plaintiffs' members living and working near exempted facilities therefore face heightened exposure risks that they would not otherwise bear.

130. Without continuous emissions monitoring, Plaintiffs and their members cannot determine whether exempted facilities are complying with legal limits, malfunctioning, or operating in ways that create elevated emission events. The absence of required emissions data deprives Plaintiffs of information necessary to comment meaningfully on key regulatory decisions such as permits, renewals, state implementation plan submissions, enforcement actions, and future EPA rulemakings related to ethylene oxide.

131. Plaintiffs will have to spend additional time and resources to obtain alternative information, including through community monitoring, independent sampling, Freedom of

ED_021114D_00001579-00033

Information Act and state records requests, and technical analysis, to fill the information gap created by the exemptions. These expenditures divert resources from other advocacy, public education, and community activities.

132. Despite multiple inquiries, Plaintiff Sustainable Newton has not received up-to-date control system performance test results or continuous emissions monitoring data from the exempted Becton-Dickinson facility in Covington. Becton-Dickinson installed continuous emissions monitoring systems and is no longer required by its permit or the EtO Rule to conduct performance testing on its control systems. Georgia's Environmental Protection Division does not require data reporting for continuous emissions monitoring systems. Because of the exemption, Sustainable Newton and its members have lost access to information they would otherwise have been able to access.

133. Plaintiffs and their members are therefore harmed by the Sterilizers Proclamation exemptions.

CLAIMS FOR RELIEF

COUNT ONE:
Unlawful Executive Action in Violation of the Clean Air Act
(Nonstatutory Review for Violations of Federal Law by Federal Officials; Against All Defendants)

134. Plaintiffs incorporate by reference Paragraphs 1–133.

135. The President has limited authority to exempt a stationary source from duly promulgated hazardous air pollutant regulations solely by virtue of the authority delegated by Congress in 42 U.S.C. § 7412(i)(4). The President lacks any independent authority under the U.S. Constitution to issue such an exemption.

136. Section 7412(i)(4) permits the President to exempt "any stationary source" from a hazardous air pollutant standard only if "the President determines that the technology to

implement such standard is not available" and if an exemption "is in the national security interests of the United States."

137. Whether technology to implement a standard is not available is a discrete, yes-or-no factual inquiry that limits the President's discretion to grant exemptions.

138. Section 7412(i)(4) establishes a judicially manageable standard with clear and precise limits of the sort federal courts routinely construe to determine whether officials have acted consistent with law.

139. There is no statutory basis for the President's indiscriminately broad determinations that technology to implement the EtO Rule is not available or that granting exemptions from that Rule is in the national security interests of the United States. The Sterilizers Proclamation patently misconstrued the statutory terms "technology" and "not available" in purporting to exercise the Section 7412(i)(4) exemptions authority.

140. The Sterilizers Proclamation's purported determination that the technology needed to implement the various standards of the EtO Rule is not available is a conclusory statement without specific findings as to any particular standard, technology, or facility.

141. Technology to implement the EtO Rule is in fact available. The relevant technologies to implement each aspect of the EtO Rule standards are commercially available and have been used in and demonstrated feasible for use in the commercial sterilization industry.

142. The purported determination that the technology to implement the standards is not available is directly contradicted by factual evidence, and the Sterilizers Proclamation's cursory and conclusory statements to the contrary cannot be credited.

ED_021114D_00001579-00035

143. The President's purported determination that the technology to implement the EtO Rule is not available rests on overly broad interpretation of the authority conferred by Section 7412(i)(4) of the Clean Air Act.

144. Because the President grossly exceeded the bounds of his statutory authority by purporting to exempt dozens of stationary sources from standards for which the technology to implement is available, the Sterilizers Proclamation is plainly in excess of the President's delegated powers and contrary to the statute's specific limitations on those powers.

145. The President's action is contrary to the Clean Air Act and is ultra vires.

146. The Court possesses inherent equitable power to "grant injunctive relief . . . with respect to violations of federal law by federal officials." *Armstrong v. Exceptional Child Ctr., Inc.*, 575 U.S. 320, 326 27 (2015). Congress has nowhere foreclosed review of the interpretation and application of 42 U.S.C. § 7412(i)(4). There is no alternative statutory procedure for review of Plaintiffs' claims.

147. Because the Sterilizers Proclamation violates the Clean Air Act and is ultra vires, EPA actions implementing or giving effect to the proclamation likewise violate the Clean Air Act and are ultra vires.

COUNT TWO:
Ultra Vires, De Facto Rulemaking Without Statutory Authority
(Nonstatutory Review of Action in Excess of Statutory Authority by Federal Officer; Against All Defendants)

148. Plaintiffs incorporate by reference the allegations of Paragraphs 1 133.

149. Congress requires EPA to provide for existing sources' compliance with hazardous air pollutant standards "as expeditiously as practicable," and set a firm limit that compliance deadlines occur "in no event later than 3 years after the effective date of such standard." 42 U.S.C. § 7412(i)(3)(A).

150. Congress gives EPA and state permitting authorities discrete, limited authority to grant an existing source "up to 1 additional year to comply" with standards promulgated under subsection (d) "if such additional period is necessary for the installation of controls." 42 U.S.C. § 7412(i)(3)(B).

151. Congress further conferred discrete, limited authority on EPA to stay the effectiveness of rules, including hazardous air pollutant standards, for no more than three months. 42 U.S.C. § 7607(d)(7)(B).

152. Congress directed EPA to provide for public notice and comment on EPA actions to revise hazardous air pollutant standards, their compliance dates, or to grant source-specific deadline extensions. 42 U.S.C. § 7607(d)(5), (h).

153. The exemption authority in Section 7412(i)(4) must be construed congruously with the authorities and limitations Congress enacted in Sections 7412 and 7607.

154. EPA and the President are bound by the Clean Air Act's requirements when implementing Section 7412(i)(4) exemptions, including following rulemaking procedures, and being bound by lawfully adopted regulations.

155. Reading Section 7412(i)(4) to authorize sweeping exemptions for a large swath of the regulated source category, from every single standard and other requirement of a rule, without facility- or standard-specific justification tied to the statutory factors, is contrary to the content, purpose, and structure of the Clean Air Act.

156. The Sterilizers Proclamation's extremely broad sweep reflects an interpretation of the Section 7412(i)(4) authority that effectively nullifies statutory limits.

157. The content, context, and scope of the Sterilizers Proclamation demonstrates that the Proclamation is not a true "exemption" within the meaning of Section 7412(i)(4).

158. The Sterilizers Proclamation is functionally a rulemaking or stay pending reconsideration, issued without adherence to the statutory procedures governing such actions as Congressionally required under Sections 7412 and 7607 of the Clean Air Act.

159. EPA explicitly invited requests for presidential exemptions in the context of its announced reconsideration of the EtO Rule.

160. EPA stated that the exemptions are offered "while EPA reconsiders" the underlying rule. *Id.*

161. The President granted sweeping exemptions from all compliance obligations of the EtO Rule without particularized consideration of the specific standards, technologies, or practices needed to comply, all of which is necessary to determine whether technology is not available to implement the standards.

162. In doing so, the Sterilizers Proclamation is effectively a rulemaking or stay authority that the Clean Air Act grants only to EPA and only after following certain procedures in certain circumstances not present here.

163. The Sterilizers Proclamation exceeds the narrow bounds of Section 7412(i)(4) to achieve improper goals prohibited by other provisions of the Clean Air Act. In granting compliance relief that far exceeds the Section 7412(i)(4) authority, the President bypassed and contravened the statutory requirements on rulemaking and reconsideration to accomplish sweeping compliance exemptions unauthorized by law and in excess of the President's statutory authority.

164. The Sterilizers Proclamation is beyond the authority conveyed by the Clean Air Act and is ultra vires.

ED_021114D_00001579-00038

165. Because the Sterilizers Proclamation is beyond the Clean Air Act authority and ultra vires, EPA actions implementing or giving effect to the proclamation are similarly ultra vires.

RELIEF REQUESTED

WHEREFORE Plaintiffs request that the Court:

A. Declare that the Sterilizers Proclamation is unlawful and invalid and that the Annex I sources remain subject to the EtO Rule as promulgated;

B. Issue injunctive relief:

   i. prohibiting EPA and Administrator Lee Zeldin from implementing, relying on, or giving effect to the Sterilizers Proclamation, including through implementation of the Clean Air Act's Title V operating permit program; and

   ii. directing EPA to promptly notify, in writing, the operators of facilities listed in Annex I and relevant state, local, and/or Tribal permitting authorities that the Sterilizers Proclamation is unlawful and invalid, and that any facilities that the Sterilizers Proclamation purported to exempt may not lawfully delay or avoid compliance with the deadlines promulgated by the EtO Rule by relying on the Sterilizers Proclamation.

C. Award Plaintiffs their fees and costs of litigation as authorized by law;

D. Grant such other relief as the Court deems just and proper.

Dated: January 28, 2026

Respectfully submitted,

/s/ Sarah A. Buckley
Sarah A. Buckley (D.C. Bar No. 90035401)
Natural Resources Defense Council, Inc.
1152 15th St. NW, Suite 300
Washington, D.C. 20005
sbuckley@nrdc.org
Tel: (202) 836-9555

/s/ Sheena Patel
Sheena Patel (D.C. Bar No. 90029725)
Pro Hac Vice Application Forthcoming
Natural Resources Defense Council, Inc.
1152 15th St. NW, Suite 300
Washington, D.C. 20005
spatel@nrdc.org
Tel: (202) 836-9470

Counsel for Plaintiffs Natural Resources Defense Council

/s/ Keri Powell
Keri N. Powell (D.C. Bar No. 477045)
Marissa Land (GA Bar No. 168442)
Pro Hac Vice Application Forthcoming
SOUTHERN ENVIRONMENTAL LAW CENTER
Ten 10th Street Northwest, Suite 1050
Atlanta, GA 30309
kpowell@selc.org
mland@selc.org
Telephone: (678) 433-6851
Facsimile: (404) 521-9909

/s/ Irena Como
Irena Como (N.C. Bar No. 51812)
Pro Hac Vice Application Forthcoming
SOUTHERN ENVIRONMENTAL LAW CENTER
136 East Rosemary Street, Suite 500
Chapel Hill, NC 27514
icomo@selc.org
Telephone: (919) 867-4404
Facsimile: (919) 929-9421

Counsel for Plaintiffs CleanAIRE NC, Sustainable Newton, and Virginia Interfaith Power & Light

ED_021114D_00001579-00041

Message

From: Hirsch, Brigit [Hirsch.Brigit@epa.gov]
Sent: 1/2/2026 7:18:28 PM
To: Donahue, Sean [donahue.sean@epa.gov]; Tisa, Nathaniel [Tisa.Nathaniel@epa.gov]
CC: Holran, Carolyn [Holran.Carolyn@epa.gov]; Mandy, Cora [Mandy.Cora@epa.gov]; Bastasch, Mike [Bastasch.Mike@epa.gov]; Murphy, Jacob [Murphy.Jacob@epa.gov]
Subject: Fw: Chicago Tribune reporter reaching out for comment from EPA
Attachments: 2025 12 22 Enviro groups sue Trump EPA about coke oven regs.pdf

CUI//PRIVILEGE

Hi Sean and Nate,

From your perspective, is it ok to respond to this media request with the below draft statement?

Draft deliberative statement

Ex. 5 Deliberative Process (DP)

I hope you had a nice Christmas and New Year!
Brigit

Controlled by U.S. Environmental Protection Agency

From: Hawthorne, Michael <mhawthorne@chicagotribune.com>
Sent: Friday, January 2, 2026 2:06:28 PM
To: [redacted]@epa.gov>; EPA Press Office <Press@epa.gov>
Subject: Chicago Tribune reporter reaching out for comment from EPA

> **Caution:** This email originated from outside EPA, please exercise additional caution when deciding whether to open attachments or click on provided links.

Folks,

I'm looking for a response to this recently filed lawsuit challenging a two-year compliance delay for facilities regulated under the 2024 Coke Ovens Rule. Please get back to me by COB today. Thanks.

Michael

Michael Hawthorne
Environment and Public Health Reporter
Chicago Tribune
(312) 731-3639
@scribeguy.bsky.social
SIGNAL: scribeguy.35

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

GREATER-BIRMINGHAM ALLIANCE TO STOP POLLUTION
2320 Highland Avenue South, Suite 270
Birmingham, AL 35205;

CLEAN AIR COUNCIL
200 First Avenue, Suite 101
Pittsburgh, PA 15222;

ENVIRONMENTAL LAW & POLICY CENTER
35 East Wacker Drive, Suite 1600
Chicago, IL 60601;

CITIZENS FOR PENNSYLVANIA'S FUTURE
610 North Third Street
Harrisburg, PA 17101;

SIERRA CLUB
2101 Webster St., Suite 1300
Oakland, California 94612;

JUST TRANSITION NORTHWEST INDIANA
PO Box 8847
Michigan City, Indiana 46361;

HOOSIER ENVIRONMENTAL COUNCIL
3951 N. Meridian, Suite 100
Indianapolis, IN 46208; and

NATURAL RESOURCES DEFENSE COUNCIL, INC.
40 West 20th Street, 11th Floor
New York, New York 10011;

Plaintiffs,

Case No.

v.

DONALD TRUMP, President of the United States, in his official capacity;

U.S. ENVIRONMENTAL PROTECTION AGENCY; and

LEE ZELDIN, Administrator of the U.S. Environmental Protection Agency, in his official capacity;

Defendants.

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

1. Plaintiffs Greater-Birmingham Alliance to Stop Pollution ("GASP"), Clean Air Council, Environmental Law & Policy Center, Citizens for Pennsylvania's Future ("PennFuture"), Sierra Club, Just Transition Northwest Indiana ("JTNWI"), Hoosier Environmental Council ("HEC"), and Natural Resources Defense Council ("NRDC") (collectively "Plaintiffs") bring this action against Donald Trump, in his official capacity as President of the United States, the U.S. Environmental Protection Agency ("EPA"), and Lee Zeldin, in his official capacity as Administrator of the EPA, (collectively "Defendants") for exceeding the authority granted by Section 112(i)(4) of the Clean Air Act, 42 U.S.C. § 7412(i)(4), by exempting coke oven facilities from complying with applicable hazardous air pollutant standards adopted in EPA's 2024 revisions to rules for Coke Oven Batteries ("COB") (40 C.F.R. Part 63, Subpart L) and Pushing Quenching Battery Stacks ("PQBS") (40 C.F.R. Part 63, Subpart CCCCC) (together, the "Coke Ovens Rule").

2. Coke oven facilities manufacture metallurgical coke—which is used as a fuel in certain steelmaking processes by superheating coal to remove impurities. The coking process

results in the emission of numerous hazardous air pollutants, from benzene and other volatile organic compounds to mercury and other toxic metals.

3. EPA updated the hazardous air pollutant emission standards for coke ovens in 2024. All sources were required to comply with most of the Coke Ovens Rule's requirements by July 7, 2025.

4. Before that compliance date came, EPA issued an Interim Final Rule revising the compliance deadlines to July 5, 2027. EPA then took public comments on the Interim Final Rule and held a public hearing on September 4, 2025. EPA was sued, and on October 2, 2025, issued a notice withdrawing the Interim Final Rule. In the withdrawal action, EPA noted that it had reviewed information submitted in public comments on the Interim Final Rule and concluded "the EPA does not believe that the currently available information supports a conclusion that regulated parties would face significant immediate compliance challenges" meeting the 2024 standards. 89 Fed. Reg. 56011.

5. Six weeks later, President Trump issued a proclamation purporting to exempt all eleven coke plants subject to the 2024 Coke Ovens Rule from those standards. *Regulatory Relief for Certain Stationary Sources To Promote American Coke Oven Processing Security*, 90 Fed. Reg. 54517 (Nov.26, 2025) (Coke Ovens Proclamation) (Ex. 1). The Coke Ovens Proclamation stated that the President "determin[ed]" that the "technology to implement the Coke Ovens Rule is not available "because "[s]uch technology does not exist in a commercially viable form sufficient to allow implementation of and compliance with the Coke Ovens Rule by the compliance dates in the Coke Ovens Rule."

6. The President granted these sweeping exemptions by seizing on a narrow and, until this year, never-before-used provision of the Clean Air Act: Section 112(i)(4). That

provision allows the President to exempt a source from a hazardous air pollutant standard for up to two years only if "the President determines that the technology to implement such standard is not available and that it is in the national security interests of the United States to do so." 42 U.S.C. § 7412(i)(4). Neither of those predicates are met here.

7. No President had used section 112(i)(4) in the fifty-five years since Congress enacted it. To date, President Trump has done so seven times for more than 180 facilities. Besides the Coke Ovens Proclamation, President Trump issued proclamations exempting nearly one-third of U.S. coal-fired power plants from mercury and other air toxics standards, 50 chemical manufacturers from ethylene oxide and other hazardous air pollutant standards, one of two copper smelters from toxic metals standards, and the entire taconite iron-ore processing industry.

8. President Trump's sweeping Coke Ovens Proclamation grossly exceeds the bounds of the Section 112(i)(4) exemption authority. The Coke Ovens Proclamation exempts all eleven coke plants from these requirements without any standard- or facility-specific analysis to show that the exempted facilities meet section 112(i)(4)'s standards.

9. The scope, content, and context of the Coke Ovens Proclamation show it for what it really is: a pretext to relieve these polluters from complying with the Coke Ovens Rule and its critical public-health protections while EPA reconsiders it, even though Congress explicitly prohibited that sort of delay pending administrative reconsideration. 42 U.S.C. § 7607(d).

10. The Coke Ovens Proclamation violates the Clean Air Act and exceeds the President's lawful authority. Plaintiffs ask the Court to enter appropriate relief declaring the Coke Ovens Proclamation unlawful and invalid, and enjoining EPA and its Administrator from implementing or giving effect to it.

ED_021114D_00001581-00004

JURISDICTION AND VENUE

11. This Court has subject matter jurisdiction under 28 U.S.C. § 1331 because this is a civil action arising under laws of the United States, including the Clean Air Act.

12. Venue is proper in this Court under 28 U.S.C. § 1391(e) because Defendants reside in this judicial district, and because a substantial part of the events giving rise to the claim occurred in this judicial district.

13. The Court has authority to enter a declaratory judgment and to provide injunctive relief pursuant to Rules 57 and 65 of the Federal Rules of Civil Procedure; the Declaratory Judgment Act, 28 U.S.C. §§ 2201-2202; the All Writs Act, 28 U.S.C. § 1651; and the Court's inherent equitable powers.

PARTIES

The Plaintiffs

14. Plaintiff Greater Birmingham Alliance to Stop Pollution ("GASP") is a nonprofit corporation organized and existing under the laws of Alabama. GASP advocates for the reduction of air pollution, advancement of environmental justice, and promotion of climate solutions.

15. Plaintiff Clean Air Council ("CAC") is a nonprofit corporation organized and existing under the laws of the Commonwealth of Pennsylvania. As an environmental health advocacy organization, CAC is focused on protecting people's health from the harmful impacts of pollution.

16. Plaintiff Environmental Law & Policy Center ("ELPC") is a Midwest-based nonprofit public interest organization dedicated to action and advocacy for improving environmental quality including air quality and protecting natural resources. ELPC's

headquarters is in Chicago, Illinois, with additional offices in Iowa, Ohio, Michigan, and Washington, D.C.

17. Plaintiff Citizens for Pennsylvania's Future ("PennFuture") is a membership nonprofit corporation organized and existing under the laws of the Commonwealth of Pennsylvania. PennFuture is dedicated to the transition to a clean energy economy and to the protection of air, water, and land. PennFuture's activities include advocating for legislative action on a state and federal level; providing education for the public; and engaging in legal actions to ensure environmental protections. PennFuture's mission is to lead the transition to a clean energy economy in Pennsylvania and beyond. PennFuture works to protect our air, land and water, and to empower citizens to build sustainable communities for future generations. PennFuture has members who live, work, and spend time near the Clairton Coke Works facility.

18. Plaintiff Just Transition Northwest Indiana ("JTNWI") is a nonprofit corporation organized and existing under the laws of the State of Indiana. JTNWI educates and organizes Northwest Indiana communities and workers to support a just transition to a regenerative economy that protects the environment, climate, and future generations. JTNWI has members who live, work, and spend time near the Cleveland Cliffs Burns Harbor and Indiana Harbor Coke facilities.

19. Plaintiff Hoosier Environmental Council ("HEC") is a nonprofit corporation organized and existing under the laws of the State of Indiana. HEC is Indiana's largest environmental public policy organization, working to improve people's health, the economy, and the environment for forty years, through education, technical assistance, and advocacy. HEC has members who live, work, and recreate near the Burns Harbor and East Chicago coke ovens that received presidential exemptions. Many of the members near these facilities are aware of them,

ED_021114D_00001581-00006

are concerned about the pollution they are exposed to, suffer from health issues, and alter their routines to minimize exposure to pollution from these sources.

20. Plaintiff Sierra Club is a nonprofit corporation with its headquarters located in Oakland, California. The Sierra Club is a national membership organization dedicated to the protection of public health and the environment and regularly advocates for policies that protect clean air. It has chapters in Alabama, Illinois, Indiana, Michigan, Ohio, Pennsylvania, and Virginia and more than 600,000 members residing in all 50 states, the District of Columbia, and Puerto Rico. Sierra Club has members who live near each of the coke oven facilities that received an exemption.

21. Plaintiff Natural Resources Defense Council ("NRDC") is a national nonprofit environmental membership organization with hundreds of thousands of members nationwide. NRDC's purpose is to safeguard the Earth—its people, its plants and animals, and the natural systems on which all life depends. Part of NRDC's core mission is to improve air quality and safeguard public health by combating hazardous air pollutant emissions.

The Defendants

22. Defendant Donald Trump is the President of the United States. He resides and conducts his duties in Washington, D.C., and is sued in his official capacity.

23. Defendant EPA is a federal agency of the United States is headquartered in Washington, D.C.

24. Defendant Lee Zeldin is the Administrator of the EPA. He resides and conducts his duties in Washington, D.C. and is sued in his official capacity.

ED_021114D_00001581-00007

LEGAL BACKGROUND

The Clean Air Act's Program to Address Hazardous Air Pollution and Procedural Requirements

25. The Coke Ovens Rule was promulgated under Section 112 of the Clean Air Act, which establishes the framework for EPA's regulation of "hazardous air pollutants" from stationary sources, including industrial facilities.

26. "Hazardous air pollutants" for Section 112 purposes are a group of 188 air pollutants determined by Congress and EPA to be particularly harmful to human health. The Coke Ovens Rule regulates hazardous air pollutants in coke oven emissions, such as benzene. EPA's most recent estimate is that coke ovens emit nearly 2,400 tons of hazardous air pollutants annually. Coke Ovens Risk and Technology Review: Data Summary, EPA-HQ-OAR-2002-0085-0809, at B-2 Tbl. B-1 (May 1, 2023).

27. Section 112 requires EPA to regulate hazardous air pollutants by issuing emissions standards for categories and subcategories of stationary sources of such pollutants. Emissions standards must require the maximum degree of reduction that EPA deems "achievable," taking into consideration cost and any non-air quality health and environmental impacts and energy requirements. 42 U.S.C. § 7412(d)(2), (3)(A)-(B).

28. The Clean Air Act also provides procedures for reconsidering a promulgated rule. The EPA Administrator can "convene a proceeding for reconsideration of the rule" but must "provide the same procedural rights as would have been afforded" in the original proceeding. 42 U.S.C. § 7607(d)(7)(B). The Clean Air Act states, however, that reconsideration "shall not postpone the effectiveness of the rule," except that the Administrator or a reviewing court may stay the effectiveness of the rule "for a period not to exceed three months." *Id.* Section

7607(d)(7)(B) is the sole authority EPA has to stay a rule after its effective date has passed. *Clean Air Council v. Pruitt*, 862 F.3d 1, 9 (D.C. Cir. 2017).

Presidential Exemption Provision

29. Clean Air Act Section 112(i)(4) authorizes the President, in narrowly prescribed circumstances, to "exempt any stationary source from compliance" with hazardous air pollutant standards promulgated under Section 112, "for a period of not more than 2 years if the President determines [1] that the technology to implement such standard is not available and [2] that it is in the national security interests of the United States to do so." 42 U.S.C. § 7412(i)(4).

30. Section 112 allows the President to extend the exemption "for 1 or more additional periods, each period not to exceed 2 years." 42 U.S.C. § 7412(i)(4).

FACTUAL AND PROCEDURAL BACKGROUND

Coke Ovens National Emissions Standards for Hazardous Air Pollutants

31. Coke oven facilities manufacture metallurgical coke, which is used as a fuel in certain steelmaking processes. Metallurgical coke is made by the destructive distillation of coal at two types of coke facilities: (1) byproduct recovery ("ByP") plants, where chemical by-products are recovered from coke oven emissions at a co-located coke byproduct chemical recovery plant; and (2) heat nonrecovery ("HNR") plants. 89 Fed. Reg. 55684, 55688 (July 5, 2024).

32. The primary hazardous air pollutants emitted from coke facilities are "coke oven emissions," which contain volatile and semi volatile organic compounds such as polycyclic aromatic hydrocarbons, benzene, toluene and xylene.

33. Coke oven emissions are likely to cause cancer through a mutagenic mode of action. 70 Fed. Reg. 19992, 19993 (Apr. 15, 2005).

34. Benzene comprises a significant portion of coke oven emissions from coke oven doors, "which are fugitive emissions[.]" 89 Fed. Reg. at 55698.

35. The hazardous air pollutants emitted by coke ovens are associated with a variety of adverse health effects, including chronic disorders (e.g. cancers, blood disorders, central nervous system and respiratory effects) and acute disorders (e.g. irritation of skin, eyes and mucous membranes and depression of the central nervous system). EPA, "Revised Coke Ovens Residual Risk Rule and Preamble" (May 28, 2004), *available at* https://www.regulations.gov/document/EPA-HQ-OAR-2003-0051-0169.

36. In 1993, EPA promulgated the first hazardous air pollutant standards for COBs at 40 C.F.R. part 63, subpart L and in 2003 promulgated the first standards for PQBS at 40 C.F.R. part 63, Subpart CCCCC. 58 Fed. Reg. 57898 (Oct. 27, 1993); 68 Fed. Reg. 18008 (Apr. 14, 2003). Standards for COBs and PQBS were both revised in 2005. 70 Fed. Reg. 19992 (Apr. 15, 2005); 70 Fed. Reg. 44285 (Aug. 2, 2005).

37. Presently, the U.S. has eleven operating coke plants, in Alabama, Illinois, Indiana, Michigan, Ohio, Pennsylvania and Virginia. Six of these are ByP facilities (ABC Coke, U.S. Steel Clairton Coke Works, Cleveland-Cliffs Burns Harbor, Cleveland-Cliffs Monessen, Cleveland-Cliffs Cleveland Works, DTE Vantage-EES Coke Battery) and five are HNR ovens operated by SunCoke.

The 2024 Coke Ovens Rule

38. In 2024, EPA updated the hazardous air pollutant standards for Coke Oven Batteries (COB) (40 CFR Part 63, Subpart L) and Pushing Quenching Battery Stacks (PQBS) (40 CFR Part 63, Subpart CCCCC) (together, the "Coke Ovens Rule"). Various parts of the COB and PQBS standards apply to both ByP and HNR facilities.

ED_021114D_00001581-00010

39. The Coke Ovens Rule created new PQBS Maximum Achievable Control Technology ("MACT") standards for previous unregulated hazardous air pollutants; a fenceline monitoring standard for benzene emitted from ByP facilities; reduced COB leak limits; modified the equation used to estimate emissions from coke oven doors for ByP facilities; removed startup, shutdown and malfunction ("SSM") exemptions; required PQBS weekly opacity monitoring at HNR bypass/waste heat stacks; and introduced COB visual oven door emissions monitoring, daily pressure monitoring, and oven door leak limits at HNR coke oven batteries. 89 Fed. Reg. at 55686.

40. The Coke Ovens Rule was the result of a court order secured by frontline communities who sued EPA for a years-long pattern of failing to update Clean Air Act Standards. *Citizens for Pennsylvania's Future v. Wheeler*, 469 F. Supp. 3d 920 (N.D.*/-/z Cal. 2020). The Coke Ovens Rule includes sensible requirements that would better protect the health of people living near and working in coke plants.

41. The Coke Ovens Rule included new MACT standards for previously unregulated hazardous air pollutants like acid gases; dioxins and furans; formaldehyde; hydrogen cyanide; mercury; polycyclic aromatic hydrocarbons; and volatile organic hazardous air pollutants.

42. EPA explained that the new MACT standards ensured that "emission of [hazardous air pollutants] [does] not increase and that air quality does not degrade over time." 89 Fed. Reg. at 55723.

43. The Coke Ovens Rule also established requirements for PQBS and COB standards for ByP facilities. Those requirements included: fenceline monitoring for benzene (40 C.F.R. §§ 63.314 and 63.311(j) (l)); revised leak standards for doors, lids, and offtakes (40 C.F.R. §§ 63.302(a)(4), 63.302(d), 63.304(b)(8), and 63.311(h) through (i)); and battery stack

standards for previously unregulated HAP (40 CFR §§ 63.7283(d), 63.7290, 63.7296(e) through (f), 63.7300(e)(4), 63.7320(a), 63.7321, 63.7333, and 63.7341(f)).

44. The Coke Ovens Rule also established requirements for PQBS and COB standards for HNR facilities. Those requirements included: opacity monitoring and action opacity limits for bypass/waste heat stacks (40 C.F.R. § 63.7299); revised pressure monitoring requirements for oven doors and common tunnels (40 C.F.R. § 63.303(a)(1)(i)–(ii)); and MACT floor standards for previously unrelated hazardous air pollutants (40 C.F.R. §§ 63.7290(b) (d), 63.7297(a)–(d), and 63.7298(a)–(c)).

45. In finalizing the Coke Ovens Rule, EPA concluded that the changes were modest and achievable, mostly through work practices, and "facilities will be able to comply with these limits without the need for any new [or additional] controls." *Id.* at 55696; 55707.

46. EPA finalized the Coke Ovens Rule in July 2024. 89 Fed. Reg. 55684.

47. The Coke Ovens Rule established compliance deadlines for each of the new standards, which ranged from July 7, 2025 (lowered leak limits and fenceline monitoring), to January 5, 2026 (new MACT floor standards). 89 Fed. Reg. at 55690.

EPA announces reconsideration, tries to suspend compliance deadlines

48. On March 12, 2025, in a press event billed as "the greatest day of deregulation our nation has seen," EPA announced that it would "reconsider" the Coke Ovens Rule and 31 other regulations protecting human health and the environment. EPA, News Release, *EPA Launches Biggest Deregulatory Action in U.S. History* (Mar. 12, 2025), *available at* https://perma.cc/LXL5-FAMQ (last visited Dec. 18, 2025).

49. Along with its press release, EPA published a "fact sheet" about its planned reconsideration of the Coke Ovens Rule and seven other recent hazardous air pollutant rules.

That fact sheet included an invitation that "[a]ny source interested in a Presidential exemption" from any of the eight rules, "should provide their recommendations to EPA by March 31, 2025." EPA, *Oil and Gas Regulations: Powering the Great American Comeback Fact Sheet* 3, *available at* https://perma.cc/ESUM-RN3K (last visited Oct. 21, 2025). The Fact Sheet further explained, "Sources need only provide why technology is unavailable and why it is in the national security interests of the United States to provide the exemption." *Id.*

50. Following up on its invitation to request exemptions, on or about March 24, 2025, EPA posted a new webpage announcing it had established "an electronic mailbox"—airaction@epa.gov "to allow the regulated community to request a Presidential Exemption under section 112(i)(4)." EPA, *Clean Air Section 112 Presidential Exemption Information* (last updated Apr. 14, 2025), *available at* https://perma.cc/WKL5-44FC (last visited December 17, 2025). EPA asked that requests be submitted "by March 31, 2025," a week after the webpage was posted. *Id.*[1]

51. Facility owners and operators across multiple source categories sent exemption requests to that email inbox. EPA did not solicit any information from the public or provide any opportunity for public comment.

52. On March 31, 2025, all five companies operating coke plants Cleveland-Cliffs, U.S. Steel, SunCoke, Drummond Company and DTE Vantage—requested Section 112(i)(4) exemptions from the President. On July 3, 2025, EPA signed an Interim Final Rule extending the compliance deadlines of the Coke Ovens Rule by 2 years.

53. EPA was sued over the Interim Final Rule, in a case captioned *GASP v. EPA*.

[1] EPA has since removed much of the information in an April 14, 2025 update to the webpage. *See* EPA, *Clean Air Act Section 112 Presidential Exemption Information*, https://perma.cc/WKL5-44FC (last visited Dec. 17, 2025).

54. On October 2, 2025, EPA signed an action withdrawing the Interim Final Rule, reinstating the Coke Ovens Rule's original compliance deadlines. EPA explained that the Agency "does not believe that the currently available information supports a conclusion that regulated parties would face significant immediate compliance challenges meeting" the Coke Ovens Rule standards. 90 Fed. Reg. at 56011.

55. The notice withdrawing the Interim Final Rule was published in the Federal Register on December 5, 2025.

The Coke Oven Exemption Proclamation.

56. On November 21, 2025, President Trump issued a proclamation exempting all eleven coke oven facilities from "all compliance deadlines established under the Coke Ovens Rule," "with each such deadline extended by 2 years from the date originally required for such deadline." The Coke Ovens Proclamation included "Annex I," a list of the facilities to which the exemptions apply.

57. The Coke Ovens Proclamation and Annex I were published in the Federal Register on November 26, 2025. 90 Fed. Reg. 54517.

58. The Coke Ovens Proclamation cited "authority vested in [the President] by the Constitution and the laws of the United States, including Section 112(i)(4) of the Clean Air Act, 42 U.S.C. § 7412(i)(4)." 90 Fed. Reg. 54517.

59. The Coke Ovens Proclamation included what it referred to as two "determinations."

60. First, the Coke Ovens Proclamation purported to "determine" that "[t]he technology to implement the Coke Ovens Rule is not available," stating "[s]uch technology does not exist in a commercially viable form sufficient to allow implementation of and compliance

with the Coke Ovens Rule by the compliance dates in the Coke Ovens Rule." 90 Fed. Reg. at 54518.

61. Second, the Coke Ovens Proclamation purported to determine that "[i]t is in the national security interests of the United States to issue this Exemption for the reasons stated in paragraphs 1 and 3 of this proclamation." 90 Fed. Reg. at 54517. The President generally invoked the vital role of steel in the United States economic and daily life, including infrastructure, manufacturing, and various other industries. *Id.* The Coke Ovens Proclamation asserts that 70 percent of steel is made using metallurgical coke. *Id.* The Coke Ovens Proclamation states that the Coke Ovens Rule places severe burdens on the coke production industry and, through its indirect effects, on the viability of our Nation's critical infrastructure, defense, and national security. 90 Fed. Reg. at 54517.

62. The Coke Ovens Proclamation included no facility-, standard-, or technology-specific determinations. Instead, the Coke Ovens Proclamation broadly and conclusory purported to "determine" that the technology to implement the Coke Ovens Rule (in its entirety) was not available and that exemptions are in the national security interests of the United States.

63. The Coke Ovens Proclamation's unsupported determinations are unambiguously contradicted by factual evidence, including EPA's own findings and record for the Coke Ovens Rule. The determinations were further contradicted in EPA's December 5, 2025 withdrawal of the Interim Final Rule where the agency stated *"[a]fter reviewing the information received, EPA does not believe the information before it establishes that the applicable air toxics standards would have been exceeded if the compliance dates had not been extended, regardless of whether facilities installed additional controls*." 90 Fed. Reg. at 56011 (emphasis added).

Presidential Exemptions for ByP facilities

64. The President exempted ByP facilities from three requirements in the Coke Ovens Rule: 1) fenceline monitoring, 2) limits on leaks from coke oven battery doors, lids and offtakes and related reporting requirements, and 3) new MACT and work practice standards for coke oven pushing and battery stacks and related performance testing and reporting requirements. Technology necessary to implement each of those standards is available, as discussed below.

Fenceline Monitoring

65. Technology to implement the COB fenceline monitoring standard is available.

66. The Coke Ovens Rule fenceline monitoring standard requires that operators purchase and install sorbent tubes for collecting benzene concentrations at the perimeter of the coke oven facilities. Operators are to install the sorbent tubes following EPA Method 325A. Operators must then send the tubes to a lab that will analyze according to Method 325B. 89 Fed. Reg. 55694 (codified at 40 C.F.R. § 63.314)

67. There are six ByP facilities regulated by the Coke Ovens Rule. Four of those, ABC Coke, U.S. Steel Clairton Coke Works, Cleveland Cliffs' Burns Harbor plant and, DTE Energy-EES Coke Battery conducted six months of fenceline monitoring in 2022 as part of EPA's Information Collection Request ("ICR") Section 114 of the Clean Air Act.

68. Sorbent tubes needed to implement the fenceline monitoring standard according to Method 325A are commercially available.

69. If, after a year of collecting fenceline data, a facility's fenceline benzene concentrations exceed an action level specified in the Coke Ovens Rule and the operator is unable to determine the root cause within thirty days, that facility would be required to conduct

monitoring with real time benzene sensors. 89 Fed. Reg. 55740 (codified at 40 C.F.R. § 63.314(d)(1)(ii)(B))

70. Technology to implement real-time benzene sensors is available. These monitors are commercially available through Aeroqual. Refineries across the U.S. also deploy real-time benzene monitors. Moreover, the refinery sector has been required to perform fenceline monitoring following Method 325A/B for the past five years 85 Fed. Reg. 6064 (Feb. 4, 2020) (codified at 40 C.F.R. § 63.658). The technology that is used by refineries to comply with fenceline monitoring requirements is the same technology that is necessary to comply with the Coke Ovens Rule fenceline monitoring requirement. The monitoring technology is available for refineries to purchase, and they are still conducting fenceline monitoring.

Reduced leak limits from doors, lids and offtakes

71. Technology to implement the leak limits of the Coke Ovens Rule is available.

72. The leak limit standards do not require facilities to obtain or deploy any new "technology" within the meaning of Section 7412(i)(4).

73. The Coke Ovens Rule leak limit standards are achieved by applying operational and maintenance work practice standards, not through additional air pollution control devices or other equipment. 89 Fed. Reg. 55695 (codified at 40 C.F.R. § 63.302).

74. Industry commenters on the Coke Ovens Rule stated that "across the cokemaking industry leak control for doors, lids, and offtakes is achieved through operational and maintenance work practices, not through add-on pollution controls or other equipment." Env't Prot. Agency, Summary of Public Comments and Responses for Coke Ovens: Pushing, Quenching, and Battery Stacks Residual Risk and Technology Review, and Coke Oven Batteries Periodic Technology Review (May 2024) ,153, *available at*

https://www.regulations.gov/document/EPA-HQ-OAR-2002-0085-1613. Based on available data, the EPA expected that coke oven "*facilities will be able to comply with these limits without the need for any new controls*." 89 Fed. Reg. 55696 (emphasis added).

75. EPA "estimated that there would be no reductions in actual emissions and there would be no control costs, but the lower limits would reduce the allowable emissions." *Id*. at 55695.

New MACT floor and work practice standards

76. Technology to implement the new MACT floor limits is available.

77. The Coke Ovens Rule establishes new standards for hazardous air pollutants for which EPA had not previously established hazardous air pollutant standards. These standards for previously unregulated pollutants are stated either as a MACT floor or as work practice standards under 42 U.S.C. § 7412(h).

78. The new MACT floor standards apply to acid gases, hydrogen cyanide, mercury and particulate matter (as a surrogate for nonmercury HAP metals). 89 Fed. Reg. at 55694 (codified at 40 C.F.R. §§ 63.7283(d); 63.7296(c) (f); 63.7300(c)(4); 63.7320(a); 63.7321; 63.7333; 63.7341(f)))

79. New work practice standards apply to battery stacks (based on good combustion in battery waste heat flues) for polycyclic aromatic hydrocarbons, dioxin and furans, and volatile organic hazardous air pollutants emissions from battery stacks at ByP facilities for existing and new sources based off available test data. 89 Fed. Reg. at 55694.

80. Technology to implement new work practice standards is available.

81. Sources are capable of complying with the new MACT limits without installing additional air pollution controls or other technologies.

82. In the Coke Ovens Rule preamble, EPA estimated that "*all sources can meet the new MACT floor limits and would not have to install controls to meet the limits*." 89 Fed. Reg. at 55720 (emphasis added).

83. Facilities do not need to obtain or deploy any new "technology" within the meaning of Section 7412(i)(4) to comply with the new work practice standards. The work practice standards consist of operational practices that that prevent and minimize emissions.

Presidential Exemption for HNR facilities

84. The President exempted HNR facilities from four requirements in the Coke Ovens Rule: 1) opacity limits for bypass/waste heat stacks, 2) Method 303A and daily pressure monitoring, 3) MACT numeric emission limits, and 4) initial performance tests. Many of these standards do not require any technology, and where technology is necessary it is available and already in use by the facility, as discussed below.

Opacity limits for bypass/waste heat stacks

85. In the Coke Ovens Rule, EPA finalized opacity observation requirements for bypass/waste heat stacks and established a corrective action threshold of 20 percent opacity. 89 Fed. Reg. at 55744 (codified at 40 C.F.R. § 63.7299).

86. Under the Coke Ovens Rule, any HNR facility that emits exhaust through a bypass/waste heat stack for more than an hour continuously on a given week must perform visual emissions monitoring that week. The one continuous bypass facility that regularly exceeds this threshold — SunCoke's Jewell facility in Virginia — is already subject to an equivalent weekly monitoring requirement in its Title V permit. *Id.* at 55706. Intermittent bypass HNR facilities must only conduct visual emissions monitoring on weeks that they bypass continuously for over an hour.

87. No technology is required to implement this weekly monitoring. The weekly monitoring must be performed according to EPA Method 9, which "involves the determination of plume opacity by qualified observers" who "observe the plume momentarily at 15-second intervals" using the naked eye. *See* EPA Method 9, Appendix A-4 to 40 C.F.R. Part 60.

88. If visual observations determine that opacity is greater than 20 percent, the facility must undertake corrective action to reduce the emissions.

89. EPA noted that the 20 percent opacity limit "is currently required and achieved at the one HNR facility with continuous bypass." 89 Fed. Reg. at 55707.

Method 303A and daily pressure monitoring

90. The Coke Ovens Rule requires daily pressure monitoring for HNR facilities in either the common battery tunnel or each oven during use, and also requires zero leaks from oven doors. *Id.* at 55733 (codified at 40 C.F.R. § 63.303(a)).

91. The technology to implement the mandated pressure monitoring is already owned by and used at the facilities subject to this regulation. As EPA summarized, all HNR facilities "already monitor negative pressure in the common tunnel electronically on a continuous basis." *Id.* at 55703. This negative pressure monitoring was performed to comply with regulations prior to the 2024 update, and no facility requested an exemption from the updated pressure monitoring requirements codified at 40 C.F.R. § 63.303(a)(1)(ii).

92. To determine the percentage of leaking coke oven doors, the Coke Ovens Rule requires operators to perform visual observations pursuant to EPA Method 303 or 303A. 40 C.F.R. § 63.303(a)(1)(i) (citing procedures found in *id.* § 63.309(d)(1) and Appendix A to 40 C.F.R. Part 63). These procedures are not technology based, but "rel[y] on observing [visible emissions] emanating from the ovens." 89 Fed. Reg. at 55689.

ED_021114D_00001581-00020

93. In promulgating the Coke Ovens Rule, EPA commented that it is already "current SunCoke practice to observe oven doors to maintain zero leaks" and the rule is merely codifying current practices into regulations. 89 Fed. Reg. at 55703.

MACT numeric limits

94. EPA finalized MACT floor standards for various pollutants present in HNR pushing, main stack, and bypass/waste heat vent stack emissions based on available test data and additional data provided by industry during the rulemaking process. Specifically, EPA finalized:

95. MACT floor standards for mercury, acid gases, and PAH emitted from pushing operations, 89 Fed. Reg. 55743 (codified at 40 C.F.R. § 63.7290(b) (d));

96. MACT floor standards for particulate matter (as a surrogate for nonmercury HAP metals), mercury, acid gases, and hydrogen cyanide emitted from HNR HRSG main stacks, 89 Fed. Reg. 55744 (codified at 40 C.F.R. § 63.7297(a)–(d)); and

97. MACT floor standards for particulate matter (as a surrogate for nonmercury HAP metals), mercury, acid gases, hydrogen cyanide, and formaldehyde emitted from HNR bypass/waste heat vent stacks. 89 Fed. Reg. 55744 (codified at 40 C.F.R. § 63.7298(a) (c)).

98. The Coke Ovens Rule also set forth specific deadlines for HNR facilities to comply with the performance test required by the general NESHAP regulations. 40 C.F.R. § 63.7320(a) (setting forth the deadline for HNR MACT performance tests); *id.* § 63.7(a)(2) (the performance test requirement that applies across NESHAP source categories).

99. EPA proposed and finalized these new MACT floor limits expecting all sources to be able to meet them "without the need for additional controls." 89 Fed. Reg. at 55717; Maximum Achievable Control Technology Standard Calculations, Cost Impacts, and Beyond-

the-Floor Cost Impacts for Coke Ovens Facilities under 40 CFR part 63, subpart CCCCC Final Rule, Docket ID Nos. EPA–HQ–OAR–2002–0085 and EPA–HQ–OAR–2003–0051.

The Court's equitable authority to review ultra vires Executive action

100. The Coke Ovens Proclamation exceeds the President's statutory authority because, by granting sweeping exemptions to the entirety of regulated sources in the COB and PQBS categories without making facility-, standard-, or technology-specific determinations, the Proclamation exceeds the bounds of the President's Section 112(i)(4) authority.

101. The Coke Ovens Proclamation in effect categorically amends the compliance dates of the Coke Ovens Rule, an action outside the bounds of Section 112(i)(4). Section 112(i)(4) is a narrow exemption applicable in specific statutorily defined circumstances; it does not give the President authority to amend EPA standards. Only EPA may amend those standards and only after notice and comment rulemaking.

102. D.C. Circuit case law generally allows for review of presidential actions to ensure conformity with statutory requirements, provided that "the authorizing statute or another statute places discernible limits on the President's discretion." *Mountain States Legal Found. v. Bush*, 306 F.3d 1132, 1136 (D.C. Cir. 2002) (citing, *inter alia*, *Chamber of Com. of the U.S. v. Reich*, 74 F.3d 1322, 1331 (D.C. Cir. 1996)).

103. The statutory provision at issue, Section 112(i)(4), provides such discernable limits on the President's discretion by requiring a determination that, for specific facilities, "technology to implement" a standard "is not available" and that the exemption "is in the national security interests of the United States." 42 U.S.C. § 7412(i)(4).

104. The Court has the power to review the Coke Ovens Proclamation to discern whether the President's exercise of statutory authority was unlawful because the necessary

factual predicate required by the Clean Air Act is not present, and because the Coke Ovens Proclamation unlawfully exercises authority not conveyed by Section 112(i)(4), contrary to Congress's explicit restrictions on stay regulations and compliance deadlines.

105. The Court has the power to declare the Coke Ovens Proclamation is unlawful and *ultra vires*.

STANDING

106. Plaintiffs' members live, work, and recreate in areas affected by the hazardous air pollutants that are and will be emitted from the exempted facilities. Plaintiffs' members are harmed by breathing air pollution from the exempted facilities and are concerned that exposure to hazardous air pollutants from the exempted facilities could have harmful impacts on their health.

107. According to EPA, "[c]oke oven emissions are among the most toxic of all air pollutants." EPA, Fact Sheet-Coke Oven NESHAP, at 1 (*available at* https://www.epa.gov/sites/default/ files/2016-01/documents/cokefact.pdf). Exposure to coke oven emissions, including benzene, emitted by exempted coke ovens causes adverse health effects. Plaintiffs' members and their families that live near coke ovens suffer from pulmonary disease, cancer and other health issues that they believe are caused by breathing toxic emissions from the coke ovens.

108. Plaintiffs' members stood to benefit from the emissions reductions required by the Coke Ovens Rule, which were slated to go into effect July 7, 2025. Exempted facilities are now able to emit coke oven emissions, including benzene, at higher levels than otherwise would have been allowed, for years beyond the Rule's mandate.

109. Plaintiffs' members are harmed by the excess emissions that will result from the Coke Ovens Proclamation exemptions. Plaintiffs have members that live in close proximity to exempted facilities now face a significant risk of exposure to harmful emissions as a result of the Coke Ovens Proclamation.

110. Because all eleven coke oven facilities did not begin implementing work practice requirements to meet the MACT limits for the previously unregulated hazardous air pollutants, Plaintiffs' members are deprived of the protections the Coke Ovens Rule provides for their exposure to those hazardous air pollutants.

111. Because the lower leak limits for ByP facilities would reduce the allowable emissions, Plaintiffs are deprived of these protections from fugitive coke oven emissions from the COB, including benzene.

112. Because the five HNR facilities no longer have to monitor for negative pressure or for door leaks, leaks may take longer to detect which will increase Plaintiffs' members' exposure to pollutants. Similarly, without weekly opacity monitoring for HNR bypass/waste heat stacks and a mandatory action threshold, operators may not detect emissions or take action to reduce them, thereby increasing Plaintiffs' members' exposure to pollutants.

113. Plaintiffs' members also stood to benefit from the fenceline monitoring requirements that were to go into effect July 7, 2025.

114. The Coke Ovens Rule requires that sources make available the data collected from fenceline monitoring to EPA's Compliance and Emissions Data Reporting Interface ("CEDRI") and be available to the public via the Web Factor Information Retrieval System ("WebFIRE"). 89 Fed. Reg. at 55690, 55701; 40 C.F.R. § 63.311(j).

ED_021114D_00001581-00024

115. The Coke Ovens Proclamation denies Plaintiffs and their members the emissions information those reports would provide.

116. Plaintiffs' members were looking forward to results of benzene concentrations at ByP facilities being publicly available. They would use this information to improve their understanding of the levels of benzene they are exposed to and the resultant health risks they are subject to. They would have used this information to limit their time at home and/or outdoors if the results were high and inform neighbors and friends about benzene concentrations in their communities.

117. Plaintiffs and their members would use such information to raise public awareness of air pollution and to further Plaintiffs' and their members' advocacy, education, and outreach efforts to reduce air pollution and protect public health. Plaintiffs and their members will be deprived of information they would have used to evaluate their pollution exposure and health risks in areas affected by emissions from the exempted facilities. That information would also allow some Plaintiffs to make educated decisions about how they engage in advocacy to reduce air pollution. Plaintiffs and their members are therefore harmed by the Coke Ovens Proclamation.

CLAIMS FOR RELIEF

COUNT ONE:
Unlawful Executive Action in Violation of the Clean Air Act
(Nonstatutory Review for Violations of Federal Law by Federal Officials; Against All Defendants)

118. Plaintiffs incorporate by reference Paragraph 1–117.

119. The President has limited authority to exempt stationary sources from duly promulgated hazardous air pollutant regulations solely by virtue of the authority delegated by

ED_021114D_00001581-00025

Congress in Section 112(i)(4). The President lacks any independent authority under the U.S. Constitution to issue the exemptions.

120. Section 112(i)(4) permits the President to exempt a source from a hazardous air pollutant standard only if "the technology to implement such standard is not available" and if an exemption is in the national security interests of the United States.

121. Whether technology to implement a standard is or is not available is a discrete, yes-or-no factual inquiry that limits the President's discretion to grant exemptions.

122. Section 112(i)(4) establishes a judicially manageable standard with clear and precise limits of the sort federal courts routinely construe to determine whether officials have acted consistent with law.

123. There is no statutory basis for the President's indiscriminately broad determinations that technology to implement the Coke Ovens Rule is not available or that granting exemptions from that Rule is in the national security interests of the United States. The President patently misconstrued the statutory terms "technology" and "not available" in purporting to exercise the Section 112(i)(4) exemptions authority.

124. The Coke Ovens Proclamation's purported determination that technology needed to implement the various standards of the Coke Ovens Rule is a conclusory statement without specific findings as to any specific standard, any specific technology, or any specific facility.

125. EPA did not quantify benefits with the Coke Ovens Rule because "all covered facilities already have [hazardous air pollutant] emissions levels that are below the final limits, based on facility data available to EPA." 89 Fed. Reg. at 55686. However, EPA anticipated that the Coke Ovens Rule would allow for "earlier corrective action and prevent pollution increases that would otherwise occur." *Id.*

126. Technology to implement the Coke Ovens Rule is in fact available. The relevant technologies to implement each aspect of the Coke Ovens Rule standards are already in use throughout the cokemaking industry.

127. The technology for fenceline monitoring for ByP facilities is available and already in use at all 115 refineries.

128. The Coke Ovens Proclamation is ultra vires as to the fenceline monitoring requirement for ByP facilities.

129. The fenceline monitoring requirement of the Coke Ovens Rule rests, in part, on statutory authority independent of 42 U.S.C. § 7412 and hence beyond the scope of the exemption provision, which is limited to standards promulgated under "this section." 42 U.S.C. § 7412(i)(4). The fenceline monitoring requirement was grounded, in part, on Section 114(a)(1)(C) of the Clean Air Act, 42 U.S.C. § 7414(a)(1)(C) (authorizing EPA to require "any person who owns or operates any emission source … or who is subject to any requirement of this chapter" to install, use, or maintain monitoring equipment). 89 Fed. Reg. at 55697 ("CAA section 114 independently provides ample authority to require monitoring"); *Id.* (promulgating fenceline monitoring requirement based, in part, on "additional authority" under 42 U.S.C. § 7414).

130. The MACT floor standards for ByP and HNR ovens are met through work practices that do not require the installation of any controls.

131. For ByP and HNR facilities, compliance with the reduced limits for leaking components of COB is achieved through work practices that do not require the installation of additional controls.

132. The work practice standards necessary to meet the Coke Ovens Rule standards do not meet the definition of "technology" under Section 7412(i)(4). For HNR facilities, PQBS and

COB mandatory opacity and door leak monitoring must be performed visually by a human observer and do not require any technology to implement.

133. The five exempted HNR facilities already have pressure monitors in the common tunnels that are capable of operating continuously and complying with the daily pressure monitoring standard.

134. The purported determination that technology to implement the standards is not available is unambiguously contradicted by factual evidence. The Coke Ovens Proclamation's cursory and conclusory statements to the contrary cannot be credited.

135. The President's purported determination that the technology to implement the Coke Ovens Rule is not available rests on an unlimited, untenable interpretation and application of the authority conveyed by Section 112(i)(4) of the Clean Air Act.

136. Because the President grossly exceeded the bounds of his statutory authority by purporting to exempt stationary sources from standards for which the technology to implement is available, the Coke Ovens Proclamation is plainly in excess of the President's delegated powers and contrary to the statute's specific limitations on those powers.

137. The President's action is contrary to the Clean Air Act and is ultra vires.

138. The Court possesses inherent equitable power to "grant injunctive relief . . . with respect to violations of federal law by federal officials." *Armstrong v. Exceptional Child Ctr., Inc.*, 575 U.S. 320, 326 27 (2015). Congress has nowhere foreclosed review of the interpretation and application of Section 112(i)(4). There is no alternative statutory procedure for review of Plaintiffs' claim.

ED_021114D_00001581-00028

139. Because the Coke Ovens Proclamation violates the Clean Air Act and is ultra vires, EPA actions implementing or giving effect to the proclamation likewise violate the Clean Air Act and are ultra vires.

COUNT TWO:

Ultra Vires, De Facto Rulemaking Without Statutory Authority (Nonstatutory Review of Action in Excess of Statutory Authority by Federal Officer; Against All Defendants)

140. Plaintiffs incorporate by reference Paragraph 1 117.

141. Congress required EPA to provide for existing sources' compliance with hazardous air pollutant standards "as expeditiously as practicable," and set concrete boundaries on EPA's flexibility to set compliance deadlines "in no event later than 3 years after the effective date of such standard." 42 U.S.C. § 7412(i)(3)(A).

142. Congress gave EPA and state permitting authorities discrete, limited authority to grant an existing source "up to 1 additional year to comply" with standards promulgated under subsection (d) "if such additional period is necessary for the installation of controls." 42 U.S.C. § 7412(i)(3)(B).

143. Congress further conferred discrete, limited authority on EPA to stay the effectiveness of rules, including hazardous air pollutant standards, for no more than three months. 42 U.S.C. § 7607(d)(7)(B).

144. Congress directed EPA to provide for public notice and comment on EPA actions to revise hazardous air pollutant standards, their compliance dates, or to grant source-specific deadline extensions. 42 U.S.C. § 7607(d)(5), (h).

145. The exemption authority conveyed in Section 112(i)(4) must be construed congruously with the authorities and limitations Congress enacted in Sections 112 and 7607.

146. Interpreting Section 112(i)(4) to authorize exemptions for all operating sources of the regulated source category, from every standard and other requirement of a rule, without facility- or standard-specific justification tied to the statutory factors, is contrary to the context, purpose, and structure of the Clean Air Act.

147. The Coke Ovens Proclamation's sweep of the entire cokemaking industry reflects an interpretation of the Section 112(i)(4) authority that would swallow and render superfluous statutory limits.

148. The content, context, and scope of the Coke Ovens Proclamation demonstrates that the Coke Ovens Proclamation is not an "exemption" within the meaning of Section 112(i)(4).

149. The Coke Ovens Proclamation is functionally a rulemaking and/or stay pending reconsideration granted without observance of the procedural and substantive limitations Congress enacted in Sections 112 and 307 of the Clean Air Act. The Proclamation was issued despite the statutory requirements for conducting rulemaking or for granting a stay pending reconsideration.

150. EPA invited requests for presidential exemptions explicitly in the context of its announced reconsideration of the Coke Ovens Rule and seven other hazardous air pollutant rules. *See* supra ¶¶ 49, 50. EPA stated that the exemptions are offered "while EPA reconsiders" the underlying rule. *See* EPA, Clean Air Act Section 112 Presidential Exemption Information, *available at* https://permalee/NPTS-RAQY (last accessed Oct. 20, 2025).

151. The President indiscriminately granted exemptions from all compliance obligations of the Coke Ovens Rule, without particularized consideration of the specific standards, technologies or practices needed to comply, or facilities and their particular products

and processes, all of which is necessary to determine whether technology is not available to implement the standards and whether an exemption is in the national security interests of the United States.

152. The Coke Ovens Proclamation 's purported exercise of Section 112(i)(4) exemption authority is in fact an exercise of rulemaking and/or stay authority despite the President lacking such power. The Clean Air Act gives only EPA that authority and only after following certain procedures in certain circumstances.

153. The sweeping Coke Ovens Proclamation exceeds the narrow bounds of Section 112(i)(4) to achieve improper goals prohibited by other provisions of the Clean Air Act. In granting compliance relief that far exceeds the Section 112(i)(4) authority, the President bypassed and contravened the statutory requirements on rulemaking and reconsideration to accomplish sweeping compliance exemptions unauthorized by law and in excess of the President's statutory authority.

154. The Coke Ovens Proclamation is beyond the authority conveyed by the Clean Air Act and is *ultra vires*.

155. Because the Coke Ovens Proclamation is beyond the Clean Air Act authority and ultra vires, EPA actions implementing or giving effect to the proclamation are similarly ultra vires.

RELIEF REQUESTED

WHEREFORE Plaintiffs request that the Court:

A. Declare that the Coke Ovens Proclamation is unlawful and invalid and that the Annex I sources remain subject to the Coke Ovens Rule as promulgated;

B. Issue injunctive relief:

ED_021114D_00001581-00031

i. prohibiting EPA and Administrator Lee Zeldin from implementing, relying on, or giving effect to the Coke Ovens Proclamation, including through implementation of the Clean Air Act's Title V operating permit program; and

ii. directing EPA to promptly notify, in writing, the operators of facilities listed in Annex I and relevant state, local, and/or Tribal permitting authorities that the Coke Ovens Proclamation is unlawful and invalid, and that any facilities that the Coke Ovens Proclamation purported to exempt may not lawfully delay or avoid compliance with the deadlines promulgated by the Coke Ovens Rule by relying on the Coke Ovens Proclamation .

C. Award Plaintiffs their fees and costs of litigation as authorized by law;

D. Grant such other relief as the Court deems just and proper.

Dated: December 22, 2025

Respectfully submitted,

/s/ draft
Abel Russ (D.C. Bar No. 1007020)
888 17th Street, NW
Suite 810
Washington, DC 20006
aruss@environmentalintegrity.org
Tel: (802) 482-5379

/s/ draft
Haley Lewis (AL Bar No. ASB-1008-R66I)
888 17th Street, NW
Suite 810
Washington, DC 20006
hlewis@environmentalintegrity.org
Tel: (202) 263-4449
Pro Hac Vice Application Pending

/s/ draft
David Bookbinder (D.C. Bar No. 455525)
Environmental Integrity Project
888 17th Street, NW
Suite 810
Washington, DC 20006
dbookbinder@environmentalintegrity.org
Tel: (202) 301-751-0611

Counsel for Plaintiff Greater-Birmingham Alliance to Stop Pollution and Clean Air Council

/s/ Sarah A. Buckley
Sarah A. Buckley (D.C. Bar No. 90035401)
Natural Resources Defense Council, Inc.
1152 15th St. NW, Suite 300
Washington, D.C. 20005
sbuckley@nrdc.org
Tel: (202) 836-9555

/s/ Shampa Panda
Shampa Panda (D.C. Bar No. 90030605)
Natural Resources Defense Council, Inc.
1152 15th St. NW, Suite 300
Washington, D.C. 20005
spanda-bryant@nrdc.org
Tel: (202) 836-9333

Counsel for Plaintiff Natural Resources Defense Council

/s/ Tosh Sagar
Tosh Sagar (D.D.C. Bar No. D00497)
Earthjustice
1001 G Street NW, Suite 1000
Washington, DC 20001
Tel: (202) 793-2075
tsagar@earthjustice.org

Counsel for Plaintiffs Citizens for Pennsylvania's Future, Hoosier Environmental Council, Just Transition Northwest Indiana, and Sierra Club

/s/ draft
Mark Sabath (D.C. Bar No. 90002735)
Southern Environmental Law Center
122 C Street NW, Suite 325
Washington, DC 20001-5862
Telephone: 434-977-4090
Msabath@selc.org

/s/ draft
Christina Tidwell (Ala. Bar No ASB-9696-D10R)
Southern Environmental Law Center
2829 2nd Avenue S, Suite 282
Birmingham, AL 35233
Tel: 205-745-3060
Ctidwell@selc.org
Pro Hac Vice Application Pending

/s/ draft
Jaclyn Brass (Ala. Bar No. ASB-5340-B19L)
Southern Environmental Law Center
2829 2nd Avenue S, Suite 282
Birmingham, AL 35233
Tel: 205-745-3060
Jbrass@selc.org
Pro Hac Vice Application Pending

Counsel for Plaintiff Greater-Birmingham Alliance to Stop Pollution

/s/ draft
Brian Lynk (D.C. Bar No. 459525)
Environmental Law & Policy Center
740 15th St. NW, Suite 700
Washington, D.C. 20005
Tel: 240-461-4241

Counsel for Environmental Law & Policy Center

ED_021114D_00001581-00035

Message

From: EPA Press [EPAPress@govdelivery.epa.gov]
Sent: 3/13/2026 3:10:24 PM
To: Fotouhi, David [fotouhi.david@epa.gov]
Subject: EPA Releases Proposal for Commercial Sterilizers to Safeguard the Supply of Life-Saving Medical Tools

View as a webpage / Share

EPA.GOV/NEWSROOM

EPA Releases Proposal for Commercial Sterilizers to Safeguard the Supply of Life-Saving Medical Tools

March 13, 2026

Contact Information

EPA Press Office (press@epa.gov)

WASHINGTON — U.S. Environmental Protection Agency (EPA) proposed amendments to the Biden-era 2024 National Emissions Standards for Hazardous Air Pollutants (NESHAP) for Ethylene Oxide (EtO) Commercial Sterilization Facilities to ensure consistency with the law and gold standard science. EtO is the only safe and effective sterilization method available for many medical devices, making it indispensable for life-saving medical equipment including heart valves, pacemakers, surgical kits, gowns, drapes, ventilators, syringes, and catheters—medical equipment that newborns, the elderly, and Americans undergoing surgery rely on daily to survive. EPA is concerned that the current Biden-era EtO emission standards actively threaten facilities' ability to sterilize equipment and jeopardize one of America's only options for a secure domestic supply chain of essential medical equipment. EPA is committed to a rulemaking process that follows the law, ensures that regulation will not put countless lives at risk, and advances the agency's core mission of protecting human health and the environment, including minimizing Americans' unnecessary exposure to EtO.

> *"This proposed rule shows EPA's strong commitment to protecting people's health while maintaining a stable domestic medical supply chain,"* ***said EPA Administrator Lee Zeldin****. "The Trump EPA is committed to ensuring life-saving medical devices*

remain available for the critical care of America's children, elderly, and all patients without unnecessary exposure to communities."

Congress deliberately designed CAA section 112 with detailed implementation timelines and requirements for residual risk reviews of Maximum Achievable Control Technology (MACT) standards in NESHAP rules. In 2024, however, the Biden-Harris EPA took the unprecedented step of conducting a second, "discretionary" residual risk review despite already completing the residual risk review required by law within eight years of promulgating the NESHAP. This second risk review, done in apparent contravention of the best reading of the statute using an almost decade old risk-based value for EtO, led to the 2024 EtO Commercial Sterilizer Final Rule (2024 NESHAP). During and following the promulgation of the Biden-Harris Administration's 2024 NESHAP, the medical community, industry stakeholders and other federal agencies, including the U.S. Food and Drug Administration, raised serious concerns. These concerns included the feasibility of complying with the more stringent EtO emission standards and the significant impacts the requirements would have on maintaining a strong domestic supply chain for sterilized medical equipment essential to saving American lives. Commercial sterilizers utilize EtO to sterilize 50 percent of all medical devices in the U.S. every year—or 20 billion medical devices—with no viable alternative on the market.

As a result of the 2024 NESHAP, the Biden-Harris Administration was forced in January 2025 to establish a Presidential exemption process from the administration's own rule due to facilities' inability to meet required standards before compliance deadlines, and the grave risk that the closures of these facilities posed to American lives. In response to legal, scientific and policy concerns, including the critical medical supply chain issue the U.S. faced due to the 2024 NESHAP rule, the Trump EPA issued a press release on March 12, 2025, announcing its reconsideration of the 2024 NESHAP, and on March 21, 2025, formally granted voluntary reconsideration.

With this rule, EPA is proposing that section 112(f)(2) of the CAA prevents EPA from conducting more than the one risk review EPA completed in 2006. Therefore, the second risk review the Biden EPA conducted in 2024 violated the CAA and should never been completed. In line with congressional intent, EPA is proposing to remove the risk-based CAA section 112(f)(2) standards which justified the 2024 NESHAP. EPA is also proposing to change other requirements that were promulgated from the standards, including the requirement to use continuous emission monitoring systems, technology review standards for new aeration room vents (ARV), and requirements for permanent total enclosure. If finalized as proposed, the Trump EPA's rule would give facilities the choice between installing a new monitoring system or making adjustments to the 2024 EtO standards for technology review standards for new ARV where EtO is greater than ten tons per year. These changes better reflect the complexity of facilities and give them the flexibility to work to use safe and effective equipment to sterilize medical tools and devices without compromising clean air for all Americans. EPA is proposing to keep the 2024 NESHAP standards consistent with the CAA and that result in facilities installing attainable emission controls consistent with the latest required technology review. The Trump EPA is committed to following the law exactly as it is written, while also ensuring standards effectively protect human health and the environment.

Since 2016, new information, including new epidemiological studies, advancements in statistical methods related to dose-response modeling have continued to emerge. It is known that EtO is produced within the body via normal processes and additionally from tobacco smoke or other combustion processes. As part of this rulemaking, EPA is seeking comment on new information related to these sources of EtO exposure. EPA anticipates this information would be useful for updating the agency's understanding of EtO exposure and toxicity and determining whether the 2016 EtO IRIS value remains suitable for estimating risk to inform regulatory decision-making, including the proposed amendments

announced today. The agency will also consider comments regarding the Texas Commission of Environmental Quality's 2020 finalized alternative assessment of EtO's toxicity and potential to cause cancer or other alternative values not yet considered by the agency.

EPA estimates that this proposed action would save approximately $630 million in costs over 20 years, or about $43 million annually, not including the immeasurable value of the countless lives that would be saved from lethal or significantly debilitating infections that would result without properly sterilized medical equipment.

EPA will accept public comments on this proposal for 45 days after it is published in the *Federal Register*. EPA will hold a virtual public hearing for this proposed action 15 days after publication in the *Federal Register*.

For more information about this rulemaking and further details about the public hearing, please visit here.

Background

EtO is a colorless gas that is critical to the medical device supply chain. The EtO Commercial Sterilization NESHAP regulates EtO emitted from commercial sterilization facilities. Commercial sterilization covers the sterilizer process that uses EtO to sterilize or fumigate materials such as medical equipment and supplies, spices, and other miscellaneous products and items. This process is designed to eliminate microorganisms including bacteria, viruses, fungi, and protists from products to ensure they are safe for human use and consumption.

EtO sterilization plays a key role in the medical device supply chain, sterilizing a variety of devices ranging from general health care items, such as wound dressings, to specialized devices, such as stents. For many heat- and moisture-sensitive products, EtO sterilization is the only method that effectively sterilizes a product without damaging it.

Today, there are about 90 commercial sterilization facilities owned and operated by approximately 50 companies. EPA issued the original NESHAP under section 112(d) of the CAA in 1994, establishing emission limits for sterilization chamber vents, ARVs, and catalytic oxidizer vents (CEVs). In 2001, EPA revised the NESHAP to remove requirements for CEVs due to equipment failure. In 2006, EPA finalized a residual risk and technology review under CAA sections 112(f)(2) and (d)(6) with no further changes. On April 5, 2024, EPA finalized amendments to the EtO Sterilizers NESHAP based on the results of a residual risk and technology review outside the scope of CAA statutory authority.

EPA.GOV

Stay Connected with EPA Office of the Administrator:

SUBSCRIBER SERVICES:
Manage Subscriptions | Unsubscribe All | Help

Message

From: EPA Press [EPAPress@govdelivery.epa.gov]
Sent: 3/13/2026 3:10:27 PM
To: Gall, Daniel [gall.daniel@epa.gov]
Subject: EPA Releases Proposal for Commercial Sterilizers to Safeguard the Supply of Life-Saving Medical Tools

View as a webpage / Share

EPA.GOV/NEWSROOM

EPA Releases Proposal for Commercial Sterilizers to Safeguard the Supply of Life-Saving Medical Tools

March 13, 2026

Contact Information

EPA Press Office (press@epa.gov)

WASHINGTON — U.S. Environmental Protection Agency (EPA) proposed amendments to the Biden-era 2024 National Emissions Standards for Hazardous Air Pollutants (NESHAP) for Ethylene Oxide (EtO) Commercial Sterilization Facilities to ensure consistency with the law and gold standard science. EtO is the only safe and effective sterilization method available for many medical devices, making it indispensable for life-saving medical equipment including heart valves, pacemakers, surgical kits, gowns, drapes, ventilators, syringes, and catheters—medical equipment that newborns, the elderly, and Americans undergoing surgery rely on daily to survive. EPA is concerned that the current Biden-era EtO emission standards actively threaten facilities' ability to sterilize equipment and jeopardize one of America's only options for a secure domestic supply chain of essential medical equipment. EPA is committed to a rulemaking process that follows the law, ensures that regulation will not put countless lives at risk, and advances the agency's core mission of protecting human health and the environment, including minimizing Americans' unnecessary exposure to EtO.

> *"This proposed rule shows EPA's strong commitment to protecting people's health while maintaining a stable domestic medical supply chain,"* ***said EPA Administrator Lee Zeldin****. "The Trump EPA is committed to ensuring life-saving medical devices*

remain available for the critical care of America's children, elderly, and all patients without unnecessary exposure to communities."

Congress deliberately designed CAA section 112 with detailed implementation timelines and requirements for residual risk reviews of Maximum Achievable Control Technology (MACT) standards in NESHAP rules. In 2024, however, the Biden-Harris EPA took the unprecedented step of conducting a second, "discretionary" residual risk review despite already completing the residual risk review required by law within eight years of promulgating the NESHAP. This second risk review, done in apparent contravention of the best reading of the statute using an almost decade old risk-based value for EtO, led to the 2024 EtO Commercial Sterilizer Final Rule (2024 NESHAP). During and following the promulgation of the Biden-Harris Administration's 2024 NESHAP, the medical community, industry stakeholders and other federal agencies, including the U.S. Food and Drug Administration, raised serious concerns. These concerns included the feasibility of complying with the more stringent EtO emission standards and the significant impacts the requirements would have on maintaining a strong domestic supply chain for sterilized medical equipment essential to saving American lives. Commercial sterilizers utilize EtO to sterilize 50 percent of all medical devices in the U.S. every year—or 20 billion medical devices—with no viable alternative on the market.

As a result of the 2024 NESHAP, the Biden-Harris Administration was forced in January 2025 to establish a Presidential exemption process from the administration's own rule due to facilities' inability to meet required standards before compliance deadlines, and the grave risk that the closures of these facilities posed to American lives. In response to legal, scientific and policy concerns, including the critical medical supply chain issue the U.S. faced due to the 2024 NESHAP rule, the Trump EPA issued a press release on March 12, 2025, announcing its reconsideration of the 2024 NESHAP, and on March 21, 2025, formally granted voluntary reconsideration.

With this rule, EPA is proposing that section 112(f)(2) of the CAA prevents EPA from conducting more than the one risk review EPA completed in 2006. Therefore, the second risk review the Biden EPA conducted in 2024 violated the CAA and should never been completed. In line with congressional intent, EPA is proposing to remove the risk-based CAA section 112(f)(2) standards which justified the 2024 NESHAP. EPA is also proposing to change other requirements that were promulgated from the standards, including the requirement to use continuous emission monitoring systems, technology review standards for new aeration room vents (ARV), and requirements for permanent total enclosure. If finalized as proposed, the Trump EPA's rule would give facilities the choice between installing a new monitoring system or making adjustments to the 2024 EtO standards for technology review standards for new ARV where EtO is greater than ten tons per year. These changes better reflect the complexity of facilities and give them the flexibility to work to use safe and effective equipment to sterilize medical tools and devices without compromising clean air for all Americans. EPA is proposing to keep the 2024 NESHAP standards consistent with the CAA and that result in facilities installing attainable emission controls consistent with the latest required technology review. The Trump EPA is committed to following the law exactly as it is written, while also ensuring standards effectively protect human health and the environment.

Since 2016, new information, including new epidemiological studies, advancements in statistical methods related to dose-response modeling have continued to emerge. It is known that EtO is produced within the body via normal processes and additionally from tobacco smoke or other combustion processes. As part of this rulemaking, EPA is seeking comment on new information related to these sources of EtO exposure. EPA anticipates this information would be useful for updating the agency's understanding of EtO exposure and toxicity and determining whether the 2016 EtO IRIS value remains suitable for estimating risk to inform regulatory decision-making, including the proposed amendments

announced today. The agency will also consider comments regarding the Texas Commission of Environmental Quality's 2020 finalized alternative assessment of EtO's toxicity and potential to cause cancer or other alternative values not yet considered by the agency.

EPA estimates that this proposed action would save approximately $630 million in costs over 20 years, or about $43 million annually, not including the immeasurable value of the countless lives that would be saved from lethal or significantly debilitating infections that would result without properly sterilized medical equipment.

EPA will accept public comments on this proposal for 45 days after it is published in the *Federal Register*. EPA will hold a virtual public hearing for this proposed action 15 days after publication in the *Federal Register*.

For more information about this rulemaking and further details about the public hearing, please visit here.

Background

EtO is a colorless gas that is critical to the medical device supply chain. The EtO Commercial Sterilization NESHAP regulates EtO emitted from commercial sterilization facilities. Commercial sterilization covers the sterilizer process that uses EtO to sterilize or fumigate materials such as medical equipment and supplies, spices, and other miscellaneous products and items. This process is designed to eliminate microorganisms including bacteria, viruses, fungi, and protists from products to ensure they are safe for human use and consumption.

EtO sterilization plays a key role in the medical device supply chain, sterilizing a variety of devices ranging from general health care items, such as wound dressings, to specialized devices, such as stents. For many heat- and moisture-sensitive products, EtO sterilization is the only method that effectively sterilizes a product without damaging it.

Today, there are about 90 commercial sterilization facilities owned and operated by approximately 50 companies. EPA issued the original NESHAP under section 112(d) of the CAA in 1994, establishing emission limits for sterilization chamber vents, ARVs, and catalytic oxidizer vents (CEVs). In 2001, EPA revised the NESHAP to remove requirements for CEVs due to equipment failure. In 2006, EPA finalized a residual risk and technology review under CAA sections 112(f)(2) and (d)(6) with no further changes. On April 5, 2024, EPA finalized amendments to the EtO Sterilizers NESHAP based on the results of a residual risk and technology review outside the scope of CAA statutory authority.

EPA.GOV

Stay Connected with EPA Office of the Administrator:

SUBSCRIBER SERVICES:
Manage Subscriptions | Unsubscribe All | Help

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

AIR ALLIANCE HOUSTON
2520 Caroline Street, Suite 100
Houston, TX 77004;

CENTER FOR BIOLOGICAL DIVERSITY
378 North Main Avenue
Tucson, AZ 85701;

CITIZENS FOR PENNSYLVANIA'S FUTURE
610 North Third Street
Harrisburg, PA 17101;

CLEAN AIR COUNCIL
1617 JFK Boulevard, Suite 1130
Philadelphia, PA 19103;

DAKOTA RESOURCE COUNCIL
1902 East Divide Avenue
Bismarck, ND 58501;

DOWNWINDERS AT RISK
1808 S. Good-Latimer #202
Dallas, TX 76226;

ENVIRONMENTAL DEFENSE FUND
2060 Broadway St., Suite 300
Boulder, CO 80302;

ENVIRONMENTAL INTEGRITY PROJECT
888 17th St. NW, Suite 810
Washington, DC 20006;

ENVIRONMENTAL LAW & POLICY CENTER
35 East Wacker Drive, Suite 1600
Chicago, IL 60601;

MONTANA ENVIRONMENTAL INFORMATION CENTER
324 Fuller Avenue, #C-8
Helena, MT 59601;

Civil Action No.

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

NATURAL RESOURCES DEFENSE COUNCIL, INC.
40 West 20th Street, 11th Floor
New York, New York 10011; *and*

SIERRA CLUB
2101 Webster St., Suite 1300
Oakland, CA 94612,

Plaintiffs,

v.

DONALD TRUMP, President of the United States, in his official capacity;

U.S. ENVIRONMENTAL PROTECTION AGENCY; *and*

LEE ZELDIN, Administrator of the U.S. Environmental Protection Agency, in his official capacity,

Defendants.

INTRODUCTION

1. In a proclamation issued on April 8, 2025, President Donald Trump purported to exempt nearly one-third of coal-fired power plants across the country from mercury and other toxic air pollution standards critical to protecting Americans, especially infants and children, from a range of harmful health impacts and risks including cancer, birth defects, and developmental harms in children. *Regulatory Relief for Certain Stationary Sources to Promote American Energy*, 90 Fed. Reg. 16,777 (Apr. 21, 2025) (attached as Exhibit 1) ("Exemption Proclamation"). President Trump declared those sweeping exemptions by invoking Section 7412(i)(4) of the Clean Air Act, 42 U.S.C. § 7412(i)(4), a narrow and never-before-used

ED_021114D_00001846-00002

provision authorizing the President to provide a limited exemption from compliance with hazardous air pollutant emission standards in instances where "the technology to implement" the relevant standard is "not available" and when exempting a facility "is in the national security interests of the United States." 42 U.S.C. § 7412(i)(4). Now, for the first time in the history of the Clean Air Act, President Trump and the U.S. Environmental Protection Agency ("EPA") seek to exploit that narrow provision to indiscriminately exempt scores of coal-fired power plants. Many of the exempted power plants have already installed and are actively using the technology sufficient to meet the targeted mercury and other toxic air pollution standards—technology that EPA itself determined was available in a final rule issued just over a year ago, based on an ample record developed through public notice and comment.

2. Congress authorized use of Section 7412(i)(4) to exempt a stationary source only where the technology to implement a standard is not available. President Trump violated this limitation by issuing exemptions where the technology is available but where he wishes to relieve sources of their need to expend costs to comply with pollution standards while the Administration undertakes proceedings to repeal them. The Clean Air Act does not permit this use of Section 7412(i)(4) authority. The Exemption Proclamation is illegal and must be invalidated.

3. The Exemption Proclamation exempts 68 coal-fired power plants from Clean Air Act standards EPA adopted in 2024 to modernize existing pollution standards for highly toxic substances such as mercury, arsenic, and nickel that are emitted by coal-fired power plants in light of developments in pollution control technologies. *National Emission Standards for Hazardous Air Pollutants: Coal- and Oil-Fired Electric Utility Steam Generating Units Review*

of the Residual Risk and Technology Review, 89 Fed. Reg. 38,508 (May 7, 2024) (attached as Exhibit 2) ("2024 Rule").

4. The 2024 Rule established more protective limits on mercury emissions from power plants burning lignite coal, and lowered emission limits for arsenic, nickel, and other toxic metals from all coal-fired power plants. EPA also required plants to demonstrate compliance with the arsenic, nickel, and other toxic metals standard using continuous emissions monitoring systems that provide real-time feedback, and tightened pollution standards for power plants during their startup periods.

5. EPA required power plants to comply with the startup standard by January 2025 and established a compliance deadline of July 2027 for the lignite mercury standard, the arsenic, nickel, and other metals standard, and the continuous emissions monitoring requirement. From 2028-2037, the standards were expected to reduce significant quantities of mercury, arsenic, nickel, and other toxic metals, delivering cleaner, healthier air and water nationwide from Texas and North Dakota to Pennsylvania and North Carolina.

6. The President's Exemption Proclamation jeopardizes the realization of these public health benefits without any proper basis. Section 7412(i)(4) authorizes the President in exceptional circumstances to exempt a "stationary source" only if the President "determines" that "the technology to implement such standard is not available" for that source and "it is in the national security interests" to do so. The President violates these firm statutory requirements by issuing exemptions to coal-fired power plants based on a conclusory and false claim that "[t]he technology to implement the Rule is not available" and that "[s]uch technology does not exist in a commercially viable form sufficient to allow implementation of and compliance with the Rule by its compliance date of July 8, 2027." To the extent these and the other claims in the

Exemption Proclamation operate as "determinations," they cannot support the exemptions issued because they fail to make any determination grounded in the factual circumstances specific to the 68 coal-fired power plants exempted, as the statute requires.

7. The exempted power plants vary with regards to the actions they need to take to comply with the 2024 Rule, but the Exemption Proclamation treats them equally with a broad brush, does not identify which control technologies any of the 68 coal-fired power plants require to implement the 2024 Rule, and does not identify which of those control technologies are unavailable. The President has not, in the Exemption Proclamation itself or otherwise, provided any factual basis, reasoning, or other support for the exemptions.

8. Moreover, the Exemption Proclamation's claims are contradicted both by EPA's own recent findings just 11 months earlier that that technology is readily available and by the fact that technology sufficient for meeting the standards is already used by many coal-fired power plants, including by some of those the President exempted. *See, e.g.*, 89 Fed. Reg. 38,508, 38,531, 38,536-37, 38,539.

9. In 2024, EPA found that coal-fired power plants that burn lignite coal could lower mercury emissions by using more of the same chemical additives those plants were already using to comply with existing, less stringent, mercury limits. 89 Fed. Reg. at 38,540. EPA found that coal-fired power plants responsible for generating 93 percent of total coal-fired energy had already demonstrated the ability to meet the revised lower limit for arsenic, nickel, and other metals with existing controls and that this standard could be met using available control technology. *Id.* at 38,530. EPA found that approximately one-third of the existing coal power plant fleet was already using continuous emissions monitoring systems, *id.* at 38,535, and that these monitoring systems provide superior "certainty, accuracy, transparency, and granularity"

ED_021114D_00001846-00005

while costing only slightly more than the existing requirement to conduct pollution emissions testing a handful of times per year. *Id.* at 38,536-37. EPA also found that the vast majority of plants were already able to meet the startup standard the 2024 Rule required for all coal-fired power plants. *Id.* at 38,551.

10. The Exemption Proclamation does not rest on findings of any coal-fired power plant's actual inability to comply with the 2024 Rule at all, much less to a degree that implicates national security. Nor does it contain such findings for each of the named plants that it purports to exempt from clean air standards. Rather, the real reason and basis for the exemption, as is apparent from the Proclamation itself and the circumstances leading to its issuance, is to provide "regulatory relief" to coal plants in furtherance of President Trump's policy "to promote American energy" through deregulation as baldly stated in the Exemption Proclamation's title, "Regulatory Relief for Certain Stationary Sources to Promote American Energy." 90 Fed. Reg. 16,777 (Apr. 21, 2025). That is not a permissible basis for granting Section 7412(i)(4) exemptions.

11. President Trump and his administration have made no secret of their intent to undo a suite of public health and environmental regulations adopted by the last administration. In March, EPA Administrator Lee Zeldin declared "the greatest day of deregulation our nation has seen," announcing the rollback of 31 regulations, including the 2024 Rule. EPA, News Release, *EPA Launches Biggest Deregulatory Action in U.S. History* (Mar. 12, 2025), https://www.epa.gov/newsreleases/epa-launches-biggest-deregulatory-action-us-history.

12. New presidential administrations that wish to reconsider and revise regulations generally must comply with statutory administrative procedure requirements such as notice-and-comment rulemaking under the Administrative Procedure Act and the Clean Air Act. The Trump

ED_021114D_00001846-00006

administration announced in a March press release and fact sheet that they would "reconsider" the 2024 Rule because of "concerns" about compliance costs and burdens on the coal industry. At the same time, EPA also announced that, "[t]he Trump Administration is considering a 2-year compliance exemption via Section [7412](i)(4) of the Clean Air Act for affected power plants while EPA goes through the rulemaking process." EPA, News Release, *Trump EPA Announces Reconsideration of Air Rules Regulating American Energy, Manufacturing, Chemical Sectors (NESHAPs)* (Mar. 12, 2025), https://www.epa.gov/newsreleases/trump-epa-announces-reconsideration-air-rules-regulating-american-energy-manufacturing. On June 11, EPA issued a proposed rule to repeal certain requirements of the 2024 Rule. EPA, News Release, *EPA Proposes Repeal of Biden-Harris EPA Regulations for Power Plants, Which, If Finalized, Would Save Americans More than a Billion Dollars a Year* (Jun. 11, 2025), https://www.epa.gov/newsreleases/epa-proposes-repeal-biden-harris-epa-regulations-power-plants-which-if-finalized-would.

13. In disregarding the limitations imposed by Section 7412(i)(4), Defendants improperly circumvented the procedural requirements (including public comment) that properly constrain agency decisions to weaken, or delay application of, pollution standards. This exercise was plainly unlawful. The Clean Air Act authorizes permitting authorities to provide sources one-year compliance extensions "if necessary for the installation of controls." 42 U.S.C. § 7412(i)(3)(B). Other than that, EPA has authority to revise pollution standards and compliance deadlines where the statute allows,[1] but only after engaging in the public notice and comment process mandated by the Clean Air Act in 42 U.S.C. § 7607(d)(1), addressing procedural requirements for rulemaking, and only when the substantive standards of 42 U.S.C. § 7412,

[1] The compliance deadlines for rules promulgated under 42 U.S.C. § 7412 are strictly managed by Section 7412(i)(3)(A).

which governs pollution standards for the hazardous air pollution at issue here, are met. The President lacks authority to exempt coal-fired power plants from emission standards so that EPA can revise or undo the standards themselves.

14. Plaintiff environmental and public health groups bring this action challenging the Exemption Proclamation as issued in violation of the Clean Air Act and as beyond the President's lawful authority. Plaintiffs seek an order declaring the Exemption Proclamation to be unlawful and invalid and enjoining EPA and its Administrator from implementing or giving effect to it.

JURISDICTION AND VENUE

15. This Court has subject matter jurisdiction under 28 U.S.C. § 1331 because this is a civil action arising under laws of the United States, including the Clean Air Act.

16. Venue is proper in this Court under 28 U.S.C. § 1391(b) and (e) because Plaintiff Environmental Integrity Project resides in this judicial district, because Defendants reside in this judicial district, and because a substantial part of the events giving rise to the claim occurred in this judicial district.

17. The Court has authority to enter a declaratory judgment and to provide injunctive relief pursuant to Rules 57 and 65 of the Federal Rules of Civil Procedure; the Declaratory Judgment Act, 28 U.S.C. §§ 2201-2202; the All Writs Act, 28 U.S.C. § 1651; and the Court's inherent equitable powers.

18. Although the Clean Air Act provides for judicial review through "[a] petition for review of action of the Administrator" of "any emission standard or requirement under section 7412 . . . or any other nationally applicable regulations promulgated, or final action taken, by the

ED_021114D_00001846-00008

Administrator" in the D.C. Circuit, 42 U.S.C. § 7607(b), the Act does not expressly provide for judicial review of the actions here at issue.

PARTIES

19. Plaintiff Air Alliance Houston is a nonprofit organization that works to improve air quality and public health through research, education, and advocacy. Founded in 1988, Air Alliance Houston's mission is to reduce the public health impacts of air pollution in Harris County and Houston, Texas, and the surrounding region. This includes the health impacts of toxic power plant emissions. Air Alliance Houston pursues its mission by conducting applied research on air pollution, educating its members and the community about the harms of air pollution and its sources, and advocating for improvements at the local, state, and national levels. The organization regularly engages with Fort Bend County community members, to provide greater transparency about members' exposure to harmful emissions.

20. Plaintiff Center for Biological Diversity ("CBD") is a national 501(c)(3) nonprofit conservation organization. CBD's mission is to ensure the preservation, protection, and restoration of biodiversity, native species, ecosystems, public lands and waters, and public health through science, policy, and environmental law. Based on the understanding that the health and vigor of human societies and the integrity and wildness of the natural environment are closely linked, CBD is working to secure a future for animals and plants hovering on the brink of extinction, for the ecosystems they need to survive, and for a healthy, livable future for all of us. Part of CBD's core mission is to protect and improve air quality across the country, including by reducing pollution from power plants. CBD is headquartered in Tucson, Arizona, with offices and members throughout the United States, including Alaska, the District of Columbia, and New York.

ED_021114D_00001846-00009

21. Plaintiff Citizens for Pennsylvania's Future ("PennFuture") is a nonprofit organization that works to aid the transition to a clean energy economy in Pennsylvania and beyond; to protect our air, water, and land; and to empower citizens to build sustainable communities for future generations. PennFuture advocates for and advances legislative action at the state and federal levels; educates and provides advocacy opportunities for the public; and enforces environmental laws and advocates for the transformation of public policy.

22. Plaintiff Clean Air Council ("CAC") is a nonprofit, membership-based organization dedicated to protecting and defending everyone's right to a healthy environment, including everyone's right to breathe clean air. It is headquartered in Philadelphia, Pennsylvania, with offices in Philadelphia and Pittsburgh, Pennsylvania and Wilmington, Delaware. CAC engages in community advocacy, regulatory work, and litigation with a primary goal of improving air quality and the corresponding health of those in Pennsylvania and the Mid-Atlantic region, including CAC's members. CAC's programmatic activities include advocating for clean air and stringent emissions standards for power plants.

23. Plaintiff Dakota Resource Council ("DRC") is a nonprofit, grassroots community organizing group that works on conservation and family farm issues across North Dakota and promotes sustainable use of its natural resources. Formed in 1978, DRC grew out of existing organizing efforts responding to impacts from coal development, and has since focused on agriculture and food policy, and holding the oil and gas industry accountable for its externalities (pollution). DRC works with communities to organize around common goals of securing a thriving North Dakota and putting people first. Members take action to create public awareness and shape public policy to ensure safe and responsible development, to protect North Dakota's

agricultural economy, and to establish a foundation for a just transition to a diverse energy economy.

24. Plaintiff Downwinders at Risk is a nonprofit corporation organized and existing under the laws of the State of Texas, with its headquarters located in Dallas, Texas. Downwinders at Risk is a diverse grassroots citizens group dedicated to promoting environmental justice through protecting public health from air pollution and promoting good governance in North Texas.

25. Plaintiff Environmental Defense Fund ("EDF") is a 501(c)(3) non-profit environmental organization dedicated to finding practical solutions to critical environmental problems through the use of law, policy, science, and economics. EDF has offices throughout the United States, including in the District of Columbia. As a membership-based organization, EDF currently has more than 330,000 members in the United States, and members in all 50 states and the District of Columbia. These members have a strong interest in protecting human health and the environment from pollution.

26. Plaintiff Environmental Integrity Project ("EIP") is a non-profit, nonpartisan organization based in Washington, D.C. that empowers communities and protects public health and the environment by investigating polluters, holding them accountable under the law, and strengthening public policy on toxic air pollution and other environmental health issues. EIP works for more effective enforcement of environmental laws.

27. Plaintiff Environmental Law & Policy Center ("ELPC") is a Midwest-based not-for-profit public interest organization dedicated to action and advocacy for improving environmental quality—including air quality—and protecting natural resources. ELPC's

headquarters is in Chicago, Illinois, and ELPC also has offices in Washington, D.C., as well as Iowa, Ohio, and Wisconsin.

28. Plaintiff Montana Environmental Information Center ("MEIC") is a membership-based nonprofit dedicated to protecting public health and the natural environment in Montana. Founded in 1973, MEIC's purpose is to protect and restore the land, air, water, and life-sustaining climate of Montana. MEIC works with Montanans across the state in service of a clean and healthful environment for present and future generations. MEIC has worked for decades to require mercury and air toxics emission limits on power plants.

29. Plaintiff Natural Resources Defense Council ("NRDC") is a national non-profit environmental membership organization with hundreds of thousands of members nationwide. NRDC's purpose is to safeguard the Earth its people, its plants and animals, and the natural systems on which all life depends. Part of NRDC's core mission is to improve air quality and safeguard public health by combatting air pollution from power plants.

30. Plaintiff Sierra Club is a nonprofit corporation with its headquarters located in Oakland, California. The Sierra Club is a national membership organization whose mission is to explore, enjoy, and protect the planet; to practice and promote the responsible use of the earth's ecosystems and resources; to educate and enlist humanity to protect and restore the quality of the natural and human environment; and to use all lawful means to carry out those objectives. As such, Sierra Club is dedicated to the protection of public health and the environment, and regularly works to achieve and strengthen policies that protect air quality. It has 64 chapters and more than 780,000 members who reside in all 50 states, the District of Columbia, and Puerto Rico.

31. Defendant Donald Trump is the President of the United States. He resides and conducts his duties in Washington, D.C. He is sued in his official capacity.

32. Defendant U.S. Environmental Protection Agency ("EPA") is a federal agency of the United States. EPA is headquartered in Washington, D.C.

33. Defendant Lee Zeldin is the Administrator of the U.S. Environmental Protection Agency. He resides and conducts his duties in Washington, D.C. He is sued in his official capacity.

LEGAL BACKGROUND

34. Clean Air Act Section 7412, 42 U.S.C. § 7412, sets forth the regulatory regime for EPA to address "hazardous air pollutants," a group of 188 air pollutants determined by Congress and EPA to be particularly harmful to human health. Mercury, arsenic, hexavalent chromium, lead, and nickel are hazardous air pollutants under 42 U.S.C. § 7412.

35. This section requires EPA to regulate the largest "stationary sources" of hazardous air pollutants by promulgating pollution standards that "require the maximum degree of reduction in emissions of the hazardous air pollutants . . . (including a prohibition on such emissions where achievable) that the Administrator, taking into consideration the cost of achieving such emission reduction, and any non-air quality health and environmental impacts and energy requirements, determines is achievable." 42 U.S.C. § 7412(d)(2).

36. For new sources, the statute provides that the standards adopted "shall not be less stringent than the emission control that is achieved in practice by the best controlled similar source." 42 U.S.C. § 7412(d)(3)(A).

37. For existing sources, the statute provides that the standards adopted "shall not be less stringent, and may be more stringent than, the average emission limitation achieved by the

best performing 12 percent of the existing sources" where there are at least 30 or more sources. 42 U.S.C. § 7412(d)(3)(A)-(B).

38. For "electric utility steam generating units" *i.e.*, combustion units at fossil-fuel fired power plants—the EPA Administrator is directed to perform a study of the hazards to public health reasonably anticipated to occur as a result of emissions from such units and the statute provides EPA "shall" regulate those units under Section 7412 if the Administrator determines such regulation is appropriate and necessary after considering the results of the hazard study. 42 U.S.C. § 7412(n)(1)(A). EPA first made the determination that regulation of electric utility steam generating units under Section 7412 is necessary and appropriate in 2000. EPA made that determination again in 2024.

39. When EPA first adopts standards, Section 7412(d) provides a minimum level of stringency for those standards based on the best performing sources, known as the "maximum achievable control technology" or "MACT" "floor."

40. After these pollution standards are adopted, the Clean Air Act requires EPA to "review, and revise" those standards every 8 years "as necessary (taking into account developments in practices, processes, and control technologies)." 42 U.S.C. § 7412(d)(6). This process is known as the "technology review" and ensures that standards are modernized as necessary to reflect developments in pollution control technologies and otherwise to comply with the Clean Air Act.

41. When EPA revises standards pursuant to Section 7412(d)(6), a court has held EPA must consider the same statutory criteria set out in Section 7412(d)(2) that guide the initial standard-setting—including cost and achievability. *See Ass'n of Battery Recyclers v. EPA*, 716 F.3d 667, 673-74 (D.C. Cir. 2013).

42. A court has held that EPA is not required to re-calculate the MACT floors when revising standards pursuant to Section 7412(d)(6). *Id.* at 673. A court has held that when revising standards, EPA generally must consider statutorily required factors including cost and achievability.

43. Congress provided for a strict schedule of compliance with Section 7412 standards. Emission standards "shall be effective upon promulgation." 42 U.S.C. § 7412(d)(2). "New sources," those for which construction or reconstruction "is commenced after the Administrator first proposes regulations under this section establishing an emission standard applicable to such source," *id.* § 7412(a)(4), must comply no later than the effective date of that standard, *id.* § 7412(i)(3)(A). "Existing sources," those that are not "new," *id.* § 7412(a)(10), must comply no later than three years after the effective date, *id.* § 7412(i)(2). EPA may grant a source up to one additional year to comply where "such additional period is necessary for the installation of controls." *Id.* § 7412(i)(3).

44. The Clean Air Act authorizes the President, in narrowly prescribed circumstances, to provide compliance exemptions to stationary sources from Section 7412 hazardous air pollutant standards. It provides: "The President may exempt any stationary source from compliance with any standard or limitation under this section for a period of not more than 2 years if the President determines that the technology to implement such standard is not available and that it is in the national security interests of the United States to do so. An exemption under this paragraph may be extended for 1 or more additional periods, each period not to exceed 2 years. The President shall report to Congress with respect to each exemption (or extension thereof) made under this paragraph." 42 U.S.C. § 7412(i)(4).

45. The exemption provision only authorizes exemptions from a standard or limitation established under Section 7412.

46. D.C. Circuit case law generally allows for review of presidential actions to ensure conformity with statutory requirements, provided that "the authorizing statute or another statute places discernible limits on the President's discretion." *Mountain States Legal Found. v. Bush*, 306 F.3d 1132, 1136 (D.C. Cir. 2002). The statutory provision here at issue, Section 7412(i)(4) provides discernible limits on the President's discretion, requiring a determination that "technology to implement" a standard "is not available" and that the exemption "is in the national security interests of the United States." 42 U.S.C. § 7412(i)(4).

47. The Clean Air Act sets out requirements for rulemaking that apply to "the promulgation or revision of any emission standard or limitations under section 7412(d)." 42 U.S.C. § 7607(d)(1)(C). These requirements include establishing a rulemaking docket, publishing in the Federal Register a notice of proposed rulemaking, publicly providing factual data and other information on which the proposed rule is based, allowing submission of written comments, and providing an opportunity for a hearing, among others. *Id.* § 7607(d)(2)-(6), (h).

48. The Clean Air Act provides EPA limited authority to stay rules that have taken effect. EPA may stay such rules only when it has commenced formal reconsideration proceedings described in 42 U.S.C. § 7607(d)(7)(B). Those proceedings differ from an agency voluntarily revisiting a promulgated rule as EPA is doing in its proposed rule to rescind portions of the 2024 Rule. A rule remains in effect during a reconsideration proceeding unless it is stayed. A stay may not exceed three months. 42 U.S.C. § 7607(d)(7)(B). EPA has not convened a Section 7607(d)(7)(B) reconsideration proceeding for the 2024 Rule and has not sought to stay the

ED_021114D_00001846-00016

effectiveness of the 2024 Rule. Section 7607(d)(7)(B) is the sole authority EPA has to stay a rule after its effective date has passed. *See Clean Air Council v. Pruitt*, 862 F.3d 1, 9 (D.C. Cir. 2017).

49. As part of EPA's duties and authorities implementing the Clean Air Act Title V operating permit program, EPA has the statutory obligation to object to a permitting authority's issuance of a Title V operating permit that is not in accordance with law and to require the permitting authority to revise the permit. *See* 42 U.S.C. § 7661d(b); 40 C.F.R. § 70.8(c). If EPA does not object to such issuance, any person may petition EPA to make an objection. *See* 42 U.S.C. § 7661d(b)(2); 40 C.F.R. § 70.8(d). Any denial by EPA of such petition can be challenged in the relevant U.S. Court of Appeals under 42 U.S.C. § 7607 of the Clean Air Act. 42 U.S.C. § 7661d(b)(2).

50. EPA also has authority to order a permitting authority to reopen and revise a deficient Title V operating permit. *See* 42 U.S.C. § 7661d(e); 40 C.F.R. § 70.7(f), (g). If the permitting authority does not reopen and revise the permit within 90 days of receiving EPA's reopening notification, EPA may modify or revoke and reissue the permit. *See* 42 U.S.C. § 7661d(e); 40 C.F.R. § 70.7(g)(2), (5).

FACTUAL AND PROCEDURAL BACKGROUND

A. EPA's Mercury and Air Toxics Standards and the 2024 Rule

51. EPA first set standards, known as the "Mercury and Air Toxics Standards," for emissions of hazardous air pollutants from coal-fired power plants in 2012. *National Emission Standards for Hazardous Air Pollutants From Coal- and Oil-Fired Electric Utility Steam Generating Units and Standards of Performance for Fossil-Fuel-Fired Electric Utility, Industrial-Commercial- Institutional, and Small Industrial- Commercial-Institutional Steam*

Generating Units, 77 Fed. Reg. 9,304 (Feb. 16, 2012) ("2012 Mercury and Air Toxics Standards").

52. In May 2024, EPA adopted the 2024 Rule pursuant to its obligation under Section 7412(d)(6) to review "developments in practices, processes, and control technologies" and revise the 2012 Mercury and Air Toxics Standards "as necessary." 89 Fed. Reg. 38,508, 38,513.

53. EPA adopted the 2024 Rule after issuing a proposed rule and holding a public comment period. The factual record for the 2024 Rule demonstrated that the 2024 Rule would benefit public health by reducing harmful exposures to toxic pollutants threatening the safety of communities across the country.

54. Coal-fired power plants emit mercury, arsenic, nickel, and other toxic metals, as well as particulate matter. Mercury has adverse health effects including brain and spinal cord damage. Babies are particularly vulnerable to mercury. Non-mercury toxic metals, including arsenic, lead, nickel, and chromium have adverse health effects including cancer, kidney damage, decreased pulmonary function, chronic health disorders such as lung irritation, pneumonia, and damage to the central nervous system.

55. A coal-fired power plant consists of one or more electric utility steam generating units *i.e.*, individual "coal-fired units" that burn coal to generate steam that is then converted into electricity.

56. When EPA reviewed the 2012 Mercury and Air Toxics Standards, EPA found that coal-fired power plants that burn lignite coal were disproportionately emitting high levels of mercury. Lignite coal contains more mercury than other coal types and is the least efficient type of coal to burn for energy. In 2021, 16 of the top 20 mercury-emitting coal-fired units burned lignite coal. In 2021, lignite coal-fired units were responsible for 30% of all mercury emissions

ED_021114D_00001846-00018

from coal-fired units but only 7% of total energy generated by coal-fired units. 89 Fed. Reg. at 38,537.

57. The 2024 Rule revised the 2012 Mercury and Air Toxics Standards to further restrict pollution from coal-fired power plants. The 2024 Rule set forth four standards and requirements relevant here (hereinafter referred to as the "four requirements of the 2024 Rule"):

a. *Modernized lignite mercury standard:* First, EPA lowered limits on mercury emissions from power plants burning lignite coal to require them to meet the more protective standard that already applies to power plants burning all other types of coal. EPA lowered the mercury limit from 4 lb/TBtu[2] to 1.2 lb/TBtu.

b. *Modernized arsenic, nickel, and other metals standard:* Second, EPA lowered limits for arsenic, nickel, and other toxic metals from all coal-fired power plants from 0.030 lb/MMBtu[3] fPM to 0.010 lb/MMBtu fPM. EPA uses filterable particulate matter (fPM) as a surrogate for toxic metals.

c. *Modernized continuous emissions monitoring systems requirement:* Third, EPA required coal-fired power plants to demonstrate compliance with the arsenic, nickel, and other toxic metals standard using continuous emissions monitoring systems that provide continuous feedback and real-time information about emission levels. Under the 2012 Mercury and Air Toxics Standards, coal-fired power plants could demonstrate compliance with the standards through infrequent stack testing of emission levels only four times per year. EPA found it had authority to require continuous emissions monitoring systems under 42 U.S.C.

[2] TBtu is an abbreviation for one trillion British thermal units. British thermal unit is a traditional unit of energy.
[3] MMbtu is an abbreviation for one million British thermal units.

§ 7412(d)(6) and separately under 42 U.S.C. § 7414. EPA found authority under Section 7412(d)(6) because it "further[ed] Congress's goal [in Section 7412] to ensure that emission reductions are consistently maintained" by "provid[ing] real-time information to owners and operators (who can promptly address any problems with emissions control equipment)" and "to regulators, to adjacent communities, and to the general public." 89 Fed. Reg. at 38,535. EPA found authority under Section 7414 because it allows EPA to require applicable facilities to "install, use, and maintain such monitoring equipment" on a "one-time, periodic or continuous basis." *Id.*

d. *Strengthened startup standard:* Fourth, EPA removed an extended startup compliance option that allowed coal-fired power plants to delay compliance with numerical emissions limits, and instead comply only with less stringent work practice requirements, for up to four hours after units begin generating electricity. Removing the extended startup compliance option left only one startup compliance option in place, which required power plants to meet numerical emission limits more quickly. 89 Fed. Reg. at 38,551. This change had the effect of requiring all coal-fired power plants to meet a stricter startup standard and would therefore lower hazardous pollutant emissions. *Id.*

58. Each of the four requirements of the 2024 Rule is independently achievable. EPA explained that "a source can abide by any one of these individual requirements without abiding by any others. Thus, the EPA's overall approach to this source category continues to be fully implementable even in the absence of any one or more of the elements included in this final rule." 89 Fed. Reg. at 38,519.

59. The 2024 Rule went into effect on July 8, 2024. Regulated power plants were required to comply with the strengthened startup standard by January 2, 2025. 89 Fed. Reg. at 38,519, 38,564. Regulated power plants are required to comply with the modernized lignite mercury standard, arsenic, nickel, and other metals standard, and continuous emissions monitoring requirement by three years after the effective date (the maximum allowed by statute) on July 6, 2027. *Id.* at 38,564 (see regulatory text).

60. On information and belief, no coal-fired power plant has requested a compliance extension of up to one additional year available under 42 U.S.C. § 7412(i)(3) "if such additional period is necessary for the installation of controls."

61. EPA projected that the 2024 Rule would reduce annual emissions of mercury by 900 to 1,000 pounds starting in 2028. EPA projected that the 2024 Rule would reduce emissions of arsenic, nickel, and other toxic metals by about four to seven tons per year. 89 Fed. Reg. at 38,561. From 2028-2037, the 2024 Rule was expected to reduce 9,500 pounds of mercury and 49 tons of arsenic, nickel, and other toxic metals. The 2024 Rule is expected to yield $79 million in monetizable health benefits in 2028 alone, even without considering the benefits from reductions of mercury and toxic metals that EPA was unable to quantify.

62. EPA also projected that requiring the use of continuous emissions monitoring systems would deliver non-monetizable benefits such as increased transparency, compliance assurance, and faster identification of pollution exceedances allowing operators to act more quickly to address problems and come back into compliance with standards.

B. The Availability of Technology to Implement the 2024 Rule's Modernized Standards

63. Technology to implement the four requirements of the 2024 Rule is available.

ED_021114D_00001846-00021

64. The pollution control technologies sufficient to meet the lower emissions standards consist of technologies such as fabric filters and electrostatic precipitators to meet the standard for arsenic, nickel, and other toxic metals, and activated carbon injection systems to meet the mercury standard. Those pollution control technologies are and have been widely used by many coal-fired electric generating units.

65. Different power plants may apply different configurations and combinations of control technologies and operational methods in order to comply with emission standards.

66. EPA determined that the four requirements of the 2024 Rule are achievable for at least two reasons. First, EPA determined they are achievable because coal-fired power plants were demonstrating the ability to meet the requirements eventually adopted by the 2024 Rule based on their emissions performance to comply with the 2012 Mercury and Air Toxics Standards. Second, EPA determined they are achievable because the compliance costs were reasonable. For requirements to be achievable, the technology to implement the requirements must be available.

67. The technology needed for lignite-fired coal power plants to implement the lignite mercury standard, which may include activated carbon injection, fuel additives, scrubber chemicals, and equipment such as blowers, carbon metering valves, and sorbent storage vessels, is available.

68. The 2012 Mercury and Air Toxics Standards carved out lignite-fired coal power plants for a higher mercury emissions limit than all other coal-fired power plants. In the 2024 Rule, EPA determined that these 22 lignite-fired coal units could meet the same mercury limit as the rest of the fleet because the mercury control technologies they were already using to meet existing standards are "dial up" operational methods, allowing the operator to dial the controls

"up or down to achieve a desired [mercury] emission rate." 89 Fed. Reg. at 38,540. Two lignite units—Twin Oaks units 1 and 2 located in Texas—were already voluntarily emitting at low levels (1.24 lb/TBtu and 1.31 lb/TBtu) near the new limit adopted by the 2024 Rule (1.2 lb/TBtu). *Id.* at 38,539.

69. EPA acknowledged that the chemical composition of lignite coal, including low halogen content and high sulfur content, created certain challenges for controlling mercury emissions. However, EPA determined that these compositional challenges were not unique and other non-lignite plants had demonstrated the ability to address these issues and meet the lower mercury limit that lignite plants would now be subject to. 89 Fed. Reg. at 38,546-47, 38,549. EPA found that the advanced sorbents and chemical additives used to control mercury emissions at lignite-fired plants were "commercially available" from several vendors. *Id.* at 38,539, 38,541.

70. EPA stated that lignite coal plants have never been required to meet a lower mercury emission level and therefore had no incentive to incur the greater operating costs required to "dial up" their controls. EPA concluded: "Most units that are permitted to meet a [mercury] emission standard of 4.0 lb/TBtu have no reason to 'over control' since doing so by injecting more sorbent would increase their operating costs. So, it is unsurprising that many units that are permitted to fire lignite have reported [mercury] emission rates between 3.0 and 4.0." 89 Fed. Reg. 38,540.

71. The technology for coal-fired power plants to implement the arsenic, nickel, and other metals standard, which may include electrostatic precipitators, fabric filters, and operations and maintenance changes, is available.

72. Coal-fired power plants providing 93% of the total energy capacity generated by the coal power plant fleet have already met the standard for arsenic, nickel, and other metals adopted by the 2024 Rule with their existing technology. 89 Fed. Reg. at 38,522, 38,530.

73. The fact that the overwhelming majority of coal-fired power plants are already meeting the arsenic, nickel, and other metals standard demonstrates that the technology needed to meet the standard is available.

74. After EPA found that most power plants were emitting well below the standard adopted in the 2012 Mercury and Air Toxics Standards, the agency determined that it was necessary to update the arsenic, nickel, and other metals standard to require that the worst-performing units in the fleet achieve emissions levels in line with what the vast majority of other units were proving to be achievable due to developments in control technologies following the 2012 standards. This was consistent with Section 7412(d)'s mandate that standards reflect the maximum degree of reduction in emissions that is achievable. 89 Fed. Reg. at 38,522, 38,530.

75. EPA estimated that very few power plants would require upgrades to comply with the new lower limit on arsenic, nickel, and other metals. Only 33 of 296 coal-fired units would need to take action to meet the arsenic, nickel, and other metals standard. 89 Fed. Reg. at 38,530. EPA, *Presentation: Final National Emission Standards for Hazardous Air Pollutants: Coal and Oil-Fired Electric Utility Steam Generating Units Review of the Residual Risk and Technology Review,* at 12 (Apr. 25, 2024), https://www.epa.gov/system/files/documents/2024-04/presentation_mats_final-2024-4-24-2024.pdf (attached as Exhibit 3). Of these 33 units, EPA estimated that 20 units would require no new capital investments but only modifications to their existing technology. 89 Fed. Reg. at 38,522, 38,530.

ED_021114D_00001846-00024

76. Continuous emissions monitoring technology needed to implement the continuous emissions monitoring requirement is available.

77. One-third of the coal-fired fleet over 100 units has already installed the required continuous emissions monitoring systems. 89 Fed. Reg. at 38,535.

78. EPA found in the 2024 Rule that technology to implement continuous emissions monitoring for compliance demonstration was "readily available and in widespread use by the electric utility industry." *Id.* at 38,536.

79. Technology sufficient to implement the strengthened startup standard is also available.

80. Technology and practices sufficient to implement the strengthened startup standard includes "greater clean fuel capacity, better tuned equipment, better trained staff, a more efficient/better design structure, or a combination of factors." *Id.* at 38,551.

81. As of the promulgation of the 2024 Rule, the overwhelming majority of coal-fired power plants—generating over 98% of energy generated by the entire coal-fired power plant fleet were already meeting the more stringent startup compliance option available under the 2012 Mercury and Air Toxics Standards. *Id.*

82. Only eight coal-fired units were using the more lax extended startup standard that the 2024 Rule removed. These units are Prairie State Generating (Units 1 and 2) (Illinois), Brame Energy Center (Units 2, 3-1, and 3-2) (Louisiana), Sherburne (Unit 3) (Minnesota), Westwood (Unit 1) (Pennsylvania), and Centralia (BW22) (Washington). 88 Fed. Reg. 24,854-85. These units were required to comply with the strengthened startup standard starting on January 2, 2025. All other coal-fired units had already been using the strengthened startup standard even prior to the 2024 Rule.

83. The fact that all other coal-fired power plants have already implemented the 2024 Rule's startup standard demonstrates that the technology to meet the strengthened startup standard is available.

84. The costs are reasonable for operators to obtain or maintain the control technologies needed to comply with the 2024 Rule.

85. For the lignite mercury standard, EPA determined that the improved operational methods needed injecting more activated carbon sorbent represented just "a small fraction of" the revenues of the affected lignite-fired coal units. 89 Fed. Reg. at 38,549.

86. The annual costs to meet the arsenic, nickel, and other metals standard are a small fraction of power sector expenditures and a very small share of total power sector sales. 89 Fed. Reg. at 38,533. EPA determined these costs were "much lower" than estimated in the original 2012 Mercury and Air Toxics Standards. *Id.* at 38,531. Only 33 of 296 coal-fired units would need to make upgrades or install new technology to comply with the modernized arsenic, nickel, and other metals standard. Twenty of those 33 units would incur costs of at most $100,000 a year per coal-fired unit. Those implementation costs are a small fraction of the power sector's annual electricity revenues, which in 2022 were $427.8 billion. *Id.* at 38,532-34.

87. Implementing the continuous emissions monitoring systems requirement costs about $72,000 per year per coal-fired unit. That is about $12,000 greater per year than the cost of quarterly emissions performance tests allowed under the 2012 Mercury and Air Toxics Standards. *See* 89 Fed. Reg. at 38,535-36.

88. Implementing the strengthened startup standard would require little to no additional expenditures by coal-fired units. The strengthened startup standard has simplified

reporting and recordkeeping requirements, which can decrease compliance costs. 89 Fed. Reg. at 38,551.

89. EPA studied the impacts of the 2024 Rule and determined its implementation would not cause any coal-fired power plant to retire, would have no significant impact on retail electricity prices, and would not cause any significant challenges to existing resource adequacy—that is, the power system's ability to meet electricity demand. 89 Fed. Reg. at 38,526, 38,556.

90. Units that must achieve additional pollution reductions to comply with the four requirements of the 2024 Rule are forecast to produce just 2% of electricity generated in 2028. 89 Fed Reg. at 38,555.

91. As EPA noted, concerns about the reliability of the power grid were raised in connection with the 2012 Mercury and Air Toxics Standards. The 2012 Mercury and Air Toxics Standards required far greater action and investments by the coal-fired power plant fleet to implement than the 2024 Rule. To date there is no evidence that the 2012 Mercury and Air Toxics Standards contributed to problems with the U.S. power grid's ability to meet energy demand. 89 Fed. Reg. at 38,527.

C. Litigation Challenging the 2024 Rule and Coal Industry Requests to Stay the Rule

92. A number of coal industry participants filed petitions for review of the 2024 Rule in the U.S. Court of Appeals for the District of Columbia Circuit. Coal industry Petitioners and associated Petitioner-Intervenors also filed emergency applications to stay the 2024 Rule premised on claims of irreparable injury should they be required to comply with the rule or take actions to prepare for compliance with the rule before the litigation in the case resolved and the potential for disruptions to the U.S. power grid should power plants be forced to shut down. The

ED_021114D_00001846-00027

D.C. Circuit denied the motions to stay the rule. Order in *North Dakota v. EPA*, No. 24-1119 (D.C. Cir., Aug. 6, 2024) (attached as Exhibit 4).

93. Petitioners and Petitioner-Intervenors then filed stay applications in the Supreme Court raising similar arguments that they would suffer irreparable injury from the costs of actions taken to prepare for rule compliance during the pendency of litigation. The Court denied those applications. Docket Order in *North Dakota v. EPA*, No. 24A180 (D.C. Cir., Oct. 4, 2024) (attached as Exhibit 5).

94. The case was fully briefed on the merits when the D.C. Circuit granted EPA's request that the case be held in abeyance pending the agency's reconsideration of the 2024 Rule. Order in *North Dakota v. EPA*, No. 24-1119 (D.C. Cir., Feb. 20, 2025) (attached as Exhibit 6). No party challenged the 2024 Rule's strengthened startup standard, nor EPA's assertion of 42 U.S.C. § 7414(a)(1)(C) as additional authority to require continuous emissions monitoring systems to demonstrate compliance with the arsenic, nickel, and other metals standard.

D. The Trump Administration's Announcement That It Was Reconsidering the 2024 Rule and Invitation to Apply for Presidential Exemptions

95. On March 12, 2025, EPA announced that it would "reconsider" the 2024 Rule—together with 31 other federal regulations protecting human health and the environment. EPA, News Release, *Trump EPA to Reconsider Biden-Harris MATS Regulation That Targeted Coal-Fired Power Plants to be Shut Down* (Mar. 12, 2025), https://www.epa.gov/newsreleases/trump-epa-reconsider-biden-harris-mats-regulation-targeted-coal-fired-power-plants-be. EPA Administrator Lee Zeldin called it "the greatest day of deregulation our nation has seen." EPA, News Release, *EPA Launches Biggest Deregulatory Action in U.S. History* (Mar. 12, 2025), https://www.epa.gov/newsreleases/epa-launches-biggest-deregulatory-action-us-history.

96. EPA announced on that day that: "The Trump Administration is considering a 2-year compliance exemption via Section [7412](i)(4) of the Clean Air Act for affected power plants while EPA goes through the rulemaking process." *Id.*

97. EPA published a "fact sheet" on the reconsideration of the 2024 Rule that stated that: "Any source interested in a Presidential exemption, should provide their recommendations to EPA by March 31, 2025. Sources need only provide why technology is unavailable and why it is in the national security interests of the United States to provide the exemption." EPA, *Mercury and Air Toxics Standards (MATS): Powering the Great American Comeback Fact Sheet* (undated), at https://www.epa.gov/system/files/documents/2025-03/fact-sheet-reconsideration-of-mercury-and-air-toxics-standards.pdf.

98. The fact sheet provided reasons for the reconsideration of the 2024 Rule none of which were that the technology needed for power plants to comply with the rule was not available. Instead, the fact sheet cited reasons relating to a changed interpretation of Clean Air Act authority, costs to power plants and operators, and a concern the 2024 Rule created an "undue burden" on certain coal plants. *Id.*

99. That same day, EPA announced reconsideration of eight other Section 7412 rules limiting hazardous air pollution from various industrial sectors including integrated iron and steel manufacturing, rubber tire manufacturing, synthetic organic chemical manufacturing industry, commercial sterilizers for medical devices and spices, lime manufacturing, coke ovens, copper smelting, and taconite ore processing. EPA stated that the Trump Administration was also considering 2-year compliance exemptions for facilities subject to these standards "while EPA goes through the rulemaking process" and invited sources to "provide their recommendations to EPA by March 31, 2025" to procure an exemption. *See* EPA, Trump EPA Announces

Reconsideration of Air Rules Regulating American Energy, Manufacturing, Chemical Sectors (NESHAPs) (Mar. 12, 2025), https://www.epa.gov/newsreleases/trump-epa-announces-reconsideration-air-rules-regulating-american-energy-manufacturing; EPA, National Emission Standards for Hazardous Air Pollutants (NESHAP), Powering the Great American Comeback Fact Sheet, https://www.epa.gov/system/files/documents/2025-03/neshap_powering-the-great-american-comeback_fact-sheet_2.pdf.

100. On or about March 24, 2025, EPA posted a new webpage with details on how facilities could submit requests for presidential exemptions from compliance with the nine Section 7412 rules including the 2024 Rule previously identified as being reconsidered. EPA, *Clean Air Section 112 Presidential Exemption Information* (last updated Apr. 14, 2025), https://www.epa.gov/stationary-sources-air-pollution/clean-air-act-section-112-presidential-exemption-information. (attached as Exhibit 7). The webpage explained, "EPA set up an electronic mailbox to allow the regulated community to request a Presidential Exemption under section [7412](i)(4)" and provided requesters an email address—airaction@epa.gov—to submit requests "by March 31, 2025." *Id.* EPA has since removed much of the information in an April 14, 2025 update to the webpage. EPA did not ask for any information from the general public or affected communities or otherwise invite their input on issuing exemptions.

101. On information and belief, a presidential administration has only once previously established a process for the consideration of whether the President might provide exemptions from a national emissions standard for hazardous air pollutants, for facilities that sterilize medical products. The process for consideration of and granting such exemptions was set forth in a presidential memorandum. *Memorandum on the Orderly Implementation of the Air Toxics Standards for Ethylene Oxide Commercial Sterilizers*, 90 Fed. Reg. 6,773 (Jan. 17, 2025)

("Sterilizers Memorandum"). On information and belief, no exemptions were granted as a result of this process.

102. The President stated in the Sterilizers Memorandum that the exemption process was intended to address "the exceptional circumstances in which a commercial sterilizer can demonstrate that, notwithstanding due diligence and best efforts, it will be unable to meet a covered standard or limitation required by the [ ] Rule before the compliance deadline due to the unavailability of control technology for the facility, leading to likely shutdown of the facility, and the best available information demonstrates that the shutdown of the facility will likely lead to a serious disruption to the supply of medical products, such as medical devices and pharmaceuticals, necessary for America's national security and public health." 90 Fed. Reg. at 6,774.

103. The President made clear in the Sterilizers Memorandum that issuing an exemption is a last resort reserved for when "notwithstanding its due diligence and best efforts, the facility cannot be brought into compliance before the compliance deadline for the covered standard or limitation." *Id.*

E. President Trump Granted Exemptions from the 2024 Rule to 68 Coal-Fired Power Plants.

Release and Publication of the Exemption Proclamation and Annex 1

104. On April 8, 2025, President Trump issued a proclamation (the Exemption Proclamation) that exempted "certain stationary sources . . . as identified in Annex 1 of this proclamation" from the 2024 Rule pursuant to "authority vested . . . by the Constitution and the laws of the United States of America, including section [7412](i)(4) of the Clean Air Act, 42 U.S.C 7412(i)(4)." Exemption Proclamation.

105. In support of the exemptions, the Exemption Proclamation included what it referred to as two "determinations." *Id.*

106. First, the Exemption Proclamation purported to "determine" that "[t]he technology to implement the Rule is not available." *Id.* The Proclamation stated: that "[s]uch technology does not exist in a commercially viable form sufficient to allow implementation of and compliance with the Rule by its compliance date of July 8, 2027." *Id.*

107. Second, the Exemption Proclamation purported to "determine" that "[i]t is in the national security interests of the United States to issue this Exemption" because the 2024 Rule "places severe burdens on coal-fired power plants" and the "viability of our Nation's coal sector," "requires compliance with standards premised on the application of emissions-control technologies that do not yet exist in a commercially viable form," and provides a "compliance timeline . . . [that] therefore raises the unacceptable risk of the shutdown of many coal-fired power plants, eliminating thousands of jobs, placing our electrical grid at risk, and threatening broader harmful economic and energy security effects . . . in turn undermin[ing] our national security, as these effects would leave America vulnerable to electricity demand shortages, increased dependence on foreign energy sources, and potential disruptions of our electricity and energy supplies, particularly in times of crisis." *Id.*

108. The Exemption Proclamation declared that the exempted power plants "are exempt from compliance with the Rule for a period of 2 years beyond the Rule's compliance date—*i.e.*, for the period beginning July 8, 2027, and concluding July 8, 2029 (Exemption)." *Id.*

109. The Exemption Proclamation asserts the compliance deadline of the 2024 Rule is July 8, 2027. That is wrong. The compliance deadline for the lignite mercury standard, the nickel, arsenic, and other metals standard, and the continuous emissions monitoring systems

requirement is July 6, 2027. The compliance deadline for the 2024 Rule's startup standard was January 2, 2025. 89 Fed. Reg. at 38,564.

110. The Exemption Proclamation purports to exempt sources from compliance with the 2024 Rule for a period that extends beyond two years from the date of the purported "determination" on technological availability and national security.

111. The Exemption Proclamation stated that, "during this 2-year period [from July 8, 2027, to July 8, 2029], these stationary sources are subject to the compliance obligations that they are currently subject to under the [2012 Mercury and Air Toxics Standards] as [they] existed prior to the [2024] Rule." *Id.*

112. President Trump transmitted a notification of the exemptions to Congress, dated April 14, 2025. H.R. Doc. No. 119-40, (2025). The Exemption Proclamation and "Annex 1" were published in the Federal Register on April 21, 2025. 90 Fed. Reg. 16,777 (Apr. 21, 2025), www.govinfo.gov/content/pkg/FR-2025-04-21/pdf/2025-06936.pdf.

113. Plaintiff EDF submitted a Freedom of Information Act request to EPA seeking information about requests for exemptions from sources and their responses. To date, EDF has not received any responsive documents.

114. The White House has since highlighted the exemptions as an example of the President broadly "pausing restrictive emissions rules for coal plants." *See, e.g.*, White House, On Earth Day, We Finally Have a President Who Follows the Science (Apr. 22, 2025), https://www.whitehouse.gov/articles/2025/04/on-earth-day-we-finally-have-a-president-who-follows-science. The same White House release stated that "President Trump is cutting wasteful regulations that stifle innovation and raise costs. Actions like pausing restrictive emissions rules for coal plants . . . have accelerated responsible energy and infrastructure projects while

maintaining rigorous environmental standards saving American families thousands annually on energy bills and proving that a strong economy and a healthy environment go hand-in-hand." *Id.*

EPA's Proposed Repeal

115. On June 11, 2025, Administrator Zeldin signed and submitted to the Office of the Federal Register for publication a notice of proposed rulemaking entitled, "Repeal of Amendments to National Emission Standards for Hazardous Air Pollutants: Coal- and Oil-Fired Electric Utility Steam Generating Units," *available at* https://www.epa.gov/stationary-sources-air-pollution/mercury-and-air-toxics-standards. The notice proposes to repeal the modernized mercury standard, the modernized arsenic, nickel, and other metals standard, and the continuous emissions monitoring standard.

Facts Relating to Power Plants That Received Exemptions

116. Although the Exemption Proclamation issued on April 8, 2025 referenced an "Annex I" for the list of exempted power plants, the Proclamation as issued did not include an "Annex I." Plaintiff EDF filed a Freedom of Information Act request with EPA and the White House Office of Management and Budget for "Annex I" on April 10. The "Annex I" list of exempted power plants was published for the first time on April 14, when EPA posted the document to its website. EPA, "Annex 1"[4] (Apr. 14, 2025) https://www.epa.gov/system/files/documents/2025-04/regulatory-relief-for-certain-stationary-annex-1.pdf (providing list of 68 exempted plants organized by operating company).

[4] While the Exemptions Proclamation referred to an "Annex I" using the Roman numeral, the document itself as posted on EPA's website and later in the Federal Register was titled "Annex 1" using the Arabic numeral.

117. The list revealed that the President had exempted 68 coal-fired power plants across 23 states from the 2024 Rule. The exemptions cover approximately one-third of the entire domestic coal fleet.

118. Annex 1 lists 47 power companies and identifies every "affected facility/source" owned by that power company granted an exemption. The document in some cases identifies specific coal-fired units located at a specified facility receiving exemptions, but in other cases only lists the facility itself. The total number of exempted coal-fired units is thus unspecified and unclear.

119. Some of the power plants that the Exemption Proclamation exempts are already able to meet the four requirements of the 2024 Rule with their existing controls. EPA determined that these power plants do not need to install or upgrade any technology or make any changes to operations and maintenance to implement the 2024 Rule's standards. For example, the H.L. Spurlock (Kentucky), R.S. Nelson (Louisiana), Sioux (Missouri), and Cooper (Kentucky) plants have already installed the continuous emissions monitoring systems required by the 2024 Rule, are not affected by the lignite mercury standard because they do not burn lignite, are already meeting the modernized arsenic, nickel, and other metals standard with their existing technology, and are already meeting the strengthened startup standard.

120. All but one of the exempted power plants (the Colstrip facility in Montana) are able to meet the modernized arsenic, nickel, and other metals standard with existing controls. *See* Proposed Repeal at 23. Several other exempted power plants, including D. B. Wilson (Ohio), Milton R. Young 2 (North Dakota), Martin Lake 1 (Texas), San Miguel (Texas), Mt. Storm (West Virginia), and Laramie River 3 (Wyoming) already have the necessary control technology to meet the modernized arsenic, nickel, and other metals standard and would only need to

implement operations and maintenance changes to comply with the 2024 Rule's modernized arsenic, nickel, and other metals standard.

121. Some exempted power plants would need to upgrade their existing pollution controls with commercially available equipment to comply with the 2024 Rule's standard for arsenic, nickel, and other metals. Colstrip (Montana), Labadie (Missouri), and Harrison (West Virginia) need to invest in fabric filters or electrostatic precipitators to meet the modernized arsenic, nickel, and other metals standard. John B. Rich (Pennsylvania) and Westwood (Pennsylvania) need a bag-type upgrade to their existing fabric filters to meet the modernized arsenic, nickel, and other metals standard.

122. Only 10 of the coal plants exempted by the Exemption Proclamation are lignite-fired: Antelope Valley (ND), Coal Creek (ND), Coyote (ND), Leland Olds (ND), Limestone (TX), Martin Lake (TX), Milton R. Young (ND), Oak Grove (TX), Red Hills Generating Facility (MS), and San Miguel (TX). All 10 of the lignite-fired coal plants exempted by the Exemption Proclamation are already using some form of sorbent or activated carbon injection system to control emissions. Those 10 facilities have thus installed the technology necessary to meet the 2024 Rule's modernized mercury standard and would only need to change some aspects of the operation of that technology to further control mercury emissions sufficient to meet the 2024 Rule's modernized mercury standard. 89 Fed. Reg. at 38,547-49.

123. At least 42 of the 68 coal-fired plants exempted by the Exemption Proclamation are already using fabric filters and electrostatic precipitators and have been meeting, on average, the levels of the arsenic, nickel, and other metals standard of the 2024 Rule.

124. Eleven of the 68 coal-fired power plants exempted by the Exemption Proclamation already have continuous emissions monitoring systems installed.

ED_021114D_00001846-00036

125. Two of the coal-fired power plants exempted by the Exemption Proclamation were previously using the extended startup compliance option and have been required to use the strengthened startup standard in the 2024 Rule beginning in January 2025. These plants are Rausch Creek Generation/Westwood (Pennsylvania) and Brame Energy Center (Unit 2) (Louisiana). All other exempted power plants were already using the strengthened startup standard to comply.

Lack of Source-Specific Determinations Made by the President

126. The Exemption Proclamation does not reveal any factual consideration or deliberation of the statutory prerequisites for granting a Section 7412(i)(4) exemption. Readily discernible facts reveal that the statutory prerequisites are not met.

127. The President has not, in the Exemption Proclamation, Annex 1, or (on information and belief) otherwise, for any power plants granted exemptions, made a source-specific determination that "the technology to implement" each (or any) of the 2024 Rule's requirements "is not available" for that specific power plant or any of the coal-fired units at that power plant.

128. The Exemption Proclamation states without explanation, analysis, basis, or specificity that "[t]he technology to implement the Rule is not available" and "does not exist in a commercially viable form sufficient to allow implementation of and compliance with the Rule by its compliance date of July 8, 2027." This statement is not a determination that the technology to comply with each requirement is unavailable for each of the exempted power plants.

129. The Exemption Proclamation states "the technology to implement the Rule is not available." The Exemption Proclamation does not specify which technology is not available. The Exemption Proclamation does not specify for which of the four requirements of the 2024 Rule

ED_021114D_00001846-00037

the technology to implement such requirement is not available. Each of the four requirements depends on implementing distinct technologies.

130. The President has not, in the Exemption Proclamation, Annex 1, or (on information and belief) otherwise made any determination that any of the power plants listed on Annex 1 will shut down if required to comply with the 2024 Rule.

131. The President has not, in the Exemption Proclamation, Annex 1, or (on information and belief) otherwise made any determination that the retirement or shutdown of any of the plants listed on Annex 1 would pose national security risks to the United States. The Exemption Proclamation declares "[t]he current compliance timeline of the Rule therefore raises the unacceptable risk of the shutdown of many coal-fired power plants," but does not say which power plants are at risk of shutting down or assert that any of the power plants listed in Annex 1 are at "unacceptable risk of shutdown." The President has not, in the Exemption Proclamation, Annex 1, or (on information and belief) otherwise made any determination for each power plant granted an exemption (1) that the technology is not available for it to comply with the 2024 Rule, (2) that the plant will retire as a result, or (3) that such retirement would pose a national security threat.

132. The President has not, in the Exemption Proclamation, Annex 1, or (on information and belief) otherwise made any determination as to the individual exempted plants and the different requirements from which they necessitated an exemption.

133. The Exemption Proclamation exempts power plants from having to comply with the strengthened startup standard from July 8, 2027 to July 8, 2029 after they have been subject to compliance with the standard from January 2, 2025 to July 7, 2027. This illogic underscores

the absence of a fact-based determination made about the availability of technology to implement the 2024 Rule over any particular time period.

134. In the alternative, if the exemption from the strengthened startup standard were to apply immediately to power plants, it would provide an exemption for over four years, when 42 U.S.C. § 7412(i)(4) allows the President to issue a single exemption "of not more than 2 years."

135. Similarly, the Exemption Proclamation's erroneous assertion that the compliance deadline of the 2024 Rule is July 8, 2027, rather than July 6, 2027, means the terms of the proclamation may require sources to install controls and comply with the 2024 Rule's requirements for two days in July 2027 before sources are exempted. This illogic underscores the absence of a determination about the availability of technology over any particular time period.

136. The Exemption Proclamation granted Brame Energy Center Unit 2 an exemption from the 2024 Rule for the period from July 8, 2027, to July 8, 2029. Brame Energy Center Unit 2 is one of the few coal-fired units that was previously not in compliance with the 2024 Rule's startup standard. Brame Energy Center Unit 2, like all other coal-fired units subject to the 2024 Rule, was required to comply with the more stringent startup standard starting January 2, 2025. On its face, if the Exemption Proclamation exempts sources from compliance with the startup standard, it would mean that Brame Energy Center Unit 2 will be exempt from that standard from July 8, 2027, to July 8, 2029. And it would mean that Brame Energy Center Unit 2 will either need to procure and use technological controls before July 8, 2027, to comply with the strengthened startup standard—or be in noncompliance with the 2024 Rule—but then be permitted to not use such technological controls from July 8, 2027, to July 8, 2029 due to a Presidential determination that such technology is "not available" to achieve compliance during that later period. This belies an assertion that the technology to implement the startup standard is

not available and demonstrates that there was no determination made as to the availability of technology necessary for Brame Energy Center Unit 2 to implement the strengthened startup standard.

137. Similarly, the factual allegations *supra* at ¶¶ 119, 121, 122-125, that the Exemption Proclamation exempts coal-fired power plants from requirements of the 2024 Rule that they are already in compliance with demonstrates that there was no determination made about the availability of technology for exempted sources to implement the 2024 Rule.

Facts Contradicting the Exemption Proclamation

138. The facts alleged *supra* at ¶¶ 63-93 demonstrate that the technology to implement the 2024 Rule is available and that compliance with the 2024 Rule will not cause any power plant to retire.

139. The Exemption Proclamation's determination that technology is not "available" is contradicted by the fact that all of the different technologies necessary to implement the 2024 Rule, such as continuous emission monitoring systems, are already installed and in use by existing coal-fired power plants. As explained *supra* ¶¶ 119, 121, 122-125, several of the exempted power plants already have installed the technology necessary to comply with the 2024 Rule.

140. The Exemption Proclamation directly contradicts the findings made by EPA just 11 months earlier, on the basis of an ample administrative record developed through public notice and comment, that the control technologies needed to implement each of the four requirements of the 2024 Rule are available and cost reasonable, and that each of the four requirements of the 2024 Rule are achievable. *See, e.g.*, 89 Fed. Reg. at 38,533, 38,535-36, 38,539.

141. EPA found that the 2024 Rule will not drive any coal plant retirements, and that the 2024 Rule can be implemented without interfering with electric system reliability or resource adequacy. The Exemption Proclamation directly contradicts those findings, made just 11 months earlier.

142. Since the time the 2024 Rule was finalized, upon information and belief, no unit has publicly indicated that it intends to shut down as a result of the 2024 Rule.

143. Since President Trump issued the Exemption Proclamation, certain power plant owners and operators who did not receive an exemption have publicly shared that they did not request an exemption. One power plant operator stated: "The 2024 MATS rule does not impact our ability to continue to provide safe, reliable and affordable energy to our customers while continuing to comply with environmental regulations." Morgan Watkins, *Why two Kentucky utilities sought coal pollution exemption from Trump, but others didn't*, Louisville Public Media (Apr. 29, 2025), https://www.lpm.org/investigate/2025-04-29/why-two-kentucky-utilities-sought-coal-pollution-exemption-from-trump-but-others-didnt. Another power plant operator said: "After careful consideration of the statutory requirements necessary to seek a presidential exemption, Duke Energy determined that it was in the best interest of our customers not to seek an (exemption)." *Id.* The fact that certain power plant owners and operators did not request an exemption illustrates how technology is available to implement the 2024 Rule's requirements.

STANDING

144. Plaintiffs' members live, work, and recreate in areas affected by the excess pollution that is and will be emitted from the exempted coal-fired power plants. Members are harmed by breathing in air pollution from the exempted plants. Members are concerned that exposure to pollution from the exempted plants could have harmful impacts on their health.

Exposure to mercury, particulate matter, and arsenic, nickel, and other heavy metals emitted at higher volumes by exempted plants as a result of the Exemption Proclamation has adverse health effects, which may include cancer, kidney damage, and detrimental effects to the central nervous system.[5]

145. Plaintiffs' members are also harmed by exposure to excess mercury when consuming fish contaminated with power plant mercury. Coal plant mercury emissions can travel through the air before being deposited on land or in waterbodies. Once deposited into waterbodies, microbial action can turn mercury into methylmercury. Methylmercury can be taken up by aquatic organisms and bioaccumulate in larger, longer-living organisms that eat smaller organisms. Humans are exposed when they eat fish with high concentrations of methylmercury. Exposure to methylmercury from fish consumption causes adverse health effects, including neurodevelopmental and cardiovascular harms. 89 Fed. Reg. at 38,515. Birds and mammals can also become exposed via fish consumption and face resulting adverse health effects.

146. Plaintiffs' members are concerned that air pollution from the exempted power plants is present in the locations where they live, work, and recreate. These reasonable concerns about their increased exposure to air pollution while engaged in those activities and other resulting harms from that exposure diminish their enjoyment of outdoor activities and areas they previously enjoyed or would like to continue to engage in or use, thereby harming members'

---

[5] EPA, Fact Sheet: EPA's Final Rule to Strengthen and Update the Mercury and Air Toxics Standards for Power Plants at 4, https://www.epa.gov/system/files/documents/2024-04/fact-sheet_mats-rtrfinal_rule_2024.pdf; *see also National Emission Standards for Hazardous Air Pollutants: Coal- and Oil-Fired Electric Utility Steam Generating Units Revocation of the 2020 Reconsideration and Affirmation of the Appropriate and Necessary Supplemental Finding*, 88 Fed. Reg. 13,956 (Mar. 6, 2023).

aesthetic and recreational interests. Some members are aware that mercury and other heavy metals can contaminate animals and are concerned about the safety of eating the fish they catch and animals they hunt in the areas affected by the exempted plants. Some members fish recreationally but curtail their fishing or refrain from fishing, or avoid eating the fish they catch, because of mercury advisories or other concerns about the mercury content of fish.

147. Plaintiffs' members benefit from stronger controls on power plants in a variety of ways, including through reduced exposure to pollution, cleaner air and environment, reduced contamination of fish and game, and a greater ability to enjoy outdoor activities in areas affected by the power plants.

148. Some of Plaintiffs' members live, work, fish, hunt, or recreate near power plants that are exempted from complying with the strengthened standard for arsenic, nickel, and other toxic metals beginning on July 8, 2027. Compliance with the strengthened standard will reduce health-harming pollution, including particulate matter and heavy metals. Exempting power plants from the strengthened standard injures those members by delaying or denying them the benefits of stronger pollution controls.

149. Some of Plaintiffs' members live, work, fish, hunt, or recreate near lignite-fired power plants that are exempted from complying with the strengthened mercury standards beginning on July 8, 2027. Compliance with the strengthened standard will reduce mercury pollution. Exempting power plants from the strengthened standard injures those members by delaying or denying them the benefits of stronger pollution controls.

150. Some of Plaintiffs' members live, work, or recreate near power plants that are exempted from the requirement to employ continuous emissions monitoring for the strengthened standard for arsenic, nickel, and other toxic metals beginning on July 8, 2027. Requiring

ED_021114D_00001846-00043

continuous emissions monitoring can result in reduced pollution and strengthened compliance through faster identification and correction of problems with pollution control devices. 89 Fed. Reg. at 38,508, 38,536. EPA recognized those benefits in its 2024 rulemaking. Continuous emissions monitoring will also generate up-to-date information for Plaintiffs, their members, and the public about particulate matter and toxic metal emissions at the power plants.

151. Exempting power plants from the requirement to employ continuous emissions monitoring injures members by delaying or denying them the pollution reduction and improved compliance that can result from continuous monitoring. The exemptions also deny Plaintiffs and their members the information about emissions at the power plants that continuous emissions monitoring would provide. Sources that are major under Clean Air Act Section 7412, 42 U.S.C. § 7412, are subject to the Clean Air Act's Title V permitting requirements. Title V requires that "a copy of each permit application, compliance plan including the schedule of compliance), emissions or compliance monitoring report, certification, and each permit . . . shall be available to the public." 42 U.S.C. § 7661b(e). Some Plaintiffs and their members would use such monitoring data to raise public awareness of air pollution and to further Plaintiffs' and their members' advocacy, education, and outreach efforts to reduce air pollution. For example, it can allow Plaintiffs and their members to better identify violations and act when the data shows a power plant has not complied with pollution standards. It would also help the communities some Plaintiffs serve make educated decisions about how they engage in advocacy to reduce air pollution. And improved monitoring data empowers Plaintiffs, their members, and the communities they work with to better understand their own pollution exposures so that they can modify their behavior to limit their exposure to pollution from coal power plants. Without continuous emissions monitoring data, Plaintiffs and their members will be unable to improve

their advocacy and public education work, and some members will be deprived of information they could have used to evaluate the pollution exposure and health risks of areas affected by the exempted power plants and make decisions to reduce their exposure.

152. Some of Plaintiffs' members live, work, or recreate in areas near power plants that are exempted from the requirement to comply with more stringent startup standards, for which compliance was required starting on January 2, 2025. Compliance with the strengthened standard will reduce mercury and other toxic air pollution. Exempting power plants from the strengthened standard injures those members by delaying or denying them the benefits of stronger pollution controls.

153. Power plants that were issued exemptions are now able to emit toxic air pollution at higher levels during the period of exemption than otherwise would have been allowed. They are also able to forgo use of continuous emissions monitoring during the period of exemption. Power plants that may have already been complying with the strengthened standards of the 2024 Rule will now have no legal obligation to do so during the period of exemption. They will be permitted to stop using already-installed pollution control technologies and raise their emissions, significantly increasing the risk to Plaintiffs and their members of exposure to increased emissions and the health harms associated with such exposures.

154. A coal industry group stated that the 2024 Rule will require coal power plants to take immediate actions and make immediate expenditures to be able to meet the rule's requirements by the compliance deadline.

155. Stephanie Coates is a member of the Environmental Defense Fund and works as a Climate & Health Project Manager for EDF. Ms. Coates lives in Houston with her family and enjoys spending time outdoors with her family, including biking and taking regular walks to the

park or coffee shop. She lives about 25 miles from the W.A. Parish Coal Plant. The W.A. Parish coal plant needs to install CEMS to comply with the 2024 Rule. The Martin Lake coal plant, the Oak Grove coal plant, and the San Miguel coal plant are located outside of Houston. All three plants are lignite-fired and must make operations changes to comply with the strengthened mercury standard. Martin Lake and San Miguel also need to invest in increased operations and maintenance to meet the strengthened standard for arsenic, nickel, and other metals, and San Miguel needs to install CEMS to comply with the 2024 Rule. All four of those coal plants are exempted from compliance with the 2024 Rule by the Exemption Proclamation. Ms. Coates has concerns about her exposure and her children's exposure to mercury and other toxic emissions from those exempted coal plants, and the effect of such exposures on their health. Ms. Coates was diagnosed with non-hereditary breast cancer and is concerned that toxic pollution from those exempted coal plants will exacerbate her health condition and detract from her quality of life. Ms. Coates relies on public information about air quality to make decisions about the health risks of outdoor activities, and limits the time she and her children spend outdoors when air quality is unhealthy. Exemptions for W.A. Parish and other Houston-area coal plants deny her the more detailed and regular information about coal plant emissions that would have otherwise been available under the 2024 Rule. The exemptions also harm Ms. Coates and her family by permitting exempted coal plants to emit more pollution during the period of exemption than they would otherwise emit.

156. Michelle L. Marley-Knox is a member of ELPC and has lived within thirty miles of the Kincaid power plant in Christian County, Illinois for her entire life. She enjoys outdoor recreational activities near the Kincaid plant, including bicycling, camping, water activities, and fishing. In recent years, she has needed to stop fishing and swimming in the lakes near her home

due to concerns over mercury pollution. Everyone in Ms. Marley-Knox's family suffers from a susceptibility to bronchitis and must carry inhalers. The Kincaid plant was scheduled to close down by the end of 2027 but has recently received an exemption from the 2024 Rule. It already has the technology sufficient to implement the arsenic, nickel, and other toxic metals standard of the 2024 Rule. With the exemption, the Kincaid plant will no longer be required to implement or use that technology and will be allowed to emit levels of pollution in excess of the 2024 standard beginning in July 2027. Ms. Marley-Knox is also concerned that the Kincaid plant may remain open longer than it had originally planned and continue to jeopardize her health, recreational, and business interests. Further, Ms. Marley-Knox is concerned that the Kincaid plant will no longer be required to conduct continuous monitoring and that the subsequent lack of up-to-date emissions information would prevent her from effectively evaluating the health risks she and her family are exposed to each day.

157. Derf Johnson, a lifelong resident of Montana, is a member of the Sierra Club and the Montana Environmental Information Center (MEIC), and a Deputy Director of MEIC. Mr. Johnson enjoys outdoor activities in Montana including hunting, fishing, swimming, and observing wildlife. Mr. Johnson regularly visits the area around the Colstrip coal plant and has definite plans to return to the area. Annex 1 lists the Colstrip coal plant as exempted from compliance with the 2024 Rule. Colstrip needs to install pollution controls to be able to achieve the levels in the arsenic, nickel, and other metals standard of the 2024 Rule. Visible air pollution from the Colstrip coal plant and concerns about the health implications of air pollution degrade his experience visiting southeastern Montana, where Colstrip is located. Mr. Johnson is aware that the Colstrip coal plant emits mercury and other toxic metals, as well as particulate matter. He is concerned about exposure to the coal plant's emissions and the resulting harm to his health.

158. Catherine Fleischman is a member of the Natural Resources Defense Council. She lives in Davis, West Virginia, in close proximity to the Mt. Storm Generating Station coal-fired power plant. Mt. Storm is listed in Annex 1 as exempted from the 2024 Rule. Mt. Storm already has technology sufficient to implement the modernized arsenic, nickel, and other toxic metals standard and the continuous emissions monitoring standard of the 2024 Rule. Ms. Fleischman frequently checks air quality information. She spends a significant amount of time outside in the area of the Mt. Storm plant and limits her outdoor activities when air quality is poor because she suffers fatigue and lethargy from poor air quality. She is concerned about the health effects from air quality degradation as a result of pollution from the Mt. Storm plant and frequently observes and smells plumes of pollution from Mt. Storm.

159. Barbara Sue is a member of the Natural Resources Defense Council. She lives in Macon, Georgia, near the Scherer coal-fired power plant in Monroe County, Georgia. The Scherer Plant is listed in Annex 1 as exempted from the 2024 Rule. It has technology sufficient to implement the modernized arsenic, nickel, and other toxic metals standard of the 2024 Rule. With the exemption, the Scherer Plant will no longer be required to implement or use the technology and will be allowed to emit levels of pollution in excess of the standard beginning in July 2027. Ms. Sue frequently checks air quality information. She suffers severe ongoing allergies, sinus problems, and migraines that she is concerned are exacerbated by air pollution from the Scherer plant.

160. As set forth above, Plaintiffs' members directly benefit from the public-health and environmental protections and informational benefits provided by the requirements adopted in the 2024 Rule and as a result are harmed by exempting power plants from compliance with those

ED_021114D_00001846-00048

requirements.[6] Granting the requested relief would redress these injuries. The interests Plaintiffs seek to protect by bringing this case are germane to their organizational purposes of working to secure reductions of harmful air pollutants from sources covered by the 2024 Rule. The participation of individual members is not required because the claims and entitlement to relief will be resolved without consideration of those members' individual circumstances.

CLAIMS FOR RELIEF

COUNT ONE:

Unlawful Executive Action in Violation of the Clean Air Act (Nonstatutory Review for Violations of Federal Law by Federal Officials; Against All Defendants)

161. Plaintiffs re-allege and incorporate by reference the allegations contained in all preceding paragraphs of this Complaint.

162. The Court possesses inherent equitable power to "grant injunctive relief . . . with respect to violations of federal law by federal officials." *Armstrong v. Exceptional Child Ctr., Inc.*, 575 U.S. 320, 326–27 (2015). Such authority is presumptively available "absent only 'the clearest command' otherwise in a statute, . . . either express or implied." *Mathis v. United States Parole Commission,* 749 F. Supp. 3d 8, 23 (D.D.C. 2024) (quoting *McQuiggin v. Perkins*, 569 U.S. 383, 397 (2013)). Congress has nowhere foreclosed review of the interpretation and application of 42 U.S.C. § 7412(i)(4).

163. Section 7412(i)(4) establishes a judicially manageable standard with clear and precise limits of the sort federal courts routinely construe to determine whether the officials have acted consistent with law.

[6] Plaintiffs are prepared to file their members' declarations with their principal brief or in the event their standing is challenged.

164. The Exemption Proclamation is an unlawful action that clearly exceeds the scope of the President's statutory authority and rests upon an unlimited, and plainly untenable, interpretation of the Clean Air Act and application of both. The Exemption Proclamation exceeded the authority afforded to the President by Congress in 42 U.S.C. § 7412(i)(4) in multiple respects.

165. Section 7412(i)(4) authorizes an exemption only for a "stationary source," and only if the President "determines that the technology to implement such standard is not available" for that source and determines "that it is in the national security interests of the United States" to exempt that source.

166. The President failed to make a factual determination as to "any stationary source" that a technology is not available for that "stationary source" to implement the 2024 Rule, in violation of 42 U.S.C. § 7412(i)(4) and in excess of lawful authority.

167. The President failed to make a factual determination as to "any stationary source" that an exemption for that source is in the "national security interests of the United States," in violation of 42 U.S.C. § 7412(i)(4) and in excess of lawful authority.

168. The President failed to make factual determinations as to "any stationary source" that the technology is not available *and* that an exemption is in the national security interests of the United States, in violation of 42 U.S.C. § 7412(i)(4) and in excess of lawful authority.

169. EPA and the President are bound by the Clean Air Act's duties with respect to implementing 42 U.S.C. § 7412(i)(4), following rulemaking procedures, and being bound by lawfully adopted regulations.

170. The Exemption Proclamation exceeds the President's statutory authority and is contrary to Section 7412 of the Clean Air Act because, by granting sweeping exemptions to one

ED_021114D_00001846-00050

third of regulated sources without determinations pertaining to those sources, the Proclamation effectively amends the compliance dates of EPA's 2024 Rule without observing the statutorily mandated process for amending a rule. Section 7412(i)(4) is a narrow provision applicable in exceptional circumstances; it is not intended to be used as a substitute for notice-and-comment rulemaking to amend EPA standards that were themselves adopted after a full rulemaking process and that reflected EPA determinations that technology is available and standards achievable. The failure to make the required findings here operated as a process-free, evidence-free amendment to the 2024 Rule.

171. The Exemption Proclamation unlawfully attempts to amend a rule and/or stay a rule pending reconsideration in violation of the Clean Air Act, 42 U.S.C. § 7607(b), (d).

172. The Exemption Proclamation is unlawful because it flouts the statutory purpose of Section 7412(i)(4) authority—to address circumstances where requiring compliance with a standard would prevent the operation of national security-related equipment due to the unavailability of necessary control technology and instead has an improper purpose to relieve sources of regulatory burdens and compliance costs while EPA reconsiders the 2024 Rule.

173. The Proclamation exceeds the authority granted in Section 7412(i)(4) because it seeks to exempt sources from all the 2024 Standards indiscriminately, without identifying for each source which of the four distinct standards would call for technology that is unavailable. For example, units producing over 98% of coal plant-generated electricity in 2022 already employed the 2024 Rule's startup standard, and 93% of power plants covered by the 2024 Rule are already meeting the arsenic, nickel, and other toxic metals standard. Section 7412(i)(4) authorizes the President to exempt a source from a requirement if technology is unavailable to implement that requirement. The statute does not authorize the President or EPA

to exempt sources from requirements as to which the relevant technology is available. Accordingly, there could be no basis for exempting sources from all four of the 2024 Rule's requirements, even if (contrary to fact) the conditions for exemption could be satisfied for a subset of the requirements. The effect of that unlawfully indiscriminate approach is to exempt many sources from compliance with standards that will be implemented by technologies already installed at such sources, and to exempt other sources from compliance even where the requisite technologies required by the 2024 Rule's compliance date are readily available and in widespread use at similar sources.

174. The President lacks any independent authority under the U.S. Constitution to issue the exemptions.

175. Because the Exemption Proclamation is beyond the Clean Air Act authority and *ultra vires*, EPA actions implementing or giving effect to the proclamation are similarly beyond the Clean Air Act authority and *ultra vires*.

COUNT TWO:

Unlawful Executive Action in Violation of the Clean Air Act (Nonstatutory Review for Violations of Federal Law by Federal Officials; Against All Defendants)

176. Plaintiffs re-allege and incorporate by reference the allegations contained in all preceding paragraphs of this Complaint.

177. The President granted exemptions when the technology needed to implement the 2024 Rule is in fact available, in violation of 42 U.S.C. § 7412(i)(4) and in excess of lawful authority. The relevant technologies were in widespread use by regulated sources, including at the time of the Exemption Proclamation by many of the sources listed in Annex 1.

178. The purported determinations are not supported by any factual analysis or reasoning and are unambiguously contradicted by factual evidence, including EPA's own findings and record for the 2024 Rule.

179. The absence in the Exemption Proclamation, in Annex 1, or otherwise of any findings, reasoning, or other facts to establish the necessary factual predicate that the needed technology is not available demonstrates that the President did not make the determinations required by 42 U.S.C. § 7412(i)(4). That is confirmed by the fact that many of the exempted sources had already installed the technologies in question. Rather, the Exemption Proclamation bypassed and contravened statutory requirements to achieve sweeping compliance exemptions unauthorized by any law.

180. Because the Exemption Proclamation is beyond the Clean Air Act authority and *ultra vires*, EPA actions implementing or giving effect to the proclamation are similarly beyond the Clean Air Act authority and *ultra vires*.

COUNT THREE:

Unlawful Executive Action in Violation of the Clean Air Act (Nonstatutory Review for Violations of Federal Law by Federal Officials; Against All Defendants)

181. Plaintiffs re-allege and incorporate by reference the allegations contained in all preceding paragraphs of this Complaint.

182. Section 7412(i)(4) authorizes the President to exempt a stationary source only "for a period of not more than 2 years" that begins immediately following the statutorily-required determinations. With an end date of July 8, 2029 more than four years away the Exemption Proclamation purports to grant exemptions exceeding the "period of not more than 2 years" that Congress prescribed to allow technology to become available or national security

issues to be resolved following the President's determinations, in violation of 42 U.S.C. § 7412(i)(4) and in excess of lawful authority.

183. The Exemption Proclamation is unlawful because the President has not made and cannot make a determination that the technology to implement the 2024 Rule will not be available during the future period during which the exemption applies.

184. The Exemption Proclamation is unlawful because the President has not made and cannot make a determination that it is in the national security interests of the United States to exempt sources from compliance with the 2024 Rule during the future period during which the exemption applies.

185. Because the Exemption Proclamation is beyond the Clean Air Act authority and *ultra vires*, EPA actions implementing or giving effect to the proclamation are similarly beyond the Clean Air Act authority and *ultra vires*.

COUNT FOUR:

Unauthorized Executive Action in Disregard of Section 7412(i)(4)'s Inapplicability to Provisions Independently Justified under Statutory Authority Other than Section 7412 (Nonstatutory Review for Violations of Federal Law by Federal Officials; Against All Defendants)

186. Plaintiffs re-allege and incorporate by reference the allegations contained in all preceding paragraphs of this Complaint.

187. The Exemption Proclamation is *ultra vires* as to the continuous emissions monitoring requirement because that requirement of the 2024 Rule rests on statutory authority independent of 42 U.S.C. § 7412 and hence beyond the scope of the exemption provision, which is limited to standards promulgated under "this section." 42 U.S.C. § 7412(i)(4). The continuous emissions monitoring requirement was independently grounded on Section

ED_021114D_00001846-00054

7414(a)(1)(C) of the Clean Air Act, 42 U.S.C. § 7414(a)(1)(C) (authorizing EPA to require "any person who owns or operates any emission source … or who is subject to any requirement of this chapter" to install, use, or maintain monitoring equipment). *See* 89 Fed. Reg. at 38,562 (monitoring requirements "are specifically authorized by" 42 U.S.C. § 7414); 89 Fed. Reg. at 38535 (promulgating continuous emissions monitoring requirement based on "additional authority" under 42 U.S.C. § 7414). Because the continuous emissions monitoring requirement rests on legal grounds separate from Section 7412, the President cannot delay its implementation under Section 7412(i)(4). Insofar as it purports to exempt sources from the continuous emissions monitoring requirement, the Exemption Proclamation is *ultra vires*. 89 Fed. Reg. at 38,535 (promulgating continuous emissions monitoring requirement based on "additional authority" under Section 7414(a)(1)(C)).

188. Because the Exemption Proclamation is beyond the Clean Air Act authority and *ultra vires*, EPA actions implementing or giving effect to the proclamation are similarly beyond the Clean Air Act authority and *ultra vires*.

RELIEF REQUESTED

WHEREFORE Plaintiffs respectfully request that the Court:

189. Declare that the Exemption Proclamation is unlawful and invalid and that the deadlines of the 2024 Rule remain as promulgated;

190. Issue injunctive relief:

a. prohibiting EPA and EPA Administrator Lee Zeldin from implementing, relying on, or giving effect to the Exemption Proclamation, including through its implementation of Clean Air Act Title V's operating permit program;

ED_021114D_00001846-00055

b. directing EPA to promptly notify, in writing, the operators of coal plants listed in Annex 1 and delegated state, local, and/or Tribal permitting authorities that the Exemption Proclamation is unlawful and invalid, and that any coal plants the Exemption Proclamation purported to exempt may not lawfully delay or avoid compliance with the deadlines promulgated by the 2024 Rule by relying on the Exemption Proclamation, and that EPA will object to any Title V permit which permitting authorities propose to issue which contain an exemption from compliance with the 2024 Rule in reliance on the Exemption Proclamation;

191. Awarding Plaintiffs their fees and costs of litigation as authorized by law;

192. Granting such other relief as the Court deems just and proper.

DATED: June 12, 2025

Respectfully submitted,

/s/ Nicholas Morales

Nicholas Morales (D.C. Bar No. 1003942)
James Pew (D.C. Bar No. 488201)
Earthjustice
1001 G Street NW, Suite 1000
Washington, DC 20001
Tel: (202) 667-4500
nmorales@earthjustice.org
jpew@earthjustice.org

Counsel for Plaintiffs Air Alliance Houston, Clean Air Council, Downwinders at Risk, Montana Environmental Information Center, and Sierra Club

Surbhi Sarang (CO Bar No. 56667, D.D.C. Bar ID CO0112)
Richard Yates (*D.D.C. Admission Pending*)
Tomás Carbonell (*D.D.C. Admission Pending*)
Environmental Defense Fund
2060 Broadway St., Ste. 300

Boulder, Colorado 80302
Tel: (303) 440-4901
ssarang@edf.org
ryates@edf.org
tcarbonell@edf.org

Sean H. Donahue (DC Bar No. 450940)
Donahue, Goldberg & Herzog
1008 Pennsylvania Ave., SE
Washington, DC 20003
Tel: (202) 277-7085
sean@donahuegoldberg.com

Counsel for Plaintiff Environmental Defense Fund

Patton Dycus (Georgia Bar. No. 236636)
Environmental Integrity Project
888 17th St. NW, Suite 810
Washington, DC 20006
(202) 296-8800
pdycus@environmentalintegrity.org

Counsel for Plaintiff Environmental Integrity Project

Sarah Buckley (Va. Bar No. 87350) *pro hac vice pending*
Natural Resources Defense Council
1152 15th Street NW, Suite 300
Washington, DC 20005
(202) 836-9555
sbuckley@nrdc.org

Katherine Desormeau (D.D.C. Bar ID CA00024)
Natural Resources Defense Council
111 Sutter Street, 21st Floor
San Francisco, California 94104
(415) 875-6100
kdesormeau@nrdc.org

Counsel for Plaintiff Natural Resources Defense Council

Brian H. Lynk (D.C. Bar No. 459525) (*DDC admission pending*)
Environmental Law & Policy Center
740 15th Street, NW, Suite 700
Washington, DC 20005
(240) 461-4241
blynk@elpc.org

Counsel for Plaintiffs Environmental Law & Policy Center and Dakota Resource Council

Shaun A. Goho (D.D.C. Bar ID MA0013)
Clean Air Task Force
114 State Street, 6th Floor
Boston, MA 02109
617-624-0234
sgoho@catf.us

Counsel for Plaintiff Citizens for Pennsylvania's Future

Ryan Maher (D.C. Bar No. 1620024)
Center for Biological Diversity
1411 K Street, NW, Suite 1300
Washington, DC 20005
(781) 325-6303
rmaher@biologicaldiversity.org

Counsel for Plaintiff Center for Biological Diversity

ED_021114D_00001846-00058

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF THE DISTRICT OF COLUMBIA

TEXAS ENVIRONMENTAL JUSTICE ADVOCACY SERVICES
900 North Wayside Dr.
Houston, Texas 77023;

AIR ALLIANCE HOUSTON
2520 Caroline St.
Houston, Texas 77004;

CONCERNED CITIZENS OF ST. JOHN
389 E 26th St.
Reserve, Louisiana 70084;

ENVIRONMENTAL JUSTICE HEALTH ALLIANCE FOR CHEMICAL POLICY REFORM
28 Vernon Street, Suite 434
Brattleboro, Vermont 05301;

ENVIRONMENTAL DEFENSE FUND
257 Park Ave S,
New York, New York 10010;

ENVIRONMENTAL INTEGRITY PROJECT
888 17th St. NW, Suite 810
Washington, D.C. 20006;

LOUISIANA ENVIRONMENTAL ACTION NETWORK
P.O. Box 66323
Baton Rouge, Louisiana 70896;

NATURAL RESOURCES DEFENSE COUNCIL, INC.
40 West 20th Street, 11th Floor
New York, New York 10011;

RISE ST. JAMES LOUISIANA
8581 Hwy 18
St. James, Louisiana 70086; *and*

SIERRA CLUB

Case No. 1:25-cv-3745

2101 Webster St., Suite 1300
Oakland, California 94612;

Plaintiffs,

v.

DONALD TRUMP, President of the United States, in his official capacity;

U.S. ENVIRONMENTAL PROTECTION AGENCY; *and*

LEE ZELDIN, Administrator of the U.S. Environmental Protection Agency, in his official capacity;

Defendants.

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

1. On July 17, 2025, President Donald Trump issued a proclamation purporting to exempt 50[1] chemical manufacturing plants from requirements to monitor and control emissions of hazardous air pollutants like ethylene oxide and chloroprene for two years. *Regulatory Relief for Certain Stationary Sources to Promote American Chemical Manufacturing Security*, 90 Fed. Reg. 34,587 (July 23, 2025) ("HON Proclamation") (Ex. 1). EPA had issued these requirements in its 2024 updates to its hazardous air pollutant standards for more than 200 facilities that manufacture synthetic organic chemicals and polymers and resins in a new rule (known as the "HON Rule").[2] By imposing more stringent requirements to prevent and control toxic air

[1] President Trump's Proclamation listed 52 facilities. Based on a review of EPA facility records, two of those appear to be duplicates.

[2] "HON" stands for "Hazardous Organics NESHAP." "NESHAP" stands for "national emissions standards for hazardous air pollutants," the hazardous air pollutant standards issued under 42 U.S.C. § 7412. The HON Rule covers the synthetic organic chemical manufacturing industry and two groups of polymers and resins manufacturers.

pollutant emissions, the updated HON Rule is estimated to reduce the number of people facing elevated cancer risk from HON emissions by 96 percent.

2. President Trump's HON Proclamation, soon after a request from industry trade groups, unilaterally sweeps away those protections for nearly one-quarter of all HON Rule-regulated facilities, giving facilities in states from Louisiana to Michigan a free pass to continue to pollute and put communities at risk for an additional two years. By granting these exemptions, President Trump has allowed facilities to delay controls for toxic pollutants including ethylene oxide—a known carcinogen linked to lymphoma, leukemia, and breast cancer. He has allowed facilities to forgo leak monitoring and repair requirements that would help timely detect and stop toxic emissions from leaky pumps and vents. He has allowed facilities to postpone updating their operational practices to prevent and minimize toxic emissions during maintenance activities. And he has allowed facilities to forgo fenceline monitoring that would identify when toxic emissions escape a facility's boundaries and poison neighboring communities.

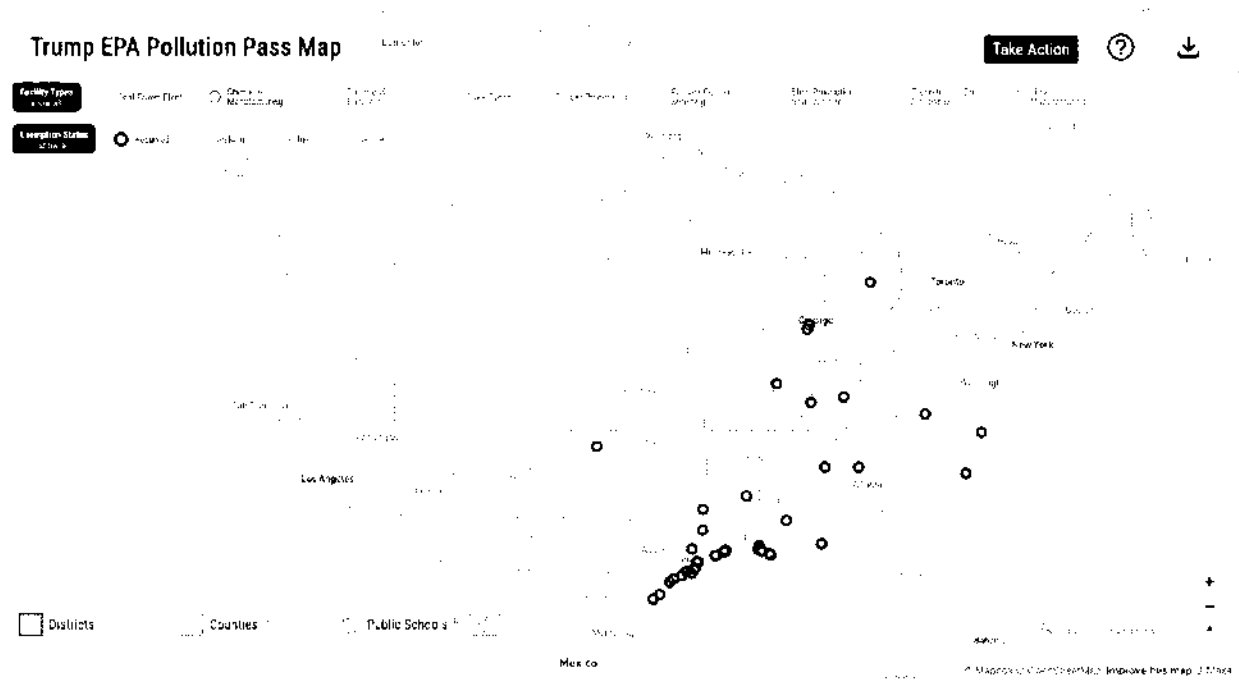


Image from https://www.edf.org/maps/epa-pollution-pass/ (last accessed Oct. 22, 2025)

3. The President granted these sweeping exemptions by seizing on a narrow and, until this year, never-before-used provision of the Clean Air Act, 42 U.S.C. § 7412(i)(4). That provision allows the President to exempt a source from a hazardous air pollutant standard for up to two years only if "the technology to implement" the relevant standard is "not available" and if exempting the source "is in the national security interests of the United States." 42 U.S.C. § 7412(i)(4). Neither of those predicates are met here.

4. In the fifty-five years since Congress enacted Section 7412(i)(4), no President had ever used that exemption authority. In just the first six months of his term, President Trump has done so five times for a total of 170 facilities. Besides the HON Proclamation, President Trump has issued proclamations exempting nearly one-third of U.S. coal-fired power plants from mercury and other air toxics standards, nearly half of commercial medical sterilizers from ethylene oxide standards, and the entire taconite iron-ore processing industry from mercury standards.

5. President Trump's sweeping HON Proclamation grossly exceeds the bounds of the Section 7412(i)(4) exemption authority. The Proclamation exempts nearly one-quarter of HON-regulated facilities from complying with any part of the Rule without any standard- or facility-specific analysis to show that any of the 50 specific facilities meets the statutory standard. In fact, many of the 2024 HON Rule's requirements cannot be reasonably understood as turning on any "technological availability," as required to invoke the Section 7412(i)(4) exemption. Rather, they are operational practices and prohibitions that reduce dangerous emissions from existing equipment and processes. For other requirements, the air pollution control technology needed to comply with the standards is widely available in the industry—and indeed already in use by many of the facilities that received exemptions.

ED_021114D_00001944-00004

6. The scope, content, and context of the Proclamation show it for what it really is: a pretext to relieve polluters from working to comply with the 2024 HON Rule while EPA works administratively to repeal those critical protections. Congress explicitly prohibited that sort of delay pending administrative reconsideration. 42 U.S.C. § 7607(d).

7. The Proclamation violates the Clean Air Act and exceeds the President's lawful authority. Plaintiffs ask the Court to enter appropriate relief declaring the Proclamation unlawful and invalid and enjoining EPA and its Administrator from implementing or giving effect to it.

JURISDICTION AND VENUE

8. This Court has subject matter jurisdiction under 28 U.S.C. § 1331 because this is a civil action arising under laws of the United States, including the Clean Air Act.

9. Venue is proper in this Court under 28 U.S.C. § 1391(e) because Plaintiff Environmental Integrity Project resides in this judicial district, because Defendants reside in this judicial district, and because a substantial part of the events giving rise to the claim occurred in this judicial district.

10. The Court has authority to enter a declaratory judgment and to provide injunctive relief pursuant to Rules 57 and 65 of the Federal Rules of Civil Procedure; the Declaratory Judgment Act, 28 U.S.C. §§ 2201-2202; the All Writs Act, 28 U.S.C. § 1651; and the Court's inherent equitable powers.

PARTIES

The Plaintiffs

11. Plaintiff Louisiana Environmental Action Network ("LEAN") is a nonprofit organization based in Louisiana. LEAN is an environmental justice network of community members that advocate for environmental justice and protection from toxic pollution in

Louisiana. Through public education, advocacy, and community organizing, LEAN educates communities about the environmental impacts of industry and development, and empowers them to advocate for protecting human health and the environment.

12. Plaintiff Environmental Justice Health Alliance for Chemical Policy Report ("EJHA") is a national network of grassroots environmental and economic justice organizations and advocates in communities that are disproportionately impacted by toxic chemicals from legacy contamination, ongoing exposure to polluting facilities, and health-harming chemicals in household products. EJHA has over a dozen member community-based environmental justice organizations in ten states. EJHA's member organizations represent communities in areas impacted by hazardous air pollutant emissions, including emissions from HON-regulated facilities. EJHA's mission is to support its affiliate member organizations to achieve a just transition to a pollution-free economy that leaves no community or worker behind.

13. Plaintiff Air Alliance Houston ("AAH") is a nonprofit organization based in Texas. AAH works to reduce air pollution in the Houston region to protect public health and environmental integrity by conducting applied research on air pollution, educating the community about the sources and harms of air pollution, and advocating for improvements at the local, state, and national levels. AAH works closely with constituents to provide the training and technical assistance they need to address air pollution in their daily lives.

14. Plaintiff Concerned Citizens of St. John ("CCSJ") is a nonprofit organization based in St. John the Baptist Parish, Louisiana. CCSJ advocates for community health and safety by working to reduce pollution and to protect the air, water, and soil in Louisiana. CCSJ also works to educate the residents of St. John Parish about environmental pollution and health risks.

ED_021114D_00001944-00006

15. Plaintiff RISE St. James Louisiana is a nonprofit, grassroots, and faith-based organization based in Louisiana. RISE St. James advocates for racial and environmental justice in St. James Parish, Louisiana and in other river parishes impacted by toxic pollution.

16. Plaintiff Texas Environmental Justice Advocacy Services ("t.e.j.a.s.") is a nonprofit organization with its headquarters in Houston, Texas. T.e.j.a.s. promotes environmental protection and environmental justice through education, policy development, community outreach, and legal action to ensure that everyone, regardless of race or income, is entitled to live in a clean environment.

17. Plaintiff Environmental Defense Fund ("EDF") is a nonprofit environmental organization dedicated to finding practical solutions to critical environmental problems through the use of science, economics, policy, and law. EDF regularly collects and publishes data that highlights harm from petrochemical and industrial air pollution, including mapping reported air toxic emissions from petrochemical facilities alongside health risk levels, to provide information to communities and policymakers. *See, e.g.*, Petrochemical Air Pollution Map, https://www.clearcelllab.org/pollutionmap. EDF has offices throughout the United States, including in the District of Columbia. As a membership-based organization, EDF currently has more than 330,000 members, in all 50 states and the District of Columbia. These members have a strong interest in protecting human health and the environment from pollution.

18. Plaintiff Environmental Integrity Project ("EIP") is a nonprofit, nonpartisan organization based in Washington, D.C. that empowers communities and protects public health and the environment by investigating polluters, holding them accountable under the law, and strengthening public policy on toxic air pollution and other environmental health issues. EIP works for more effective enforcement of environmental laws.

19. Plaintiff Natural Resources Defense Council ("NRDC") is a national nonprofit environmental membership organization with hundreds of thousands of members nationwide. NRDC's purpose is to safeguard the Earth — its people, its plants and animals, and the natural systems on which all life depends. Part of NRDC's core mission is to improve air quality and safeguard public health by combating hazardous air pollutant emissions.

20. Plaintiff Sierra Club is a nonprofit corporation with its headquarters located in Oakland, California. The Sierra Club is a national membership organization dedicated to the protection of public health and the environment and regularly advocates for policies that protect clean air. It has chapters in Alabama, Arkansas, Florida, Georgia, Illinois, Indiana, Kentucky, Louisiana, Michigan, Mississippi, North Carolina, Texas, and Virginia, and more than 600,000 members residing in all 50 states, the District of Columbia, and Puerto Rico.

The Defendants

21. Defendant Donald Trump is the President of the United States. He resides and conducts his duties in Washington, D.C. He is sued in his official capacity.

22. Defendant U.S. Environmental Protection Agency ("EPA") is a federal agency of the United States. EPA is headquartered in Washington, D.C.

23. Defendant Lee Zeldin is the Administrator of the U.S. Environmental Protection Agency. He resides and conducts his duties in Washington, D.C. He is sued in his official capacity.

ED_021114D_00001944-00008

LEGAL BACKGROUND

The Clean Air Act's Program to Address Hazardous Air Pollution

24. Clean Air Act Section 112, 42 U.S.C. § 7412, establishes the framework for EPA's regulation of "hazardous air pollutants" from stationary sources, including industrial facilities.

25. "Hazardous air pollutants" for Section 7412 purposes are a group of 188 air pollutants determined by Congress and EPA to be particularly harmful to human health. Ethylene oxide, benzene, 1,3-butadiene, ethylene dichloride, vinyl chloride, and chloroprene are hazardous air pollutants.

26. Section 7412 requires EPA to regulate hazardous air pollutants by issuing emissions standards for categories and subcategories of stationary sources of such pollutants. Emissions standards must require the maximum degree of reduction that EPA deems "achievable," taking into consideration cost and any non-air quality health and environmental impacts and energy requirements. *Id.* § 7412(d)(2), (3)(A)-(B).

27. After EPA establishes Section 7412 standards for a source category, the Clean Air Act requires EPA to perform recurring reviews to ensure that the standards adequately address risks to health and welfare from hazardous air emissions and that they reflect advancements in technology and practice that allow sources to achieve even greater emission reductions. These reviews are often done together and are known as the "residual risk and technology review."

28. In a technology review, EPA must "review, and revise" the Section 7412 standards "as necessary (taking into account developments in practices, processes, and control technologies)." *Id.* § 7412(d)(6).

29. In a risk review, EPA determines whether unacceptable risk to public health remains, or is likely to remain, from hazardous air pollutant emissions even after the application

ED_021114D_00001944-00009

of Section 7412 standards. If unacceptable risk remains, EPA must promulgate additional standards that eliminate the unacceptable risk, "provide an ample margin of safety to protect public health," and prevent "an adverse environmental effect." *Id.* § 7412(f)(2)(A).

30. Congress also prescribed strict compliance schedules for Section 7412 standards. Residual risk-based emissions standards "shall become effective upon promulgation" for new sources, or 90 days after the effective date for existing sources. *Id.* § 7412(f)(3). EPA may waive compliance for up to two years only if it determines "such period is necessary for the installation of controls and that steps will be taken during the period of the waiver to assure that the health of persons will be protected from imminent endangerment." *Id.* § 7412(f)(4)(B).

31. For standards revised as the result of a technology review, EPA must require existing sources to comply "as expeditiously as practicable," and no later than three years after the effective date. *Id.* § 7412(i)(3)(A). EPA may grant a source up to one additional year to comply only where "such additional period is necessary for the installation of controls." *Id.* § 7412(i)(3)(B).

Clean Air Act Procedural Requirements

32. The Clean Air Act sets out rulemaking requirements that apply to "the promulgation or revision of any . . . emission standard or limitation under section 7412(d)." *Id.* § 7607(d)(1)(C). EPA must establish a rulemaking docket, publish a notice of proposed rulemaking in the Federal Register, and provide a statement of basis and purpose for the rule that includes the factual data on which the proposed rule is based, the methodology used in obtaining and analyzing the data, and the major legal interpretations and policy considerations underlying the proposed rule. *Id.* § 7607(d)(3). EPA must also provide, along with the proposal, any

ED_021114D_00001944-00010

comments by the Scientific Review Committee and the National Academy of Sciences and all data, information, and documents. *Id.*

33. The Clean Air Act also requires EPA to allow any person to submit written comment, and to provide an opportunity for oral presentation of data, views, or arguments, on a proposed rule. *Id.* § 7607(d)(5); *see also id.* § 7607(h). In promulgating a final rule, EPA must provide a statement of basis and purpose as required at the proposal stage and must explain major changes from the proposed to final rule. *Id.* § 7607(d)(6)(A). EPA must also provide a response to each of the significant comments, criticisms, and new data submitted during the comment period. *Id.* § 7607(d)(6)(B). EPA may not base a promulgated rule on "any information or data which has not been placed in the docket as of the date of such promulgation." *Id.* § 7607(d)(6)(C).

34. The Clean Air Act also provides procedures for reconsidering a promulgated rule. The EPA Administrator can "convene a proceeding for reconsideration of the rule" but must "provide the same procedural rights as would have been afforded" in the original proceeding. *Id.* § 7607(d)(7)(B). The Act states, however, that reconsideration "shall not postpone the effectiveness of the rule," except that the Administrator or a reviewing court may stay the effectiveness of the rule "for a period not to exceed three months." *Id.* Section 7607(d)(7)(B) is the sole authority EPA has to stay a rule after its effective date has passed. *See Clean Air Council v. Pruitt*, 862 F.3d 1, 9 (D.C. Cir. 2017).

Presidential Exemption Provision

35. Section 7412(i)(4) of the Clean Air Act authorizes the President, in narrowly prescribed circumstances, to "exempt any stationary source from compliance" with hazardous air pollutant standards promulgated under Section 7412, "for a period of not more than 2 years if the

President determines [1] that the technology to implement such standard is not available and [2] that it is in the national security interests of the United States to do so." 42 U.S.C. § 7412(i)(4).

36. The President may extend the original exemption "for 1 or more additional periods, each period not to exceed 2 years." *Id.*

FACTUAL AND PROCEDURAL BACKGROUND

Synthetic Organic Chemical Manufacturing Industry NESHAP

37. In 1994, EPA promulgated the first hazardous air pollutant standards for synthetic organic chemical manufacturing industry ("SOCMI") processes at 40 C.F.R. part 63, subparts F, G, H, and I. 59 Fed. Reg. 19,402 (Apr. 22, 1994). EPA completed a residual risk and technology review for the HON Rule in 2006. 71 Fed. Reg. 76,603 (Dec. 21, 2006).

38. The SOCMI source category comprises any facility engaged in manufacturing processes that produce synthetic organic chemicals. Those chemicals are primarily used to manufacture plastics, as well as rubbers, paints, adhesives, and pesticides. Demand for synthetic organic chemicals is driven by the growth of automotive and packaging sectors in emerging economies like India, Brazil, Vietnam, and Thailand.

39. Emissions from SOCMI facilities are a major driver of cancer risk for millions of Americans. EPA estimated that emissions from the SOCMI source category alone is responsible for one excess cancer case every 6 months. EPA estimated that approximately 50,000,000 people live within 50 kilometers of SOCMI facilities, and that more than 7 million of those are estimated to have cancer risk above EPA's presumptively "unacceptable" rate of 100-in-1 million because of those facilities' emissions.

40. EPA's estimates are based on modeled emissions from SOCMI facilities based on facilities' reported emissions. Studies have shown that actual hazardous emissions are often

ED_021114D_00001944-00012

higher. One study in Louisiana's "Cancer Alley," an 85-mile stretch along the Mississippi River between Baton Rouge and New Orleans that is home to more than 100 petrochemical manufacturers and refineries, found that pollution levels outside the property lines of ethylene oxide-emitting facilities were 10 times higher than EPA estimates.

Polymers and Resins NESHAP

41. In 1995, EPA established the first standards for certain polymer and resins manufacturing processes at 40 C.F.R. part 63, subpart W, known as the Group II Polymers and Resins NESHAP ("P&R II NESHAP"). 60 Fed. Reg. 12,670 (Mar. 8, 1995). EPA completed a residual risk and technology review for the P&R II NESHAP in 2008. 73 Fed. Reg. 76,220, 76,223 (Dec. 16, 2008).

42. In 1996, EPA established the first standards for various elastomer manufacturing processes at 40 C.F.R. part 63, subpart U, known as the Group I Polymers and Resins NESHAP ("P&R I NESHAP"). 61 Fed. Reg. 46,906 (Sep. 5, 1996). EPA completed a residual risk and technology review for those standards in 2008 and 2011. 73 Fed. Reg. at 76,223; 76 Fed. Reg. 22,566 (Apr. 21, 2011).

43. EPA estimated that of the approximately 1,000,000 people live within 50 kilometers of the Denka facility, a neoprene manufacturer that emits chloroprene, 690,000 are estimated to have a cancer risk at or above 1-in-1 million from primarily the chloroprene emitted from Denka's source category emissions, with 2,000 people estimated to have a cancer risk above 100-in-1 million.

The HON Risk & Technology Review

44. In 2010, EPA for the first time published a cancer potency for chloroprene, a pollutant emitted by the P&R I sources producing neoprene, in its Integrated Risk Information

System ("IRIS"). This cancer potency estimate was not available when EPA conducted its initial residual risk and technology review for P&R I source categories in 2008. 88 Fed. Reg. at 25,090. As a result, EPA's initial risk assessment and hazardous air pollutant standards treated chloroprene as presenting zero risk. Chloroprene is a likely human carcinogen that increases the risks of multiple cancers in addition to increasing the risk of non-cancer nervous system, immune system, and respiratory harms.

45. In 2016, EPA updated its IRIS assessment for ethylene oxide, a pollutant emitted by the SOCMI source category. The updated IRIS assessment showed that ethylene oxide was a significantly more potent carcinogen than previously known. Exposure to even small amounts of ethylene oxide increases the risk of lymphoid cancer, such as non-Hodgkin lymphoma, myeloma, and lymphocytic leukemia, as well as breast cancer. Ethylene oxide exposure is also linked to respiratory, nervous system, and hormone disruption. Children are more susceptible to health effects from ethylene oxide exposure.

46. That change in EPA's understanding of health risks led the Agency to determine that it was necessary to conduct an updated residual risk review for the SOCMI and P&R I source categories, in addition to the technology review required under 42 U.S.C. § 7412(d)(6).

47. In its final Residual Risk Assessment for SOCMI sources, EPA found the cancer risks in communities adjacent to HON facilities are "unacceptable," driven in large part by those facilities' ethylene oxide emissions.

48. Without the requirements of the 2024 HON Rule, approximately 83,000 people living within 50 kilometers of SOCMI sources are exposed to "unacceptable" cancer risk above 100-in-1 million, and over 7 million people are exposed to excess cancer risk of 1-in-1 million.

The highest cancer risk from HON sources is 2,000-in-1 million — approximately 20 times higher than the level of risk that EPA considers presumptively "unacceptable."

49. In addition to ethylene oxide and chloroprene, EPA identified at least eight additional hazardous air pollutants emitted by SOCMI sources contributing to risks above 1-in-1-million — which the Agency described as risk "drivers" — including acrylonitrile, ethylene dichloride, naphthalene, vinyl chloride, benzene, hydrazine, acrylamide, and nickel.

50. Even after implementing the controls required by the 2024 Rule, EPA estimates that several pollutants other than ethylene oxide will cause roughly 40 percent of the remaining cancer risk from SOCMI sources. 89 Fed. Reg. 42,957 (May 16, 2024).

51. In its final Residual Risk Assessment for P&R I neoprene production sources, EPA determined that the maximum individual lifetime cancer risk was 500-in-1-million before implementing the requirements of the 2024 Rule, and that 690,000 people living within 50 kilometers of the neoprene production source would be exposed to lifetime cancer risks greater than 1-in-1-million.

52. EPA also conducted a technology review for the SOCMI and P&R source categories. EPA determined that developments in practices, processes, and control technologies warranted revisions to standards for heat exchange systems, storage vessels, and process vents in one or more of the SOCMI and both P&R source categories. EPA promulgated several new requirements to reflect those developments. 89 Fed. Reg. at 42,948-49.

ED_021114D_00001944-00015

The 2024 HON Rule

53. EPA finalized the 2024 HON Rule in May 2024. 89 Fed. Reg. at 42,932. The 2024 HON Rule became effective on July 15, 2024.

54. EPA found that the 2024 HON Rule would reduce hazardous air pollutant emissions by 6,230 tons per year, and reduce the number of local residents facing elevated cancer risks from HON emissions by 96 percent.

55. Though EPA was not able to monetize the benefits from these reductions, EPA found the rule's reductions of volatile organic compound emissions and ozone would yield at least $77 to $690 million (using a 3 percent discount rate). 89 Fed. Reg. at 43,060.

56. The 2024 HON Rule was projected to impose about $455 million in total capital costs across all regulated sources.

57. The total annual cost of the rule is about $168 million.

58. The annual cost represents less than 0.1 percent of the value of the U.S. synthetic organic chemical manufacturing industry, which was valued at $168 billion in 2022.

59. The 2024 HON Rule established a variety of requirements applicable to different chemical manufacturing process units ("CMPUs"). Different HON facilities have different arrays of CMPUs, and thus are subject to different combinations of requirements from the 2024 HON Rule. For example, facilities that do not use or emit ethylene oxide would not be required to comply with ethylene oxide-specific requirements.

60. Different HON facilities emit different arrays of hazardous organic air pollutants.

61. For instance, the Formosa Plastics facility in Baton Rouge, Louisiana, is a plastics and resins manufacturer that emitted at least 21 hazardous air pollutants in 2024, including benzene, chloroprene, dioxins, and vinyl chloride.

62. The Westlake Vinyls facility in Geismar, Louisiana, is a plastics and resins manufacturer that emitted at least 29 hazardous air pollutants in 2024, including benzene, chloroprene, dioxins, ethylene oxide, and vinyl chloride.

63. The Citgo Petroleum Corporation Lemont Refinery is a petroleum refinery that emitted at least 34 hazardous air pollutants in 2024, including benzene and 1,3-butadiene.

64. The 2024 HON Rule standards can be grouped and summarized as follows:

65. *Ethylene oxide control requirements:* The 2024 HON Rule requires facilities that use, store, or emit ethylene oxide to reduce ethylene oxide emissions from process vents and storage vessels by either (1) venting the ethylene oxide to a control device that reduces ethylene oxide by a certain amount (for example, greater than or equal to 99.9 percent by weight), or (2) venting the ethylene oxide to a flare that meets preexisting performance, operation, and maintenance requirements. *See* 40 C.F.R. §§ 63.113(j) (process vents), 63.119(a)(5) (storage vessels). The Rule also sets new standards for wastewater containing ethylene oxide, including certain control measures and a prohibition on disposing of such wastewater through any heat exchange system. *Id.* § 63.104(k). The Rule prohibits bypassing air pollution controls for equipment that carries ethylene oxide and makes an atmospheric release from a pressure relief device a violation of the standard. *See* 89 Fed. Reg. at 42,957, 43,017; 40 C.F.R. § 63.165(e)(3)(v)(D). The compliance deadline for these provisions is July 15, 2026. 40 C.F.R. § 63.100(k)(11).

66. *Fenceline monitoring and corrective action requirements:* The 2024 HON Rule requires facilities that use, store, or emit one or more of benzene, 1,3-butadiene, chloroprene, ethylene dichloride, ethylene oxide, and vinyl chloride to sample along the facility's property boundary (known as the "fenceline"). 40 C.F.R. § 63.184. The Rule provides standardized

sampling procedures for each of the pollutants. *See id.* § 63.184(b), (c). The Rule also creates an "action level": if the samples show concentrations of any of the six pollutants above a certain concentration, the facility's owner or operator must take specified actions to identify the root cause of the exceedance and take corrective action, including actions to prevent future exceedances. *Id.* § 63.184(d)(3), (e), (f). The compliance deadline for fenceline monitoring is July 15, 2026, and the compliance deadline for corrective action is July 15, 2027. *Id.* § 63.100(k)(12).

67. *Leak detection and repair requirements:* The 2024 HON Rule requires facilities to implement new leak detection and repair requirements for certain equipment in ethylene oxide service to more quickly identify and correct leaks. These requirements include more frequent monitoring, with a lower leak concentration requiring repair, shorter deadlines to repair leaks, and limitations on any delay of repair. *See, e.g.*, 40 C.F.R. §§ 63.104(g)(6), 63.174(a)(3), (b)(3)(vi), (d) (g)(3), § 63.171(f). The compliance deadline for these requirements is July 15, 2026. *Id.* § 63.100(k)(11). The 2024 HON Rule also requires facilities to implement new leak detection and repair requirements for heat exchange systems generally, and the compliance deadline for those requirements is July 15, 2007, *id.* § 63.100(k)(10).

68. *Work practice standards:* The 2024 HON Rule establishes work practice standards for pressure relief devices and maintenance activities designed to prevent or minimize hazardous air pollutant emissions during maintenance activities or upsets. For instance, the Rule requires facilities with pressure relief devices that vent to the atmosphere to implement three release prevention measures such as routine inspection and maintenance programs or operator training; to monitor pressure relief devices and take corrective action if there are emissions. 40 C.F.R. § 63.165(c)(3)(i)-(iii). The Rule also prescribes how and when operators can open process

ED_021114D_00001944-00018

equipment, including recordkeeping requirements and restrictions on the amount of ethylene oxide released from maintenance vents, and standards for maintenance on storage vessels. *See id.* §§ 63.113(k), 63.119(b)(7) (work practice standards during planned routine maintenance of a fixed roof and an internal floating roof used for storage vessel compliance with total organic HAP emission control requirements). The compliance deadline for these provisions is July 15, 2027. *Id.* § 63.100(k)(10).

69. *Bypass prohibition:* The 2024 HON Rule prohibits owners and operators of HON facilities from bypassing an air pollution control device at any time, and provides that in most instances bypassing a control device is a violation of the applicable emission standard. 40 C.F.R. §§ 63.114(d)(3) (process vents), 63.119(e)(7) (storage vessels), 63.127(d)(3) (transfer racks), 63.148(f)(4) (vapor collection systems and closed vent systems). The compliance deadline for these provisions is July 15, 2027. *Id.* § 63.100(k)(10).

70. *Operating and monitoring requirements for flares:* The Rule sets revised operating and monitoring requirements for flares used as air pollution control devices. *See, e.g., id* §§ 63.108, 63.508. The Rule's requirements mirror and cross-reference the flare requirements promulgated in EPA's 2015 hazardous air pollutant rules for refineries. These revisions include a requirement that facilities operate at a minimum and monitor the net heating value of gases at the flare combustion zone, taking into account any "assist" steam or air added to the stream. The Rule also requires the use of certain methodologies to determine compliance. *See id.* §§ 63.108(a), (c), 63.508(a).

71. EPA determined that existing HON sources could comply with the requirements of the HON Rule within the statutory timeframes of two years (for section 7412(f) ethylene oxide requirements) and three years (for section 7412(d) technology-based requirements) by

July 15, 2026, and July 15, 2027, respectively. 89 Fed. Reg. at 42,953-55. Each of these is the maximum compliance timeframe allowed under the statute. EPA also determined that HON sources could comply with fenceline monitoring requirements within two years, and fenceline monitoring root cause analysis and corrective action requirements within three years. *Id.* at 42,954.

72. On January 31, 2025, the industry trade groups American Chemistry Council and the American Fuel and Petrochemical Manufacturers filed a petition for reconsideration of the HON Rule, requesting a broad rollback of the Rule's standards. The industry groups also requested that EPA "provide interim relief . . . while EPA takes regulatory action or addresses the more detailed issues" in the reconsideration petition. Among the options for interim relief suggested by the industry groups was that EPA "should request that the President provide national security exemptions under § 112(i)(4)."

73. Less than two months later, on March 12, 2025, in a press event billed as "the greatest day of deregulation our nation has seen," EPA announced that it would "reconsider" the 2024 HON Rule and 31 other regulations protecting human health and the environment. EPA, News Release, *EPA Launches Biggest Deregulatory Action in U.S. History* (Mar. 12, 2025), https://perma.cc/EXL5-FAMQ (last visited Oct. 21, 2025).

74. Along with its press release, EPA published a "fact sheet" about its planned reconsideration of the HON Rule and seven other recent hazardous air pollutant rules. That fact sheet included an invitation that "[a]ny source interested in a Presidential exemption" from any of the eight rules, "should provide their recommendations to EPA by March 31, 2025." EPA, *Oil and Gas Regulations: Powering the Great American Comeback Fact Sheet* 3, https://perma.cc/L8UM-RN3K (last visited Oct. 21, 2025). The Fact Sheet further explained,

"Sources need only provide why technology is unavailable and why it is in the national security interests of the United States to provide the exemption." *Id.*

75. Following up on its invitation to request exemptions, on or about March 24, 2025, EPA posted a new webpage announcing it had established "an electronic mailbox"—airaction@epa.gov "to allow the regulated community to request a Presidential Exemption under section 112(i)(4)." EPA, *Clean Air Section 112 Presidential Exemption Information* (last updated Apr. 14, 2025), https://perma.cc/WKL5-44FC (last visited Oct. 21, 2025). EPA asked that requests be submitted "by March 31, 2025," a week after the webpage was posted. *Id.*[3]

76. EPA did not solicit any information from the public, or provide any opportunity for public comment.

77. Facility owners and operators across multiple source categories sent exemption requests to that email inbox. Many requests urged the President to interpret the statutory considerations of technological availability and national security to encompass the cost of compliance and economic "security" and development. The industry trade groups American Chemistry Council and the American Fuel and Petrochemical Manufacturers also submitted a request for a blanket two-year exemption from the HON rule for all covered facilities.

The HON Proclamation

78. On July 17, 2025, President Trump issued a proclamation exempting a list of HON-regulated facilities from "those aspects of the HON Rule that were promulgated under section 112 of the Clean Air Act, 42 U.S.C. 7412 for a period of 2 years beyond the HON Rule's relevant compliance dates." 90 Fed. Reg. at 34,587. The HON Proclamation cited "authority

[3] EPA has since removed much of the information in an April 14, 2025 update to the webpage. *See* EPA, *Clean Air Act Section 112 Presidential Exemption Information,* https://perma.cc/WKL5-44FC (last visited Oct. 21, 2025).

vested in [the President] by the Constitution and the laws of the United States, including section 112(i)(4) of the Clean Air Act, 42 U.S.C. 7412(i)(4)." *Id.* The HON Proclamation stated that it "applies to all compliance deadlines established under the HON Rule applicable to the stationary sources listed in Annex I, with each such deadline extended by 2 years from the date originally required for such deadline." *Id.*

79. The Exemption Proclamation included what it referred to as two "determinations."

80. First, the Exemption Proclamation purported to "determine" that "[t]he technology to implement the HON Rule is not available," stating that "[s]uch technology does not exist in a commercially viable form sufficient to allow implementation of and compliance with the HON Rule by the compliance dates in the HON Rule." *Id.* at 34,588.

81. Second, the Exemption Proclamation purported to determine that "[i]t is in the national security interests of the United States to issue this Exemption for the reasons stated in paragraphs 1 and 3 of this proclamation." *Id.* Paragraph 1 asserted that "[m]aintaining a robust domestic chemical industry is vital to safeguarding the supply chains that underpin our economy and to reducing the Nation's dependence on foreign control over materials critical to national resilience." *Id.* at 34,587. Paragraph 3 asserted that "[t]he HON Rule imposes substantial burdens on chemical manufacturers already operating under stringent regulations," and posited that "the timeline for compliance" with the HON Rule "would require shutdowns or massive capital investments before any proven pathway to compliance exists" and would "weaken key supply chains, increase dependence on foreign producers, and impair our ability to respond effectively in a time of crisis." *Id.*

82. The Exemption Proclamation and "Annex I" were published in the Federal Register on July 23, 2025. *Id.* at 34,587-91.

83. The Exemption Proclamation included no facility-, standard-, or technology-specific determinations. Instead, the Exemption Proclamation broadly and conclusory purported to "determine" that the technology to implement the 2024 HON Rule (in its entirety) was not available and that exemptions are in the national security interests of the United States.

84. For example, the HON Proclamation purports to exempt from ethylene oxide standards facilities that do not emit ethylene oxide, and thus to which the ethylene oxide control requirements do not apply.

85. The HON Proclamation purports to exempt from fenceline monitoring requirements facilities that have successfully implemented fenceline monitoring, either due to consent decree requirements or the requirements of other hazardous air pollutant standards.

86. The HON Proclamation purports to exempt from ethylene oxide control requirements facilities that already have air pollution control devices and/or flares that would meet those standards.

87. The HON Proclamation purports to exempt facilities from requirements for which "technology" is not needed to "implement" the standards, such as more frequent leak monitoring.

88. The HON Proclamation purports to exempt from the HON standards facilities that have or are in the process of retiring their HON-regulated units.

89. The HON Proclamation's indiscriminate exemptions apply without any consideration of whether the facilities have the technology and operational capability to implement the 2024 HON Rule's standards.

Technology to implement the Rule's requirements is widely available

90. The Proclamation's unsupported determinations are unambiguously contradicted by factual evidence, including EPA's own findings and record for the 2024 HON Rule.

91. *Ethylene oxide control requirements*: Technology to implement the ethylene oxide control requirements is widely available.

92. For example, for the requirement to control emissions from process vents using ethylene oxide, the Rule allows facilities a range of options, including that they may use a control device that reduces ethylene oxide to by greater than or equal to 99.9 percent by weight or may simply use a flare operating in compliance with the revised operating and monitoring requirements. *See* 40 C.F.R. § 63.113(j).

93. Air pollution control devices that are capable of meeting the standards are commercially available and feasible to implement.

94. Flares that are capable of meeting the standards are commercially available and feasible to implement. Many exempted facilities already possess and operate flares capable of meeting the standards.

95. The exempted facilities either do not need any technology to implement aspects of these standards, already have in place the technology necessary to implement other aspects of the standards, or can obtain the widely commercially available and technically feasible technology to implement other aspects of these standards.

96. The same air pollution control devices or flares needed to comply with the control requirements of the 2024 HON Rule are widely used by owners and operators of equipment and processes that are subject to similar ethylene oxide standards imposed in 2020 by the

ED_021114D_00001944-00024

Miscellaneous Organic Chemical Manufacturing hazardous air pollutant standards (known as the "MON Rule").

97. Many facilities regulated by the MON Rule are co-located with equipment and processes regulated by the HON Rule. On information and belief, only 14 of the exempted facilities would be subject to the ethylene oxide control requirements of the 2024 HON Rule. On information and belief, 9 of those 14 exempted facilities are subject to the MON Rule. As discussed below, EPA assumed for certain HON facilities co-located with MON facilities that "the HON facility likely upgraded at least one HON flare already." It is therefore likely that many of the exempted facilities already have the required control technology in place.

98. Technology to implement the 2024 HON Rule's ethylene oxide wastewater controls is available.

99. The controls for wastewater streams in ethylene oxide service can be implemented with a device called a steam stripper, a technology and a method that has been available since at least 1992, when EPA analyzed the effectiveness of steam stripping to remove organic pollutants from wastewater streams in the original HON rulemaking.

100. HON-regulated facilities already use the technological controls necessary to comply with the wastewater requirements on non-ethylene oxide wastewater streams.

101. *Fenceline monitoring*: Technology to implement the fenceline monitoring requirement is available.

102. The majority of exempted facilities would only be required to use passive diffusive tube monitors to comply with the fenceline monitoring requirements for benzene, chloroprene, 1,3-butadiene, and ethylene dichloride. Fenceline monitoring with passive diffusive

tube monitors has been successfully implemented in the petroleum refineries source category since 2018.

103. Many refineries are co-located with HON-regulated processes. On information and belief, of the 39 exempted facilities that would be required by the 2024 HON Rule to conduct passive fenceline monitoring for at least one pollutant, 10 of these facilities are already conducting this very same passive fenceline monitoring consistent with the standards for the refineries source category.

104. The monitoring technology used by refineries since 2018 is the same technology that the 2024 rule requires for measuring benzene, chloroprene, 1,3-butadiene, and ethylene dichloride. Under the 2024 HON Rule, the majority of HON-regulated sources, including the majority of exempted facilities, would be required to conduct only the passive diffusive tube monitoring.

105. Some facilities would be required to use canister sampling technique Method 327 to comply with the fenceline monitoring requirements for ethylene oxide and vinyl chloride. On information and belief, only 17 of the 50 exempted facilities would be required to use canister monitoring under Method 327.

106. Canister sampling using Method 327 is an available technology.

107. Canister sampling has been an EPA-approved method since at least 1989. The differences between Method 327 and its immediate precursor (Method TO-15A) have to do with "Best Practices" and "enhanced [quality assurance/quality control]," 89 Fed. Reg. at 43,008, not a change in the underlying sampling technology.

108. In developing the 2024 Rule, EPA requested fenceline monitoring data from eleven HON facilities. EPA required that these facilities use a modified Method TO-15 for

ED_021114D_00001944-00026

certain pollutants, in effect requiring what would become Method 327. The subject facilities were able to comply.

109. Today, multiple laboratories in the United States are offering Method 327 services. Canister sampling using Method 327 is an available technology.

110. *Leak detection and repair requirements:* Technology to implement the 2024 Rule's leak detection and repair requirements is available.

111. The technology to monitor heat exchange systems employs common sampling and analysis methods. As such, the Rule does not require facilities to install or implement any new technology.

112. For connectors in ethylene oxide service, the Rule simply requires facilities to conduct the same kind of leak detection practices using the same devices or equipment that facilities had already conducted pursuant to the previous HON requirements, but on a more frequent basis and with quicker repair based on a lower leak concentration. The updated requirements apply narrowly to a subset of facilities subject to the Rule—just those that use ethylene oxide, which EPA estimated only to be 15 existing facilities at the time.

113. *Work practice standards*: Technology to implement work practice standards is available.

114. The work practice standards for pressure relief devices, storage vessels, and other equipment are implemented through routine inspection and maintenance, operator training, and

the use of widely available devices including flow indicators, level indicators, temperature indicators, pressure indicators.

115. *Bypass prohibition*: The bypass prohibition requirements do not require facilities to install or implement any new technological controls; it simply prohibits facilities from bypassing the controls that currently exist.

116. *Flare operating and monitoring standards*: Technology to comply with the Rule's flare operating and monitoring requirements is widely available.

117. For many exempted facilities, the necessary technology to comply with the flare operating and monitoring standards is already in place.

118. The 2024 HON Rule incorporates by reference the flare operating and monitoring requirements established in the 2015 Refineries Rule, which have long been in effect. *See* 40 C.F.R. §§ 63.108(a), 63.508(a). Many exempted facilities are also regulated under that Refineries Rule.

119. There is no need to install new technology to implement many of the flare operating and monitoring requirements. Certain of the revised operating and monitoring requirements do not necessitate additional equipment, or such equipment is already in place at exempted facilities. For example, the requirement for facilities to use a shorter averaging time is

ED_021114D_00001944-00028

important for the purposes of compliance, but only requires different calculations and not different equipment.

120. EPA estimated that only about half of HON-regulated operators may need to make some upgrades to better monitor and operate their existing flares.

121. Even where the installation of new monitoring equipment may be required, all of this technology is readily available and already in use.

122. Refineries have complied with the flare operating and monitoring requirements since 2019, and other types of petrochemical facilities—such as MON and ethylene production have complied since 2023. Of the exempted facilities, 12 are co-located with refineries, 21 are co-located with units subject to the MON rule, and three are co-located with ethylene production units. A total of 29 exempted facilities are therefore co-located with one or more of these other units.

123. In the 2024 HON Rule, EPA assumed that HON-regulated facilities that are co-located with MON or ethylene production sources had likely upgraded at least one of their HON-regulated flares already. Many of the exempted facilities, therefore, likely already have the technology required to implement the standard in place.

The Court's equitable authority to review ultra vires Executive action

124. The Exemption Proclamation exceeds the President's statutory authority because, by granting sweeping exemptions to one quarter of regulated sources without making facility-, standard-, or technology-specific determinations, the Proclamation exceeds the bounds of the President's Section 7412(i)(4) authority.

125. The Proclamation effectively amends the compliance dates of EPA's 2024 Rule, an action outside the bounds of Section 7412(i)(4). Section 7412(i)(4) is a narrow exemption

ED_021114D_00001944-00029

applicable in specific statutorily defined circumstances; it does not give the President authority to amend EPA standards. Only EPA may amend those standards and only after notice and comment rulemaking.

126. Case law in this Circuit generally allows for review of presidential actions to ensure conformity with statutory requirements, provided that "the authorizing statute or another statute places discernible limits on the President's discretion." *Mountain States Legal Found. v. Bush*, 306 F.3d 1132, 1136 (D.C. Cir. 2002) (citing, *inter alia*, *Chamber of Com. of the U.S. v. Reich*, 74 F.3d 1322, 1331 (D.C. Cir. 1996)).

127. The statutory provision at issue, Section 7412(i)(4), provides such discernable limits on the President's discretion by requiring a determination that, for specific facilities, "technology to implement" a standard "is not available" and that the exemption "is in the national security interests of the United States." 42 U.S.C. § 7412(i)(4).

128. The Court has the power to review the Proclamation to discern whether the President's exercise of statutory authority was unlawful because the necessary factual predicate required by the Clean Air Act is not present, and because the HON Proclamation unlawfully exercises authority not conveyed by Section 7412(i)(4), contrary to Congress's explicit restrictions on stay regulations and compliance deadlines. The Court therefore has the power to declare the HON Proclamation is unlawful and *ultra vires*.

STANDING

129. Plaintiffs' members live, work, and recreate in areas affected by the excess pollution that is and will be emitted from the exempted facilities. Plaintiffs' members are harmed

ED_021114D_00001944-00030

by breathing air pollution from the exempted facilities and are concerned that exposure to hazardous air pollutants from the exempted facilities could have harmful impacts on their health.

130. Plaintiffs' members stood to benefit from the ethylene oxide requirements, which were slated to go into effect July 15, 2026. Exempted facilities are now able to emit toxic air pollution at higher levels than otherwise would have been allowed, for years beyond the Rule's mandate. Plaintiffs' members are harmed by the excess emissions that will result from the HON Proclamation exemptions.

131. Plaintiffs' members also stood to benefit from the leak detection and repair requirements, maintenance work practice standards, and other requirements that were slated to go into effect July 15, 2027. Exempted facilities are now not required to comply with operational practices, monitoring, and prohibitions that would reduce the emission of toxic air pollutants. Plaintiffs and plaintiffs' members are harmed by the excess emissions that will result from the HON Proclamation exemptions.

132. Exposure to ethylene oxide, chloroprene, vinyl chloride, benzene, 1,3-butadiene, and other hazardous air pollutants emitted by exempted facilities causes adverse health effects.

133. On average, census blocks containing the exempted HON-regulated facilities face cancer risks of 71 per million, compared to national cancer risk average of 28 per million. In some affected communities, the cancer risk is 300 or 400 per million, 10 to 14 times greater than the national average. In these communities, 38 percent of cancer risk can be attributed to industrial pollutant sources like HON-regulated facilities, as opposed to the national average of just 2 percent attributable to industrial pollution sources.

134. Plaintiffs' members also stood to benefit from reduced exposure to the pollutants subject to the fenceline monitoring requirements, also slated to go into effect July 15, 2026.

Facilities subject to the fenceline monitoring requirements would have to take corrective action that would reduce hazardous air pollutant emissions. The exemptions remove those requirements and increase the likelihood of hazardous pollutant exposures in the communities surrounding the exempted facilities. Plaintiffs and their members are harmed by increased exposure to hazardous air pollutants as a result of the HON Proclamation.

135. The HON Rule fenceline monitoring provisions also require facilities to submit quarterly fenceline emissions reports to EPA, which EPA then makes available to the public. The HON Proclamation exempts Annex I facilities from fenceline monitoring requirements. Those exemptions deny Plaintiffs and their members the emissions information those reports would provide.

136. Some Plaintiffs and their members would use such information to raise public awareness of air pollution and to further Plaintiffs' and their members' advocacy, education, and outreach efforts to reduce air pollution and protect public health. Plaintiffs and their members will be deprived of information they would have used to evaluate their pollution exposure and health risks in areas affected by emissions from the exempted facilities. That information would also allow some Plaintiffs to make educated decisions about how they engage in advocacy to reduce air pollution. Plaintiffs and Plaintiffs' members are therefore harmed by the HON Proclamation exemptions.

137. For example, Plaintiff EJHA works to provide organizing, capacity, and technical support to communities and enhance the public's understanding of the health and safety implications of hazardous chemicals. In collaboration with the Coalition to Prevent Chemical Disasters, EJHA launched and now maintains an online tracker that tracks incidents involving hazardous chemicals. EJHA also offers information and analysis based on publicly reported

ED_021114D_00001944-00032

facility emissions information to educate and support its member affiliate organizations to build grassroots power to remedy and redress the health and safety legacy of chemical pollution in their affiliates' communities.

138. For example, EJHA has created facility profiles from emissions data for specific facilities of concern in EJHA affiliate communities. EJHA has used facility emissions data to support affiliates in commenting on facility air permits, including for some HON facilities. EJHA has used facility emissions data to contribute to comments on the 2024 HON Rule and other EPA rulemakings that address chemical facilities. EJHA uses facility emissions data to provide affiliate members with information to advocate within their home communities, and to connect affiliates' localized pollution concern to federal policy.

139. EJHA also convenes and facilitates a joint working group on hazardous facilities with the environmental health network Coming Clean. Several EJHA member organizations participate regularly in the Hazardous Facilities Team, which supports information sharing between place-based environmental justice groups working on local issues and campaigns related to the impacts of hazardous facilities (including HON facilities) in their neighborhoods and provides a space for translating local needs into federal policy. The Team works collaboratively to advance federal policies that will support local needs and establish a more protective "floor" of protections from hazardous facilities at the federal level to protect all communities across the country. Reducing exposure to and cancer and other health effects harms from hazardous air pollutants like ethylene oxide, chloroprene, 1,3-butadiene and dioxins has been a top priority of this Team since its inception.

140. EJHA's affiliate members have members in communities like Westlake, Louisiana, Louisville, Kentucky, and Houston, Texas, which are home to facilities that received

ED_021114D_00001944-00033

exemptions under the HON Proclamation. Because of the exemptions, EJHA will be deprived of emissions information that would allow it to support its member organizations and effectively advocate in furtherance of its mission.

141. EJHA has advocated extensively for fenceline monitoring in the HON Rule and other NESHAP rules, as well as in other policy spaces. EJHA believes fenceline monitoring data (particularly when made available in real time) is critical to community members' ability to take action to protect themselves and their families in times of chemical release and other pollution incidents. Several EJHA affiliate member organizations have as a core tenet of their local work and mission providing community members accurate pollution information and emergency planning and preparedness training in the absence of prevention requirements at the federal level or adequate emergency preparedness and communication at the local level. There is also reason to expect that the 2024 HON Rule's fenceline monitoring requirements would help to prevent catastrophic chemical disasters in EJHA affiliate members' communities by providing earlier warning of a malfunction or other issues before they become a disaster.

142. Jim Vandenbosch is a member of NRDC. He lives less than three miles from the Citgo Petroleum Corporation Lemont Refinery, which received an exemption under the HON Proclamation. The Lemont Refinery emits, among other hazardous air pollutants, 1, 3-butadiene and benzene. Mr. Vandenbosch regularly smells a strong chemical odor from the direction of the refinery and has observed plumes and fires coming from the facility. As a result of the HON Proclamation, the Lemont Refinery will emit more hazardous air pollutants during the two-year exemption period. Mr. Vandenbosch is concerned about the health risk of exposure to the hazardous air pollutant emissions from the Lemont Refinery.

143. Sharon Cayette Lavigne is the Director/Founder and a member of RISE St. James. She is a lifelong resident of St. James, Louisiana. Ms. Lavigne lives and regularly visits areas near numerous Louisiana facilities that have received exemptions under the HON Proclamation. These include the Denka Performance Elastomer facility in St. John the Baptist Parish, and the DuPont Specialty Products Pontchartrain Site in St. John the Baptist Parish; and the BASF North Geismar site, BASF Geismar site, Shell Geismar chemical plant, Westlake Vinyls plant, and Rubicon Geismar plant in Ascension Parish. These five facilities in Ascension Parish are located directly across the Mississippi River from where one of Ms. Lavigne's granddaughters lives. Another of Ms. Lavigne's granddaughters attends Southern University Laboratory School which is 3.7 miles from the Formosa Plastics Plant in Baton Rouge. Ms. Lavigne is concerned about her own and family members' exposure to the hazardous air pollutant emissions from these facilities that will continue for an additional two years due to the HON Proclamation. Ms. Lavigne is specifically concerned for these facilities' effects on her own health, as she already has health issues including autoimmune hepatitis. Because of the HON Proclamation, Ms. Lavigne is concerned that these facilities will not have to comply with fenceline monitoring requirements or the more stringent controls of the HON Rule and will emit more hazardous air pollutants during the two-year exemption period.

144. Diana LeBlanc is a resident of Port Allen, Louisiana and a member of LEAN. Ms. LeBlanc lives and spends time near the Dow facility in Plaquemine, Louisiana and the Formosa facility in Baton Rouge, both of which received exemptions under the HON Proclamation. Ms. LeBlanc suffers from asthma and an immune deficiency disorder, and she is concerned that hazardous air pollution from these facilities will worsen these conditions and expose her and her family to other health risks, including cancer.

145. Concerned Citizens of St. John and Environmental Defense Fund member Letitia Taylor lives in St. John the Baptist parish in Louisiana, about one mile from Denka Performance Elastomer's neoprene plant, which received an exemption under the HON proclamation. While producing neoprene, the Denka facility emits chloroprene, a dangerous chemical. Due to the HON proclamation, the Denka facility will be allowed to continue to emit hazardous air pollutants during the two-year extension. Ms. Taylor is concerned about the impacts of Denka's emissions on her and her family's health, and she spends less time outdoors due to these concerns.

146. Melanie Oldham is a Sierra Club member and lives five miles from the exempted BASF facility in Freeport, Texas. Ms. Oldham suffers from frequent coughs and colds and is concerned about the impacts of the air pollution from the BASF Freeport facility, among other facilities, on her health. She avoids spending time outdoors, and enjoys the time she does spend outdoors less, as a result of these concerns.

147. Jennifer Hadayia is the Executive Director of Air Alliance Houston, an organization dedicated to reducing the public health impacts of air pollution in the Houston area. Ms. Hadayia lives in Houston, Texas, and regularly travels throughout Harris County for work and to visit family. As a result, Ms. Hadayia spends time near HON facilities, including the exempted Celanese Clear Lake and Ineos Styrolution facilities in Pasadena, Texas. Ms. Hadayia is concerned about the impact of these facilities' pollution on her health.

148. Ana Parras is the co-founder and executive co-director of t.e.j.a.s. Ms. Parras lives approximately halfway between the Houston Ship Channel and downtown Houston, near many HON facilities, including the exempted Celanese Clear Lake and INEOS Styrolution facilities in Pasadena. Ms. Parras suffers from hypersensitivity pneumonitis, a respiratory condition that

ED_021114D_00001944-00036

makes it difficult to breathe. Ms. Parras is concerned about the impacts of the exempted facilities' emissions on her health. Ms. Parras and t.e.j.a.s. participated in the rulemaking process underlying the HON Rule, as well as litigation defending the rule against industry legal challenges. Ms. Parras is concerned that the exemptions will delay compliance with the HON Rule's fenceline monitoring requirements at nearby facilities. Without these fenceline monitoring requirements, t.e.j.a.s. will not be able to fully inform its constituents about potential exposure level, diminishing its ability to educate and conduct outreach to its constituents. The exemption for compliance with the fenceline monitoring requirements would also delay pollution reductions and deprive Ms. Parras, her family, and T.e.j.a.s.'s constituents of the health protections that fenceline monitoring would provide.

CLAIMS FOR RELIEF

COUNT ONE:
Unlawful Executive Action in Violation of the Clean Air Act
(Nonstatutory Review for Violations of Federal Law by Federal Officials; Against All Defendants)

149. Plaintiffs incorporate by reference Paragraph 1-148.

150. The President has limited authority to exempt stationary sources from duly promulgated hazardous air pollutant regulations solely by virtue of the authority delegated by Congress in 42 U.S.C. § 7412(i)(4). The President lacks any independent authority under the U.S. Constitution to issue the exemptions.

151. Section 7412(i)(4) permits the President to exempt a source from a hazardous air pollutant standard only if "the technology to implement such standard is not available" and if an exemption is in the national security interests of the United States.

152. Whether technology to implement a standard is or is not available is a discrete, yes-or-no factual inquiry that limits the President's discretion to grant exemptions.

ED_021114D_00001944-00037

153. Section 7412(i)(4) establishes a judicially manageable standard with clear and precise limits of the sort federal courts routinely construe to determine whether officials have acted consistent with law.

154. There is no statutory basis for the President's indiscriminately broad determinations that technology to implement the 2024 HON Rule is not available or that granting exemptions from that Rule is in the national security interests of the United States. The President patently misconstrued the statutory terms "technology" and "not available" in purporting to exercise the Section 7412(i)(4) exemptions authority.

155. The HON Proclamation's purported determination that technology needed to implement the various diverse standards of the 2024 HON Rule is not available for various diverse HON-regulated facilities is a conclusory statement without specific findings as to any specific standard, any specific technology, or any specific facility.

156. Technology to implement the 2024 HON Rule is in fact available. The relevant technologies to implement each aspect of the 2024 HON Rule standards are in widespread use among chemical manufacturers regulated by the HON Rule and similar regulated sources.

157. Other requirements of the 2024 HON Rule do not require facilities to obtain or deploy any new "technology" within the meaning of Section 7412(i)(4). For instance, leak monitoring requirements simply require more frequent monitoring of the same type the exempted sources are already required to undertake. Similarly, maintenance work practice standards simply require different operational practices to prevent and minimize emissions during maintenance activities facilities already undertake.

158. The purported determination that technology to implement the standards is not available is unambiguously contradicted by factual evidence. The HON Proclamation's cursory and conclusory statements to the contrary cannot be credited.

159. The President's purported determination that the technology to implement the 2024 HON Rule is not available rests on an unlimited, untenable interpretation and application of the authority conveyed by Section 7412(i)(4) of the Clean Air Act.

160. The President patently misconstrued the statutory term "national security" in purporting to exercise the Section 7412(i)(4) exemptions authority.

161. National security concerns "only those activities of the Government that are directly concerned with the protection of the Nation from internal subversion or foreign aggression, and not those which contribute to the strength of the Nation only through their impact on the general welfare." *Cole v. Young*, 351 U.S. 536, 544 (1956).

162. The HON Proclamation's purported determination that it is in the national security interests of the United States to issue the exemption is a conclusory statement that reveals no specific consideration whether the varied chemical products produced by exempted sources—including chemicals used for artificial sweeteners, cleaning agents, dyes and textiles, household and personal care products, pesticides, and plastic packaging have any national security nexus.

163. The HON Proclamation's purported determination that it is in the national security interests of the United States to issue the exemption is a conclusory statement without specific findings that the purported compliance burdens on any specific facility threatens national security.

ED_021114D_00001944-00039

164. The President's overly broad interpretation of "national security" is inconsistent with the statute.

165. Because the President grossly exceeded the bounds of his statutory authority by purporting to exempt stationary sources from standards for which the technology to implement is available and the exemptions do not further national security interests, the HON Proclamation is plainly in excess of the President's delegated powers and contrary to the statute's specific limitations on those powers. The President's action is contrary to the Clean Air Act and is ultra vires.

166. The Court possesses inherent equitable power to "grant injunctive relief . . . with respect to violations of federal law by federal officials." *Armstrong v. Exceptional Child Ctr., Inc.*, 575 U.S. 320, 326-27 (2015). Congress has nowhere foreclosed review of the interpretation and application of 42 U.S.C. § 7412(i)(4). There is no alternative statutory procedure for review of Plaintiffs' claim.

167. Because the Exemption Proclamation violates the Clean Air Act and is ultra vires, EPA actions implementing or giving effect to the proclamation likewise violate the Clean Air Act and are ultra vires.

COUNT TWO:
Ultra vires, de facto rulemaking without statutory authority
(Nonstatutory review of action in excess of statutory authority by federal officer; against all Defendants)

168. Plaintiffs incorporate by reference the allegations of Paragraphs 1-167.

169. Congress required EPA to provide for existing sources' compliance with hazardous air pollutant standards "as expeditiously as practicable," and set concrete boundaries on EPA's flexibility to set compliance deadlines "in no event later than 3 years after the effective date of such standard." 42 U.S.C. § 7412(i)(3)(A).

ED_021114D_00001944-00040

170. Congress gave EPA and state permitting authorities discrete, limited authority to grant an existing source "up to 1 additional year to comply" with standards promulgated under subsection (d) "if such additional period is necessary for the installation of controls." 42 U.S.C. § 7412(i)(3)(B).

171. Congress further conferred discrete, limited authority on EPA to stay the effectiveness of rules, including hazardous air pollutant standards, for no more than three months. 42 U.S.C. § 7607(d)(7)(B).

172. Congress directed EPA to provide for public notice and comment on EPA actions to revise hazardous air pollutant standards, their compliance dates, or to grant source-specific deadline extensions. 42 U.S.C. § 7607(d)(5), (h).

173. The exemption authority conveyed in Section 7412(i)(4) must be construed congruously with the authorities and limitations Congress enacted in Sections 7412 and 7607.

174. EPA and the President are bound by the Clean Air Act's duties with respect to implementing Section 7412(i)(4), following rulemaking procedures, and being bound by lawfully adopted regulations.

175. Reading Section 7412(i)(4) to authorize exemptions for a large swath of the regulated source category, from every single standard and other requirement of a rule, without facility- or standard-specific justification tied to the statutory factors, is contrary to the context, purpose, and structure of the Clean Air Act. The HON Proclamation's extremely broad sweep reflects an interpretation of the Section 7412(i)(4) authority that would swallow and render superfluous statutory limits.

176. The content, context, and scope of the HON Proclamation demonstrates that the Proclamation is not an "exemption" within the meaning of Section 7412(i)(4).

177. The HON Proclamation is functionally a rulemaking and/or stay pending reconsideration granted without observance of the procedural and substantive limitations Congress enacted in Section 7412 and 7607 of the Clean Air Act. The Proclamation was issued without observance of the statutory requirements for rulemaking or for granting a stay pending reconsideration.

178. EPA invited requests for presidential exemptions explicitly in the context of its announced reconsideration of the 2024 HON Rule and seven other hazardous air pollutant rules. *See* supra ¶¶ 53, 54. EPA has stated that the exemptions are offered "while EPA reconsiders" the underlying rule. *See* EPA, Clean Air Act Section 112 Presidential Exemption Information, https://perma.cc/NPT5-RAQY (last accessed Oct. 20, 2025).

179. The President indiscriminately granted exemptions from all compliance obligations of the 2024 HON Rule, without particularized consideration of the specific standards, technologies or practices needed to comply, or facilities and their particular products and processes, all of which is necessary to determine whether technology is not available to implement the standards and whether an exemption is in the national security interests of the United States.

180. The HON Proclamation's purported exercise of Section 7412(i)(4) exemption authority is in fact an exercise of rulemaking and/or stay authority despite the President lacking such power. The Clean Air Act gives only EPA that authority and only after following certain procedures in certain circumstances.

181. The sweeping HON Proclamation exceeds the narrow bounds of Section 7412(i)(4) to achieve improper goals prohibited by other provisions of the Clean Air Act. In granting compliance relief that far exceeds the Section 7412(i)(4) authority, the President

ED_021114D_00001944-00042

bypassed and contravened the statutory requirements on rulemaking and reconsideration to accomplish sweeping compliance exemptions unauthorized by law and in excess of the President's statutory authority.

182. The HON Proclamation is beyond the authority conveyed by the Clean Air Act and is *ultra vires*.

183. Because the HON Proclamation is beyond the Clean Air Act authority and ultra vires, EPA actions implementing or giving effect to the proclamation are similarly ultra vires.

RELIEF REQUESTED

WHEREFORE Plaintiffs request that the Court:

A. Declare that the HON Proclamation is unlawful and invalid and that the Annex I sources remain subject to the 2024 HON Rule as promulgated;

B. Issue injunctive relief:

i. prohibiting EPA and Administrator Lee Zeldin from implementing, relying on, or giving effect to the HON Proclamation, including through implementation of the Clean Air Act's Title V operating permit program; and

ii. directing EPA to promptly notify, in writing, the operators of facilities listed in Annex I and relevant state, local, and/or Tribal permitting authorities that the HON Proclamation is unlawful and invalid, and that any facilities that the HON Proclamation purported to exempt may not lawfully delay or avoid compliance with the deadlines promulgated by the 2024 Rule by relying on the HON Proclamation.

C. Awarding Plaintiffs their fees and costs of litigation as authorized by law;

D. Granting such other relief as the Court deems just and proper.

ED_021114D_00001944-00043

Dated: October 22, 2025

Respectfully submitted,

/s/ Sarah A. Buckley
Sarah A. Buckley (Va. Bar No. 87350), *pro hac vice pending*
Natural Resources Defense Council, Inc.
1152 15th St. NW, Suite 300
Washington, D.C. 20005
sbuckley@nrdc.org
Tel: (202) 836-9555

Counsel for Plaintiffs Natural Resources Defense Council and Environmental Justice Health Alliance for Chemical Policy Reform

Adam Kron (D.C. Bar No. 992135)
Kathleen Riley (D.C. Bar No. 1618580)
Deena Tumeh (D.C. Bar No. 488201)
Earthjustice
1001 G St. NW, Ste. 1000
Washington, D.C. 20001
akron@earthjustice.org
kriley@earthjustice.org
dtumeh@earthjustice.org
Tel: (202) 794-8039

Counsel for Plaintiffs Texas Environmental Justice Advocacy Services, Air Alliance Houston, Concerned Citizens of St. John, Louisiana Environmental Action Network, RISE St. James Louisiana, and Sierra Club

Abel Russ (D.D.C. Bar No. 1007020)
Environmental Integrity Project
888 17th St. NW, Suite 810
Washington, DC 20006
aruss@environmentalintegrity.org
Tel: (802) 482-5379

Counsel for Plaintiff Environmental Integrity Project

ED_021114D_00001944-00044

Rosalie Winn (Colorado Bar No. 52662),
pro hac vice pending
Environmental Defense Fund
2060 Broadway, Suite 300
Boulder, CO 80302
rwinn@edf.org
Tel: (303) 447-7212

Samantha Liskow, (New York Bar No. 5545140), *admission pending*
Environmental Defense Fund
257 Park Avenue South
New York, NY 10010
sliskow@edf.org
Tel: (212) 616-1247

Counsel for Plaintiff Environmental Defense Fund

Message

From: OAR Invitations [OAR_Invitations@epa.gov]
Sent: 10/8/2025 4:19:59 PM
To: Szabo, Aaron [Szabo.Aaron@epa.gov]; Tardif, Abigale (Abbie) [Tardif.Abigale@epa.gov]
CC: OAR Invitations [OAR_Invitations@epa.gov]; Mills, Katie [Mills.Katie@epa.gov]
Subject: FW: National Lime Association
Attachments: NLA External Meeting Request Form Sept. 2025.pdf

Hi Aaron and Abbie,

Please see the attached external meeting request from National Lime Association re: Compliance Deadline & Reconsideration of the Lime Manufacturing NESHAP.

This meeting request was vetted with OAQPS and the recommendation is: f Ex. 5 Deliberative Process (DP)
Ex. 5 Deliberative Process (DP)

Reason for recommendation: Ex. 5 Deliberative Process (DP)
Ex. 5 Deliberative Process (DP)
Is there a timing consideration? No
Is a pre-brief needed? No
Recommended program office attendees (if applicable): [redacted]
Caution: Ex. 5 Deliberative Process (DP)

Please confirm if you agree with the provided recommendation.

Thanks!
Jessica

Message

From: OAR Invitations [OAR_Invitations@epa.gov]
Sent: 1/22/2026 2:47:52 PM
To: Tardif, Abigale (Abbie) [Tardif.Abigale@epa.gov]; Mills, Katie [Mills.Katie@epa.gov]
CC: OAR Invitations [OAR_Invitations@epa.gov]; Szabo, Aaron [Szabo.Aaron@epa.gov]
Subject: FW: Bracewell
Attachments: OAR HON Rule Meeting Request Form.pdf

Good morning,

Please see the attached external meeting request from Bracewell re: To discuss the HON Rule, both the presidential exemption process and potential changes to the rule.

This meeting request was vetted with OCAP and the recommendation is: f Ex. 5 Deliberative Process (DP)

- Who should take this meeting? Ex. 5 Deliberative Process (DP)
- Reason for recommendation: Ex. 5 Deliberative Process (DP)
  Ex. 5 Deliberative Process (DP)
- Recommended program office attendees (if applicable): [redacted]; [redacted]

Please confirm if you agree with the provided recommendation.

Thanks!
Jessica

Office of Air and Radiation (OAR)
External Meeting Request Form

Please complete all fields in this form to schedule a meeting with EPA's OAR.

Today's Date: 1/16/20

Purpose

Purpose of the Meeting	To discuss the HON Rule, both the presidential exemption process and potential changes to the rule
Requesting Organization	Bracewell
Additional Organizations in Attendance (if applicable)	n/a

Background

Provide any background information the OAR scheduling team or meeting attendees should be aware of.

In the last year, have you met with anyone within EPA? If so, whom?	Bracewell regularly meets with EPA on behalf of our clients
Is this meeting related to ongoing litigation or an enforcement matter?	No
Additional Information	

Scheduling Point of Contact (POC)

Provide the information of who the OAR scheduling team should be in communication with.

Name	Holt Edwards
Email	holt.edwards@bracewell.com
Affiliation	Bracewell

Scheduling Information

Provide context for the urgency of this meeting.

Is the meeting urgent and if so, why?	The meeting is time senstive in that our clients are facing
Meeting Type	In-Person - EPA HQ
If in-person, are you traveling from outside the DC metro area? From where?	We are local to the DC metro area

ED_021114D_00002686-00001

Proposed Weeks for Meeting

Propose weeks that you would like to meet with OAR. These times are not guaranteed, and the OAR scheduling team will follow up with the above scheduling POC should this meeting request be granted.

Option 1	Week of: 1/19/26
Option 2	Week of: 1/26/26
Option 3	Week of: 2/2/26

EPA OAR Participants Requested

More information about OAR: https://www.epa.gov/aboutepa/about-office-air-and-radiation

Leadership

☐ **Szabo, Aaron:** Assistant Administrator

☑ **Tardif, Abigale:** Principal Deputy Assistant Administrator

☐ **Dominguez, Alexander:** Deputy Assistant Administrator

☐ **Mills, Katie:** Deputy Assistant Administrator

Program Offices

☑ **OCAP,** Office of Clean Air Programs

☐ **OSAP,** Office of State Air Partnerships

☐ **OTAQ,** Office of Transportation and Air Quality

☐ **ORIA,** Office Radiation and Indoor Air

External Participants

Identify all participants for this meeting and inform OAR scheduling team of any modifications at least 48 hours before meeting.

Name (Last, First)	Affiliation	Title	Executive Suite or Equivalent	Representative of a Law, Lobbying, or Consulting Firm	International Visitor
Edwards, Holt	Bracewell	Principal	☐	☑	☐
Brazauskas, Joe	Bracewell	Partner	☐	☑	☐
Holmstead, Jeff	Bracewell	Partner	☐	☑	☐
			☐	☐	☐
			☐	☐	☐
			☐	☐	☐
			☐	☐	☐

For internal use only

Status	
Title of the Meeting OAR Leadership Support	

Message

From: OAR Invitations [OAR_Invitations@epa.gov]
Sent: 5/28/2025 12:37:59 PM
To: Szabo, Aaron [Szabo.Aaron@epa.gov]
Subject: RE: [External] Call request with Brian Bird, CEO of NorthWestern Energy

Sounds good! I'll move forward.

Thanks.
Jessica

From: Szabo, Aaron <Szabo.Aaron@epa.gov>
Sent: Wednesday, May 28, 2025 8:31 AM
To: OAR Invitations <OAR_Invitations@epa.gov>
Subject: RE: [External] Call request with Brian Bird, CEO of NorthWestern Energy

Yes. Happy to talk with them about the reconsideration.

Thanks,

Aaron Szabo
Senior Advisor to the Administrator
202-855-3241

From: OAR Invitations <OAR_Invitations@epa.gov>
Sent: Wednesday, May 28, 2025 8:23 AM
To: Szabo, Aaron <Szabo.Aaron@epa.gov>
Cc: OAR Invitations <OAR_Invitations@epa.gov>
Subject: RE: [External] Call request with Brian Bird, CEO of NorthWestern Energy

Hi Aaron,

The stakeholder replied and said, "Yes while the presidential exemption is appreciated. There's interest in following up about the MATS rulemaking/rewrite".

Should I move forward with scheduling this call?

Thanks!
Jessica

From: Szabo, Aaron <Szabo.Aaron@epa.gov>
Sent: Monday, May 26, 2025 12:39 PM
To: OAR Invitations <OAR_Invitations@epa.gov>
Subject: RE: [External] Call request with Brian Bird, CEO of NorthWestern Energy

Jessica – can you follow up to see if they would like a meeting to discuss any other issues since the Presidential Exemption was granted?

Thanks,

Aaron Szabo
Senior Advisor to the Administrator
202-855-3241

From: OAR Invitations <OAR_Invitations@epa.gov>
Sent: Tuesday, May 20, 2025 11:34 AM
To: Szabo, Aaron <Szabo.Aaron@epa.gov>
Cc: OAR Invitations <OAR_Invitations@epa.gov>
Subject: FW: [External] Call request with Brian Bird, CEO of NorthWestern Energy

Hello Aaron,

Please see the attached external meeting request from NorthWestern Energy re: Discuss EPA MATS rule.

This meeting request was vetted with OAQPS and the recommendation is: Ex. 5 Deliberative Process (DP) Program Comments: Ex. 5 Deliberative Process (DP)

Ex. 5 Deliberative Process (DP)

Please note: NorthWestern Energy did include C-Suite level information. Brian Bird, CEO of NorthWestern Energy

Please confirm if you agree with the provided recommendation.

Thanks!
Jessica

Message

From: Hall, Jeffrey [Hall.Jeffrey.A@epa.gov]
Sent: 7/1/2025 10:53:06 PM
To: Tardif, Abigale (Abbie) [Tardif.Abigale@epa.gov]; Szabo, Aaron [Szabo.Aaron@epa.gov]; Tisa, Nathaniel [Tisa.Nathaniel@epa.gov]
Subject: Fw: Coke Ovens OECA Letter
Attachments: RE: March 7, 2025 Letter to EPA Administrator Zeldin re: Request for Extension of Compliance Dates; RE: March 7, 2025 Letter to EPA Administrator Zeldin re: Request for Extension of Compliance Dates; RE: March 7, 2025 Letter to EPA Administrator Zeldin re: Request for Extension of Compliance Dates

Get Outlook for iOS

From: [redacted]@epa.gov>
Sent: Tuesday, July 1, 2025 6:38:51 PM
To: [redacted]@epa.gov>; Hall, Jeffrey <Hall.Jeffrey.A@epa.gov>
Cc: [redacted]@epa.gov>; [redacted]@epa.gov>
Subject: RE: Coke Ovens OECA Letter

See attached for your records.

Best,
[redacted]

From: [redacted]@epa.gov>
Sent: Tuesday, July 1, 2025 5:46 PM
To: Hall, Jeffrey <Hall.Jeffrey.A@epa.gov>
Cc: [redacted]@epa.gov>
Subject: RE: Coke Ovens OECA Letter

Jeff,

[redacted] plans to sign the letters before he leaves this evening.

[redacted]

[redacted]
Senior Advisor
Office of Enforcement and Compliance Assurance
[redacted] (rings to cell)
[redacted] (cell)

** my schedule might not be the same as yours -- please don't feel obligated to respond outside of your normal work hours.*

From: Hall, Jeffrey <Hall.Jeffrey.A@epa.gov>
Sent: Tuesday, July 1, 2025 4:53 PM
To: [redacted]@epa.gov>
Subject: RE: Coke Ovens OECA Letter

OAR and OGC approved this. Unless there is some major problem that needs to be discussed further, please ensure AED sends this out today.

From: [redacted]@epa.gov>
Sent: Tuesday, July 1, 2025 3:03 PM
To: Hall, Jeffrey <Hall.Jeffrey.A@epa.gov>
Subject: RE: Coke Ovens OECA Letter

Jeff,

I have been working with AED on the language that we discussed this morning. Let me know what you think of the attached.

[redacted]

[redacted]
Senior Advisor
Office of Enforcement and Compliance Assurance
[redacted] (rings to cell)
[redacted](cell)

** my schedule might not be the same as yours – please don't feel obligated to respond outside of your normal work hours.*

From: Hall, Jeffrey <Hall.Jeffrey.A@epa.gov>
Sent: Tuesday, July 1, 2025 1:56 PM
To: [redacted]@epa.gov>
Subject: Fw: Coke Ovens OECA Letter

Get Outlook for iOS

From: Tardif, Abigale (Abbie) <Tardif.Abigale@epa.gov>
Sent: Tuesday, July 1, 2025 1:33 PM
To: Hall, Jeffrey <Hall.Jeffrey.A@epa.gov>; Tisa, Nathaniel <Tisa.Nathaniel@epa.gov>; Szabo, Aaron <Szabo.Aaron@epa.gov>
Subject: Re: Coke Ovens OECA Letter

Jeff-

Just wanted to check in on the status of the letters.

Best,
Abbie

Get Outlook for iOS

Message

From: [redacted]@epa.gov]
Sent: 7/1/2025 10:37:09 PM
To: walter.tamukong@clevelandcliffs.com
CC: [redacted]epa.gov]; [redacted]@epa.gov]; [redacted]@epa.gov]; [redacted]@epa.gov]
Subject: RE: March 7, 2025 Letter to EPA Administrator Zeldin re: Request for Extension of Compliance Dates
Attachments: Cleveland-Cliffs Supplemental Information Request Withdrawal Letter.pdf

Dear Mr. Tamukong,

Please see the attached withdrawal of EPA's June 10, 2025 completeness determination seeking additional information.

Best,
[redacted], Deputy Director
Air Enforcement Division
US Environmental Protection Agency
William Jefferson Clinton Building (South), Rm 1119A
1200 Pennsylvania Ave, NW
Washington, DC 20460
[redacted] (office)
[redacted] (cell)

From: [redacted]@epa.gov>
Sent: Tuesday, June 10, 2025 3:48 PM
To: walter.tamukong@clevelandcliffs.com
Cc: [redacted]@epa.gov>; [redacted]@epa.gov>; [redacted]@epa.gov>; [redacted]@epa.gov>; [redacted]@epa.gov>; [redacted]@epa.gov>; [redacted]@epa.gov>
Subject: March 7, 2025 Letter to EPA Administrator Zeldin re: Request for Extension of Compliance Dates

Dear Mr. Tamukong,

Please see the attached in response to Cleveland Cliff's March 7, 2025, letter to Administrator Zeldin requesting extensions of various compliance dates pursuant to Clean Air Act §112(i)(3), 42 U.S.C. § 7412 (i)(3), for two National Emission Standards for Hazardous Air Pollutants (NESHAP) subparts applicable to metallurgical coke manufacturing.

If you have any questions regarding this letter, please contact [redacted] at ([redacted] or [redacted]@epa.gov.

Regards,

[redacted]
Acting Chief
Stationary Source Legal Branch
Air Enforcement Division

OFFICE OF CIVIL ENFORCEMENT

WASHINGTON, D.C. 20460

Mr. Walter Tamukong
Program Director
Environmental Permitting and Regulatory
Cleveland-Cliffs Inc.
200 Public Square
Suite 3300
Cleveland, OH 41114

Via Electronic Mail: walter.tamukong@clevelandcliffs.com

Dear Mr. Tamukong:

I am writing to formally withdraw our June 10, 2025, letter regarding the US Environmental Protection Agency's (EPA) completeness determination seeking additional information related to Cleveland-Cliff's March 7, 2025, letter to Administrator Lee M. Zeldin. That letter requested extensions of various compliance dates pursuant to Clean Air Act §112(i)(3), 42 U.S.C. § 7412 (i)(3), for two National Emission Standards for Hazardous Air Pollutants subparts applicable to metallurgical coke manufacturing. You submitted the request on behalf of Cleveland-Cliffs, Inc. for three facilities: Cleveland-Cliffs Burns Harbor LLC in Indiana, Cleveland-Cliffs Cleveland Works LLC, Warren Location in Ohio, and Cleveland-Cliffs Monessen Coke LLC in Pennsylvania.

Since we issued the completeness determination seeking additional information, we have since been informed that the Office of Air and Radiation (OAR) has additional information relevant to the issue of a compliance extension. In light of this, it is appropriate to withdraw our letter in the interim while we coordinate with OAR and pending further developments. You are welcome to provide any additional information you think would be helpful. Please note that pursuant to 40 C.F.R. § 63.6(i)(4)(i)(B), "[n]onfrivolous requests [for compliance extensions] will stay the applicability of the rule…until such time as the request is granted or denied."

Sincerely,

[redacted]
Digita[redacted]
Date: 2025.07.01
16:20:13 -04'00'
[redacted], Acting Director
Stationary Source Legal Branch
Air Enforcement Division

cc: [redacted], Director, Air Enforcement Division
[redacted], Acting Chief, Stationary Source Legal Branch, Air Enforcement Division
[redacted], Director, OAQPS, OAR, EPA
[redacted], Supervisor, AECAB, ECAD, Region 5

Message

From: [redacted]@epa.gov]
Sent: 7/1/2025 10:35:29 PM
To: robert.sanch@dteenergy.com
CC: [redacted]@epa.gov]; [redacted]@epa.gov]; [redacted]@epa.gov]; [redacted]@epa.gov]
Subject: RE: March 7, 2025 Letter to EPA Administrator Zeldin re: Request for Extension of Compliance Dates
Attachments: DTE Vantage Supplemental Information Request Withdrawal Letter.pdf

Dear Mr. Sanch,

Please see the attached withdrawal of EPA's June 10, 2025 completeness determination seeking additional information.

Best,
[redacted], Deputy Director
Air Enforcement Division
US Environmental Protection Agency
William Jefferson Clinton Building (South), Rm 1119A
1200 Pennsylvania Ave, NW
Washington, DC 20460
[redacted] (office)
[redacted](cell)

From: [redacted]@epa.gov>
Sent: Tuesday, June 10, 2025 3:50 PM
To: robert.sanch@dteenergy.com
Cc: [redacted]@epa.gov>; [redacted]@epa.gov>; [redacted]@epa.gov>; [redacted]@epa.gov>; [redacted]@epa.gov>; [redacted]@epa.gov>; [redacted]@epa.gov>; [redacted]@epa.gov>
Subject: March 7, 2025 Letter to EPA Administrator Zeldin re: Request for Extension of Compliance Dates

Dear Mr. Sanch,

Please see the attached in response to DTE Vantage's March 7, 2025, letter to Administrator Zeldin requesting extensions of various compliance dates pursuant to Clean Air Act §112(i)(3), 42 U.S.C. § 7412 (i)(3), for two National Emission Standards for Hazardous Air Pollutants (NESHAP) subparts applicable to metallurgical coke manufacturing.

If you have any questions regarding this letter, please contact [redacted] at [redacted] or [redacted]@epa.gov.

Regards,

[redacted]
Acting Chief
Stationary Source Legal Branch
Air Enforcement Division

OFFICE OF CIVIL ENFORCEMENT

WASHINGTON, D.C. 20460

Mr. Robert Sanch
Environmental Supervisor
DTE Vantage
One Energy Plaza 400 WCB
Detroit, MI 48226

Via Electronic Mail: robert.sanch@dteenergy.com

Dear Mr. Sanch:

I am writing to formally withdraw our June 10, 2025, letter regarding the US Environmental Protection Agency's (EPA) completeness determination seeking additional information related to DTE Vantage's March 7, 2025, letter to Administrator Lee M. Zeldin. That letter requested extensions of various compliance dates pursuant to Clean Air Act §112(i)(3), 42 U.S.C. § 7412 (i)(3), for two National Emission Standards for Hazardous Air Pollutants subparts applicable to metallurgical coke manufacturing. You submitted the request on behalf of EES Coke, LLC for its facility located at Zug Island, Michigan.

Since we issued the completeness determination seeking additional information, we have since been informed that the Office of Air and Radiation (OAR) has additional information relevant to the issue of a compliance extension. In light of this, it is appropriate to withdraw our letter in the interim while we coordinate with OAR and pending further developments. You are welcome to provide any additional information you think would be helpful. Please note that pursuant to 40 C.F.R. § 63.6(i)(4)(i)(B), "[n]onfrivolous requests [for compliance extensions] will stay the applicability of the rule…until such time as the request is granted or denied."

Sincerely,

[redacted], Acting Director
Stationary Source Legal Branch
Air Enforcement Division

cc: [redacted], Director, Air Enforcement Division
[redacted] Acting Chief, Stationary Source Legal Branch, Air Enforcement Division
[redacted] Director, OAQPS, OAR, EPA
[redacted] Supervisor, AECAB, ECAD, Region 5

Message

From: [redacted]@epa.gov]
Sent: 7/1/2025 10:33:31 PM
To: cwhardin@uss.com
CC: [redacted]@epa.gov]; [redacted]@epa.gov]; [redacted]@epa.gov], [redacted]@epa.gov]
Subject: RE: March 7, 2025 Letter to EPA Administrator Zeldin re: Request for Extension of Compliance Dates
Attachments: US Steel Supplemental Information Request Withdrawal Letter.pdf

Dear Mr. Hardin,

Please see the attached withdrawal of EPA's June 10 completeness determination seeking additional information.

Best,
[redacted], Deputy Director
Air Enforcement Division
US Environmental Protection Agency
William Jefferson Clinton Building (South), Rm 1119A
1200 Pennsylvania Ave, NW
Washington, DC 20460
[redacted]office)
[redacted](cell)

From: [redacted]@epa.gov>
Sent: Tuesday, June 10, 2025 3:52 PM
To: cwhardin@uss.com
Cc: [redacted]@epa.gov>; [redacted]@epa.gov>; [redacted]@epa.gov>; [redacted]@epa.gov>; [redacted]@epa.gov>; [redacted]@epa.gov>; [redacted]@epa.gov>
Subject: March 7, 2025 Letter to EPA Administrator Zeldin re: Request for Extension of Compliance Dates

Dear Mr. Hardin,

Please see the attached in response to U.S. Steel's March 7, 2025, letter to Administrator Zeldin requesting extensions of various compliance dates pursuant to Clean Air Act §112(i)(3), 42 U.S.C. § 7412 (i)(3), for two National Emission Standards for Hazardous Air Pollutants (NESHAP) subparts applicable to metallurgical coke manufacturing.

If you have any questions regarding this letter, please contact [redacted] at [redacted] or [redacted]epa.gov.

Regards,

[redacted]
Acting Chief
Stationary Source Legal Branch
Air Enforcement Division

OFFICE OF CIVIL ENFORCEMENT

WASHINGTON, D.C. 20460

Mr. Chris W. Hardin
Manager, Environmental Control
United States Steel Corporation
400 State Street
Clairton, PA 15025

Via Electronic Mail: cwhardin@uss.com

Dear Mr. Hardin:

I am writing to formally withdraw our June 10, 2025, letter regarding the US Environmental Protection Agency's (EPA) completeness determination seeking additional information related to United States Steel Corporation's March 7, 2025, letter to Administrator Lee M. Zeldin. That letter requested extensions of various compliance dates pursuant to Clean Air Act §112(i)(3), 42 U.S.C. § 7412 (i)(3), for two National Emission Standards for Hazardous Air Pollutants subparts applicable to metallurgical coke manufacturing. You submitted the request on behalf of United State Steel Corporation, and it was assumed the request only covered the Clairton Plant.

Since we issued the completeness determination seeking additional information, we have since been informed that the Office of Air and Radiation (OAR) has additional information relevant to the issue of a compliance extension. In light of this, it is appropriate to withdraw our letter in the interim while we coordinate with OAR and pending further developments. You are welcome to provide any additional information you think would be helpful. Please note that pursuant to 40 C.F.R. § 63.6(i)(4)(i)(B), "[n]onfrivolous requests [for compliance extensions] will stay the applicability of the rule…until such time as the request is granted or denied."

Sincerely,

[redacted]
Digitally signed [redacted]
Date: 2025.07.01 18:29:40 -04'00'

[redacted], Acting Director
Stationary Source Legal Branch
Air Enforcement Division

cc: [redacted], Director, Air Enforcement Division
[redacted], Acting Chief, Stationary Source Legal Branch, Air Enforcement Division
[redacted], Director, OAQPS, OAR, EPA
[redacted] Supervisor, AECAB, ECAD, Region 5

Message

From: Brian Lynch [brian.lynch@santeecooper.com]
Sent: 5/29/2025 5:32:31 PM
To: Szabo, Aaron [Szabo.Aaron@epa.gov]; Tardif, Abigale (Abbie) [Tardif.Abigale@epa.gov]; AirAction [AirAction@epa.gov]
Subject: Application for Presidential Exemption for Cross Generating Station and Winyah Generating Station
Attachments: Application for Presidential Exemption for Cross Generating Station and Winyah Generating Station.pdf

Caution: This email originated from outside EPA, please exercise additional caution when deciding whether to open attachments or click on provided links.

Mr. Szabo & Ms. Tardif,

Santee Cooper is submitting to EPA the attached application seeking a Presidential Exemption for its two coal-fired generating stations under section 112(i)(4) of the Clean Air Act. The application for a Presidential Exemption seeks a two-year extension of the MATS compliance deadlines for 8 coal-fired electric generating units located in South Carolina at the Cross Generating Station and the Winyah Generating Station, both of which are owned and operated by Santee Cooper. We acknowledge that President Trump signed on April 8 a Presidential Proclamation that provided MATS compliance extensions to many coal-fired generating units that had initially applied for the Presidential Exemption last March. However, it is our understanding that additional electric utilities will be afforded the same opportunity to apply for the Presidential Exemption through a second proclamation that would be issued in the near term. Santee Cooper requests that EPA include in this second proclamation the attached application requesting a Presidential Exemption for the Santee Cooper's Cross and Winyah Generating Stations.

Santee Cooper appreciates your attention on this important matter. Please contact me regarding any matters pertaining to Santee Cooper's application.

Thanks,

santee cooper
Brian Lynch
Director – Environmental Services
☎ P: 843.761.8000 ext. 4620 | brian.lynch@santeecooper.com

Message

From: [redacted]@epa.gov]
Sent: 6/18/2025 8:14:50 PM
To: [redacted]@epa.gov]
Subject: e-mail #4 - Sterilizers
Attachments: Sterilizers.xlsx; Sterilizers.zip

All of the sterilizer sources have been verified. The only source that we did not have on an independent list was #42 – Aligned Medical Systems. We have found the company through web searches and the mail came from an address associated with the company s Ex. 5 Deliberative Process (DP)

Outlook

Sterilizer Rule (89 FR 24090): [International Sterilization Laboratory]

From Steve Walter <swalter@asocorp.com>
Date Wed 3/26/2025 11:55 AM
To AirAction <AirAction@epa.gov>
Cc Douglas Parzuchowski <dparzuchowski@isl-fl.com>

1 attachment (224 KB)
FINAL EOSA Letter re NESHAP.pdf;

Caution: This email originated from outside EPA, please exercise additional caution when deciding whether to open attachments or click on provided links.

To: airaction@epa.gov

Re: Sterilizer Rule (89 FR 24090): International Sterilization Laboratory

I write on behalf of [International Sterilization Laboratory] to request that the President issue a two-year exemption pursuant to his authority under CAA Section 112(i)(4) for all emission standards and associated requirements set or revised in EPA's April 4, 2024 *National Emission Standards for Hazardous Air Pollutants: Ethylene Oxide Emissions Standards for Sterilization Facilities Residual Risk and Technology Review*, 89 FR 24090 (April 5, 2024) (Sterilizer Rule).

International Sterilization Laboratory requests that the Presidential Exemption apply to the following facilities regulated by the Sterilizer Rule and all sources therein:

- International Sterilization Laboratory, 217 Sampey Road, Groveland, Florida, 34736

International Sterilization Laboratory requests that the President issue a two-year exemption as quickly as possible, but designate it as taking effect on the compliance deadlines for the standards in the Sterilizer Rule. Specifically:

- For standards set or revised under CAA Section 112(f) and all corresponding requirements (including monitoring requirements), the exemption should apply as of April 6, 2026 (the compliance deadline for those standards);

- For standards set or revised under CAA Section 112(d) and all corresponding requirements (including monitoring requirements), the exemption should apply as of April 5, 2027 (the compliance deadlines for those standards).

As explained further in the attached letter submitted to EPA on March 17 on behalf of the Ethylene Oxide Sterilization Association (EOSA), the technology necessary to implement the standards is not available because manufacturers cannot guarantee that existing emissions control equipment will enable sources to meet the new standards; there is not a sufficient supply of the necessary technology; and there are not enough experienced installation professional and technical experts to install and test that equipment within the current compliance timeframes.

As also explained further in EOSA's March 17 letter, it is in the national security interests of the United States to issue the requested exemption because if some facilities choose to cease operations rather than attempt compliance (which is likely), that will disrupt the supply of sterilized medical devices, raise the cost of those devices, and/or force medical suppliers or providers to source sterilized medical devices from abroad.

Please don't hesitate to let me know if any additional information is needed. [International Sterilization Laboratory] appreciates EPA's attention to this important matter and urges EPA to recommend that the President issue the requested exemption as quickly as possible.

Sincerely,

Steve Walter
Vice President
ISL
International Sterilization Laboratory
Phone: 941-378-6649
Cell: 813-843-2124
Email: swalter@ISL-FL.com

NOTICE: This e-mail may contain confidential information. It is intended only for the use of the person(s) named above. If you have received this e-mail in error, you are hereby notified that any review, dissemination, distribution or duplication of this communication is strictly prohibited. If you are not the intended recipient, please notify us immediately by reply e-mail, destroy all copies of the message, and delete the message from your system. Unless stated to the contrary, any opinions or comments contained in the e-mail are personal to the writer and do not represent the official view of the company. Thank you for your cooperation. Although this email and any attachments are believed to be free of any VIRUS or other defect that might affect any computer system into which it is received and opened, it is the responsibility of the recipient to ensure that it is virus free and ASO Corporation, ASO LLC, its officers, directors, affiliates, agents, and employees accept no responsibility for any loss or damage.

EOSA The Ethylene Oxide Sterilization Association, Inc.
Managed by B&C® Consortia Management, L.L.C.

The Honorable Lee Zeldin
Administrator
Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, DC 20460
Mail Code: 1101A

Dear Administrator Zeldin:

I write on behalf of the Ethylene Oxide Sterilization Association (EOSA) to ask EPA to take near-term action regarding the *National Emission Standards for Hazardous Air Pollutants: Ethylene Oxide Emissions Standards for Sterilization Facilities Residual Risk and Technology Review*, 89 Fed. Reg. 24090 (Apr. 5, 2024), known as the "Sterilizer Rule." The Sterilizer Rule imposes extremely onerous ethylene oxide (EtO) emission standards on medical device sterilizers the most stringent of which must be met by April 2026—and is causing substantial harm to and regulatory uncertainty for EOSA's members.

EPA announced on March 12, 2025, that it will reconsider the Sterilizer Rule (alongside other NESHAPs), which is a welcome development. EOSA was also pleased to see EPA's statement that the Administration "is considering a 2-year compliance exemption via Section 112(i)(4) of the Clean Air Act for affected facilities while EPA goes through the rulemaking process." But medical device sterilizers need to decide *now* whether to expend substantial resources to acquire technology and reconfigure their facilities to try to comply with the Sterilizer Rule—or to instead cease operations. That, in turn, may disrupt the supply of critical medical devices, harming both patients and providers, or force medical providers to source those essential medical devices from abroad—increasing the offshoring of the sterilization of medical devices and inflating costs to Americans in direct contravention of the Trump administration's economic objectives.

The Sterilizer Rule was promulgated by the Biden administration under Clean Air Act ("CAA") Section 112 on April 5, 2024. The Sterilizer Rule includes standards set under Section 112(d), the CAA's hazardous pollutant "technology review" provision, and Section 112(f), the "risk review" provision, the latter of which the D.C. Circuit described as a "*one-time* 'risk review.'" *Nat'l Ass'n for Surface Finishing v. EPA*, 795 F.3d 1, 5 (D.C. Cir. 2015) (emphasis added). There are several major flaws in the Sterilizer Rule, and a litany of other issues and errors.

First, the Sterilizer Rule unlawfully set new standards under Section 112(f) even though EPA previously undertook the one-time risk review for this source category in 2006. 71 Fed. Reg. 17, 712, 17,716 (April 7, 2006). In doing so, EPA ignored the statutory text and context, both of which indicate that Congress intended EPA to regulate primarily through periodic technology reviews under Section 112(d) and conduct only one round of risk-based review under Section 112(f). By ignoring that Congressional mandate, EPA wrongly avoided Section 112(d)'s requirement that the agency must consider costs when setting and revising technology-based standards.

Second, the emission standards set in the Sterilizer Rule—particularly under Section 112(f), but also those set under Section 112(d) are extremely onerous, unsupported by the record data, and for some sterilizers will be impossible to meet. For example, EPA increased the standard for sterilization chamber vents using at least 30 tons per year ("tpy") of EtO from a 99% destruction

ED_021114D_00002974-00001

and removal efficiency (DRE) standard to a 99.99% DRE standard. This leaves no margin for error or equipment malfunction. Likewise, for aeration room vents ("ARVs") using at least 30 tpy of EtO, the Sterilizer Rule increased the DRE requirement from 99% to 99.9%, while wrongly rejecting commenters' request for an alternative standard. Both the SCV and ARV standards were premised on test data that EPA admitted, in the Proposed Rule, is not representative of normal operations. *See* 88 Fed. Reg. at 22,844. EPA also imposed stringent new standards on area sources; for example, EPA set a chamber exhaust vent emission standard of 99.9% DRE for facilities using at least 60 tpy of EtO. These are just a few of the stringent standards set in the Sterilizer Rule under Sections 112(f) and (d), all of which are unrealistic and unsupported by the record.

The Sterilizer Rule is also flawed because EPA arbitrarily and capriciously imposed onerous Continuous Emission Monitoring System (CEMS) mandates on facilities using at least 100 lb/year of EtO without proper notice and comment. Replacing parametric monitoring with CEMS, operating at fifteen-minutes intervals and demonstrating 90% data availability, is costly, complicated, and burdensome, while emission reduction benefits are minimal. Further, EPA failed to allow commenters to weigh in on the CEMS scheme the agency finalized, which requires application of CEMS *at each emissions inlet*, not just outlets. This CEMS scheme is thus both arbitrary and unlawful.

EOSA challenged the Sterilizer Rule in the United States Court of Appeals for the District of Columbia Circuit (No. 24-1180). In addition to raising the above major concerns, EOSA also explained that EPA wrongly set standards based on EtO *usage*, rather than based on EtO *emissions* (as the text of Section 112 requires); failed to establish technology-based standards under Section 112(d) before imposing certain of the risk-based standards; failed to consider and address comments on EPA's reliance on the flawed IRIS value for EtO; and failed to conduct rational cost/benefit analysis in deciding whether and to what extent to revise all standards. A fuller discussion of all of these issues can be found in EOSA's opening merits brief (Doc. #2080994).

As noted above, EPA has announced it will reconsider the Sterilizer Rule. EPA also recently moved to hold the litigation over the Sterilizer Rule in abeyance for 60 days "to allow new Agency leadership to review" the Sterilizer Rule and "to decide what action, if any, is necessary." *Cal. Cmtys. Against Toxics v. EPA*, No. 24-1178 (D.C. Cir. filed Feb. 18, 2025) (Doc. 2101209). EOSA appreciates EPA's recognition of the need to reconsider the Sterilizer Rule. But while EPA does so, EOSA's members continue to face the Sterilizer Rule's fast-approaching compliance deadlines: April 6, 2026, for standards set under Section 112(f) and April 5, 2027, for standards set under Section 112(d). These deadlines (particularly the former, which applies to the most stringent standards) require sterilizers to decide now whether to commit significant financial and operational resources—including to purchase new control technologies, redesign facilities, and restructure operations—to try to comply with the Sterilizer Rule, which is not possible for all facilities.

Lending further urgency to EPA's reconsideration of the Sterilizer Rule and the standards and deadlines set therein, the D.C. Circuit denied EPA's abeyance motion and the case has been set for argument on April 15, 2025. EOSA therefore urges EPA to act quickly to relieve sterilizers of the Sterilizer Rule's obligations, preventing unnecessary expenditures and irrevocable decisions that some sterilizers will likely be forced to make absent near-term relief.

To address the urgent compliance challenges posed by the Sterilizer Rule, EOSA identifies two potential pathways for relief. Ideally, EPA should pursue both to ensure that sterilizers can continue to operate in the near term, even while EPA reconsiders the Sterilizer Rule more broadly.

Path 1: Presidential Waiver under Section 112(i)(4)

As suggested by EPA, the President should exercise his authority under CAA § 112(i)(4) to grant a two-year compliance exemption commencing on the Sterilizer Rule's compliance deadlines: April 6, 2026, for risk-based standards and April 5, 2027, for technology-based standards. The President may grant such an exemption for all sources regulated by the Sterilizer Rule in one action,[1] based upon findings that (1) "it is in the national security interests … to do so" and (2) "the technology to implement such standard is not available." 42 U.S.C. § 7412(i)(4).

The first requirement—national security interests—is satisfied due to the critical role that sterilization facilities play in maintaining the U.S. medical device supply chain. Compliance with the Sterilizer Rule's deadlines, particularly the two-year deadline for compliance with the risk-based standards set under Section 112(f), will significantly reduce sterilization capacity. This, in turn, will lead to severe shortages of life-critical medical devices such as catheters, surgical kits, syringes, bandages, IV equipment, and needles, disrupting essential healthcare services. EOSA cautioned in its Comments on the Proposed Sterilizer Rule that the loss of capacity while facility reconstruction and modifications are underway will cause "a large reduction in medical device sterilization capacity and a severe shortage of sterilized medical devices." EOSA Comments 59, EPA-HQ-OAR-2019-0178-0618. Medical industry stakeholders similarly noted that modifying sterilization equipment is "no trivial matter":

> These complex facilities, no two of which share the same design or process, typically must go at least partially offline to make modifications to the equipment. Even routine maintenance or periodic upgrades require significant planning to minimize downtime across the monthly or annual supply cycle.

Advanced Medical Technology Association Comments 9–10, EPA-HQ-OAR-2019-0178-0601.

Without relief, sterilizers may be unable to meet demand for sterilized medical devices, leading to shortages that force medical providers to seek alternative sources abroad and increase the United States' dependence on foreign suppliers for essential medical devices. This growing reliance on foreign sterilization capacity and imported medical equipment poses an immediate national security risk, as any disruption—whether from geopolitical conflicts, trade restrictions, or economic coercion—could severely limit the United States' ability to maintain an independent and resilient healthcare system, jeopardizing timely access to life-saving medical equipment.

[1] Nothing in Section 112(i)(4) bars the President from issuing an exemption that applies to all regulated sources—and the President should do so here to ensure that all sterilization facilities are relieved from the obligation to comply with the Sterilizer Rule.

The second requirement technology unavailability is also met. It will be impossible for all regulated sources to obtain and install necessary control technology by April 2026 due to the limited number of equipment manufacturers and workforce shortages.

EOSA has explained that many of the Sterilizer Rule's requirements "require significant facility reconstruction and major equipment procurement and installation" that could take years—particularly if all sterilizers must redesign their facilities and install equipment to meet the new standards at the same time. EOSA Comments 58 59. And "[t]he availability of the equipment, materials, and contractor services necessary to modify emission control systems is severely limited." Sterigenics Comments 28, EPA-HQ-OAR-2019-0178-0632. Between supply chain constraints, the time-intensive process of facility redesign to accommodate new equipment, and the extensive testing and validation required before any system can become operational, the necessary control technology is functionally unavailable within the required timeframes.

Further, even if it were possible for all facilities to secure the needed equipment and make the necessary design and structural changes within the current compliance periods, the limited number of experienced installation professionals and technical experts who support this industry makes timely compliance by all regulated sources logistically infeasible. *See* AdvaMed Comments at 10. There is simply no way that all regulated sources will be able to obtain both the necessary equipment *and* the skilled technicians needed to successfully install, test, and bring that equipment online within the same two-year period, as required under the Sterilizer Rule.

Finally, control device manufacturers cannot guarantee that their equipment will operate to meet the Sterilizer Rule's stringent performance deadlines. *See* Sterigenics Comments at 28. This further highlights the technological infeasibility of meeting the current compliance deadlines as well as the irrationality and infeasibility of the standards themselves. This is a particularly compelling basis for the President to find that "the technology to implement such standard is not available," 42 U.S.C. § 7412(i)(4), and grant a two-year waiver.

Even the Biden Administration recognized the compliance challenges posed by the Sterilizer Rule. In its *Memorandum on the Orderly Implementation of the Air Toxics Standards for Ethylene Oxide Commercial Sterilizers* (Jan. 16, 2025), the Administration acknowledged that waivers or exemptions may be necessary to "achiev[ing] the … Rule's critical health protections as soon as practicable, while safeguarding the supply of safe medical products from disruption that would compromise the health and welfare of the American people."

EPA should therefore urge President Trump to exercise his authority under Section 112(i)(4) and quickly issue a two-year compliance exemption for all sources regulated under the Sterilizer Rule, effective when each set of standards set therein would otherwise apply. The exemptions then may be extended for one or more additional periods, if necessary.

Path 2: EPA Rulemaking to Stay or Extend Deadlines

Also or alternatively, EPA should take a near-term discrete administrative action to rescind the Rule 112(f) risk-based standards, or at least stay the compliance deadlines, based on a finding that the standards are likely unlawful and EPA's stated commitment to reconsider the Sterilizer Rule.

Because Section 112(f) allows EPA to grant no more than two years for compliance with risk-based standards (although, as discussed above, the President may issue a further two-year exemption—and should do so here), EPA should take near-term, discrete administrative action to rescind at least the risk-based standards set in the Sterilizer Rule based on a finding that its reliance on Section 112(f) to revise EtO emission standards was unlawful. EPA has a solid basis for taking that initial step now: under the Biden Administration, EPA ignored the statutory text and context, both of which confirm that the risk-review is (as the D.C. Circuit previously stated), a "one-time" event, and therefore EPA's conduct of a second risk review was unlawful.

Alternatively, EPA could take a discrete administrative action to stay the Sterilizer Rule's compliance deadlines (ideally for all standards, but at least the Section 112(f) risk-based standards) pending completion of reconsideration and a new notice-and-comment rulemaking process to rescind, replace, or revise the Sterilizer Rule. Such action would relieve sterilizers of near-term compliance obligations and reduce the risk that many sterilizers will cease operations and thereby disrupt the supply of medical devices even while EPA is reconsidering the Sterilizer Rule.

Because the Sterilizer Rule is the result of a notice-and-comment rulemaking process, rescinding or revising the Sterilizer Rule or even just staying the compliance deadlines likely also requires rulemaking to minimize the chance that a reviewing court vacates such action. But EPA could invoke the Administrative Procedure Act's "good cause" exception to notice and comment because the key legal issue whether EPA can conduct a second round of risk review for a source category has already been subject to a notice-and-comment process, and it is a pure statutory construction question on which EPA can correct course now. Further notice-and-comment on that issue is thus "unnecessary," and it is also "impracticable" and "contrary to the public interest" given the urgency of the issue and the impact on the medical device supply chain. *See* 5 U.S.C. 553(b)(B). Or, EPA could issue an interim final rule rescinding at least the Section 112(f) standards and thereby obviating the nearest-term compliance deadlines. This option would allow further notice and comment, but still provide immediate relief for sterilizers facing the difficult choice whether to try to comply with the Sterilizer Rule despite the near-impossibility of doing so or cease operations and disrupt the domestic medical supply chain.

* * * *

EOSA appreciates EPA's commitment to reconsidering the Sterilizer Rule and addressing the concerns of regulated facilities. EOSA also appreciates the Agency's willingness to consider near-term actions, such as a Presidential exemption and/or discrete administrative action to address the Section 112(f) standards and associated compliance deadlines. As many facilities confront immediate investment decisions, regulatory clarity is essential. EOSA urges EPA to take timely action to ensure that sterilization facilities remain operational while advancing long-term regulatory solutions that balance public health objectives with industry feasibility.

Thank you for your consideration. Please feel free to contact me at mzhuang@bc-cm.com if you have any questions regarding this request.

Sincerely,

Meibao Zhuang
Senior Manager
Ethylene Oxide Sterilization Association

Cc:

Abbie Tardif, Principal Deputy Assistant Administrator for the Office of Air and Radiation

Alex Dominguez, Deputy Assistant Administrator for Mobile Sources, Office of Air and Radiation

[redacted], Director, EPA Office of Air Quality Planning and Standards

[redacted], Director, Sector Policies and Programs Division, EPA Office of Air Quality Planning and Standards

faegre drinker

faegredrinker.com

Bryan Michael Allen
Senior Manager - Federal Policy & Consulting
bryan.allen@faegredrinker.com
+1 202 230 5323 direct

Faegre Drinker Biddle & Reath LLP
1500 K Street NW, Suite 1100
Washington, DC 20005
+1 202 230 5000 main
+1 202 842 8465 fax

March 31, 2025

Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, D.C. 20460
airaction@epa.gov

Re: Subject: Presidential Exemption: Ethylene Oxide Emissions Standards for Sterilization Facilities: Trinity Sterile, Inc.

Dear Sirs:

On behalf of Trinity Sterile, Inc. (Trinity), we respectfully request a two-year exemption from compliance with the National Emission Standards for Hazardous Air Pollutants (NESHAP) for Commercial Sterilizers (40 CFR Part 63, Subpart O) under Section 112(i)(4) of the Clean Air Act. Information supporting this request is provided below.

Emissions Standards or Limitations Subject to the Request:

- "National Emission Standards for Hazardous Air Pollutants: Ethylene Oxide Emissions Standards for Sterilization Facilities Residual Risk and Technology Review" (89 FR 24090; April 5, 2024) (Sterilizer Rule)

Facility and Affected Sources:

- Facility Name: Trinity Sterile, Inc.
- Facility Address: 201 Kiley Drive, Salisbury, MD 21801
- Permit Number: 045-0139
- AIRS ID: 1506
- Affected Sources:
  - Sterilization chamber vent
  - Two aeration room vents

Length of Compliance Period Being Requested:

- A two-year exemption, effective as of the compliance date of April 6, 2026, and extending through April 6, 2028.

Justification for the Request:

1. **Technology Unavailability:**
   - The revised NESHAP requires the implementation of a permanent total enclosure (PTE) to capture all fugitive emissions. Most facilities, including Trinity's Salisbury facility, were not initially designed to implement PTE and will require substantial redesign to comply. This redesign process is technologically complex and will vary for each facility; Trinity estimates the process at its facility—including re-

permitting—will necessitate the reconfiguration of an 12,000 square foot warehouse space. As this work cannot be completed before the April 2026 deadline, Trinity will have to shut down its operations after that date while these upgrades are completed. Details regarding the impact that this disruption will have on Trinity's sterilization operation is detailed below.

- There is also a scarcity of engineers and consultants capable of this type of work within the short time frame permitted under the current rule. It is also unknown what technology EPA will recommend after it reconsiders this rule. Therefore, it cannot be determined at this point whether that technology is currently available for this facility.
- Finally, the medical devices that Trinity assembles must be sterilized according to specific protocols and can only be sterilized at Trinity's Salisbury facility. Outsourcing sterilization would take more than twelve months and may be impossible, as all other facilities capable of sterilizing Trinity's products are at capacity. Likewise, there is no guarantee that there will be capacity at other sterilizers for Trinity's products after the rule's implementation.

2. **National Security Interests:**
   - Trinity manufactures critical medical devices that are essential for patient care across the United States. These devices are distributed to over 4,000 institutions, including hospitals, homecare facilities and military bases. Any interruption in sterilization operations due to this rule's implementation could result in severe disruptions to the supply of these devices. Trinity estimates that it manufactures and distributes nearly 25,000,000 medical kits a year, as well as over an additional 6,000,000 surgical instruments. Trinity will likely have to shut-down sterilization operations for at least year in order to implement PTE. For that year, those 25,000,000 kits and 6,000,000 instruments will not be available to the care providers that need them to perform necessary procedures on millions of patients. Ensuring the continuous availability of sterilized medical devices is vital for national health security and public safety.
   - Without this exemption, Trinity may be forced to permanently shut down its onsite sterilizer, or even stop manufacturing operations completely due to the lack of available sterilizer capacity at other facilities and the lengthy process of establishing sterilization protocols and completing validation. Trinity also provides assembly and manufacturing services for other entities, and these delays would also impact those entities, likely forcing them to go out-of-business entirely. Granting this exemption is also in the national security interests of the United States, as it will avoid any unnecessary delays if these standards change after the EPA reconsiders this rule.

An appropriate delegation of authority by Trinity to submit this request is enclosed. Trinity reserves the right to amend this application based on any subsequent guidance, rulemaking, or change in law.

We look forward to your favorable consideration of this request.

Respectfully submitted,

Bryan Michael Allen

Bryan Michael Allen

BMA/

TRINITY STERILE

March 27, 2025

RE: Delegation of Authority to Faegre Drinker for Section Clean Air Act Exemption Request

To Whom It May Concern,

This letter confirms that Trinity Sterile, Inc. has authorized Bryan Michael Allen of Faegre Drinker Biddle & Reath LLP to submit a request for a 2-year Presidential Exemption under Section 112(i)(4) of the Clean Air Act on its behalf. Bryan Michael Allen is fully empowered to communicate with the EPA and provide any necessary documentation related to this request.

Sincerely,

Abrar Solatch

Abrar Solatch
President
Trinity Sterile, Inc.

From:	Allen, Bryan Michael
To:	AirAction
Subject:	Presidential Exemption: NESHAP: Ethylene Oxide Emissions Standards for Sterilization Facilities: Trinity Sterile, Inc.
Date:	Monday, March 31, 2025 4:52:19 PM
Attachments:	2025-03-31 Request for Presidential Exemption Packet Final.PDF

Caution: This email originated from outside EPA, please exercise additional caution when deciding whether to open attachments or click on provided links.

Dear EPA,

Please find attached a formal request on behalf of Trinity Sterile, Inc. for a two-year exemption from the Ethylene Oxide Emissions Standards for Sterilization Facilities, as outlined in Section 112(i)(4) of the Clean Air Act.

Facility Information:

- Facility Name: Trinity Sterile, Inc.
- Facility Address: 201 Kiley Drive, Salisbury, MD 21801

Emissions Standards or Limitations Subject to the Request:

- "National Emission Standards for Hazardous Air Pollutants: Ethylene Oxide Emissions Standards for Sterilization Facilities Residual Risk and Technology Review", 40 CFR Part 63, Subpart O (89 FR 24090; April 5, 2024) (Sterilizer Rule)

Length of Compliance Period Being Requested:

- 2 year exemption from April 6, 2026, to April 6, 2028.

The attached request includes justifications based on the unavailability of required technology and the national security interests of the United States, and an appropriate delegation of authority from Trinity to submit this request on their behalf. The attached letter does not include any proprietary information. However, such information may be available if deemed necessary by the EPA, which can be submitted in accordance with applicable rules and regulations to protect confidential business information.

Please do not hesitate to contact us if you require any additional information or steps to process this request.

Kind regards,

Bryan M. Allen
Senior Manager - Federal Policy & Consulting
bryan.allen@faegredrinker.com
Connect: vCard

+1 202 230 5323 direct

1500 K Street, N.W., Ste. 1100
Washington, DC 20005, USA



faegre drinker

faegredrinker.com

Bryan Michael Allen
Senior Manager - Federal Policy & Consulting
bryan.allen@faegredrinker.com
+1 202 230 5323 direct

Faegre Drinker Biddle & Reath LLP
1500 K Street NW, Suite 1100
Washington, DC 20005
+1 202 230 5000 main
+1 202 842 8465 fax

March 31, 2025

Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, D.C. 20460
airaction@epa.gov

Subject: Presidential Exemption: Ethylene Oxide Emissions Standards for Sterilization Facilities: LivaNova USA, Inc.

Dear Sirs:

On behalf of LivaNova USA, Inc. (LivaNova), we respectfully request a two-year exemption from compliance with the National Emission Standards for Hazardous Air Pollutants (NESHAP) for Commercial Sterilizers (40 CFR Part 63, Subpart O) under Section 112(i)(4) of the Clean Air Act. Information supporting this request is provided below.

Emissions Standards or Limitations Subject to the Request:

- "National Emission Standards for Hazardous Air Pollutants: Ethylene Oxide Emissions Standards for Sterilization Facilities Residual Risk and Technology Review" (89 FR 24090; April 5, 2024) (Sterilizer Rule)

Facility and Affected Sources:

- Facility Name: LivaNova Arvada Facility
- Facility Address: 14401 W 65th Way, Arvada, CO 80004
- Permit Number: 99JE0094
- AIRS ID: 059-1258
- Affected Sources:
  - Sterilization chamber vent
  - Aeration room vent
  - Chamber exhaust vent
  - Group 1 room air emissions (indoor EtO storage, EtO dispensing, vacuum pump operation)
  - Group 2 room air emissions (post-aeration handling of sterilized material)

Length of Compliance Period Being Requested:

- A two-year exemption, effective as of the compliance date of April 6, 2026, and extending through April 6, 2028.[1]

[1] LivaNova's compliance date for the Group 1 room air emissions affected source is April 5, 2027. LivaNova only requests a one-year exemption for the Group 1 room air emissions affected source, through April 6, 2028 to align with the other requested deadlines for this facility.

Justification for the Request:

1. **Technology Unavailability**:
    - The revised NESHAP requires the implementation of a permanent total enclosure (PTE) to capture all fugitive emissions. Most facilities, including LivaNova's Arvada facility, were not initially designed to implement PTE and will require substantial redesign to comply. This redesign process is technologically complex and will vary for each facility. Construction will likely be ongoing for six months or more. LivaNova also estimates that implementing PTE will result in a shut-down of its sterilization operations for six weeks or more, leaving at least an estimated 10,000 heart surgery patients without access to the care they need, that is dependent on LivaNova's sterilized medical devices.
    - There is also a scarcity of engineers and consultants capable of this type of work within the short time frame permitted under the current rule.
    - It is also unknown what the EPA will recommend or require of facilities with Ethylene Oxide sterilization operations after it reconsiders the Sterilizer Rule. Therefore, it cannot be determined at this point whether technology is currently available for this facility or whether proceeding with a technology implementation will meet the requirements that result from the EPA's reconsideration.

2. **National Security Interests**:
    - LivaNova is the only company that is domestically manufacturing and sterilizing heart surgery packs used in United States bypass surgeries. Any interruption in sterilization operations due to non-compliance could result in severe disruptions to the supply of these devices. For example, LivaNova's medical devices are used in at least 85,000 critical heart surgeries a year, and any interruption in sterilization operations would jeopardize those surgeries. Likewise, without this exemption, those 85,000 heart surgery patients are expected to be faced with increased costs for the implementation of technology that may otherwise not be needed. Ensuring the continuous availability of sterilized medical devices is vital for national health security and public safety.
    - Without this exemption, LivaNova may need to either reduce its operations or outsource its sterilization to other facilities, which could lead to further delays in providing its products for surgeries. Granting this exemption is also in the national security interests of the United States, as it will avoid any unnecessary delays if these standards change after the EPA reconsiders this rule.

Additional information supporting this request is provided in our letter to the USEPA Office of Air and Radiation dated February 21, 2025, which is incorporated by reference. We believe that granting this exemption aligns with the national security interests of the United States without compromising public health and safety.

An appropriate delegation of authority by LivaNova to submit this request is enclosed. LivaNova reserve the right to amend this application based on any subsequent guidance, rulemaking, or change in law.

We look forward to your favorable consideration of this request.

Respectfully submitted,

Bryan Michael Allen

Bryan Michael Allen

BMA/

LivaNova

March 27, 2025

Attachment: Delegation of Authority

RE: Delegation of Authority to Faegre Drinker for Section Clean Air Act Exemption Request

To Whom It May Concern,

This letter confirms that LivaNova USA, Inc. has authorized Bryan Michael Allen of Faegre Drinker Biddle & Reath LLP to submit a request for a 2-year Presidential Exemption under Section 112(i)(4) of the Clean Air Act on its behalf. Bryan Michael Allen is fully empowered to communicate with the EPA and provide any necessary documentation related to this request.

Sincerely,

Matt Doscotch
VP, Legal North America
LivaNova, USA, Inc.

LivaNova USA, Inc.,
a wholly owned subsidiary
of LivaNova PLC
100 Cyberonics Blvd.
Houston, TX 77058

www.livanova.com

From:	Allen, Bryan Michael
To:	AirAction
Subject:	Presidential Exemption: NESHAP: Ethylene Oxide Emissions Standards for Sterilization Facilities: LivaNova USA, Inc.
Date:	Monday, March 31, 2025 4:59:42 PM
Attachments:	2025-03-31 LivaNova Request for Presidential Exemption Final Packet.PDF

Caution: This email originated from outside EPA, please exercise additional caution when deciding whether to open attachments or click on provided links.

Dear EPA,

Please find attached a formal request on behalf of LivaNova USA, Inc. for a two-year exemption from the Ethylene Oxide Emissions Standards for Sterilization Facilities, as outlined in Section 112(i)(4) of the Clean Air Act.

Facility Information:

- Facility Name: LivaNova Arvada Facility
- Facility Address: 14401 W 65th Way, Arvada, CO 80004

Emissions Standards or Limitations Subject to the Request:

- "National Emission Standards for Hazardous Air Pollutants: Ethylene Oxide Emissions Standards for Sterilization Facilities Residual Risk and Technology Review", 40 CFR Part 63, Subpart O (89 FR 24090; April 5, 2024) (Sterilizer Rule)

Length of Compliance Period Being Requested:

- 2 year exemption from April 6, 2026, to April 6, 2028.

The attached request includes justifications based on the unavailability of required technology and the national security interests of the United States, and an appropriate delegation of authority from LivaNova to submit this request on their behalf. The attached letter does not include any proprietary information. However, such information may be available if deemed necessary by the EPA, which can be submitted in accordance with applicable rules and regulations to protect confidential business information.

Please do not hesitate to contact us if you require any additional information or steps to process this request.

Kind regards,

Bryan M. Allen
Senior Manager - Federal Policy & Consulting
bryan.allen@faegredrinker.com
Connect: vCard

+1 202 230 5323 direct

1500 K Street, N.W., Ste. 1100
Washington, DC 20005, USA

Docusign Envelope ID: 9C57DD98-A887-464A-8ABD-8CB59CCF8D9E

195 McDermott Road
North Haven, CT 06473

COVIDIEN

March 31, 2025
Via Electronic Mail: airnetwork@epa.gov

The Honorable Lee M. Zeldin
Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue NW,
Washington, DC 20460

Re: Presidential Exemption:

National Emission Standards for Hazardous Air Pollutants: Ethylene Oxide Commercial Sterilization Facilities Residual Risk and Technology Review, 89 Fed. Reg. 24090 (April 5, 2024) (40 CFR Part 63, Subpart O):

- **Covidien North Haven Facility, 195 McDermott Road, North Haven, Connecticut**

Dear Administrator Zeldin:

Covidien LP ("Covidien") hereby submits the following request for Presidential Exemption from the final risk and technology review of the National Emission Standards for Hazardous Air Pollutants ("NESHAP") for the commercial ethylene oxide ("EtO") sterilization source category, 40 CFR Part 63, Subpart O ("Sterilizer Rule"), published in the Federal Register on April 5, 2024.[1] On March 12, 2025, the U.S. Environmental Protection Agency ("EPA") announced the "Powering the Great American Comeback Initiative" to, among other actions, reconsider the Sterilizer Rule and other standards affecting a broad range of American industrial sectors. The enclosed request is submitted in accordance with EPA's instruction to submit requests for Presidential Exemptions from the Sterilizer Rule by March 31, 2025.[2]

I. Request for Presidential Exemption

Covidien has determined that its medical device manufacturing and sterilization facility located at 195 McDermott Road, North Haven, Connecticut ("North Haven Facility" or "Facility") cannot implement certain requirements of the Sterilizer Rule before the applicable compliance date. Specifically, it is *technologically infeasible* to install the Facility upgrades needed to operate a Permanent Total Enclosure ("PTE") for all Group 2 room air emissions (as defined in the Sterilizer Rule) prior to April 6, 2026. If the North Haven Facility is forced to halt sterilization operations on the compliance date, there is no available alternative to safely sterilize the essential medical products manufactured by Covidien. Therefore, a disruption to the sterilization operations

[1] 89 Fed. Reg. 24090 (Apr. 5, 2024).
[2] EPA, "Clean Air Act Section 112 Presidential Exemption Information," available at, https://www.epa.gov/stationary-sources-air-pollution/clean-air-act-section-112-presidential-exemption-information.

Docusign Envelope ID: 9C57DD98-A887-464A-8ABD-8CB59CCF8D9E

195 McDermott Road
North Haven, CT 06473

COVIDIEN

of the North Haven Facility would adversely affect the United States' *national security interest* in a safe and reliable domestic supply of sterile medical products.

In accordance with Section 112(i)(4) of the Clean Air Act, Covidien requests a Presidential Exemption to extend the North Haven Facility's deadline to comply with all standards for Group 2 room air emissions under the Sterilizer Rule for ***two years until April 5, 2028***.

A. Background

The Covidien North Haven Facility is a finished goods manufacturing and assembly plant for Class I, II, and III medical devices, primarily to serve the surgical market.[3] The majority of products produced at the North Haven Facility undergo EtO sterilization as part of the standard manufacturing process. A proportion of products are made from bio-absorbable materials or contain bio-absorbable materials that are sensitive to moisture and other outside elements. Those products that are absorbable in nature, or that contain absorbable elements, are sterilized on-site to ensure product performance and shelf life. As described further below, these products require additional post-sterilization processing and packaging on-site in the North Haven Facility before being distributed for sale.

Products manufactured and EtO sterilized at the North Haven Facility include:

Product	Description	EtO Sterilized On-Site	Post-Aeration Processing On-Site
V-Loc™ Wound Closure Device	Barbed sutures, absorbable and non-absorbable	X	X
Polysorb™ Braided Absorbable Suture	Braided absorbable suture	X	X
AbsorbaTack™ Fixation Device	Absorbable tack fixation device for laparoscopic hernia repair	X	X

[3] The U.S. Food and Drug Administration ("FDA") requires medical devices to be classified based on the risk posed to a patient associated with the intended use or specialized indications for use of a device. Class I includes devices with the lowest risk and Class III includes those with the greatest risk.

ED_021114D_00002981-00002

Docusign Envelope ID: 9C57DD98-A887-464A-8ABD-8CB59CCF8D9E

195 McDermott Road
North Haven, CT 06473

COVIDIEN

Product	Description	EtO Sterilized On-Site	Post-Aeration Processing On-Site
ReliaTack™ Articulating Reloadable Fixation Device	Articulating absorbable tack fixation device for laparoscopic hernia repair	X	X
MaxTack™ Motorized Fixation Device	Motorized absorbable tack fixation device for laparoscopic hernia repair	X	X
Tri-Staple™ 2.0 Reinforced Reload	Endoscopic stapling instrument with absorbable buttress material	X	X
Endo GIA™ Reload with Tri-Staple™ Technology and Tri-Staple™ 2.0 Reload	Endoscopic stapling instruments	X	
Lapro-Clip™ Absorbable Clips	Absorbable ligation clips	X	X
Premium Poly CS™ Stapler	Absorbable open stapler	X	X

The North Haven Facility currently operates two sterilization systems, each consisting of a sterilization chamber, and a primary aeration room. Secondary aeration rooms are also available and can be shared by both systems. The two sterilizer systems are currently permitted by the Connecticut Department of Energy and Environmental Protection ("CTDEEP") under state New Source Review ("NSR") Permit Nos. 135-0143 & 135-0144. NSR Permit No. 135-0143 covers Sterilizer No. ST-A, and NSR Permit No. 135-0144 covers Sterilizer No. ST-B. Medical devices manufactured onsite are sterilized using a mixture of EtO, nitrogen, and steam. Sterilized product is then aerated. All exhausts and vents from both systems, including the sterilization chambers, primary aeration, and secondary aeration are ducted to a single stack equipped with a balancer and catalytic oxidizer.

ED_021114D_00002981-00003

Docusign Envelope ID: 9C57DD98-A887-464A-8ABD-8CB59CCF8D9E

195 McDermott Road
North Haven, CT 06473

COVIDIEN

B. The technology needed for the North Haven Facility to comply with Group 2 room air emission control requirements is not available prior to the applicable compliance date

The Sterilizer Rule requires the North Haven Facility identify a compliance approach, design physical modifications, procure control technologies, and complete construction of Facility upgrades to comply with new emission standards applicable to Sterilization Chamber Vents ("SCVs"), Aeration Room Vents ("ARVs"), Chamber Exhaust Vents ("CEVs"), and Group 1 and Group 2 room air emissions.[4] Group 1 room air emissions apply to "emissions from indoor EtO storage, EtO dispensing, vacuum pump operations, and pre-aeration handling of sterilized material."[5] Group 2 room air emissions apply to "emissions from . . . the storage and transportation of material that has been removed from aeration but has not been placed in a vehicle for the sole purpose of distribution to another facility."[6] Covidien plans to install PTEs for all areas within the North Haven Facility identified as containing Group 1 and Group 2 room air emissions, two banks of dry resin bed control device systems with at least 80% DRE, and new stacks associated with the two dry bed systems. The North Haven Facility is currently permitted for a combined EtO throughput of greater than 4 tons per year (tpy) and, therefore, must comply with Group 2 emission standards promulgated under Clean Air Act Section 112(f)(2) by April 6, 2026.

Below is a representative process flow diagram of the planned system for controlling Group 1 or Group 2 room air emissions:

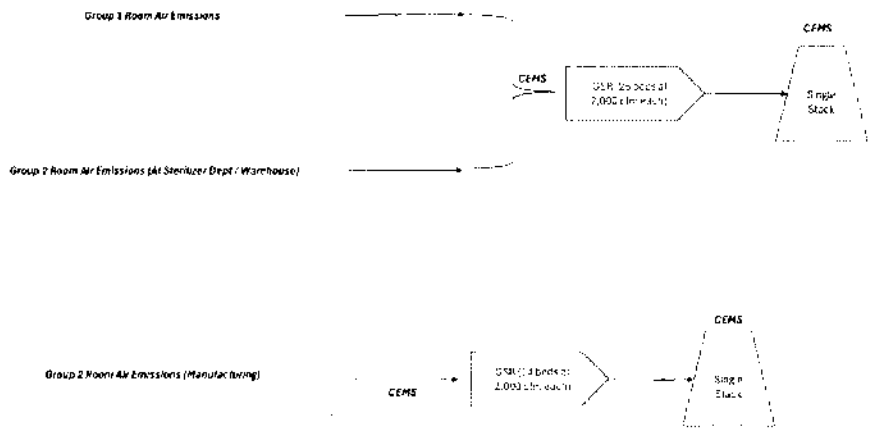
[4] This request for Presidential Exemption does not seek an extension of time to comply with the standards for SCVs, CEVs, or ARVs under the Sterilizer Rule.
[5] 40 CFR 63.361
[6] *Id.*

Docusign Envelope ID: 9C57DD98-A887-464A-8ABD-8CB59CCF8D9E

195 McDermott Road
North Haven, CT 06473

COVIDIEN

North Haven Facility Group 1 and Group 2 Planned Process Flow Diagram



The Group 1 room air emissions routed to the first dry resin bed system comprise EtO storage, dispensing, vacuum pump operations, and pre-aeration handling of sterilized material consistent with the scope of Group 1 emission sources defined under the Sterilizer Rule. The Group 2 room air emissions (sterilizer department / warehouse operations) routed to this system comprise post aeration handling of sterilized product prepared for additional processing onsite or for shipment off site. In addition, Group 2 room air emissions (manufacturing) routed to the second dry resin bed system comprise post-aeration processing operations for bioabsorbable sutures manufactured at the North Haven Facility. These operations occur in several different areas of the Facility, including dry rooms with various processes designed to remove moisture from the suture products and maintain dry conditions prior to final packaging for distribution.

Covidien has determined that it is *technologically infeasible* to design and install PTEs for Group 2 room air emissions within the extremely short compliance deadline of April 6, 2026 finalized by EPA in the Sterilizer Rule. Several engineering challenges at the North Haven Facility make the compliance deadline for controlling Group 2 room air emissions technologically infeasible.

First, manufacturing areas used to process post-aeration sterilized material include distinct room areas that are physically disconnected and located on separate floors. The hallways, elevator and other corridors connecting all Group 2 areas cannot be contained within a single PTE due to physical separation, adjoining hallways and spaces, varying ceiling heights, and utilities located through these spaces. Multiple air locks or vestibules would be needed to control air flow from one or more PTEs. Further, as a combined manufacturing and sterilization Facility, the building includes numerous operations adjacent to or surrounding Group 2 areas that do not handle post-

ED_021114D_00002981-00005

Docusign Envelope ID: 9C57DD98-A887-464A-8ABD-8CB59CCF8D9E

aeration sterilized material. Several such areas require clean room environments and/or dry room environments with positive air pressure gradients that are inconsistent with the design of a PTE. As a consequence, a PTE for the Group 2 areas must include numerous Natural Draft Openings ("NDOs") to common hallways or other areas of the North Haven Facility. The engineering challenges associated with designing a PTE for this facility make the April 6, 2026 compliance deadline infeasible.

Second, maintaining negative air pressure through the substantial volume of duct work that would be needed for a PTE will be highly energy *inefficient*. It is anticipated that the North Haven Facility will need to substantially redesign its heating and cooling systems to facilitate the necessary air pressure gradient and large volume of air exhausted from the building.

Third, Covidien's bioabsorbable suture products require post-aeration drying to remove moisture from steam used during the sterilization process. Group 2 areas that include dry rooms must be maintained at positive air pressure to remove moisture for product quality purposes. Therefore, EPA Method 204 was developed for single-room or facility-wide operations that are not readily transferrable to the North Haven Facility's combination medical device manufacturing and sterilization operations. Covidien specifically raised these serious concerns in comments responding to EPA's proposed revisions to the Sterilizer Rule, explaining:

> PTEs are not feasible for sterilizers located at medical device manufacturing plants in light of the dual nature of the activities being conducted at such facilities. PTEs would require that sterilization and manufacturing operations within the same facility to be kept under negative and positive pressure environments, respectively. This arrangement would potentially require significant changes to the overall ventilation system, which would be infeasible to implement within a single facility (depending upon the individual facility configuration). It may also disrupt or prevent certain manufacturing operations that require clean room environments with air pressure gradients that are inconsistent with the design of a PTE.[7]

In summary, the North Haven Facility faces specialized challenges to complying with the Group 2 emissions requirements because of the products manufactured and sterilized at this Facility. As a result, Covidien has determined that that it is technologically infeasible to design the physical modifications, amend NSR Permit Nos. 135-0143 and 135-0144, procure necessary control equipment, complete construction, and conduct initial performance tests prior to the April 6, 2026 to control Group 2 room air emissions. *See* 42 U.S.C. § 7412(i)(4) ("the President may

[7] EPA-HQ-OAR-2019-0178-0577 (comment submitted by Covidien's corporate parent, Medtronic Inc.).

Docusign Envelope ID: 9C57DD98-A887-464A-8ABD-8CB59CCF8D9E

195 McDermott Road
North Haven, CT 06473

COVIDIEN

exempt any stationary source from compliance with any [NESHAP] standard or limitation . . . if the President determines that ***the technology to implement such standard is not available*** . . .").

C. Any disruption or temporary pause to the supply of essential products manufactured by the North Haven Facility will threaten patient health and safety and, therefore, national security

The U.S. government has recognized that medical device manufacturing and sterilization operations are vital to domestic critical infrastructure. Incapacitation or disruption to these operations would have a debilitating effect on national security, economic security, public health and safety, or any combination thereof. Indeed, the U.S. Department of Homeland Security, Cybersecurity and Infrastructure Agency ("CISA") has determined:

> The Healthcare and Public Health Sector protects all sectors of the economy from hazards such as terrorism, infectious disease outbreaks, and natural disasters. Because the vast majority of the sector's assets are privately owned and operated, collaboration and information sharing between the public and private sectors is essential to increasing resilience of the nation's Healthcare and Public Health critical infrastructure.[8]

A reliable supply of sterile medical devices and equipment sterilized using EtO—such as sutures, surgical kits, IV sets, and other equipment—is critical to the United States' national security interests' because these products are subject to highly inelastic demand. There are nearly 6,100 hospitals in the United States which admit more than 34.4 million patients annually.[9] Medical devices and equipment respond to "on demand" and unpredictable healthcare needs. Any disruption to the supply of medical devices roughly 50% of which are sterilized using EtO[10] would adversely affect patient care. Healthcare associated infections are also a major public health concern in the United States and worldwide. In the United States alone, it is estimated that 1 in 31 patients (more than 1 million patients per year) experience healthcare associated infections.[11] Along with infection control practices, effective sterilization of medical devices and instruments is essential to minimize the risk of healthcare associated infections.

---

[8] CISA, "Healthcare and Public Health Sector", available at https://www.cisa.gov/topics/critical-infrastructure-security-and-resilience/critical-infrastructure-sectors/healthcare-and-public-health-sector.

[9] American Hospital Association, "Fast Facts on U.S. Hospitals, 2025," available at https://www.aha.org/statistics/fast-facts-us-hospitals.

[10] U.S. FDA, "Sterilization for Medical devices," available at https://www.fda.gov/medical-devices/general-hospital-devices-and-supplies/sterilization-medical-devices.

[11] U.S. Centers for Disease Control and Prevention, "2023 National and State Healthcare-Associated Infections Progress Report," available at https://www.cdc.gov/healthcare-associated-infections/php/data/progress-report.html.

ED_021114D_00002981-00007

Docusign Envelope ID: 9C57DD98-A887-464A-8ABD-8CB59CCF8D9E

195 McDermott Road
North Haven, CT 06473

COVIDIEN

The bioabsorbable sutures manufactured by Covidien provide lifesaving medical care to patients throughout the United States. If Covidien is forced to halt or terminate sterilization operations at the North Haven Facility, the resulting disruption to domestic supply of bioabsorbable sutures would adversely impact the public health critical infrastructure of the United States. Moreover, if Covidien cannot continue to conduct sterilization operations in America, it may be forced to seek manufacturing and/or sterilization capacity outside the United States. Reliance on imported medical equipment poses a *national security risk* because disruption due to geopolitical conflicts, trade restrictions, economic coercion, or other factors could severely limit the resilience of United States' healthcare system. Therefore, the requested exemption is in the national security interests of the United States. *See* 42 U.S.C. § 7412(i)(4) ("the President may exempt any stationary source from compliance with any [NESHAP] standard or limitation . . . if the President determines that . . . ***it is in the national security interests of the United States to do so***. . .").

II. Conclusion

For the reasons explained herein, Covidien respectfully requests a Presidential Exemption to extend the compliance deadline to comply with all standards for Group 2 room air emissions at the North Haven Facility. Subject to EPA's reconsideration of the Sterilizer Rule, Covidien seeks a two-year exemption until April 5, 2028.

We would be pleased to address any questions regarding this request for Presidential Exemption. Please direct any inquiries to my attention at thomas.l.osteraas@medtronic.com.

Signed by:
Thomas L. Osteraas
/6764D182239466

Thomas L. Osteraas
Officer
Covidien LP

1618838173.3

From: Wierenga, Paul
To: AirAction
Subject: Request for Presidential Exemption (Sterilizer Rule) (Covidien North Haven)
Date: Monday, March 31, 2025 5:54:32 PM
Attachments: image001.png
Covidien North Haven Request for Presidential Exemption (Sterilizer Rule).pdf

Caution: This email originated from outside EPA, please exercise additional caution when deciding whether to open attachments or click on provided links.

On behalf of Covidien LP, please find the enclosed request for Presidential Exemption under section 112(i)(4) of the Clean Air Act.

Best Regards,

Paul Wierenga

From:	Ray O"Hara
To:	AirAction
Cc:	Ray O"Hara; Jane Cardinale; Muhamad Ansari; Ronald Kramer
Subject:	Presidential Exemption: Ethylene Oxide Emissions Standards for Sterilization Facilities: National Emission Standards for Hazardous Air Pollutants (NESHAP) : Long Island Sterilization
Date:	Friday, March 28, 2025 12:26:07 PM
Attachments:	image001.png
Importance:	High

Caution: This email originated from outside EPA, please exercise additional caution when deciding whether to open attachments or click on provided links.

To whom it may concern,

We are requesting a Presidential Exemption for Ethylene Oxide Emissions Standards for Sterilization Facilities: **National Emission Standards for Hazardous Air Pollutants (NESHAP)**.

This would be for our ETO sterilizing facility: Long Island Sterilization.

Long Island Sterilization has common ownership with our medical device manufacturing company, Robert Busse & Co. dba Busse Hospital Disposables.

Busse Hospital Disposables (Busse) is a small woman owned company located in the Hauppauge Industrial Park located in Hauppauge, NY. our facilities are located two blocks from each other.

Busse Hospital Disposables is in direct control of Long Island Sterilization (LIS) , we have been sterilizing medical devices for over 26 years.

We are currently operating under a permit from the New York DEC. We have applied for an extension for our permit to take us into next year.

We are currently in full compliance with NYS DEC regulations but will need to start upgrading our sterilization facility to be incompliance with the NESHAP rules.

Busse Hospital Disposables & LIS injection mold, assemble, package and sterilize over 18 million medical products / yr.

Busse has been in operation as a manufacturer for over 45 years and in business for over 60 years.

We currently have 260 full time employees.

Our products are used throughout the entire healthcare spectrum from Hospitals to

Ambulatory Centers, Doctors offices and nursing homes

We currently have a Federal Supply Schedule contract with VA Health system.

Most of the sales of our products are done through our distributors such as Cardinal Health, Medline Industries, Henry Schein, McKesson Medical, Owens & Minor and over 100 local and regional distributors.

We also export our medical devices overseas.

Along with a full line of single use, procedural kits & trays, surgical drapes and OR suction products under the Busse brand, we also manufacture private branded products for many well known companies in the US.

We also manufacture OEM parts to other medical device manufacturers for use in their sterile procedural kits, trays & surgical packs.

We are requesting a period of at least two years to become compliant with the new NESHAP regulations. We are asking this because:

1. We feel the necessary upgrades to our existing equipment along with new construction in our facility will be quite costly for our company.
2. There will also be a required purchase of additional monitoring equipment. This will be a very large capital expense for us and most be done in stages for cash flow as well as staying in successful day to day operation as a business. The technology exists but is not inexpensive.

One of the bullet points you ask us to include was explanation as to why this extension "is in the national security interest of the United States".

I believe the best we can say is simply that we manufacture and sell at an average over 18 million sterile medical devices annually. 98% are sold to be used in the United Sates.

Lastly, many of our products are used during lifesaving surgeries as well as being used in the normal Emergency Room's and physician's offices throughout the United States.

I hope that we have answered your questions to your satisfaction and hope you can help us by including us in this program.

If you need any additional information or would like to visit our two facilities just let me know.

Sincerely,

Ray

Ray O'Hara
Vice President

Busse Hospital Disposables
75 Arkay Drive
Hauppauge, NY 11788
800-645-6526 ext. 242
www.bussehc.com

WBENC *A Certified Woman Owned and Operated Small Business*

The information contained in this email message, including any attachments, is intended solely for use by the individual or entity named above and may be confidential. If the reader of this message is not the intended recipient, you are hereby notified that you must not read, use, disclose, distribute or copy any part of this communication. If you have received this communication in error, please immediately notify me by email and destroy the original message, including any attachments. Thank you.

ELITE SPICE

March 31, 2025

VIA ELECTRONIC SUBMISSION

Elite Spice Inc.
7151 Montevideo Rd.
Jessup, MD 20794
410-796-1900

RE: Presidential Exemption: National Emission Standards for Hazardous Air Pollutants: Ethylene Oxide Emissions Standards for Sterilization Facilities Residual Risk and Technology Review" (89 FR 24090; April 5, 2024) (Sterilizer Rule)

To whom it may concern:

Elite Spice, Inc. appreciates the opportunity to submit a request for a Presidential Exemption under section 112(i)(4) of the Clean Air Act for the National Emission Standards for Hazardous Air Pollutants: Ethylene Oxide Emissions Standards for Sterilization Facilities Residual Risk and Technology Review" (89 FR 24090; April 5, 2024) (Sterilizer Rule).

Elite Spice, Inc. is a privately-held, American-owned spice and seasoning manufacturer headquartered in Jessup, Maryland. With over 35 years of experience in processing spices for the food industry, we are committed to maintaining the highest standards of food safety. Our mission is to supply pure, safe, and wholesome spices to the commercial food manufacturing industry.

Emissions standards or limitations subject to the request: National Emission Standards for Hazardous Air Pollutants: Ethylene Oxide Emissions Standards for Sterilization Facilities Residual Risk and Technology Review" (89 FR 24090; April 5, 2024) (Sterilizer Rule)

Facilities and affected sources: Elite Spice operates three facilities – two in Maryland and one in Nevada—where we utilize ethylene oxide to sterilize spices, ensuring their safety and quality for our customers.

Length of compliance period requested: Elite Spice respectfully requests an extension of 24 months beyond the original compliance deadline of April 5, 2026.

Justification as to why the technology to implement the standard is not available: The NESHAP proposes several actions that are either infeasible to implement or require a complete restructuring of current spice manufacturers' operations. Regardless, the 18-month timeframe the

ED_021114D_00002987-00001

EPA originally proposed is insufficient to implement the changes needed to comply with the NESHAP. The NESHAP effectively forces the spice industry to cease using EO at the end of the implementation period. Additionally, several spice sterilizers have already left the industry due to these challenges.

These concerns are echoed in the comments submitted by the U.S. Office of Advocacy of the Small Business Administration (NESHAP Dock ID No. EPA-HQ-OPP-20130244 & Docket ID No. EPA-HQ-OAR-2019-0178). Specifically, issues have been raised regarding the unreasonable compliance period, the challenges posed by overlapping compliance regulations with the PID, and the difficulties associated with retrofitting facilities to accommodate total enclosures.

While not classified as a small business, we at Elite Spice handle spice sterilization as a small segment of our operations, primarily to ensure the safety of our customers and their consumers.

Explanation why an extension is in the national security interests of the United States: In 2013, the FDA published a Draft Risk Profile on the prevalence of pathogens and contaminants in spices, identifying significant microbial risks, particularly Salmonella. The FDA found that nearly 7% of examined spice shipments entering the U.S. were contaminated, and both the FDA and Elite Spice believe this rate is likely underestimated due to sampling methods. Effective microbial reduction treatments are essential to protect consumers from life-threatening foodborne pathogens.

The spice industry has relied on Ethylene Oxide for over 70 years as a primary means of mitigating pathogen contamination. Given the limited alternatives, it is critical that EO remains available to safeguard public health and meet FDA safety mandates. Without EO, the industry would struggle to ensure spice safety and would need significant time to evaluate and implement new, effective sterilization technologies.

Due to the anticipated challenges in complying with the new NESHAP standards, companies have invested considerable capital and time in researching and developing alternative sterilization technologies that meet food safety standards while reducing reliance on EO. However, the equipment required for these new technologies has long lead times—often taking 8 to 12 months to deliver as it is designed and manufactured overseas, an additional 4 to 6 months to install, and up to 16 months to validate. This timeline is insufficient to meet the compliance deadline, leaving little time to transition away from EO or fully implement other engineering controls.

With the lack of time to implement new controls required by NESHAP or alternative sterilization technologies, many companies may turn to outsourcing this critical function, often relying on overseas vendors to manage foodborne pathogen risks. While spices may seem minor in the food industry, their widespread use in flavoring a variety of food products means that insufficient treatment could result in large-scale foodborne illness outbreaks, posing a significant public health risk and even a national security threat.

ELITE SPICE

For these reasons, we respectfully request that the EPA extend the compliance timeline to allow for a re-evaluation of the NESHAP and PID regulations. This extension could help prevent foodborne disease outbreaks caused by insufficiently validated technologies or the outsourcing of vital food safety technologies to foreign companies, which could create a public safety vulnerability and potentially endanger the health of the American people. Additionally, it would provide the industry with sufficient time to assess new technologies and ensure that emissions control requirements do not unnecessarily compromise food safety efforts. Ethylene Oxide remains essential to public health by preventing foodborne illnesses.

We appreciate EPA's consideration of the information provided and would be happy to answer any additional questions on the matter.

Best regards,

Amanda Slate

Amanda Slate
Food Safety Process Control | Sterilization Manager
7151 Montevideo Rd. | Jessup, MD 20794
410.796.1900 Ext. 11256
aslate@elitespice.com | www.elitespice.com

From: Amanda Slate
To: AirAction
Subject: Presidential Exemption: NESHAP: EtO Emissions Standards for Sterilization Facilities: Elite Spice Inc.
Date: Monday, March 31, 2025 5:03:01 PM
Attachments: image001.png
Presidential Exemption- National Emission Standards for Hazardous Air Pollutants Elite Spice 3-31-25.pdf

Caution: This email originated from outside EPA, please exercise additional caution when deciding whether to open attachments or click on provided links.

Hello,

To whom it may concern.

Please see attached request for a Presidential Exemption.

Feel free to reach out with any questions.

Thank you,

Amanda Slate
Food Safety Process Control | Sterilization Manager
7151 Montevideo Rd. | Jessup, MD 20794
410.796.1900 Ext. 11256
a.slate@elitespice.com www.elitespice.com



From: Wierenga, Paul
To: AirAction
Subject: Request for Presidential Exemption (Sterilizer Rule) (Xomed Jacksonville)
Date: Monday, March 31, 2025 5:47:37 PM
Attachments: image001.png
Xomed -- Request for Presidential Exemption (Sterilizer Rule).pdf

Caution: This email originated from outside EPA, please exercise additional caution when deciding whether to open attachments or click on provided links.

On behalf of Medtronic Xomed LLC, please find the enclosed request for Presidential Exemption under section 112(i)(4) of the Clean Air Act.

Best Regards,

Paul Wierenga

Docusign Envelope ID: 88B000C8-D097-434F-8811-476E9C203CA2

March 31, 2025
Via Electronic Mail: airaction@epa.gov

The Honorable Lee M. Zeldin
Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue NW,
Washington, DC 20460

Re: Presidential Exemption: National Emission Standards for Hazardous Air Pollutants: Ethylene Oxide Commercial Sterilization Facilities Residual Risk and Technology Review, 89 Fed. Reg. 24090 (April 5, 2024) (40 CFR Part 63, Subpart O).

Dear Administrator Zeldin,

I write on behalf of Medtronic Xomed LLC ("Xomed") to request that the President issue a two-year exemption pursuant to his authority under Clean Air Act (CAA) Section 112(i)(4) for all emission standards and associated requirements set or revised in EPA's April 4, 2024 National Emission Standards for Hazardous Air Pollutants: Ethylene Oxide Emissions Standards for Sterilization Facilities Residual Risk and Technology Review, 89 Fed. Reg. 24090 (Apr. 5, 2024) (Sterilizer Rule).

Xomed requests that a Presidential Exemption be granted to the following facility for all emission sources regulated under the Sterilizer Rule contained therein:

- Xomed Jacksonville Facility, 6743 Southpoint Drive North, Jacksonville, FL, 32216, FDEP Facility ID 0310379.

Xomed further requests that the Presidential Exemption take effect according to the compliance deadlines for the applicable standards in the Sterilizer Rule, as follows:

- For standards set or revised under CAA Section 112(f) and all corresponding requirements (including monitoring requirements), the exemption should apply as of April 6, 2026 (the compliance deadline for those standards); and
- For standards set or revised under CAA Section 112(d) and all corresponding requirements (including monitoring requirements), the exemption should apply as of April 5, 2027 (the compliance deadlines for those standards).

As explained further in the attached letter submitted to EPA on March 17, 2025, on behalf of the Ethylene Oxide Sterilization Association (EOSA), the technology necessary to implement the standards set forth in the Sterilizer Rule is not available because manufacturers cannot guarantee

Docusign Envelope ID: 88B000C8-D097-434F-8811-476E9C203CA2

that existing emissions control equipment will enable sources to meet the new standards; there is not a sufficient supply of the necessary control and monitoring technology; and there are not enough experienced installation professional and technical experts to install and test that equipment within the current compliance timeframes.

As also explained further in EOSA's March 17 letter, it is in the national security interests of the United States to issue the requested exemption because if the Xomed Jacksonville Facility is forced to cease operations on April 6, 2026, that will disrupt the supply of sterilized medical devices, raise the cost of those devices, and/or force medical suppliers or providers to source sterilized medical devices from abroad.

If EPA requires additional information regarding the Xomed Jacksonville Facility, including the availability of technology to comply with the Sterilizer Rule or national security risks if the Facility is forced to cease operations, we would be pleased to provide additional information as needed to fully support this request for Presidential Exemption. Please contact me if EPA has any questions or concerns regarding Xomed's request. Xomed appreciates EPA's attention to this important matter. I can be reached by phone at (904) 296-6456 or email tim.romecki@medtronic.com if EPA requires any additional information not act on the requested exemption.

DocuSigned by:
/5764D152239466

Thomas Osteraas
Officer
Medtronic Xomed LLC

Enclosure:

1618857532.2

Docusign Envelope ID: 88B000C8-D097-434F-8811-476E9C203CA2

EOSA **The Ethylene Oxide Sterilization Association, Inc.**
Managed by B&C® Consortia Management, L.L.C.

The Honorable Lee Zeldin
Administrator
Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, DC 20460
Mail Code: 1101A

Dear Administrator Zeldin:

I write on behalf of the Ethylene Oxide Sterilization Association (EOSA) to ask EPA to take near-term action regarding the *National Emission Standards for Hazardous Air Pollutants: Ethylene Oxide Emissions Standards for Sterilization Facilities Residual Risk and Technology Review*, 89 Fed. Reg. 24090 (Apr. 5, 2024), known as the "Sterilizer Rule." The Sterilizer Rule imposes extremely onerous ethylene oxide (EtO) emission standards on medical device sterilizers the most stringent of which must be met by April 2026—and is causing substantial harm to and regulatory uncertainty for EOSA's members.

EPA announced on March 12, 2025, that it will reconsider the Sterilizer Rule (alongside other NESHAPs), which is a welcome development. EOSA was also pleased to see EPA's statement that the Administration "is considering a 2-year compliance exemption via Section 112(i)(4) of the Clean Air Act for affected facilities while EPA goes through the rulemaking process." But medical device sterilizers need to decide *now* whether to expend substantial resources to acquire technology and reconfigure their facilities to try to comply with the Sterilizer Rule—or to instead cease operations. That, in turn, may disrupt the supply of critical medical devices, harming both patients and providers, or force medical providers to source those essential medical devices from abroad—increasing the offshoring of the sterilization of medical devices and inflating costs to Americans in direct contravention of the Trump administration's economic objectives.

The Sterilizer Rule was promulgated by the Biden administration under Clean Air Act ("CAA") Section 112 on April 5, 2024. The Sterilizer Rule includes standards set under Section 112(d), the CAA's hazardous pollutant "technology review" provision, and Section 112(f), the "risk review" provision, the latter of which the D.C. Circuit described as a "*one-time* 'risk review.'" *Nat'l Ass'n for Surface Finishing v. EPA*, 795 F.3d 1, 5 (D.C. Cir. 2015) (emphasis added). There are several major flaws in the Sterilizer Rule, and a litany of other issues and errors.

First, the Sterilizer Rule unlawfully set new standards under Section 112(f) even though EPA previously undertook the one-time risk review for this source category in 2006. 71 Fed. Reg. 17, 712, 17,716 (April 7, 2006). In doing so, EPA ignored the statutory text and context, both of which indicate that Congress intended EPA to regulate primarily through periodic technology reviews under Section 112(d) and conduct only one round of risk-based review under Section 112(f). By ignoring that Congressional mandate, EPA wrongly avoided Section 112(d)'s requirement that the agency must consider costs when setting and revising technology-based standards.

Second, the emission standards set in the Sterilizer Rule—particularly under Section 112(f), but also those set under Section 112(d) are extremely onerous, unsupported by the record data, and for some sterilizers will be impossible to meet. For example, EPA increased the standard for sterilization chamber vents using at least 30 tons per year ("tpy") of EtO from a 99% destruction

Docusign Envelope ID: 88B000C8-D097-434F-8811-476E9C203CA2

and removal efficiency (DRE) standard to a 99.99% DRE standard. This leaves no margin for error or equipment malfunction. Likewise, for aeration room vents ("ARVs") using at least 30 tpy of EtO, the Sterilizer Rule increased the DRE requirement from 99% to 99.9%, while wrongly rejecting commenters' request for an alternative standard. Both the SCV and ARV standards were premised on test data that EPA admitted, in the Proposed Rule, is not representative of normal operations. *See* 88 Fed. Reg. at 22,844. EPA also imposed stringent new standards on area sources; for example, EPA set a chamber exhaust vent emission standard of 99.9% DRE for facilities using at least 60 tpy of EtO. These are just a few of the stringent standards set in the Sterilizer Rule under Sections 112(f) and (d), all of which are unrealistic and unsupported by the record.

The Sterilizer Rule is also flawed because EPA arbitrarily and capriciously imposed onerous Continuous Emission Monitoring System (CEMS) mandates on facilities using at least 100 lb/year of EtO without proper notice and comment. Replacing parametric monitoring with CEMS, operating at fifteen-minutes intervals and demonstrating 90% data availability, is costly, complicated, and burdensome, while emission reduction benefits are minimal. Further, EPA failed to allow commenters to weigh in on the CEMS scheme the agency finalized, which requires application of CEMS *at each emissions inlet*, not just outlets. This CEMS scheme is thus both arbitrary and unlawful.

EOSA challenged the Sterilizer Rule in the United States Court of Appeals for the District of Columbia Circuit (No. 24-1180). In addition to raising the above major concerns, EOSA also explained that EPA wrongly set standards based on EtO *usage*, rather than based on EtO *emissions* (as the text of Section 112 requires); failed to establish technology-based standards under Section 112(d) before imposing certain of the risk-based standards; failed to consider and address comments on EPA's reliance on the flawed IRIS value for EtO; and failed to conduct rational cost/benefit analysis in deciding whether and to what extent to revise all standards. A fuller discussion of all of these issues can be found in EOSA's opening merits brief (Doc. #2080994).

As noted above, EPA has announced it will reconsider the Sterilizer Rule. EPA also recently moved to hold the litigation over the Sterilizer Rule in abeyance for 60 days "to allow new Agency leadership to review" the Sterilizer Rule and "to decide what action, if any, is necessary." *Cal. Cmtys. Against Toxics v. EPA*, No. 24-1178 (D.C. Cir. filed Feb. 18, 2025) (Doc. 2101209). EOSA appreciates EPA's recognition of the need to reconsider the Sterilizer Rule. But while EPA does so, EOSA's members continue to face the Sterilizer Rule's fast-approaching compliance deadlines: April 6, 2026, for standards set under Section 112(f) and April 5, 2027, for standards set under Section 112(d). These deadlines (particularly the former, which applies to the most stringent standards) require sterilizers to decide now whether to commit significant financial and operational resources—including to purchase new control technologies, redesign facilities, and restructure operations—to try to comply with the Sterilizer Rule, which is not possible for all facilities.

Lending further urgency to EPA's reconsideration of the Sterilizer Rule and the standards and deadlines set therein, the D.C. Circuit denied EPA's abeyance motion and the case has been set for argument on April 15, 2025. EOSA therefore urges EPA to act quickly to relieve sterilizers of the Sterilizer Rule's obligations, preventing unnecessary expenditures and irrevocable decisions that some sterilizers will likely be forced to make absent near-term relief.

Docusign Envelope ID: 88B000C8-D097-434F-8811-476E9C203CA2

To address the urgent compliance challenges posed by the Sterilizer Rule, EOSA identifies two potential pathways for relief. Ideally, EPA should pursue both to ensure that sterilizers can continue to operate in the near term, even while EPA reconsiders the Sterilizer Rule more broadly.

Path 1: Presidential Waiver under Section 112(i)(4)

As suggested by EPA, the President should exercise his authority under CAA § 112(i)(4) to grant a two-year compliance exemption commencing on the Sterilizer Rule's compliance deadlines: April 6, 2026, for risk-based standards and April 5, 2027, for technology-based standards. The President may grant such an exemption for all sources regulated by the Sterilizer Rule in one action,[1] based upon findings that (1) "it is in the national security interests … to do so" and (2) "the technology to implement such standard is not available." 42 U.S.C. § 7412(i)(4).

The first requirement—national security interests—is satisfied due to the critical role that sterilization facilities play in maintaining the U.S. medical device supply chain. Compliance with the Sterilizer Rule's deadlines, particularly the two-year deadline for compliance with the risk-based standards set under Section 112(f), will significantly reduce sterilization capacity. This, in turn, will lead to severe shortages of life-critical medical devices such as catheters, surgical kits, syringes, bandages, IV equipment, and needles, disrupting essential healthcare services. EOSA cautioned in its Comments on the Proposed Sterilizer Rule that the loss of capacity while facility reconstruction and modifications are underway will cause "a large reduction in medical device sterilization capacity and a severe shortage of sterilized medical devices." EOSA Comments 59, EPA-HQ-OAR-2019-0178-0618. Medical industry stakeholders similarly noted that modifying sterilization equipment is "no trivial matter":

> These complex facilities, no two of which share the same design or process, typically must go at least partially offline to make modifications to the equipment. Even routine maintenance or periodic upgrades require significant planning to minimize downtime across the monthly or annual supply cycle.

Advanced Medical Technology Association Comments 9–10, EPA-HQ-OAR-2019-0178-0601.

Without relief, sterilizers may be unable to meet demand for sterilized medical devices, leading to shortages that force medical providers to seek alternative sources abroad and increase the United States' dependence on foreign suppliers for essential medical devices. This growing reliance on foreign sterilization capacity and imported medical equipment poses an immediate national security risk, as any disruption—whether from geopolitical conflicts, trade restrictions, or economic coercion—could severely limit the United States' ability to maintain an independent and resilient healthcare system, jeopardizing timely access to life-saving medical equipment.

[1] Nothing in Section 112(i)(4) bars the President from issuing an exemption that applies to all regulated sources—and the President should do so here to ensure that all sterilization facilities are relieved from the obligation to comply with the Sterilizer Rule.

Docusign Envelope ID: 88B000C8-D097-434F-8811-476E9C203CA2

The second requirement technology unavailability is also met. It will be impossible for all regulated sources to obtain and install necessary control technology by April 2026 due to the limited number of equipment manufacturers and workforce shortages.

EOSA has explained that many of the Sterilizer Rule's requirements "require significant facility reconstruction and major equipment procurement and installation" that could take years—particularly if all sterilizers must redesign their facilities and install equipment to meet the new standards at the same time. EOSA Comments 58 59. And "[t]he availability of the equipment, materials, and contractor services necessary to modify emission control systems is severely limited." Sterigenics Comments 28, EPA-HQ-OAR-2019-0178-0632. Between supply chain constraints, the time-intensive process of facility redesign to accommodate new equipment, and the extensive testing and validation required before any system can become operational, the necessary control technology is functionally unavailable within the required timeframes.

Further, even if it were possible for all facilities to secure the needed equipment and make the necessary design and structural changes within the current compliance periods, the limited number of experienced installation professionals and technical experts who support this industry makes timely compliance by all regulated sources logistically infeasible. *See* AdvaMed Comments at 10. There is simply no way that all regulated sources will be able to obtain both the necessary equipment *and* the skilled technicians needed to successfully install, test, and bring that equipment online within the same two-year period, as required under the Sterilizer Rule.

Finally, control device manufacturers cannot guarantee that their equipment will operate to meet the Sterilizer Rule's stringent performance deadlines. *See* Sterigenics Comments at 28. This further highlights the technological infeasibility of meeting the current compliance deadlines as well as the irrationality and infeasibility of the standards themselves. This is a particularly compelling basis for the President to find that "the technology to implement such standard is not available," 42 U.S.C. § 7412(i)(4), and grant a two-year waiver.

Even the Biden Administration recognized the compliance challenges posed by the Sterilizer Rule. In its *Memorandum on the Orderly Implementation of the Air Toxics Standards for Ethylene Oxide Commercial Sterilizers* (Jan. 16, 2025), the Administration acknowledged that waivers or exemptions may be necessary to "achiev[ing] the … Rule's critical health protections as soon as practicable, while safeguarding the supply of safe medical products from disruption that would compromise the health and welfare of the American people."

EPA should therefore urge President Trump to exercise his authority under Section 112(i)(4) and quickly issue a two-year compliance exemption for all sources regulated under the Sterilizer Rule, effective when each set of standards set therein would otherwise apply. The exemptions then may be extended for one or more additional periods, if necessary.

Path 2: EPA Rulemaking to Stay or Extend Deadlines

Also or alternatively, EPA should take a near-term discrete administrative action to rescind the Rule 112(f) risk-based standards, or at least stay the compliance deadlines, based on a finding that the standards are likely unlawful and EPA's stated commitment to reconsider the Sterilizer Rule.

Docusign Envelope ID: 88B000C8-D097-434F-8811-476E9C203CA2

Because Section 112(f) allows EPA to grant no more than two years for compliance with risk-based standards (although, as discussed above, the President may issue a further two-year exemption—and should do so here), EPA should take near-term, discrete administrative action to rescind at least the risk-based standards set in the Sterilizer Rule based on a finding that its reliance on Section 112(f) to revise EtO emission standards was unlawful. EPA has a solid basis for taking that initial step now: under the Biden Administration, EPA ignored the statutory text and context, both of which confirm that the risk-review is (as the D.C. Circuit previously stated), a "one-time" event, and therefore EPA's conduct of a second risk review was unlawful.

Alternatively, EPA could take a discrete administrative action to stay the Sterilizer Rule's compliance deadlines (ideally for all standards, but at least the Section 112(f) risk-based standards) pending completion of reconsideration and a new notice-and-comment rulemaking process to rescind, replace, or revise the Sterilizer Rule. Such action would relieve sterilizers of near-term compliance obligations and reduce the risk that many sterilizers will cease operations and thereby disrupt the supply of medical devices even while EPA is reconsidering the Sterilizer Rule.

Because the Sterilizer Rule is the result of a notice-and-comment rulemaking process, rescinding or revising the Sterilizer Rule or even just staying the compliance deadlines likely also requires rulemaking to minimize the chance that a reviewing court vacates such action. But EPA could invoke the Administrative Procedure Act's "good cause" exception to notice and comment because the key legal issue whether EPA can conduct a second round of risk review for a source category has already been subject to a notice-and-comment process, and it is a pure statutory construction question on which EPA can correct course now. Further notice-and-comment on that issue is thus "unnecessary," and it is also "impracticable" and "contrary to the public interest" given the urgency of the issue and the impact on the medical device supply chain. *See* 5 U.S.C. 553(b)(B). Or, EPA could issue an interim final rule rescinding at least the Section 112(f) standards and thereby obviating the nearest-term compliance deadlines. This option would allow further notice and comment, but still provide immediate relief for sterilizers facing the difficult choice whether to try to comply with the Sterilizer Rule despite the near-impossibility of doing so or cease operations and disrupt the domestic medical supply chain.

* * * *

EOSA appreciates EPA's commitment to reconsidering the Sterilizer Rule and addressing the concerns of regulated facilities. EOSA also appreciates the Agency's willingness to consider near-term actions, such as a Presidential exemption and/or discrete administrative action to address the Section 112(f) standards and associated compliance deadlines. As many facilities confront immediate investment decisions, regulatory clarity is essential. EOSA urges EPA to take timely action to ensure that sterilization facilities remain operational while advancing long-term regulatory solutions that balance public health objectives with industry feasibility.

Thank you for your consideration. Please feel free to contact me at mzhuang@bc-cm.com if you have any questions regarding this request.

Docusign Envelope ID: 86B000C8-D097-434F-8811-476E9C203CA2

Sincerely,

Meibao Zhuang
Senior Manager
Ethylene Oxide Sterilization Association

Cc:

Abbie Tardif, Principal Deputy Assistant Administrator for the Office of Air and Radiation

Alex Dominguez, Deputy Assistant Administrator for Mobile Sources, Office of Air and Radiation

[redacted], Director, EPA Office of Air Quality Planning and Standards

[redacted] Director, Sector Policies and Programs Division, EPA Office of Air Quality Planning and Standards

Docusign Envelope ID: 88B000C8-D097-434F-8811-476E9C203CA2

Medtronic Puerto Rico Operations Co
Parque Industrial Villalba Arriba
Carr. PR-149, Km 56.3, Villalba, Puerto Rico

March 31, 2025
Via Electronic Mail: airaction@epa.gov

The Honorable Lee M. Zeldin
Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue NW,
Washington, DC 20460

Re: Presidential Exemption: National Emission Standards for Hazardous Air Pollutants: Ethylene Oxide Commercial Sterilization Facilities Residual Risk and Technology Review, 89 Fed. Reg. 24090 (April 5, 2024) (40 CFR Part 63, Subpart O).

Dear Administrator Zeldin,

I write on behalf of Medtronic Puerto Rico Operations Company, Inc. ("MPROC") to request that the President issue a two-year exemption pursuant to his authority under Clean Air Act (CAA) Section 112(i)(4) for all emission standards and associated requirements set or revised in EPA's April 4, 2024 National Emission Standards for Hazardous Air Pollutants: Ethylene Oxide Emissions Standards for Sterilization Facilities Residual Risk and Technology Review, 89 Fed. Reg. 24090 (Apr. 5, 2024) (Sterilizer Rule).

MPROC requests that a Presidential Exemption be granted to the following facilities for all emission sources regulated under the Sterilizer Rule contained therein:

- MPROC Villalba Facility, Parque Industrial Villalba Arriba, Carr. PR-149, Km. 56.3, Villalba, Puerto Rico, Operating Permit No. PFE-RG-76-0217-0107-I-II-O

- MPROC Juncos Facility, 50 Ceiba Industrial Park, Carr. PR-31, Km. 24.4, Juncos, Puerto Rico, Operating Permit No. PFE-40-0416-0251-I-II-O

MPROC further requests that the Presidential Exemption take effect according to the compliance deadlines for the standards in the Sterilizer Rule, as applicable:

- For standards set or revised under CAA Section 112(f) and all corresponding requirements (including monitoring requirements), the exemption should apply as of April 6, 2026 (the compliance deadline for those standards); and
- For standards set or revised under CAA Section 112(d) and all corresponding requirements (including monitoring requirements), the exemption should apply as of April 5, 2027 (the compliance deadlines for those standards).

Docusign Envelope ID: 88B000C8-D097-434F-8811-476E9C203CA2

Following publication of the Sterilizer Rule, MPROC determined that the sterilization operations of the Juncos Facility and Villalba Facility should be consolidated at the Villalba Facility to comply with the final Rule. However, the Villalba Facility must demonstrate compliance with the Sterilizer Rule before production and sterilization capacity can be relocated from Juncos. MPROC has timely applied for a modification to the Villalba Facility's operating permit but its application is currently pending review by the Puerto Rico Department of Natural and Environmental Resources (DNER).[1]

As explained further in the attached letter submitted to EPA on March 17, 2025, on behalf of the Ethylene Oxide Sterilization Association (EOSA), the technology necessary to implement the standards set forth in the Sterilizer Rule is not available because manufacturers cannot guarantee that existing emissions control equipment will enable sources to meet the new standards; there is not a sufficient supply of the necessary control and monitoring technology; and there are not enough experienced installation professional and technical experts to install and test that equipment within the current compliance timeframes.

As also explained further in EOSA's March 17 letter, it is in the national security interests of the United States to issue the requested exemption because if the MPROC Juncos Facility and Villalba Facility are forced to cease operations on April 5, 2027, that will disrupt the supply of sterilized medical devices, raise the cost of those devices, and/or force medical suppliers or providers to source sterilized medical devices from abroad.

If EPA requires additional information regarding the MPROC Juncos Facility and Villalba Facility, including the availability of technology to comply with the Sterilizer Rule or national security risks if the Facilities are forced to cease operations, we would be pleased to provide additional information as needed to fully support this request for Presidential Exemption. Please contact me if EPA has any questions or concerns regarding MPROC's request. MPROC appreciates EPA's attention to this important matter. I can be reached by email at thomas.l.osteraas@medtronic.com if EPA requires any additional information not act on the requested exemption.

DocuSigned by:
/676403162239466

Thomas Osteraas
Officer
Medtronic Puerto Rico Operations Company, Inc.

Enclosure:

[1] Permit to Construct No. PFE-03-76-1009-0043-I-II-C issued by Puerto Rico DNER on March 21, 2025.

Docusign Envelope ID: 88B000C8-D097-434F-8811-476E9C203CA2

EOSA **The Ethylene Oxide Sterilization Association, Inc.**
Managed by B&C® Consortia Management, L.L.C.

The Honorable Lee Zeldin
Administrator
Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, DC 20460
Mail Code: 1101A

Dear Administrator Zeldin:

I write on behalf of the Ethylene Oxide Sterilization Association (EOSA) to ask EPA to take near-term action regarding the *National Emission Standards for Hazardous Air Pollutants: Ethylene Oxide Emissions Standards for Sterilization Facilities Residual Risk and Technology Review*, 89 Fed. Reg. 24090 (Apr. 5, 2024), known as the "Sterilizer Rule." The Sterilizer Rule imposes extremely onerous ethylene oxide (EtO) emission standards on medical device sterilizers the most stringent of which must be met by April 2026—and is causing substantial harm to and regulatory uncertainty for EOSA's members.

EPA announced on March 12, 2025, that it will reconsider the Sterilizer Rule (alongside other NESHAPs), which is a welcome development. EOSA was also pleased to see EPA's statement that the Administration "is considering a 2-year compliance exemption via Section 112(i)(4) of the Clean Air Act for affected facilities while EPA goes through the rulemaking process." But medical device sterilizers need to decide *now* whether to expend substantial resources to acquire technology and reconfigure their facilities to try to comply with the Sterilizer Rule—or to instead cease operations. That, in turn, may disrupt the supply of critical medical devices, harming both patients and providers, or force medical providers to source those essential medical devices from abroad—increasing the offshoring of the sterilization of medical devices and inflating costs to Americans in direct contravention of the Trump administration's economic objectives.

The Sterilizer Rule was promulgated by the Biden administration under Clean Air Act ("CAA") Section 112 on April 5, 2024. The Sterilizer Rule includes standards set under Section 112(d), the CAA's hazardous pollutant "technology review" provision, and Section 112(f), the "risk review" provision, the latter of which the D.C. Circuit described as a "*one-time* 'risk review.'" *Nat'l Ass'n for Surface Finishing v. EPA*, 795 F.3d 1, 5 (D.C. Cir. 2015) (emphasis added). There are several major flaws in the Sterilizer Rule, and a litany of other issues and errors.

First, the Sterilizer Rule unlawfully set new standards under Section 112(f) even though EPA previously undertook the one-time risk review for this source category in 2006. 71 Fed. Reg. 17, 712, 17,716 (April 7, 2006). In doing so, EPA ignored the statutory text and context, both of which indicate that Congress intended EPA to regulate primarily through periodic technology reviews under Section 112(d) and conduct only one round of risk-based review under Section 112(f). By ignoring that Congressional mandate, EPA wrongly avoided Section 112(d)'s requirement that the agency must consider costs when setting and revising technology-based standards.

Second, the emission standards set in the Sterilizer Rule—particularly under Section 112(f), but also those set under Section 112(d) are extremely onerous, unsupported by the record data, and for some sterilizers will be impossible to meet. For example, EPA increased the standard for sterilization chamber vents using at least 30 tons per year ("tpy") of EtO from a 99% destruction

Docusign Envelope ID: 88B000C8-D097-434F-8811-476E9C203CA2

and removal efficiency (DRE) standard to a 99.99% DRE standard. This leaves no margin for error or equipment malfunction. Likewise, for aeration room vents ("ARVs") using at least 30 tpy of EtO, the Sterilizer Rule increased the DRE requirement from 99% to 99.9%, while wrongly rejecting commenters' request for an alternative standard. Both the SCV and ARV standards were premised on test data that EPA admitted, in the Proposed Rule, is not representative of normal operations. *See* 88 Fed. Reg. at 22,844. EPA also imposed stringent new standards on area sources; for example, EPA set a chamber exhaust vent emission standard of 99.9% DRE for facilities using at least 60 tpy of EtO. These are just a few of the stringent standards set in the Sterilizer Rule under Sections 112(f) and (d), all of which are unrealistic and unsupported by the record.

The Sterilizer Rule is also flawed because EPA arbitrarily and capriciously imposed onerous Continuous Emission Monitoring System (CEMS) mandates on facilities using at least 100 lb/year of EtO without proper notice and comment. Replacing parametric monitoring with CEMS, operating at fifteen-minutes intervals and demonstrating 90% data availability, is costly, complicated, and burdensome, while emission reduction benefits are minimal. Further, EPA failed to allow commenters to weigh in on the CEMS scheme the agency finalized, which requires application of CEMS *at each emissions inlet*, not just outlets. This CEMS scheme is thus both arbitrary and unlawful.

EOSA challenged the Sterilizer Rule in the United States Court of Appeals for the District of Columbia Circuit (No. 24-1180). In addition to raising the above major concerns, EOSA also explained that EPA wrongly set standards based on EtO *usage*, rather than based on EtO *emissions* (as the text of Section 112 requires); failed to establish technology-based standards under Section 112(d) before imposing certain of the risk-based standards; failed to consider and address comments on EPA's reliance on the flawed IRIS value for EtO; and failed to conduct rational cost/benefit analysis in deciding whether and to what extent to revise all standards. A fuller discussion of all of these issues can be found in EOSA's opening merits brief (Doc. #2080994).

As noted above, EPA has announced it will reconsider the Sterilizer Rule. EPA also recently moved to hold the litigation over the Sterilizer Rule in abeyance for 60 days "to allow new Agency leadership to review" the Sterilizer Rule and "to decide what action, if any, is necessary." *Cal. Cmtys. Against Toxics v. EPA*, No. 24-1178 (D.C. Cir. filed Feb. 18, 2025) (Doc. 2101209). EOSA appreciates EPA's recognition of the need to reconsider the Sterilizer Rule. But while EPA does so, EOSA's members continue to face the Sterilizer Rule's fast-approaching compliance deadlines: April 6, 2026, for standards set under Section 112(f) and April 5, 2027, for standards set under Section 112(d). These deadlines (particularly the former, which applies to the most stringent standards) require sterilizers to decide now whether to commit significant financial and operational resources—including to purchase new control technologies, redesign facilities, and restructure operations—to try to comply with the Sterilizer Rule, which is not possible for all facilities.

Lending further urgency to EPA's reconsideration of the Sterilizer Rule and the standards and deadlines set therein, the D.C. Circuit denied EPA's abeyance motion and the case has been set for argument on April 15, 2025. EOSA therefore urges EPA to act quickly to relieve sterilizers of the Sterilizer Rule's obligations, preventing unnecessary expenditures and irrevocable decisions that some sterilizers will likely be forced to make absent near-term relief.

Docusign Envelope ID: 88B000C8-D097-434F-8811-476E9C203CA2

To address the urgent compliance challenges posed by the Sterilizer Rule, EOSA identifies two potential pathways for relief. Ideally, EPA should pursue both to ensure that sterilizers can continue to operate in the near term, even while EPA reconsiders the Sterilizer Rule more broadly.

Path 1: Presidential Waiver under Section 112(i)(4)

As suggested by EPA, the President should exercise his authority under CAA § 112(i)(4) to grant a two-year compliance exemption commencing on the Sterilizer Rule's compliance deadlines: April 6, 2026, for risk-based standards and April 5, 2027, for technology-based standards. The President may grant such an exemption for all sources regulated by the Sterilizer Rule in one action,[1] based upon findings that (1) "it is in the national security interests … to do so" and (2) "the technology to implement such standard is not available." 42 U.S.C. § 7412(i)(4).

The first requirement—national security interests—is satisfied due to the critical role that sterilization facilities play in maintaining the U.S. medical device supply chain. Compliance with the Sterilizer Rule's deadlines, particularly the two-year deadline for compliance with the risk-based standards set under Section 112(f), will significantly reduce sterilization capacity. This, in turn, will lead to severe shortages of life-critical medical devices such as catheters, surgical kits, syringes, bandages, IV equipment, and needles, disrupting essential healthcare services. EOSA cautioned in its Comments on the Proposed Sterilizer Rule that the loss of capacity while facility reconstruction and modifications are underway will cause "a large reduction in medical device sterilization capacity and a severe shortage of sterilized medical devices." EOSA Comments 59, EPA-HQ-OAR-2019-0178-0618. Medical industry stakeholders similarly noted that modifying sterilization equipment is "no trivial matter":

> These complex facilities, no two of which share the same design or process, typically must go at least partially offline to make modifications to the equipment. Even routine maintenance or periodic upgrades require significant planning to minimize downtime across the monthly or annual supply cycle.

Advanced Medical Technology Association Comments 9–10, EPA-HQ-OAR-2019-0178-0601.

Without relief, sterilizers may be unable to meet demand for sterilized medical devices, leading to shortages that force medical providers to seek alternative sources abroad and increase the United States' dependence on foreign suppliers for essential medical devices. This growing reliance on foreign sterilization capacity and imported medical equipment poses an immediate national security risk, as any disruption—whether from geopolitical conflicts, trade restrictions, or economic coercion—could severely limit the United States' ability to maintain an independent and resilient healthcare system, jeopardizing timely access to life-saving medical equipment.

[1] Nothing in Section 112(i)(4) bars the President from issuing an exemption that applies to all regulated sources—and the President should do so here to ensure that all sterilization facilities are relieved from the obligation to comply with the Sterilizer Rule.

Docusign Envelope ID: 88B000C8-D097-434F-8811-476E9C203CA2

The second requirement technology unavailability is also met. It will be impossible for all regulated sources to obtain and install necessary control technology by April 2026 due to the limited number of equipment manufacturers and workforce shortages.

EOSA has explained that many of the Sterilizer Rule's requirements "require significant facility reconstruction and major equipment procurement and installation" that could take years—particularly if all sterilizers must redesign their facilities and install equipment to meet the new standards at the same time. EOSA Comments 58 59. And "[t]he availability of the equipment, materials, and contractor services necessary to modify emission control systems is severely limited." Sterigenics Comments 28, EPA-HQ-OAR-2019-0178-0632. Between supply chain constraints, the time-intensive process of facility redesign to accommodate new equipment, and the extensive testing and validation required before any system can become operational, the necessary control technology is functionally unavailable within the required timeframes.

Further, even if it were possible for all facilities to secure the needed equipment and make the necessary design and structural changes within the current compliance periods, the limited number of experienced installation professionals and technical experts who support this industry makes timely compliance by all regulated sources logistically infeasible. *See* AdvaMed Comments at 10. There is simply no way that all regulated sources will be able to obtain both the necessary equipment *and* the skilled technicians needed to successfully install, test, and bring that equipment online within the same two-year period, as required under the Sterilizer Rule.

Finally, control device manufacturers cannot guarantee that their equipment will operate to meet the Sterilizer Rule's stringent performance deadlines. *See* Sterigenics Comments at 28. This further highlights the technological infeasibility of meeting the current compliance deadlines as well as the irrationality and infeasibility of the standards themselves. This is a particularly compelling basis for the President to find that "the technology to implement such standard is not available," 42 U.S.C. § 7412(i)(4), and grant a two-year waiver.

Even the Biden Administration recognized the compliance challenges posed by the Sterilizer Rule. In its *Memorandum on the Orderly Implementation of the Air Toxics Standards for Ethylene Oxide Commercial Sterilizers* (Jan. 16, 2025), the Administration acknowledged that waivers or exemptions may be necessary to "achiev[ing] the … Rule's critical health protections as soon as practicable, while safeguarding the supply of safe medical products from disruption that would compromise the health and welfare of the American people."

EPA should therefore urge President Trump to exercise his authority under Section 112(i)(4) and quickly issue a two-year compliance exemption for all sources regulated under the Sterilizer Rule, effective when each set of standards set therein would otherwise apply. The exemptions then may be extended for one or more additional periods, if necessary.

Path 2: EPA Rulemaking to Stay or Extend Deadlines

Also or alternatively, EPA should take a near-term discrete administrative action to rescind the Rule 112(f) risk-based standards, or at least stay the compliance deadlines, based on a finding that the standards are likely unlawful and EPA's stated commitment to reconsider the Sterilizer Rule.

Docusign Envelope ID: 88B000C8-D097-434F-8811-476E9C203CA2

Because Section 112(f) allows EPA to grant no more than two years for compliance with risk-based standards (although, as discussed above, the President may issue a further two-year exemption—and should do so here), EPA should take near-term, discrete administrative action to rescind at least the risk-based standards set in the Sterilizer Rule based on a finding that its reliance on Section 112(f) to revise EtO emission standards was unlawful. EPA has a solid basis for taking that initial step now: under the Biden Administration, EPA ignored the statutory text and context, both of which confirm that the risk-review is (as the D.C. Circuit previously stated), a "one-time" event, and therefore EPA's conduct of a second risk review was unlawful.

Alternatively, EPA could take a discrete administrative action to stay the Sterilizer Rule's compliance deadlines (ideally for all standards, but at least the Section 112(f) risk-based standards) pending completion of reconsideration and a new notice-and-comment rulemaking process to rescind, replace, or revise the Sterilizer Rule. Such action would relieve sterilizers of near-term compliance obligations and reduce the risk that many sterilizers will cease operations and thereby disrupt the supply of medical devices even while EPA is reconsidering the Sterilizer Rule.

Because the Sterilizer Rule is the result of a notice-and-comment rulemaking process, rescinding or revising the Sterilizer Rule or even just staying the compliance deadlines likely also requires rulemaking to minimize the chance that a reviewing court vacates such action. But EPA could invoke the Administrative Procedure Act's "good cause" exception to notice and comment because the key legal issue whether EPA can conduct a second round of risk review for a source category has already been subject to a notice-and-comment process, and it is a pure statutory construction question on which EPA can correct course now. Further notice-and-comment on that issue is thus "unnecessary," and it is also "impracticable" and "contrary to the public interest" given the urgency of the issue and the impact on the medical device supply chain. *See* 5 U.S.C. 553(b)(B). Or, EPA could issue an interim final rule rescinding at least the Section 112(f) standards and thereby obviating the nearest-term compliance deadlines. This option would allow further notice and comment, but still provide immediate relief for sterilizers facing the difficult choice whether to try to comply with the Sterilizer Rule despite the near-impossibility of doing so or cease operations and disrupt the domestic medical supply chain.

* * * *

EOSA appreciates EPA's commitment to reconsidering the Sterilizer Rule and addressing the concerns of regulated facilities. EOSA also appreciates the Agency's willingness to consider near-term actions, such as a Presidential exemption and/or discrete administrative action to address the Section 112(f) standards and associated compliance deadlines. As many facilities confront immediate investment decisions, regulatory clarity is essential. EOSA urges EPA to take timely action to ensure that sterilization facilities remain operational while advancing long-term regulatory solutions that balance public health objectives with industry feasibility.

Thank you for your consideration. Please feel free to contact me at mzhuang@bc-cm.com if you have any questions regarding this request.

Docusign Envelope ID: 86B000C8-D097-434F-8811-476E9C203CA2

Sincerely,

Meibao Zhuang
Senior Manager
Ethylene Oxide Sterilization Association

Cc:

Abbie Tardif, Principal Deputy Assistant Administrator for the Office of Air and Radiation

Alex Dominguez, Deputy Assistant Administrator for Mobile Sources, Office of Air and Radiation

[redacted], Director, EPA Office of Air Quality Planning and Standards

[redacted] Director, Sector Policies and Programs Division, EPA Office of Air Quality Planning and Standards

From: Wierenga, Paul
To: AirAction
Subject: Request for Presidential Exemption (Sterilizer Rule)
Date: Monday, March 31, 2025 5:39:50 PM
Attachments: image001.png
MPROC -- Request for Presidential Exemption (Sterilizer Rule).pdf

Caution: This email originated from outside EPA, please exercise additional caution when deciding whether to open attachments or click on provided links.

On behalf of Medtronic Puerto Rico Operations Co, please find the enclosed request for Presidential Exemption under section 112(i)(4) of the Clean Air Act.

Best Regards,

Paul Wierenga

From: Joseph Bowen
To: AirAction
Subject: Sterilizer Rule (89 FR 24090): APS- Owned and Operated Facilities
Date: Monday, March 31, 2025 9:58:56 PM
Attachments: Outlook-akkqsiqd.png

Caution: This email originated from outside EPA, please exercise additional caution when deciding whether to open attachments or click on provided links.

I write on behalf of APS- Advanced Product Solutions to request that the President issue a two-year exemption pursuant to his authority under CAA Section 112(i)(4) for all emission standards and associated requirements set or revised in EPA's April 4, 2024 *National Emission Standards for Hazardous Air Pollutants: Ethylene Oxide Emissions Standards for Sterilization Facilities Residual Risk and Technology Review*, 89 FR 24090 (April 5, 2024) (Sterilizer Rule).

APS requests that the Presidential Exemption apply to the following facilities regulated by the Sterilizer Rule and all sources therein:

- APS- Advanced Product Solutions, 502 West Church Street Columbia, AL 36319

APS requests that the President issue a two-year exemption as quickly as possible, but designate it as taking effect on the compliance deadlines for the standards in the Sterilizer Rule. Specifically:

- For standards set or revised under CAA Section 112(f) and all corresponding requirements (including monitoring requirements), the exemption should apply as of April 6, 2026 (the compliance deadline for those standards);

- For standards set or revised under CAA Section 112(d) and all corresponding requirements (including monitoring requirements), the exemption should apply as of April 5, 2027 (the compliance deadlines for those standards).

As explained further in the attached letter submitted to EPA on March 17 on behalf of the Ethylene Oxide Sterilization Association (EOSA), the technology necessary to implement the standards is not available because manufacturers cannot guarantee that existing emissions control equipment will enable sources to meet the new standards; there is not a sufficient supply of the necessary technology; and there are not enough experienced installation professional and technical experts to install and test that equipment within the current compliance timeframes.

As also explained further in EOSA's March 17 letter, it is in the national security interests of the United States to issue the requested exemption because if some facilities choose to cease operations rather than attempt compliance (which is likely), that will disrupt the supply of sterilized medical devices, raise the cost of those devices, and/or force medical suppliers or providers to source sterilized medical devices from abroad.

Please don't hesitate to let me know if any additional information is needed. APS appreciates EPA's attention to this important matter and urges EPA to recommend that the President issue the requested exemption as quickly as possible.

Joseph Bowen

Plant Manager, APS-ETO

E: jbowen@agri-aps.com

O: 334.699.7044

C: 334.441.5493

CONFIDENTIALITY NOTICE:
This e-mail communication and any attachments are intended for the sole use of the intended recipient(s) named above. The information contained in this communication and any attachments is considered proprietary and privileged by the sender. If you received this e-mail communication and attachments in error or are not the intended recipient, any use, reproduction or dissemination of this communication and attachments is strictly prohibited. If you are not the intended recipient or received this e-mail communication in error, notify the sender immediately by reply e-mail or telephone and destroy all copies of the original e-mail communication and attachments.

From:	Steve Adamietz
To:	AirAction
Cc:	Ker Morse
Subject:	Model Email to EPA Requesting Section 112(i)(4) Exemption for Sterilizer Rule
Date:	Friday, March 28, 2025 2:31:56 PM
Attachments:	image002.png

Caution: This email originated from outside EPA, please exercise additional caution when deciding whether to open attachments or click on provided links.

Re: Sterilizer Rule (89 FR 24090): MedXL, LLC

I write on behalf of MedXL, to request that the President issue a two-year exemption pursuant to his authority under CAA Section 112(i)(4) for all emission standards and associated requirements set or revised in EPA's April 4, 2024 *National Emission Standards for Hazardous Air Pollutants: Ethylene Oxide Emissions Standards for Sterilization Facilities Residual Risk and Technology Review*, 89 FR 24090 (April 5, 2024) (Sterilizer Rule).

MedXL requests that the Presidential Exemption apply to the following facilities regulated by the Sterilizer Rule and all sources therein:

- MedXL, 3204 Hale Road, Ardmore, Oklahoma 73401

MedXL requests that the President issue a two-year exemption as quickly as possible, but designate it as taking effect on the compliance deadlines for the standards in the Sterilizer Rule. Specifically:

- For standards set or revised under CAA Section 112(f) and all corresponding requirements (including monitoring requirements), the exemption should apply as of April 6, 2026 (the compliance deadline for those standards);

- For standards set or revised under CAA Section 112(d) and all corresponding requirements (including monitoring requirements), the exemption should apply as of April 5, 2027 (the compliance deadlines for those standards).

As explained further in the attached letter submitted to EPA on March 17 on behalf of the Ethylene Oxide Sterilization Association (EOSA), the technology necessary to implement the standards is not available because manufacturers cannot guarantee that existing emissions control equipment will enable sources to meet the new standards; there is not a sufficient supply of the necessary technology; and there are not enough experienced installation professional and technical experts to install and test that equipment within the current compliance timeframes.

As also explained further in EOSA's March 17 letter, it is in the national security interests of the United States to issue the requested exemption because if some facilities choose to cease operations rather than attempt compliance (which is likely), that will disrupt the supply of sterilized medical devices, raise the cost of those devices, and/or force medical suppliers or providers to source sterilized medical devices from abroad.

Please don't hesitate to let me know if any additional information is needed. MedXL appreciates EPA's attention to this important matter and urges EPA to recommend that the President issue the requested exemption as quickly as possible.

Thank you!

MEDXL

Steve Adamietz,
QA/RA Manager, Management Representative

sadamietz@medxlpro.com
Office: 580-226-7808 **ext.4206**
Cell: 405-207-4394
3204 Hale Road
Ardmore, OK 73401

From:	Travis Anderton
To:	AirAction
Subject:	NESHAP: Ethylene Oxide Emissions Standards for Sterilization Facilities (89 FR 24090) (Sterilizer Rule); Becton Dickinson and Company facilities
Date:	Thursday, March 27, 2025 4:39:24 PM

Caution: This email originated from outside EPA, please exercise additional caution when deciding whether to open attachments or click on provided links.

Dear Administrator Zeldin,

Consistent with EPA's request dated March 24, 2025, encouraging the regulated community to request a Presidential Exemption for compliance under section 112(i)(4) of the Clean Air Act (CAA) by March 31, 2025, Becton Dickinson and Company (BD) is requesting that the President issue a two-year exemption pursuant to his authority under CAA Section 112(i)(4) for all emission standards, monitoring requirements and any other applicable requirements in EPA's April 4, 2024 *National Emission Standards for Hazardous Air Pollutants: Ethylene Oxide Emissions Standards for Sterilization Facilities Residual Risk and Technology Review*, 89 FR 24090 (April 5, 2024) (Sterilizer Rule). BD requests this two-year compliance exemption for the following facilities which are regulated by the Sterilizer Rule and all sources therein:

Becton Dickinson and Company
BD Covington
8195 Industrial Boulevard
Covington, Georgia

Becton Dickinson and Company
BD Madison
1211 Mary Magnan Boulevard
Madison, Georgia

Becton Dickinson and Company
BD Medical
9450 South State Street
Sandy, Utah

Becton Dickinson and Company
BD Medical Pharmaceutical Systems
920 East 19th Street
Columbus, Nebraska

Becton Dickinson and Company
Edwards Lifesciences Technology Sàrl
Parque Industrial Carr. PR-402, Km. 1.4 N
Anasco, Puerto Rico

BD requests that the President issue a two-year exemption for compliance related to the new Sterilizer Rule. Specifically:

- For standards set or revised under CAA Section 112(f) and all corresponding requirements (including monitoring requirements), the exemption should apply as of April 6, 2026 (the compliance deadline for those standards);
- For standards set or revised under CAA Section 112(d) and all corresponding requirements

(including monitoring requirements), the exemption should apply as of April 5, 2027 (the compliance deadlines for those standards).

An extension is requested to ensure that the technology used to comply with the standard is available, capable, and reliable:

Despite our best efforts, BD may not meet the April 6, 2026 compliance deadline. Although we started planning and design activities well in advance of the issuance of the new rule, the time necessary to execute very complex plant upgrades will likely exceed the compliance deadline(s). These upgrades require a methodical approach to engineering, procurement, and construction, including but not limited to; project planning, supplier qualification, facility and equipment design, procurement, permitting and approval by State and local authorities, construction of facilities, equipment installation, commissioning and validation, as well as training. Many of the systems and equipment necessary to meet the new rule are not off-the-shelf solutions. Each facility is unique, requiring highly customized solutions and will require careful integration and testing to ensure full compliance with various regulations and to avoid compromised safety of the operation, reliability of the plant and equipment, and to avoid disruption of supply.

It is questionable whether even the best control technologies can meet the requirements of the new rule under all operating conditions. For example, it is questionable whether or not certain emissions control devices can meet minimum DRE requirements under low inlet conditions such as would be expected during periods of low production, reduced operating capacity, plant shutdown/startup, and other atypical operating scenarios. It is also questionable whether current technology for the control of Group 1 and Group 2 emissions can meet the minimum DRE requirements under all operating conditions. Product type and volume sterilized at each facility vary widely and may be subject to swings in market demand among other external factors.

Additionally, the lead time of various materials and equipment required for the plant upgrades is variable. For example, the lead time of emissions control equipment is approximately 12-18 months and there is only a limited number of vendors who can supply this equipment, and the lead time for high voltage transformers and electrical switch gear are currently 12 months or greater. In some cases additional utility requirements necessitate the involvement of the public utility company to increase local or regional capacity which may add additional complexity and time to project schedules.

Furthermore, BD anticipates additional financial burden and import/customs clearance complexity with the import of custom emissions control equipment specific to the Covington, Georgia and Madison, Georgia facility which add additional financial burden and lead time for delivery of such equipment due to current and pending tariffs.

An extension is in the national security interests of the United States for the following reasons:

BD supplies billions of sterile medical devices that enable healthcare providers to safely provide a variety of life saving therapies to patients in the US and around the world. Additionally, BD is a key supplier to the US Government.

Medical devices must be sterilized to prevent the spread of bacteria, viruses, and other pathogens, like methicillin-resistant Staphylococcus aureus ("MRSA"), HIV, and hepatitis B, that can lead to deadly infections. While BD sites deploy a variety of sterilization methods, approximately 50% of BD products currently can only be sterilized with EtO, including IV catheters, PICC catheters, surgical

prep devices, surgical kits, Foley urinary catheter trays, glass syringes, chemotherapy ports, among many others. A more detailed summary of several of these products are outlined below.

BD produces sterile vascular access devices that allow healthcare providers to safely give medications, hydration and nutritional fluid therapies, and blood products to patients used both in the hospital as well as in outpatient areas of healthcare. Up to 90 % of hospitalized patients require IV therapy, and over 95% of the devices used are peripheral IV catheters ("PIVC"). This corresponds to over 1 billion peripheral IV insertions being performed worldwide, annually. BD supplies a significant portion of IV catheters to the US market.

BD produces drug delivery devices that improve a patient's quality of life, including ready-to-fill syringes that are used to deliver drugs and vaccines indicated to prevent invasive diseases, reduce the risks of life changing conditions like heart attacks and strokes, as well as treat chronic conditions such as Crohn's disease, arthritis and diabetes. A large majority of the injectable biotech drugs delivered subcutaneously or intramuscularly are delivered in BD's sterile Prefillable Syringes. Many of the top bio-pharma companies rely heavily on BD for these products.

BD also produces devices used to diagnose and treat patients with cancer (especially breast, liver and blood cancers), end-stage-renal disease, peripheral arterial disease, complex abdominal hernia and reconstruction, and hemostasis to prevent bleeding during advanced surgical procedures. Our products are used in the majority of patients undergoing surgery in these areas and those in intensive care/post-operative care units.

BD utilizes EtO sterilization because it is the only method of sterilization that can be used for these products. As EPA explains, "Commercial sterilization facilities play a vital role in maintaining an adequate supply of medical devices. According to the U.S. Food and Drug Administration (FDA), 'Literature shows that about fifty percent of all sterile medical devices in the U.S. are sterilized with ethylene oxide.'" 88 Fed. Reg. 22,793.

As voiced directly to EPA during the public comment period BD believes that the technical complexity of the new rules and the aggressive compliance deadline threaten supply continuity for critical medical products. BD respectfully requests extension to the compliance deadline to ensure upgrades are designed, constructed, and commissioned in accordance with all applicable regulatory requirements and industry standards while maintaining safe operations and avoiding unnecessary supply disruptions that would threaten or diminish the standard of care for patients.

BD appreciates EPA's attention to this important matter and request the exemption be granted as quickly as possible.

Respectfully,

Travis Anderton

BD

Travis Anderton
Vice President, Sterilization

****

IMPORTANT MESSAGE FOR RECIPIENTS IN THE U.S.A.:
This message may constitute an advertisement of a BD group's products or services or a solicitation of interest in them. If this is such a message and you would like to opt out of receiving future advertisements or solicitations from this BD group, please forward this e-mail

to optoutbygroup@bd.com. [BD.v1.0]
****
This message (which includes any attachments) is intended only for the designated recipient(s). It may contain confidential or proprietary information and may be subject to the attorney-client privilege or other confidentiality protections. If you are not a designated recipient, you may not review, use, copy or distribute this message. If you received this in error, please notify the sender by reply e-mail and delete this message. Thank you.
****
Corporate Headquarters Mailing Address: BD (Becton, Dickinson and Company) 1 Becton Drive Franklin Lakes, NJ 07417 U.S.A.

BD Restricted

March 27, 2025

RE: Clear Air Act Section 112 (i)(4) Presidential Exemption

To whom it may concern:

Exemption request from Ethylene Oxide Emissions Standards for Sterilization Facilities: National Emission Standards for Hazardous Air Pollutants (NESHAP) - 40 CFR 60 and 63 subpart O standards that were final April 5, 2024.

Facilities affected:

1. Windstone Medical Packaging Inc. 1602 4th Ave. North Billings, MT 59102
2. Windstone Medical Packaging Inc. 1400 Montana Ave. Billings, MT 59102

Windstone Medical Packaging, Inc. dba Aligned Medical Solutions is a small business located in Billings, Montana that packages and sterilizes custom convenience kits sold to hospitals and surgery centers throughout the United States. We employ a total of 240 people, so we believe we meet the small business size standard for companies that make or process surgical appliances and supplies. NAICS Code 339113. Due to our use of ethylene oxide, we are subject to NESHAP 40 CRF 60 and 63 subpart O. We are requesting an additional 2-year compliance extension until April 5, 2029 for our facilities.

On March 21, 2025, EPA stated that it will reconsider the EtO sterilization rules. In that reconsideration, Windstone will invite EPA's attention to the low-polluting nature of Windstone's EtO sterilization process, something EPA inadequately considered in the prior rulemaking process.

Windstone Medical Packaging Inc. uses ethylene oxide (EtO) to sterilize custom convenience kits, kits which contain the sterilized medical supplies and devices tailored for specific kinds of surgical procedures according to the customer's detailed requirements. The use of these custom kits streamlines time in surgery, enhancing patient safety and improving the capacity of existing hospital surgical units.

Windstone's sterilization method differs from its large volume competitors, which use large chambers to sterilize medical supplies in bulk. By contrast, Windstone uses "flexible chamber" technology, in other words, it encases each custom kit in a plastic bag and injects Ethylene Oxide (EtO) into the bag. Windstone believes that it uses far less EtO per item sterilized than its large volume competitors use. Windstone's method is inherently

1602 4th Ave North
Telephone: 1-800-637-7056
Billings, MT
Office: 406-259-6387
www.amsaligned.com
Fax: 406-256-9875

low polluting, reducing EtO usage per item sterilized by as much as 90% compared to more common EtO sterilization methods.

EPA failed to consider these efficiencies adequately in the rulemaking process when it set percentage reduction limits on EtO emissions. Indeed, as nearly as Windstone can determine, EPA failed to consider Windstone's facilities at any time in this rulemaking process. As a consequence, the percentage limits EPA set effectively punish rather than reward Windstone for Windstone's reduced usage of EtO per item sterilized.

We believe the following additional cost, timing, and mortality factors further justify the request for an extension for compliance with the rule:

1. After the rule was finalized Windstone Medical Packaging engaged with an engineering company to develop the basis of design (BOD) for compliance. The BOD was performed and determined the cost to comply would require a capital expenditure of Ex. 4 CBI As a small business with 2024 sales of only Ex. 4 CBI, this enormous regulatory compliance cost is not feasible within the current compliance timeline and presents a significant hurdle for growth, job creation and potentially reduced sterilization capacity. Due to the extremely high cost of compliance, we believe an extension is justified. Under the circumstances, the technology needed to achieve the required percentage emission reductions (beyond those already accomplished by Windstone's low polluting sterilization method), is not reasonably available to Windstone within the meaning of section 112(i)(4) of the Clean Air Act. 42 U.S.C. Section 7412(i)(4)

2. Windstone believes that the current percentage reduction requirements, once adjusted to reflect the low-polluting nature of Windstone's sterilization process, will result in far less costly requirements, and avoid spending large sums on equipment and monitoring with negligible environmental and health benefits.

3. By the same token, an extension will provide more adequate time to implement carefully tailored EtO controls and allow expansion rather than contraction of surgical supply sterilization capacity. That expansion may help reduce hospital acquired infections (HAIs), a major public health challenge for the United States. In a peer-reviewed study, the CDC estimated that the United States suffers 99,000 deaths annually from HAIs.
   https://pmc.ncbi.nlm.nih.gov/articles/PMC3528178/#:~:text=The%20Centers%20for%20Disease%20Control,obtained%20from%20multiple%20healthcare%20databases.
   According to this peer-reviewed study, two of the four most deadly HAIs are surgical site infection and central line-associated bloodstream infection. Nearly half of

these HAIs in the study were multi-drug resistant, making surgical sterilization even more important than before such multi-drug resistance became so common.

4. Windstone submits that expanding effective surgical supply sterilization will help combat the substantial United States death and illness toll from HAIs. Reducing that toll of HAI deaths and illnesses is very much in the national security interests of the United States, within the meaning of Section 112(i)(4) of the Clean Air Act, 42 U.S.C. Section 7412(i)(4).

We appreciate the opportunity to present our case for an exemption and would be happy to discuss the details of our situation if necessary.

Regards,

Jeff Jensen
VP of Operations

cc: Russell V. Randle
Miles & Stockbridge PC
1201 Pennsylvania Ave., NW., Suite 900
Washington, DC 20004
rrandle@milesstockbridge.com

From: gcranston pcsinc.org
To: AirAction
Subject: Sterilizer Rule (89 FR 24090): Professional Contract Sterilization, Inc,
Date: Sunday, March 30, 2025 9:44:38 PM
Attachments: EOSA Letter re NESHAP.pdf

Caution: This email originated from outside EPA, please exercise additional caution when deciding whether to open attachments or click on provided links.

To: airaction@epa.gov

Re: Sterilizer Rule (89 FR 24090): Professional Contract Sterilization, Inc,

I write on behalf of Professional Contract Sterilization, Inc. to request that the President issue a two-year exemption pursuant to his authority under CAA Section 112(i)(4) for all emission standards and associated requirements set or revised in EPA's April 4, 2024 *National Emission Standards for Hazardous Air Pollutants: Ethylene Oxide Emissions Standards for Sterilization Facilities Residual Risk and Technology Review*, 89 FR 24090 (April 5, 2024) (Sterilizer Rule).

Professional Contract Sterilization, Inc. requests that the Presidential Exemption apply to the following facilities regulated by the Sterilizer Rule and all sources therein:

- 40 Myles Standish Blvd, Taunton MA 02780

Professional Contract Sterilization, Inc. requests that the President issue a two-year exemption as quickly as possible, but designate it as taking effect on the compliance deadlines for the standards in the Sterilizer Rule. Specifically:

- For standards set or revised under CAA Section 112(f) and all corresponding requirements (including monitoring requirements), the exemption should apply as of April 6, 2026 (the compliance deadline for those standards);

- For standards set or revised under CAA Section 112(d) and all corresponding requirements (including monitoring requirements), the exemption should apply as of April 5, 2027 (the compliance deadlines for those standards).

As explained further in the attached letter submitted to EPA on March 17 on behalf of the Ethylene Oxide Sterilization Association (EOSA), the technology necessary to implement the standards is not available because manufacturers cannot guarantee that existing emissions control equipment will enable sources to meet the new standards; there is not a sufficient supply of the necessary technology; and there are not enough experienced installation professional and technical experts to install and test that equipment within the current compliance timeframes.

As also explained further in EOSA's March 17 letter, it is in the national security interests of the United States to issue the requested exemption because if some facilities choose to cease operations rather than attempt compliance (which is likely), that will disrupt the supply of sterilized medical devices, raise the cost of those devices, and/or force medical suppliers or providers to source sterilized medical devices from abroad.

Please don't hesitate to let me know if any additional information is needed. Professional Contract Sterilization, Inc appreciates EPA's attention to this important matter and urges EPA to recommend that the President issue the requested exemption as quickly as possible.

-Gary Cranston, President
Professional Contract Sterilization, Inc.

[CONFIDENTIALITY AND PRIVACY NOTICE] Information transmitted by this email is proprietary to Professional Contract Sterilization Inc. (PCS) and is intended for use only by the individual or entity to which it is addressed, and may contain information that is private, privileged, confidential or exempt from disclosure under applicable law. If you are not the intended recipient or it appears that this mail has been forwarded to you without proper authority, you are notified that any use or dissemination of this information in any manner is strictly prohibited. In such cases, please delete this mail from your records.

From: Kevin Wagner
To: AirAction
Subject: Presidential Exemption: Sterilizer Rule (89 FR 24090): All Sterigenics U.S., LLC-Owned and Operated Facilities
Date: Monday, March 31, 2025 10:52:56 AM

Caution: This email originated from outside EPA, please exercise additional caution when deciding whether to open attachments or click on provided links.

I write on behalf of Sterigenics U.S., LLC ("Sterigenics" or the "Company") to request that the President issue a two-year exemption pursuant to his authority under CAA Section 112(i)(4) for all emission standards and associated requirements set or revised in EPA's April 4, 2024 National Emissions Standards for Hazardous Air Pollutants: *Ethylene Oxide Emissions Standards for Sterilization Facilities Residual Risk and Technology Review*, 89 Fed. Reg. 24090 (Apr. 5, 2024), known as the "Sterilizer Rule."

Sterigenics requests that the President issue a two-year exemption as quickly as possible and designate it as taking effect on the compliance deadlines for the standards in the Sterilizer Rule.

Specifically, for standards established or revised under CAA Section 112(f)—including all related requirements such as monitoring—the exemption should apply as of April 6, 2026, the compliance deadline for those standards.
The facilities and/or affected sources for which the Company is seeking a two-year exemption are:

2971 Olympic Industrial Dr SE Atlanta, GA 30339	10821 Withers Cove Park Drive Charlotte, NC 28278	1302 Avenue T Grand Prairie, TX 75050
4900 S Gifford Ave Los Angeles, CA 90058-2785	4801-63 E 50th Street Los Angeles, CA 90058-2709	687 S Wanamaker Ave Ontario, CA 91761
84 Park Road Queensbury, NY 12804	5725 Harold Gatty Dr. Salt Lake City, UT 84116	2400 Airport Road Santa Teresa, NM 88008

Sterigenics has consistently operated its ethylene oxide ("EtO") sterilization facilities with emission controls that meet or perform better than regulatory standards. Since 2019, the Company has proactively implemented additional enhancements to further reduce already negligible EtO emissions, pioneering many new EtO sterilization facility design features. These proactive initiatives have supported ongoing efforts to align with the final Sterilizer Rule requirements.

The Company is requesting this two-year exemption to facilitate an optimal installation and validation of the facility and emission control upgrades required under the Rule. The Rule's new requirements for existing critical healthcare infrastructure facilities have triggered major structural changes across emission control, process control and emission monitoring systems. Like others in the industry,

Sterigenics is constrained by the increasingly limited availability of specialized consultants, control and monitoring equipment, and qualified contractors. Supply chain delays, engineering complexity, and lengthy commissioning and testing periods are making it challenging and expensive to meet the Sterilizer Rule's deadlines.

Additionally, certain provisions in the Rule relating to continuous emission monitoring and secondary parameter tracking are adding unnecessary technical complexity, cost and system integration challenges without delivering meaningful emission reductions. Extending the timeline will allow Sterigenics during the exemption period to continue making thoughtful, proactive investments and focus resources on ensuring stable, reliable compliance.

Sterigenics provides FDA-required sterilization services critical to the U.S. healthcare supply chain. Given the tight implementation timeline and the constraints associated with deploying the required technology under the Sterilizer Rule, as well as the critical role these facilities play in supporting U.S. national security, the President has the authority to grant this requested relief.

If you have any questions about this exemption request, please contact me at kwagner@sterigenics.com. Sterigenics sincerely appreciates EPA's attention to this important matter and requests that the President issue the exemption as quickly as possible.

Vice President, Global Environmental Health & Safety
Sterigenics, A Sotera Health Company
kwagner@sterigenics.com
O: 630-928-1771
C: 708-860-9101

Sterigenics
A Sotera Health company

This e-mail and any files transmitted with it may contain privileged and/or confidential information. If you believe this e-mail or any of its attachments were not intended for you, you must not use, distribute, forward, print or copy this e-mail or any attached files. If you have received this e-mail in error, please notify the sender by reply e-mail and then immediately delete the email and all attachments.

From:	David Howe
To:	AirActior
Cc:	Deborah Lert; Karen Burns; Christine Rerder
Subject:	Presidential exemption: Sterilizer Rule (89 FR 24090): All facilities owned by Cosmed Group, Inc., Jamestown, RI
Date:	Monday, March 31, 2025 11:23:16 AM
Attachments:	004509/4.pdf

Caution: This email originated from outside EPA, please exercise additional caution when deciding whether to open attachments or click on provided links.

To: airaction@epa.gov

Re: Presidential exemption: Sterilizer Rule (89 FR 24090): All facilities owned by Cosmed Group, Inc., Jamestown, RI

Cosmed Group, Inc. (Cosmed) hereby requests that the President issue a two-year exemption pursuant to his authority under CAA Section 112(i)(4) for all emission standards and associated requirements set or revised in EPA's April 4, 2024 National Emission Standards for Hazardous Air Pollutants: Ethylene Oxide Emissions Standards for Sterilization Facilities Residual Risk and Technology Review, 89 FR 24090 (April 5, 2024) (Sterilizer Rule).

Cosmed requests that the requested Presidential exemption apply to the following facilities regulated by the Sterilizer Rule and all sources therein:

- Cosmed Group, Inc., d/b/a Cosmed of Pennsylvania , 2205 East 33rd Street, Erie, PA, FRS ID 110000332015
- Cosmed Group, Inc., d/b/a Cosmed of New Jersey, 19 Park Drive, Franklin, NJ, FRS ID 110070557911
- Cosmed Group Inc., 2500 Brunswick Avenue, Linden, NJ, FRS ID 110000318567

Cosmed requests that the President issue a two-year exemption as quickly as possible but designate the exemption as taking effect beginning on the compliance deadlines for the standards in the Sterilizer Rule.

Specifically, (1)
for standards set or revised under CAA Section 112(f) and all corresponding requirements (including monitoring requirements), the exemption should apply as of April 6, 2026 (the compliance deadline for those standards), and (2)
for standards set or revised under CAA Section 112(d) and all corresponding requirements (including monitoring requirements), the exemption should apply as of April 5, 2027 (the compliance deadlines for those standards).

Cosmed conducts ethylene oxide sterilization operations at the facilities identified above and is a member of the Ethylene Oxide Sterilization Association (EOSA). As explained further in the attached

letter submitted to EPA on March 17, 2025 on behalf of the EOSA, the technology necessary to implement the standards set forth in the Sterilizer Rule is not available because manufacturers cannot guarantee that existing emissions control equipment will enable sources to meet the new standards, there is not a sufficient supply of the necessary technology, and there are not enough experienced installation professionals and technical experts to install and test that equipment within the compliance timeframes specified in the Sterilizer Rule.

As also explained further in EOSA's March 17, 2025 letter, it is in the national security interests of the United States to issue the requested exemption because if some facilities choose to cease operations rather than attempt compliance (which seems likely), that will disrupt the supply of sterilized medical devices, raise the cost of those devices, and/or force medical suppliers or providers to source sterilized medical devices from abroad.

Please do not hesitate to contact us if additional information is needed. Cosmed appreciates EPA's attention to this important matter and urges EPA to recommend that the President issue the requested exemption as quickly as possible.

Cosmed Group, Inc.
Debtor in Possession

Disclaimer

The information contained in this communication from the sender is confidential. It is intended solely for use by the recipient and others authorized to receive it. If you are not the recipient, you are hereby notified that any disclosure, copying, distribution or taking action in relation of the contents of this information is strictly prohibited and may be unlawful.

This email has been scanned for viruses and malware, and may have been automatically archived by **Mimecast Ltd**, an innovator in Software as a Service (SaaS) for business. Providing a **safer** and **more useful** place for your human generated data. Specializing in: Security, archiving and compliance. To find out more Click here.

From:	Scott Beauchesne
To:	AirActior
Cc:	Tim Thompson; Rob Ross; Zach Dukerich
Subject:	Presidential Exemption: Ethylene Oxide Emissions Standards for Sterilization Facilities- National Emission Standards for Hazardous Air Pollutants (NESHAP): Arthrex Finishing Facility
Date:	Monday, March 31, 2025 12:19:55 PM
Attachments:	image001.png

Caution: This email originated from outside EPA, please exercise additional caution when deciding whether to open attachments or click on provided links.

To Whom it May Concern:

Arthrex operates two co-located facilities in Ave Maria, Florida: Arthrex Manufacturing, Inc and Arthrex - Finishing Facility. Arthrex Manufacturing, Inc is located at 6875 Arthrex Commerce Drive and manufactures medical devices for minimally invasive surgical procedures. The Arthrex - Finishing Facility is located at 6861 Arthrex Commerce Drive and sterilizes the medical devices manufactured Arthrex Manufacturing, Inc. Arthrex – Finishing Facility uses 100% Ethylene Oxide (CAS 75-21-8) gas. Ethylene Oxide is a dependably documented method of sterilization especially suited for heat- or moisture-sensitive items such as medical devices and pharmaceutical products.

Due to the use of Ethylene Oxide, Arthrex adheres to the US EPA NESHAP Standards for Ethylene Oxide Emissions. This standard has established requirements that Arthrex has begun to move toward compliance. Of note, Arthrex has progressed through the design phase for the building infrastructure and equipment changes necessary to implement the standard at the Arthrex - Finishing Facility. Currently, Arthrex is applying for the permits required by both state and local regulatory authorities. Arthrex is simultaneously working towards sourcing the equipment (e.g., controls, HVAC) that will be required. However, Arthrex cannot confirm whether the equipment necessary to implement the standard will be available for purchase, qualified, and placed in operation prior to the overall compliance deadline. The reason for this uncertainty is based on the high demand of both the mechanical and controls equipment as well as the limited number of vendors capable of supplying this equipment (i.e., dry beds capable of treating low EO concentration emissions). Approximately 90 sterilization facilities in the United States are competing for limited vendors and equipment needed to comply with the new NESHAP standard requirements. This competition for limited vendors and equipment has made it difficult for Arthrex to envision completion of all the NESHAP requirements, validate the new processes, and to continue to sterilize crucial medical devices by the NESHAP deadline.

Based on the uncertainty and scarcity of equipment and vendors, Arthrex is respectfully requesting a two-year Presidential Exemption from the NESHAP standard which will allow additional time to complete the design, procure and install the necessary equipment, and validation.

By granting this Presidential Exemption, Arthrex will continue to provide surgeons

safe and effective medical devices to treat their patients as Arthrex continues to work toward implementing the requirements of the NESHAP Standard. Additionally, granting this two-year Presidential Exemption will allow Arthrex to continue to supply critical sterilize medical devices and not negatively impact the public health nor strain the healthcare system and ensure the national security interests of the United States.

Sincerely,

Scott M Beauchesne, *PE, CSP*
Process Safety Engineer (EH&S)
Florida PE License #69757
South Carolina PE License #41848
Tel: (239) 643-5553 ext. 71070
Cell: (239) 877-1535



"Helping surgeons treat their patients better."

This e-mail and any files transmitted with it are the property of Arthrex, Inc. and/or its affiliates, are confidential, and are intended solely for the use of the individual or entity to whom this e-mail is addressed. If you are not one of the named recipient(s) or otherwise have reason to believe that you have received this message in error, please notify the sender at 239-643-5553 and delete this message immediately from your computer. Any other use, retention, dissemination forwarding, printing or copying of this e-mail is strictly prohibited. Please note that any views or opinions presented in this email are solely those of the author and do not necessarily represent those of the company. Finally, while Arthrex uses virus protection, the recipient should check this email and any attachments for the presence of viruses. The company accepts no liability for any damage caused by any virus transmitted by this email.

COOK INCORPORATED
750 DANIELS WAY, P.O. BOX 489
BLOOMINGTON, IN 47402-0489 U.S.A
PHONE 812.339.2235 TOLL FREE 800.457.4500
WWW.COOKMEDICAL.COM

March 31, 2025

To: airaction@epa.gov (Via e-mail only)

Re: Cook Incorporated Ellettsville North (6300 N. Matthews Dr., Ellettsville, IN)
Presidential Exemption Request: National Emission Standards for Hazardous Air Pollutants: Ethylene Oxide Emissions Standards for Sterilization Facilities Residual Risk and Technology Review

Emissions standards or limitations subject to the request

I write on behalf of Cook Incorporated ("Cook") to request that the President of the United States issue a two-year exemption pursuant to his authority under CAA Section 112(i)(4) for all emission standards and associated requirements set or revised in the U.S. Environmental Protection Agency's final rule *National Emission Standards for Hazardous Air Pollutants: Ethylene Oxide Emissions Standards for Sterilization Facilities Residual Risk and Technology Review*, 89 Fed. Reg 24,090 (April 5, 2024) ("Sterilizer Rule").

Facility(ies) and/or affected source(s)

Cook makes this request for its facility located at 6300 N. Matthews Dr., Ellettsville, Indiana ("Ellettsville North"), currently permitted under Indiana Department of Environmental Management air permit No. 105-44622-00030.

Length of compliance period being requested.

Cook requests that the President issue a two-year exemption as quickly as possible, but designate the exemption as taking effect on the compliance deadlines for the standards in the Sterilizer Rule. Specifically:

- For standards set or revised under CAA Section 112(f) and all corresponding requirements (including monitoring requirements), Cook requests that the exemption should apply as of April 6, 2026 (the compliance deadline for those standards); and
- For standards set or revised under CAA Section 112(d) and all corresponding requirements (including monitoring requirements), Cook requests that the exemption should apply as of April 5, 2027 (the compliance deadline for those standards).

Justification

Clean Air Act ("CAA") Section 112(i)(4) vests the President with significant authority to exempt "any stationary source" from "any standard or limitation under this section." The President may do so if he determines: (1) "that the technology to implement such standard is not available" and

(2) that the exemption is "in the national security interests of the United States." Cook respectfully requests expedited review of this exemption request due to the quickly approaching Sterilizer Rule deadlines. Although the deadline for compliance is about a year away (April 6, 2026) for certain aspects of the Sterilizer Rule, the requirements of the rule necessitate significant capital expenditures and other operating changes that have a very lengthy planning and construction time horizon.

The Sterilizer Rule specifically contemplated relief under the Presidential Exemption "if more time is needed to comply with any standard in this final rule." 89 Fed. Reg. 24,103. Cook believes the Sterilizer Rule is ripe for an exemption under 42 U.S.C. § 7412(i)(4) as the emissions standards and monitoring requirements create a heavy burden with minimal time to comply. In other words, more time is needed to comply with the Sterilizer Rule.

I. Availability of Technology

The Ethylene Oxide Sterilization Association, Inc., a non-profit group of which Cook is a member, recently sent a letter to EPA on behalf of the industry requesting that the President grant a two-year compliance exemption. This correspondence is attached hereto as Exhibit A and is incorporated by reference into this request. As explained further therein, the technology necessary to implement the Sterilizer Rule standards is not available because manufacturers cannot guarantee that existing emissions control equipment will enable sources to meet the new standards; there is not a sufficient supply of the necessary technology; and there are not enough experienced installation professional and technical experts to install and test that equipment within the current compliance timeframes.

It is important to note that the *availability* of technology is not the same as *existence* of the technology. EPA itself has various definitions for whether a technology is "available." *See California Communities Against Toxics v. Env't Prot. Agency*, 934 F.3d 627, 632–33 (D.C. Cir. 2019) (comparing GACT and MACT standards) *and Nat. Res. Def. Council v. E.P.A.*, 571 F.3d 1245, 1252 (D.C. Cir. 2009) (analyzing RACT standards). Given the broad language of 42 U.S.C. § 7412(i)(4), the President has discretion to determine whether the technology mandated by the Sterilizer Rule is truly *available* in light of the arguments made in Exhibit A.

Also, some of the Sterilizer Rule's emissions standards involve vanishingly low concentrations of ethylene oxide. For instance, the Rule's emission reduction standards for fugitive emissions seemingly request reductions of single-digit parts per billion concentrations by as much as 98%. Detecting single-digit parts per billion concentrations of ethylene oxide is already state of the art technology. Detecting 50-fold reductions from that number on a continuous basis as required by the Rule is not feasible.

II. National Security Interests

The durability of the medical device supply chain is of vital importance to national security. Given this national security interest, the U.S. Food & Drug Administration continues to closely monitor potential supply chain interruptions, including by working with industry on critical issues such as sterilization. *See, e.g.,* U.S. FDA, Supply Chain: FDA's Role, https://www.fda.gov/emergency-preparedness-and-response/supply-chain/supply-chain-fdas-role (last visited March 28, 2025).

As such, Cook incorporates by reference the section in Exhibit A related to national security and supply chain disruption. As explained further therein, it is in the national security interests of the United States to issue the requested exemption because if some facilities choose to cease operations rather than attempt compliance (which is likely), that will disrupt the supply of sterilized medical devices, raise the cost of those devices, and/or force medical suppliers or providers to source sterilized medical devices from abroad. These ideas are echoed by Indiana Senator Todd Young, who authored a letter to the EPA when the Sterilizer Rule was first proposed by the agency:

> "The potential for extensive disruption in our medical device supply chain is evident, which could instigate a public health crisis of unprecedented scale. As noted by FDA, 'EtO facilities in the United States typically run 24/7 with facilities operating at maximum capacity. Thus, when EtO facilities close (even temporarily), there are downstream implications for the medical device supply chain.'" Comment submitted by Senator Todd Young (August 14, 2023) *available at* https://www.young.senate.gov/wp-content/uploads/imo/media/doc/epa_comment_letter.pdf.

* * *

Cook appreciates EPA's attention to this important matter and urges EPA to recommend that the President issue the requested exemption as quickly as possible. If any additional information is needed regarding this request, please do not hesitate to contact me.

Sincerely,

Gene Baker
General Manager and Vice President
Cook Inc.

172054090v2

EOSA **The Ethylene Oxide Sterilization Association, Inc.**
Managed by B&C® Consortia Management, L.L.C.

The Honorable Lee Zeldin
Administrator
Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, DC 20460
Mail Code: 1101A

Dear Administrator Zeldin:

I write on behalf of the Ethylene Oxide Sterilization Association (EOSA) to ask EPA to take near-term action regarding the *National Emission Standards for Hazardous Air Pollutants: Ethylene Oxide Emissions Standards for Sterilization Facilities Residual Risk and Technology Review*, 89 Fed. Reg. 24090 (Apr. 5, 2024), known as the "Sterilizer Rule." The Sterilizer Rule imposes extremely onerous ethylene oxide (EtO) emission standards on medical device sterilizers—the most stringent of which must be met by April 2026—and is causing substantial harm to and regulatory uncertainty for EOSA's members.

EPA announced on March 12, 2025, that it will reconsider the Sterilizer Rule (alongside other NESHAPs), which is a welcome development. EOSA was also pleased to see EPA's statement that the Administration "is considering a 2-year compliance exemption via Section 112(i)(4) of the Clean Air Act for affected facilities while EPA goes through the rulemaking process." But medical device sterilizers need to decide *now* whether to expend substantial resources to acquire technology and reconfigure their facilities to try to comply with the Sterilizer Rule—or to instead cease operations. That, in turn, may disrupt the supply of critical medical devices, harming both patients and providers, or force medical providers to source those essential medical devices from abroad—increasing the offshoring of the sterilization of medical devices and inflating costs to Americans in direct contravention of the Trump administration's economic objectives.

The Sterilizer Rule was promulgated by the Biden administration under Clean Air Act ("CAA") Section 112 on April 5, 2024. The Sterilizer Rule includes standards set under Section 112(d), the CAA's hazardous pollutant "technology review" provision, and Section 112(f), the "risk review" provision, the latter of which the D.C. Circuit described as a "*one-time* 'risk review.'" *Nat'l Ass'n for Surface Finishing v. EPA*, 795 F.3d 1, 5 (D.C. Cir. 2015) (emphasis added). There are several major flaws in the Sterilizer Rule, and a litany of other issues and errors.

First, the Sterilizer Rule unlawfully set new standards under Section 112(f) even though EPA previously undertook the one-time risk review for this source category in 2006. 71 Fed. Reg. 17, 712, 17,716 (April 7, 2006). In doing so, EPA ignored the statutory text and context, both of which indicate that Congress intended EPA to regulate primarily through periodic technology reviews under Section 112(d) and conduct only one round of risk-based review under Section 112(f). By ignoring that Congressional mandate, EPA wrongly avoided Section 112(d)'s requirement that the agency must consider costs when setting and revising technology-based standards.

Second, the emission standards set in the Sterilizer Rule particularly under Section 112(f), but also those set under Section 112(d)—are extremely onerous, unsupported by the record data, and for some sterilizers will be impossible to meet. For example, EPA increased the standard for sterilization chamber vents using at least 30 tons per year ("tpy") of EtO from a 99% destruction

ED_021114D_00003015-00001

and removal efficiency (DRE) standard to a 99.99% DRE standard. This leaves no margin for error or equipment malfunction. Likewise, for aeration room vents ("ARVs") using at least 30 tpy of EtO, the Sterilizer Rule increased the DRE requirement from 99% to 99.9%, while wrongly rejecting commenters' request for an alternative standard. Both the SCV and ARV standards were premised on test data that EPA admitted, in the Proposed Rule, is not representative of normal operations. *See* 88 Fed. Reg. at 22,844. EPA also imposed stringent new standards on area sources; for example, EPA set a chamber exhaust vent emission standard of 99.9% DRE for facilities using at least 60 tpy of EtO. These are just a few of the stringent standards set in the Sterilizer Rule under Sections 112(f) and (d), all of which are unrealistic and unsupported by the record.

The Sterilizer Rule is also flawed because EPA arbitrarily and capriciously imposed onerous Continuous Emission Monitoring System (CEMS) mandates on facilities using at least 100 lb/year of EtO without proper notice and comment. Replacing parametric monitoring with CEMS, operating at fifteen-minutes intervals and demonstrating 90% data availability, is costly, complicated, and burdensome, while emission reduction benefits are minimal. Further, EPA failed to allow commenters to weigh in on the CEMS scheme the agency finalized, which requires application of CEMS *at each emissions inlet*, not just outlets. This CEMS scheme is thus both arbitrary and unlawful.

EOSA challenged the Sterilizer Rule in the United States Court of Appeals for the District of Columbia Circuit (No. 24-1180). In addition to raising the above major concerns, EOSA also explained that EPA wrongly set standards based on EtO *usage*, rather than based on EtO *emissions* (as the text of Section 112 requires); failed to establish technology-based standards under Section 112(d) before imposing certain of the risk-based standards; failed to consider and address comments on EPA's reliance on the flawed IRIS value for EtO; and failed to conduct rational cost/benefit analysis in deciding whether and to what extent to revise all standards. A fuller discussion of all of these issues can be found in EOSA's opening merits brief (Doc. #2080994).

As noted above, EPA has announced it will reconsider the Sterilizer Rule. EPA also recently moved to hold the litigation over the Sterilizer Rule in abeyance for 60 days "to allow new Agency leadership to review" the Sterilizer Rule and "to decide what action, if any, is necessary." *Cal. Cmtys. Against Toxics v. EPA*, No. 24-1178 (D.C. Cir. filed Feb. 18, 2025) (Doc. 2101209). EOSA appreciates EPA's recognition of the need to reconsider the Sterilizer Rule. But while EPA does so, EOSA's members continue to face the Sterilizer Rule's fast-approaching compliance deadlines: April 6, 2026, for standards set under Section 112(f) and April 5, 2027, for standards set under Section 112(d). These deadlines (particularly the former, which applies to the most stringent standards) require sterilizers to decide now whether to commit significant financial and operational resources—including to purchase new control technologies, redesign facilities, and restructure operations to try to comply with the Sterilizer Rule, which is not possible for all facilities.

Lending further urgency to EPA's reconsideration of the Sterilizer Rule and the standards and deadlines set therein, the D.C. Circuit denied EPA's abeyance motion and the case has been set for argument on April 15, 2025. EOSA therefore urges EPA to act quickly to relieve sterilizers of the Sterilizer Rule's obligations, preventing unnecessary expenditures—and irrevocable decisions that some sterilizers will likely be forced to make absent near-term relief.

To address the urgent compliance challenges posed by the Sterilizer Rule, EOSA identifies two potential pathways for relief. Ideally, EPA should pursue both to ensure that sterilizers can continue to operate in the near term, even while EPA reconsiders the Sterilizer Rule more broadly.

Path 1: Presidential Waiver under Section 112(i)(4)

As suggested by EPA, the President should exercise his authority under CAA § 112(i)(4) to grant a two-year compliance exemption commencing on the Sterilizer Rule's compliance deadlines: April 6, 2026, for risk-based standards and April 5, 2027, for technology-based standards. The President may grant such an exemption for all sources regulated by the Sterilizer Rule in one action,[1] based upon findings that (1) "it is in the national security interests … to do so" and (2) "the technology to implement such standard is not available." 42 U.S.C. § 7412(i)(4).

The first requirement—national security interests—is satisfied due to the critical role that sterilization facilities play in maintaining the U.S. medical device supply chain. Compliance with the Sterilizer Rule's deadlines, particularly the two-year deadline for compliance with the risk-based standards set under Section 112(f), will significantly reduce sterilization capacity. This, in turn, will lead to severe shortages of life-critical medical devices such as catheters, surgical kits, syringes, bandages, IV equipment, and needles, disrupting essential healthcare services. EOSA cautioned in its Comments on the Proposed Sterilizer Rule that the loss of capacity while facility reconstruction and modifications are underway will cause "a large reduction in medical device sterilization capacity and a severe shortage of sterilized medical devices." EOSA Comments 59, EPA-HQ-OAR-2019-0178-0618. Medical industry stakeholders similarly noted that modifying sterilization equipment is "no trivial matter":

> These complex facilities, no two of which share the same design or process, typically must go at least partially offline to make modifications to the equipment. Even routine maintenance or periodic upgrades require significant planning to minimize downtime across the monthly or annual supply cycle.

Advanced Medical Technology Association Comments 9–10, EPA-HQ-OAR-2019-0178-0601.

Without relief, sterilizers may be unable to meet demand for sterilized medical devices, leading to shortages that force medical providers to seek alternative sources abroad and increase the United States' dependence on foreign suppliers for essential medical devices. This growing reliance on foreign sterilization capacity and imported medical equipment poses an immediate national security risk, as any disruption—whether from geopolitical conflicts, trade restrictions, or economic coercion—could severely limit the United States' ability to maintain an independent and resilient healthcare system, jeopardizing timely access to life-saving medical equipment.

---

[1] Nothing in Section 112(i)(4) bars the President from issuing an exemption that applies to all regulated sources—and the President should do so here to ensure that all sterilization facilities are relieved from the obligation to comply with the Sterilizer Rule.

The second requirement – technology unavailability – is also met. It will be impossible for all regulated sources to obtain and install necessary control technology by April 2026 due to the limited number of equipment manufacturers and workforce shortages.

EOSA has explained that many of the Sterilizer Rule's requirements "require significant facility reconstruction and major equipment procurement and installation" that could take years – particularly if all sterilizers must redesign their facilities and install equipment to meet the new standards at the same time. EOSA Comments 58–59. And "[t]he availability of the equipment, materials, and contractor services necessary to modify emission control systems is severely limited." Sterigenics Comments 28, EPA-HQ-OAR-2019-0178-0632. Between supply chain constraints, the time-intensive process of facility redesign to accommodate new equipment, and the extensive testing and validation required before any system can become operational, the necessary control technology is functionally unavailable within the required timeframes.

Further, even if it were possible for all facilities to secure the needed equipment and make the necessary design and structural changes within the current compliance periods, the limited number of experienced installation professionals and technical experts who support this industry makes timely compliance by all regulated sources logistically infeasible. *See* AdvaMed Comments at 10. There is simply no way that all regulated sources will be able to obtain both the necessary equipment *and* the skilled technicians needed to successfully install, test, and bring that equipment online within the same two-year period, as required under the Sterilizer Rule.

Finally, control device manufacturers cannot guarantee that their equipment will operate to meet the Sterilizer Rule's stringent performance deadlines. *See* Sterigenics Comments at 28. This further highlights the technological infeasibility of meeting the current compliance deadlines – as well as the irrationality and infeasibility of the standards themselves. This is a particularly compelling basis for the President to find that "the technology to implement such standard is not available," 42 U.S.C. § 7412(i)(4), and grant a two-year waiver.

Even the Biden Administration recognized the compliance challenges posed by the Sterilizer Rule. In its *Memorandum on the Orderly Implementation of the Air Toxics Standards for Ethylene Oxide Commercial Sterilizers* (Jan. 16, 2025), the Administration acknowledged that waivers or exemptions may be necessary to "achiev[ing] the … Rule's critical health protections as soon as practicable, while safeguarding the supply of safe medical products from disruption that would compromise the health and welfare of the American people."

EPA should therefore urge President Trump to exercise his authority under Section 112(i)(4) and quickly issue a two-year compliance exemption for all sources regulated under the Sterilizer Rule, effective when each set of standards set therein would otherwise apply. The exemptions then may be extended for one or more additional periods, if necessary.

Path 2: EPA Rulemaking to Stay or Extend Deadlines

Also or alternatively, EPA should take a near-term discrete administrative action to rescind the Rule 112(f) risk-based standards, or at least stay the compliance deadlines, based on a finding that the standards are likely unlawful and EPA's stated commitment to reconsider the Sterilizer Rule.

Because Section 112(f) allows EPA to grant no more than two years for compliance with risk-based standards (although, as discussed above, the President may issue a further two-year exemption—and should do so here), EPA should take near-term, discrete administrative action to rescind at least the risk-based standards set in the Sterilizer Rule based on a finding that its reliance on Section 112(f) to revise EtO emission standards was unlawful. EPA has a solid basis for taking that initial step now: under the Biden Administration, EPA ignored the statutory text and context, both of which confirm that the risk-review is (as the D.C. Circuit previously stated), a "one-time" event, and therefore EPA's conduct of a second risk review was unlawful.

Alternatively, EPA could take a discrete administrative action to stay the Sterilizer Rule's compliance deadlines (ideally for all standards, but at least the Section 112(f) risk-based standards) pending completion of reconsideration and a new notice-and-comment rulemaking process to rescind, replace, or revise the Sterilizer Rule. Such action would relieve sterilizers of near-term compliance obligations and reduce the risk that many sterilizers will cease operations and thereby disrupt the supply of medical devices even while EPA is reconsidering the Sterilizer Rule.

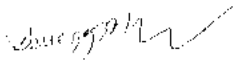
Because the Sterilizer Rule is the result of a notice-and-comment rulemaking process, rescinding or revising the Sterilizer Rule—or even just staying the compliance deadlines—likely also requires rulemaking to minimize the chance that a reviewing court vacates such action. But EPA could invoke the Administrative Procedure Act's "good cause" exception to notice and comment because the key legal issue whether EPA can conduct a second round of risk review for a source category has already been subject to a notice-and-comment process, and it is a pure statutory construction question on which EPA can correct course now. Further notice-and-comment on that issue is thus "unnecessary," and it is also "impracticable" and "contrary to the public interest" given the urgency of the issue and the impact on the medical device supply chain. *See* 5 U.S.C. 553(b)(B). Or, EPA could issue an interim final rule rescinding at least the Section 112(f) standards and thereby obviating the nearest-term compliance deadlines. This option would allow further notice and comment, but still provide immediate relief for sterilizers facing the difficult choice whether to try to comply with the Sterilizer Rule—despite the near-impossibility of doing so—or cease operations and disrupt the domestic medical supply chain.

* * * *

EOSA appreciates EPA's commitment to reconsidering the Sterilizer Rule and addressing the concerns of regulated facilities. EOSA also appreciates the Agency's willingness to consider near-term actions, such as a Presidential exemption and/or discrete administrative action to address the Section 112(f) standards and associated compliance deadlines. As many facilities confront immediate investment decisions, regulatory clarity is essential. EOSA urges EPA to take timely action to ensure that sterilization facilities remain operational while advancing long-term regulatory solutions that balance public health objectives with industry feasibility.

Thank you for your consideration. Please feel free to contact me at mzhuang@bc-cm.com if you have any questions regarding this request.

Sincerely,



Meibao Zhuang
Senior Manager
Ethylene Oxide Sterilization Association

Cc:

Abbie Tardif, Principal Deputy Assistant Administrator for the Office of Air and Radiation

Alex Dominguez, Deputy Assistant Administrator for Mobile Sources, Office of Air and Radiation

[redacted] Director, EPA Office of Air Quality Planning and Standards

[redacted] Director, Sector Policies and Programs Division, EPA Office of Air Quality Planning and Standards

FUCHS

North America

March 25, 2025

To: a'raction@epa.gov

Presidential Exemption: National Emission Standards for Hazardous Air Pollutants: Ethylene Oxide Emissions Standards for Sterilization Facilities Residual Risk and Technology Review" (89 FR 24090; April 5, 2024) (Sterilizer Rule): Fuchs North America

Fuchs North America ("Fuchs") is a seasoning and spice company located in Hampstead, Maryland. As part of our manufacturing process, Fuchs uses ethylene oxide ("EtO") as a fumigant to ensure that our spices meet Food and Drug Administration ("FDA") standards, 21 CFR 117. EtO is highly effective and validated to kill the pathogen, *Salmonella*. Fuchs's products are treated with EtO in an enclosed chamber using a programmed cycle of EtO treatment, followed by nitrogen and air washes that are intended to reduce the amount of EtO residual left on the product. The Human Exposure Model (HEM4) was used in July 5, 2022 to estimate the potential cancer risk from EtO for up to 10 kilometers from the Fuchs Hampstead facility and the results were less than 3.2 in one million.

We are requesting a Presidential Exemption for the Sterilizer Rule 89 FR 24090. The technology to implement the capture requirements and continuous emission monitoring system (CEMS) is currently not available due to 1) Engineering Time and 2) Lack of Equipment.

1) Additional Engineering Time Needed

   The capture requirements associated with the emission reduction standards for Group 1 and Group 2 room air emissions in the final rule requires a redesign of the facility. There are a limited number of vendors that specialize in the redesign of facilities to be compliant with the permanent total enclosure (PTE) requirements. Sufficient time is needed to design and plan before the permit applications are submitted.

2) Lack of Equipment Obstacle

   Additional equipment needs to be purchased and installed (e.g., fans, transformers, variable frequency drives, etc.) to meet the capture requirements. As well as additional CEMS equipment. There are a limited number of control technology vendors that supply the types of advanced control systems that are necessary for facilities to comply with the final standards. Additional time is needed to ensure our company can receive the necessary services and have the proper equipment in place by the compliance date.

An extension is also in the national security interests of the United States as there are currently no effective alternative treatment methods for certain spices and spice-related categories.

EtO is needed to ensure food safety and avoid spice shortages.

While alternative technologies are available for some applications of spices, EtO remains critical for the spice industry. Some spices are particularly vulnerable to alternative treatments due to having more delicate flavor and color. Steam is particularly challenging for use with low density products such as herbs, and spice products with a high density, such as ground spices and cannot be used for pre packaged spice. Steam treatment can also result in discoloration or loss of flavor, thus destroying certain spice products – for which the main purpose is to add flavor to foods. Another potential alternative — gamma — comes with issues. Because of world-wide shortages of cobalt, there is very low availability.

Shutting down EtO sterilization until the facilities are in compliance with the new standards of the Sterilizer Rule could push much of the spice sterilization offshore to developing countries with far less sophisticated regulatory systems than the U.S., which presents both significant food safety and environmental risks.

An additional two years is needed to comply with the standard in the 89 FR 24090 Sterilizer Rule.

In summary,

- Fuchs use of EtO is safe for food, the environment, our employees and our community through following established use requirements already established by Federal and State agencies for the use of EtO on spices.
- Presidential Exemption is requested due to insufficient capacity to sterilize our raw materials through alternative means, greatly affecting our ability to serve our customers and consumers with safe food.

We appreciate you taking the time to consider our request for Presidential Exemption and two year extension.

From: Leach, Arthur
To: AirAction
Subject: Regarding Sterilizer Rule (89 FR 24090): KPR US, LLC d/b/a Kendall Patient Recovery ("KPR")
Date: Friday, March 28, 2025 11:04:02 AM
Attachments: image001.png
FINAL EOSA Letter to EPA re. NESHAP -- March 17, 2025.pdf

Caution: This email originated from outside EPA, please exercise additional caution when deciding whether to open attachments or click on provided links.

To: airaction@epa.gov

Re: Sterilizer Rule (89 FR 24090): KPR US, LLC d/b/a Kendall Patient Recovery ("KPR")

I write on behalf of KPR to request that the President issue a two-year exemption pursuant to his authority under CAA Section 112(i)(4) for all emission standards and associated requirements set or revised in EPA's April 4, 2024 *National Emission Standards for Hazardous Air Pollutants: Ethylene Oxide Emissions Standards for Sterilization Facilities Residual Risk and Technology Review*, 89 FR 24090 (April 5, 2024) (Sterilizer Rule).

KPR requests that the Presidential Exemption apply to the following facility regulated by the Sterilizer Rule and all sources therein:

- KPR US, LLC d/b/a Kendall Patient Recovery
  1430 Marvin Griffin Road, Augusta, Georgia 30906

KPR requests that the President issue a two-year exemption as quickly as possible, but designate it as taking effect on the compliance deadlines for the standards in the Sterilizer Rule. Specifically:

- For standards set or revised under CAA Section 112(f) and all corresponding requirements (including monitoring requirements), the exemption should apply as of April 6, 2026 (the compliance deadline for those standards);
- For standards set or revised under CAA Section 112(d) and all corresponding requirements (including monitoring requirements), the exemption should apply as of April 5, 2027 (the compliance deadlines for those standards).

As explained further in the attached letter submitted to EPA on March 17 on behalf of the Ethylene Oxide Sterilization Association (EOSA), the technology necessary to implement the standards is not widely available to the sterilization industry because: manufacturers cannot guarantee that existing emissions control equipment will enable sources to meet the new standards; there is not a sufficient supply of the necessary technology; and there are not enough experienced installation professional and technical experts to install and test that equipment within the current compliance timeframes.

As also explained further in EOSA's March 17 letter, it is in the national security interests of the United States to issue the requested exemption because if some facilities choose to cease operations rather than attempt compliance (which is likely), that will disrupt the supply of sterilized medical devices, raise the cost of those devices, and/or force medical suppliers or providers to source sterilized medical devices from abroad.

Please don't hesitate to let me know if any additional information is needed. KPR appreciates EPA's attention to this important matter and urges EPA to recommend that the President issue the requested exemption as quickly as possible.

Thanks you for your considersation of this matter,

Arthur



Arthur Leach
Senior Vice President, Global Manufacturing
777 West Street, Mansfield, MA 02048
508.964.6941 tel / 508.212.5810 mobile
Executive Assistant: Allison.Sanchez@cardinalhealth.com
www.cardinalhealth.com

Well Being Notice: Receiving this email outside of normal working hours? Managing work and life responsibilities is unique for everyone. I have sent this email at a time that works for me. Please respond at a time that works for you.

This message is for the designated recipient only and may contain privileged, proprietary or otherwise private information. If you have received it in error, please notify the sender immediately and delete the original. Any other use of the email by you is prohibited.

Dansk - Deutsch - Espanol - Francais - Italiano - Japanese - Nederlands - Norsk - Portuguese - Chinese
Svenska: http://www.cardinalhealth.com/en/support/terms-and-conditions-english.html

Candace Childers
Vice President, Manufacturing Plant Manager
245 Kyle Lane
Huntington, WV 25702
Candace.Childers@alcon.com

Phone: +1(304) 733-8636
www.alcon.com

March 31, 2025

Via Electronic Mail [redacted]

The Honorable Lee Zeldin
Administrator
U.S. Environmental Protection Agency
Mail Code: 1101A
1200 Pennsylvania Avenue, N.W.
Washington, DC 20460

Re: Presidential Exemption: *National Emission Standards for Hazardous Air Pollutants: Ethylene Oxide Emissions Standards for Sterilization Facilities Residual Risk and Technology Review*, 89 Fed. Reg. 24,090 (Apr. 5, 2024): ALCON Research Ltd., ALCON Advance Optic Device Center, North Facility, 2 Vision Lane, Lesage, Cabell County, West Virginia 25537

Dear Administrator Zeldin:

ALCON Research Ltd.'s ALCON Advance Optic Device Center, North Facility located at 2 Vision Lane, Lesage in Cabell County, West Virginia (AODC) respectfully requests a two-year Presidential Exemption from the *National Emission Standards for Hazardous Air Pollutants: Ethylene Oxide Emissions Standards for Sterilization Facilities Residual Risk and Technology Review* regulation, published at 89 Fed. Reg. 24,090 (Apr. 5, 2024) (EtO NESHAP Rule).

The Emissions Standards or Limitations Subject to the Request:

National Emission Standards for Hazardous Air Pollutants: Ethylene Oxide Emissions Standards for Sterilization Facilities Residual Risk and Technology Review, published at 89 Fed. Reg. 24,090 (Apr. 5, 2024), and 40 C.F.R. Part 63, Subpart O. The limitations that are the subject of this exemption request include the emission standards and emission capture requirements applicable to sterilization chamber vents, aeration room vents, Group 1 Room emissions, and Group 2 Room emissions, the Permanent Total Enclosure (PTE) requirements of EPA Method 204 of Appendix M, 40 C.F.R. Part 51, and the requirement to install and operate

Continuous Emission Monitors (CEMs) in accordance with the requirements of Performance Specification 19 in Appendix B and Procedure 7 in Appendix F to 40 C.F.R. Part 60, all as applied at AODC.

Exemption Period Request:

ALCON Research, Ltd., is requesting a two-year Presidential Exemption and extension of the applicable compliance deadlines of the *National Emission Standards for Hazardous Air Pollutants: Ethylene Oxide Emissions Standards for Sterilization Facilities Residual Risk and Technology Review* regulation, published at 89 Fed. Reg. 24,090 (Apr. 5, 2024), as applied at AODC.

Background

Founded more than 75 years ago in Fort Worth, Texas, ALCON is the largest eye care company in the world. It is the global leader in eye care, dedicated to helping people ***See Brilliantly***. Today, more than one billion people live with some form of uncorrected visual impairment. The impact of these treatable problems is significant. We see a world where treatable, preventable eye health conditions receive the attention they need, regardless of an individual's geography, gender, age or socioeconomic status. Our Social Impact and Sustainability strategy is focused on three pillars Brilliant Lives, Brilliant Innovation and Brilliant Planet. The pillars include social impact and environmental goals that hold us accountable and measure progress. ALCON is dedicated to advancing a future where the opportunity to protect, restore or enhance vision is available to everyone, including our U.S. military and military veterans.

In 2024 alone, ALCON sold more than 52,000 vision correction lenses to the U.S. Department of Defense and other U.S. government entities through government contracts. Alcon's commitment to the United States and its local communities is illustrated by ALCON's Children Vision Program a program that works with local school districts to provide no-cost comprehensive exams and glasses for students. As part of this program, ALCON AODC provides free vision screenings for students in Cabell County, West Virginia, including 2,472 student screenings in 2024 alone.

The ALCON AODC North Facility is located on a 21-acre industrial park in a rural community, surrounded by industry, a sewer plant, and warehouses. It is located adjacent to what will become an ALCON warehouse at 1 Vision Lane which is located on a separate 26-acre parcel. The ALCON AODC North Facility manufactures Intraocular Lenses (IOLs) and IOL delivery devices. An IOL is a tiny, artificial lens for the eye, which replaces the eye's natural lens that is removed during cataract surgery. ALCON's IOL portfolio reflects a strong legacy of eye care innovation based on ALCON's significant strategic commitment to research and development.

Presidential Exemption Request

A. AODC's Current Sterilization Process Is Uniquely Designed to Minimize Ethylene Oxide Emissions

As surgical implantable devices, IOLs must be carefully sterilized. The ALCON AODC facility is an existing minor source facility which operates three (3) identical EtO sterilization chambers that are uniquely designed to minimize EtO emissions generated during the sterilization process. IOLs are sterilized in these chambers inside their primary Tyvek pouch packaging, using metal racks with three (3) plastic pallets per chamber. Unlike many EtO sterilization facilities, no cardboard or paper is used in AODC's sterilization process, which reduces residual EtO emissions after sterilization. Loading and unloading for each sterilization chamber is also automated, reducing potential employee exposure to EtO.

After sterilization, the IOLs (in their primary Tyvek pouch packaging) are transferred by enclosed mechanized conveyer into a 24-hour aeration chamber. The facility utilizes a Lesni Abatement Plant (water balancer and catalytic oxidizer) to treat the sterilization chamber vents (SCVs) and aeration room vents (ARVs). The facility has no chamber exhaust vents (CEVs). The aeration cells utilize exhaust air from the unloading area for makeup, and the aeration cell vents are routed to a low concentration inlet of the Lesni Abatement Plant. Both vent sources are routed through a single stack to the atmosphere.

After aeration, the IOLs are transported to a final Packaging and Labeling Area, where they are placed into cartons with tamper seals and placed in shipper boxes. Most commercial sterilizers sterilize products in their final packaging, which includes a lot of materials that will retain EtO and create longer aeration and/or more fugitive off-gassing downstream in trucks and distribution warehouses. AODC's sterilization process is uniquely designed to reduce aeration time and fugitive emissions in the off-gassing process thereby reducing emissions and risks to public health.

B. AODC's Current Ethylene Oxide Process Controls Are Already Highly Effective

At the present time, the ALCON AODC facility uses less than five tons of EtO on an annual basis. Moreover, the unique design of AODC's sterilization process is highly effective at reducing EtO emissions.

Total emissions from the AODC facility after existing controls already meet the requirements of the pre-2024 NESHAP regulations. Stack tests were conducted in 2019 by ALCON on the Lesni Abatement Plant stack and observed by the West Virginia Department of Environmental Protection, Division of Air Pollution Control. During the most recent testing, the Lesni Abatement Plant achieved an average destruction and removal efficiency (DRE) that exceeded 99.8%. Consequently, EtO stack emissions at AODC are extremely low. ALCON has been in

continuous compliance with the pre-2024 NESHAP regulations and has never been cited for violations of the applicable regulations.

AODC also engaged the leading provider of enhanced optical spectroscopy analytical solutions to conduct an Ethylene Oxide Workplace Exposure Site Evaluation between August 12 and September 6, 2024. The independent assessment company conducted continuous sampling at 17 locations throughout the facility over 26 days utilizing a Workplace Monitoring System (WMS). During the period of analysis, no position within the facility exceeded a 1ppm/8hr time-weighted-average (TWA) permissible exposure limit (PEL) under normal conditions. The largest 8hr TWA was 0.139 ppm. The same company noted in its final report that the EtO sampling recorded values at AODC were the **lowest** they had seen in any facility based on their extensive monitoring experience.

In addition, the EPA evaluated the cancer maximum individual risk (MIR) from ALCON's AODC facility in January 2024. *See Residual Risk Assessment for the Commercial Sterilization Facilities Source Category in Support of the 2024 Risk and Technology Review Final Rule* at Table 2a-1. The facility-wide cancer MIR for AODC in the EPA's evaluation was very low at 0.2-in-1 million **far below** the 1-in-1 million cancer risk the EtO NESHAP Rule sets as a target.

C. Challenges Presented by the EtO NESHAP Rule

The April 5, 2024, EtO NESHAP Rule presents many technological, engineering and business challenges for ALCON. To comply with this revised rule, ALCON continues to research, design, plan, and consider: (1) product disruptions, (2) capacity reductions, (3) alternative compliance options such as off-shoring production, or out-sourcing sterilization, (4) development of new engineering design plans, and (5) vendors to provide the required PTE, CEMs, and new control systems.

The first three options for AODC compliance with the EtO NESHAP Rule product disruptions, capacity reductions, or off-shoring / out-sourcing production — are problematic for the domestic and national security reasons discussed below.

1. Limitation of Technology and Expertise

ALCON continues to research technologies and suppliers to achieve the applicable NESHAP requirements without negatively impacting its IOL manufacturing at the AODC facility. This research and review has included contacting engineering firms familiar with designing sterilization facilities and Method 204 compliant PTEs and reaching out to current abatement and EtO monitoring vendors, colleagues in the industry, and trade organizations.

As the April 5, 2024, EtO NESHAP Rule recognizes and acknowledges, there are limited vendors with the technology and expertise to plan, design, and install the PTEs, the air pollution controls, and the CEMs that are required by the 2024 EtO NESHAP Rule. *See* General Information at 89 Fed. Reg. 24090, 24102. ALCON has and continues to expend significant resources in an attempt to comply with the Rule. ALCON has held onsite meetings and demonstrations with several vendors of CEM equipment that advertise technology meeting the NESHAP requirements as well as experienced engineering design firms. ALCON has approved and expended significant Capital funding for a multi-disciplinary design firm to conduct the following for the AODC facility:

- An EPA Compliance Assessment to understand the NESHAP applicability to current operations and recommended options for compliance based on the facility's unique layout and challenges.

- An onsite 25-day EtO Monitoring Study using industry-approved cavity ring-down spectroscopy technology. This study was selected to better understand the fugitive emissions in Group 1 and Group 2 rooms as well as to afford the site with the opportunity to become familiar with the vendor and their equipment.

- A Basis of Design (BOD) study for the Method 204 PTE of Group 1 and Group 2 Rooms and the Dry Bed Abatement Facility required to support the PTE abatement exhaust.

- Develop a Rough Order of Magnitude (ROM) Budgetary Cost Estimate for the project.

2. Threat to Sterilization and Quality Control

Through this design process, ALCON has determined that compliance with the EtO NESHAP Rule threatens the integrity of AODC's sterilization and quality control process. Particulate (dust, hair, etc.) in the final packaging for an implantable medical device is a major risk. To minimize this risk, AODC maintains positive air pressure in its final Packaging and Labeling Area. However, this area is a Group 2 Room that would be required to be converted to a PTE under the revised EtO NESHAP Rule. Converting this area to a PTE would create a negative air flow into the Packaging and Labeling Area from surrounding rooms (including the facility's main hallway) and potentially contaminate the final packaging for the IOLs.

3. Inability to Meet Deadline Coupled with Uncertainty

Despite ALCON's extensive efforts to find cost-effective solutions to comply with the EtO NESHAP Rule, based on the studies and efforts provided above, the estimated cost for AODC to achieve compliance with the Rule at its current EtO usage is greater than 15% of ALCON AODC's annual operating budget, which is more than 50 times EPA's woefully underestimated cost of compliance for the facility. This exorbitant cost to achieve compliance is particularly

challenging given the controversy and litigation surrounding the new EtO NESHAP Rule. As EPA is aware, EPA announced on March 12, 2025, that it would reconsider the new EtO NESHAP Rule as part of a broader deregulatory initiative mandated under Executive Orders signed by President Donald Trump. The U.S. Court of Appeals for the District of Columbia has also scheduled oral arguments to hear from multiple parties challenging the EtO NESHAP Rule. The Executive Orders, the EPA deregulatory announcements, the ongoing EtO litigation, and the difficulties with timely obtaining an assured supply of technologies and expertise have created fundamental uncertainty as to the scope, timing, and content of compliance requirements. This creates significant uncertainty for companies like ALCON that would need to deploy significant resources to attempt to comply with the Rule without reducing or off-shoring production.

Moreover, and more importantly for its purposes, despite ALCON AODC's significant efforts to achieve compliance with the April 5, 2024, EtO NESHAP Rule requirements in a timely manner, ALCON is not able to identify and implement technology that will serve its unique needs by the compliance deadlines for the new EtO Rule. For the reasons discussed above (as well as others discussed below), ALCON's AODC facility requests a two-year exemption from the April 5, 2024, EtO NESHAP Rule, as provided for in Section 112(i)(4) of the Clean Air Act.

D. National Security Implications of Compliance with the EtO NESHAP Rule

As a global and world class leading producer of IOLs, it is extremely important that ALCON continue to produce high-quality cataract replacement lenses. Indeed, the ability of ALCON to produce IOLs is in the national security interests of the United States for several reasons. ALCON supplies 56% of the US IOL market and 32% of the global IOL market. Cataract surgery is one of the most frequently performed surgical procedures. According to the National Eye Institute, cataracts are the leading cause of blindness worldwide even though effective surgical treatment exists. Currently, surgical removal of the clouded lens followed by insertion of an IOL is the preferred treatment for cataracts. The clouded lens is usually removed through a process known as phacoemulsification. During phacoemulsification, an ophthalmic surgeon makes a small surgical incision in the cornea (approximately 2-3 millimeters wide) and inserts an ultrasonic probe that breaks up, or emulsifies, the clouded lens while a hollow needle removes the pieces of the lens. Once the clouded lens is removed, the surgeon inserts an IOL through the same surgical incision. An Advanced Technology IOL (ATIOL) is a type of IOL that also corrects for refractive errors, like presbyopia and astigmatism. ALCON's AODC facility in West Virginia reduces potential American dependency on imports of IOLs.

In addition to the eye care health crisis potentially associated with IOL product disruptions due to vendor delays, longer production times, packaging modifications, and/or production shutdowns for facility modifications, the United States global leadership in IOLs is a contributor to the economic stability of this country. It is important that the United States maintains its global leadership in R&D and in advanced manufacturing. ALCON is on the cutting edge of these initiatives in the eye care industry and maintaining and improving the U.S. eye care market

contributes to the economic stability of the United States. The economic stability of the United States is in the country's national security interests.

Beyond the economic stability justifications for ALCON's contributions to our nation's national security, ALCON also supplies U.S. military personnel and military veterans with cataract replacement lens. In 2024 alone, ALCON sold more than 52,000 vision correction lenses to the U.S. Department of Defense and other U.S. government entities through government contracts. The Defense Health Agency's Vision Center of Excellence (VCE) reports that military service members are more prone to traumatic eye injuries, with 68% occurring on the battlefield and 28% during noncombat work and training. These injuries, often blunt or penetrating, frequently require IOLs for sight-restoring cataract surgeries. In addition to supporting active duty members, the U.S. Department of Veteran Affairs commonly covers, provides, and performs cataract surgery for qualifying veterans. AODC should be permitted to continue manufacturing and sterilizing high-quality cataract replacement lenses for the U.S. military and military veterans.

Conclusion

Despite its significant efforts to achieve compliance with the April 5, 2024, EtO NESHAP Rule requirements in a timely manner, ALCON is not able to obtain and install the technology required by the new Rule by the compliance deadlines. Attempting to comply with the new Rule would result in several months of manufacturing shutdowns, product shortages, capacity reductions, and the need to explore out-sourcing sterilization of IOLs to reduce EtO usage. This would negatively impact national security by affecting U.S. military and veteran use of IOLs produced at the AODC facility, as well as the stability of U.S. markets, and potentially leave multiple millions of Americans in the general population dependent on imported IOLs for their sight. For these reasons, ALCON Research Ltd., requests a two-year exemption from the April 24, 2024, EtO NESHAP, as provided for in Section 112(i)(4) of the Clean Air Act.

In addition to the federal regulations, the April 5, 2024, EtO NESHAP has been adopted by reference at W. Va. Code R. § 45-34, as a federal counterpart regulation, in accordance with W. Va. Code § 22-5-4. Accordingly, ALCON requests that the two-year exemption equally apply to the West Virginia regulations.

Moreover, given the significant resource expenditure that will be required for AODC to attempt to comply with the Rule, the minimal environmental gain given the unique design of the AODC facility, and the potential impacts to AODC's quality control process, ALCON believes the EtO NESHAP Rule should be rescinded as applied to the AODC facility. ALCON also welcomes any future opportunity to provide EPA with the technical information it requires to promulgate a revised EtO NESHAP Rule that will not negatively impact critical medical devices manufactured and sterilized at the ALCON AODC facility.

Thank you for your consideration.

Sincerely,

Childers, Candace Digitally signed by Childers, Candace
Date: 2025.03.31 14:53:06 -04'00'

Candace Childers
Vice President, Manufacturing Plant Manager
245 Kyle Lane
Huntington, WV 25702
Candace.Childers@alcon.com

Submitted on behalf of ALCON Research Ltd., ALCON Advance Optic Device Center, North Facility, 2 Vision Lane, Lesage, Cabell County, West Virginia 25537

cc: Michael Egnor, Air Toxic Coordinator
West Virginia Department of Environmental Protection
(via electronic mail - Michael.Egnor@wv.gov and DEPAirQualityReports@wv.gov)

B. Braun US Device Mfg. LLC
901 Marcon Blvd
Allentown, PA 18109

Telephone:
www.bbraunusa.com

Via Electronic Mail

March 31, 2025

United States Environmental Protection Agency
Office of Air and Radiation
1200 Pennsylvania Avenue, N.W.,
Washington, DC 20460
airaction@epa.gov

CONTAINS CONFIDENTIAL COMMERCIAL INFORMATION – EXEMPT FROM DISCLOSURE UNDER THE FREEDOM OF INFORMATION ACT

Re: Presidential Exemption Request: Ethylene Oxide Emissions Standards for Sterilization Facilities Residual Risk and Technology Review, 89 Fed. Reg. 24090 (Apr. 5, 2024), for B. Braun US. Device Manufacturing LLC's Allentown Facility

To Whom it May Concern:

B. Braun US Device Manufacturing LLC[1] ("BB Device" or the "Company") requests a Clean Air Act Section 112 Presidential Exemption. BB Device respectfully requests President Trump exercise his authority under section 112(i)(4) of the Clean Air Act ("CAA") to grant BB Device a two-year exemption to comply with the requirements of the EPA's final rule "National Emission Standards for Hazardous Air Pollutants: Ethylene Oxide Emissions Standards for Sterilization Facilities Residual Risk and Technology Review"[2] (hereafter the "2024 Rule"). BB Device requests a two-year exemption from all compliance deadlines for the 2024 Rule including: (i) all standards and requirements related to CAA Section 112(f); and (ii) all standards and requirements related to CAA Section 112(d). BB Device requests this exemption for its medical device manufacturing facility located at 901 Marcon Blvd., Allentown PA 18109 (the "Allentown Manufacturing Facility").

BB Device takes its commitments to the environment seriously and has invested significant time, energy, and resources to timely comply with the 2024 Rule. BB Device has made significant progress towards that goal. However, the lack of availability of

[1] Prior to May 1, 2024, the Allentown Manufacturing Facility was owned and operated by B. Braun Medical, Inc. Due to corporate restructuring, as of May 1, 2024, the Allentown Manufacturing Facility is owned and operated by B. Braun US Device Manufacturing LLC.
[2] 89 Fed. Reg. 24090 (Apr. 5, 2024).

proven technology needed to comply with the current version of the 2024 Rule, related national security issues as a result of the impact on supply of sterilized medical products, and the EPA's recent decision to reconsider the 2024 Rule "in its entirety", make a two-year compliance exemption necessary and appropriate.

I. The Current 2024 Rule Requires Technology in Limited Supply or Unavailable

The 2024 Rule's current standards present significant challenges regarding available technology. BB Device, and its predecessor B. Braun Medical Inc., have spent decades investing in ethylene oxide abatement equipment for the Allentown Manufacturing Facility that meets or exceeds EPA standards. Consistent with our history of regulatory compliance and safety, BB Device worked hard and invested significant resources to put itself in a position to comply with many of the technology requirements set forth in the 2024 Rule. Recently, between 2020-2022, BB Device invested millions in new abatement and monitoring equipment. Even with all of BB Device's preparations, there are real issues with the availability of certain technologies.

Practically, even if the necessary technologies exist, they are in limited supply. The 2024 Rule sets new destruction removal efficiency standards ("DRE") for many aspects of the sterilization process, and the Rule changes how DREs are calculated—requiring sterilizers to achieve these DREs on a thirty-day rolling average. If the technology does exist to comply with these requirements, it is scarce, and requires facility redesigns, equipment customization, installation, testing, and validation. Considering the number of sterilization facilities across the country that will need the same upgrades, many will not be able to meet the current deadlines.

There are also questions about whether any currently available technology can achieve the DRE requirements in the 2024 Rule. By way of example, in 2020, BB Device installed a customized EtO abatement system that controls its sterilization chamber vents and has a proven stack test DRE of more than 99.9%. Although BB Device believes the system may be able to achieve the 99.99% DRE standard under the 2024 Rule through innovations and adjustments, that has not been proven. Achieving the 2024 Rule's required DRE over a 30-day average raises concerns and questions for all of its sterilization vents.

If the necessary technology to bring sterilizers in compliance with the 2024 Rule is unavailable, there are no proven alternative sterilization methods to sterilize all medical devices. The FDA[3] acknowledged: "[f]or many medical devices, sterilization

[3] FDA, *Sterilization for Medical Devices* available at https://www.fda.gov/medical-devices/general-hospital-devices-and-supplies/sterilization-medical-devices#:~:text=Medical%20devices%20are%20sterilized%20in,acid%2C%20and%20nitrogen%20dioxide) (last updated: November 26, 2024); *see also* EPA, *Additional Questions About Ethylene Oxide*, available at https://www.epa.gov/hazardous-air-pollutants-ethylene-

with ethylene oxide may be the only method that effectively sterilizes and does not damage the device during the sterilization process." Even if an alternative sterilization method is identified, it will take years to test, install, and scale that process. Ex. 4 CBI

Ex. 4 CBI

II. Without an Exemption, Sterilizers May be Forced to Shut Down, Which Would Eliminate Necessary Medical Devices From the Market and Threaten National Security

Any facility that cannot comply with the 2024 Rule's deadlines would need to shut down its sterilization operations, which would place national security at risk because it would reduce the number of life-saving medical devices available in the US Market.

BB Device manufactures crucial life-saving devices at the Allentown Manufacturing Facility for patients throughout the country. As just one example, BB Device is a U.S. Market leader in regional anesthesia.[4] If the Allentown Manufacturing Facility was no longer able to sterilize its epidural kits, it would create a severe nationwide shortage. Medical supply shortages can be sudden and unexpected, such as when Hurricane Helene damaged a manufacturing facility in the fall of 2024, which led to nationwide shortages for intravenous products.[5] Shortages place the public at risk and add an additional layer of uncertainty to healthcare. Ex. 4 CBI

Ex. 4 CBI

oxide/additional-questions-about-ethylene-oxide-eto#:~:text=As%20of%20now%2C%20EtO%20is,to%20patients%2C%20especially%20during%20surgery (last updated January 14, 2025).

[4] 2020Q4 All Regional Anesthesia Products: Total Market HC & OPM Dollars (GHX, IQVIA [MDSA] & B. Braun Data On File)

[5] FDA, *Hurricane Helene: Baxter's Manufacturing Recovery in North Carolina*, available at https://www.fda.gov/drugs/updates-2024-hurricane-season/hurricane-helene-baxters-manufacturing-recovery-north-carolina (last updated March 18, 2025).

CONTAINS CONFIDENTIAL COMMERCIAL INFORMATION

If the Allentown Manufacturing Facility could not sterilize and ship its products, other manufacturers do not have the capacity to make up the shortfall and would need to decrease the manufacture of other products made in the ordinary course of business. Further, BB Device would not be able to simply move all of its products to contract sterilization overnight. Contract sterilizers do not have unlimited capacity, and if multiple manufacturers have their sterilization operations shut down because of the 2024 Rule, it would compound those capacity constraints.

III. EPA's Reconsideration of the 2024 Rule

The EPA announced its intent to reconsider the 2024 Rule "in its entirety", and stated that "some or all" provisions of the Rule may be revised. On March 25, 2025, the EPA filed a brief with the Court of Appeals for the District of Columbia, in which the EPA told the Court that "EPA has decided to reconsider the 2024 Rule ***in its entirety***."[6] The EPA explained that it "anticipates its reconsideration of the Rule will involve further rulemaking that could revise or rescind ***some or all of the portions of the Rule***."[7]. In support of its position, the EPA included as an exhibit a March 21, 2025, letter from Abigale Tardif, Principal Deputy Assistant Administrator of the Office of Air and Radiation that stated the EPA was reconsidering the 2024 Rule[8], including its authority and decision to undertake a second residual risk review and the resulting risk standards. The EPA's stated goal is to complete its reconsideration by March 2026.[9]

With the entire 2024 Rule under reconsideration, it is possible the EPA will "revise or rescind" some or "all" aspects of the 2024 Rule. Under those circumstances a two-year compliance exemption is both appropriate and necessary. Until the reconsideration process is complete it will be impossible for any sterilizer to ensure its operations comply with any changes or revisions that may be made to the Rule.

IV. Confidentiality

Ex. 4 CBI

[6] *See* Petitioner's Br., P. 10, *Ethylene Oxide Sterilization Association et al. v. U.S. Environmental Protection Agency et al.,* (D.C. Cir., 2025) (emphasis added).
[7] *Id.* At 4-5 (emphasis added).
[8] *See* EPA Letter to EOSA (Mar. 21, 2025).
[9] *Id.* at 9.

CONTAINS CONFIDENTIAL COMMERCIAL INFORMATION

Ex. 4 CBI

For all these reasons, BB Device respectfully requests a two-year exemption from all compliance deadlines set forth in the 2024 Rule. Please do not hesitate to contact me with any questions, or if any further information is needed.

Kind Regards,

Mike Bartholomew
President
B. Braun US Device Manufacturing, LLC
901 Marcon Blvd
Allentown, PA 18109

Request for Presidential Exemption:

National Emissions Standards for Hazardous Air Pollutants: Ethylene Oxide Emissions Standards for Sterilization Facilities Residual Risk and Technology Review (89 FR 24090; April 5, 2024) (Sterilizer Rule): DeRoyal Industries, Inc., 1135 and 1211 Highway 33 South (Two Facilities), New Tazewell, TN 37825

About DeRoyal Industries, Inc.: DeRoyal is a global medical device manufacturer headquartered in Powell, Tennessee, with over 50 years of experience serving the healthcare industry. The company offers a vast portfolio of products across several distinct markets, including surgical and safety devices, orthopedic bracing and supports, custom procedure trays, wound care products, and inventory management technologies. As one of the most vertically integrated companies in medical device manufacturing, DeRoyal has sterilized products for itself and others over the last 40 years.

Emissions standards or limitations subject to the request:

National Emissions Standards for Hazardous Air Pollutants: Ethylene Oxide Emissions Standards for Sterilization Facilities Residual Risk and Technology Review (89 FR 24090; April 5, 2024) (Sterilizer Rule)

Facility(ies) and/or affected source(s):

- 1135 Highway 33 South, New Tazewell, TN 37825
- 1211 Highway 33 South, New Tazewell, TN 37825

Length of compliance period being requested:

2 years

Why the technology to implement the standard is not available:

The U.S. Environmental Protection Agency ("EPA") published final amendments to its Sterilizer Rule in March 2024. The Sterilizer Rule sets forth extensive requirements for commercial sterilizers to reduce air emissions of ethylene oxide ("EtO"), install systems for continuous monitoring of air emissions, and report monitoring data to the agency.

The Sterilizer Rule includes stricter emissions control standards for chamber sterilization vents and aeration room vents and new standards for previously unregulated emissions sources such as chamber exhaust vents and "room air emissions," also known as fugitive emissions. The strictness of the rule's emissions control standards varies based on the volume of EtO used by a facility. For large volume sterilizers, the emissions control standards changed significantly:

- Sterilization chamber vent: continuously reduce EtO emissions by 99.99% *(previously 99% except during startup, shut down and malfunction)*
- Aeration room vent: continuously reduce EtO emissions by 99.9% *(previously 99% except during startup, shut down and malfunction)*
- Chamber exhaust vent: continuously reduce EtO emissions by 99.9% *(previously unregulated)*
- Room air emissions (Group 1 and Group 2 emissions): contain all room air emissions within a permanent total enclosure (per EPA Method 204) and continuously reduce EtO emissions by 98% *(previously unregulated)*

Notably, several rule changes were made to emissions standards with the publication of the final Sterilizer Rule that were not provided in the proposed rule for public comment.[1] An important example is the change from 99.94 percent emission reduction for sterilization chamber vents for ETO use of at least 40 tpy to 99.99 percent emission reduction. It remains unclear at this time that the technology available for purchase meets the stringent requirements of the final rule regarding emission limitations. There is significant concern that the available emission control equipment will consistently achieve 99.99% destruction removal efficiency. However, it is certain that these unannounced changes made at the finish line in the rule-making process moved the target that commercial sterilizers were pushing towards in their compliance plans.

The Sterilizer Rule also makes clear that emissions standards apply during startup, shutdown, and malfunction. This is a new requirement. The particular lack of exemption for a malfunction is extremely onerous. Indeed, other NESHAPs have implemented less stringent alternative emission limits or work practice standards during startup, shutdown and malfunction periods of operation. Malfunctions are neither predictable nor routine. Due to the nature of sterilization operations and various stages of sterilization cycles, commercial sterilizers must be able to address malfunctions that could result in a potential risk to the employees and/or facility without the risk of automatically being in noncompliance.

EPA's determination of 10 ppb as the lowest level at which current technology can measure EtO is based on the potential make-up of emissions streams and the "belief" that this is the lowest level that can be demonstrated and replicated across a wide range of emission profiles.[2] Emission profiles are dependent upon inlet and outlet concentrations making it difficult to establish a 99.99% destruction removal efficiency, especially at lower concentrations. It is still undetermined whether current technologies can reliably provide continuous emissions monitoring at these varying concentrations. Without technologies with efficacy to continuously measure the emissions standards to that level for all emissions profiles, compliance cannot be demonstrated with the emission limits set forth in the Sterilizer Rule. While the EPA has stated that it expects "EtO CEMS manufacturers, measurement companies, and laboratories will continue to improve EtO detection levels,"[3] it is unknown

[1] Sterilizer Rule, 89 FR 24123, April 5, 2024.
[2] *Id.*
[3] Sterilizer Rule, 89 FR 24108, April 5, 2024.

how long it may take EtO CEMS manufacturers, measurement companies, and laboratories to make and validate improvements. However, the industry is certain that more time is needed.

Ex. 4 CBI

DeRoyal appreciates that EPA changed the 18-month compliance period to 2 years in recognition of supply chain issues related to technology needs. Ex. 4 CBI

Ex. 4 CBI

Finally, it is this company's belief that all commercial sterilizers have undergone some element of redesign. This redesign (and any new design) has prolonged the supply chain backlog considering that there is one experienced engineering firm and one vendor for necessary control equipment.

Why an extension is in the national security interests of the United States:

Ethylene oxide sterilization is a method of sterilization that manufacturers widely use to keep medical devices safe. For many medical devices, sterilization with ethylene oxide is the only method that effectively sterilizes and does not damage the device during the sterilization process. Medical devices made from certain polymers (plastic or resin), metals, or glass, or that have multiple layers of packaging or hard-to-reach places are likely sterilized with ethylene oxide. Literature shows that about fifty percent of all sterile medical devices in the U.S. are sterilized with ethylene oxide.[4]

[4] U.S. Food and Drug Administration, https://www.fda.gov/medical-devices/general-hospital-devices-and-supplies/sterilization-medical-devices#FC, accessed March 27, 2025.

According to the U.S. Cybersecurity & Infrastructure Security Agency ("CISA"), a program under the U.S. Department of Homeland Security, the national security of healthcare and public health serves to protect all critical infrastructure sectors of the U.S. economy from hazards such as terrorism, infectious disease outbreak and national disasters by providing continuity of operations and service delivery.[5] In other words, the healthcare and public health sector's ability to manage risk and respond to emergencies safely and effectively (whether at a national or everyday American level) is paramount to the security and well-being of this country.

As an illustration of the importance of sterilization to healthcare, the types of devices that are sterilized with ethylene oxide range from devices used in general health care practices (for example, wound dressings) to more specialized devices used to treat specific areas of the body (for example, stents) to personal protective equipment necessary for infection control (for example, surgical gloves and gowns). Without resilient supply of these types of sterile devices, safe and effective healthcare cannot be provided.

Turning to the Sterilizer Rule, EPA's last-minute rule changes to and short implementation of its Sterilizer Rule, combined with the technology concerns outlined above, places America's security and well-being in jeopardy by challenging the resiliency of the healthcare supply chain. As a result, commercial sterilizers, their equipment manufacturers and environmental engineers require more time to determine a path to compliance.

As discussed above, several rule changes were made to emission standards with the publication of the final rule that were not provided in the proposed rule for public comment. These changes made at the finish line in the rule-making process moved the target that commercial sterilizers were pushing towards in their compliance plans.

After moving compliance targets, and being well-informed during the comment period of the supply-chain concerns for engineering services and technology,[6] EPA issued a compliance period of only 2-years from publication of the final rule.

In addition, smaller commercial sterilizers are electing to close due to the requirements of the final rule. Further, any company that is unable to meet the compliance deadline will not be able to supply sterile medical devices from that date forward. Thus, when either of these situations occur, the capacity of commercial sterilization services in the U.S. is limited. This company is not aware of any additional sterilization capacity available to address these situations within the U.S. at this time. **If sterilization capacity is not available in the U.S., it will be unavoidable to obtain foreign-based services to maintain continuity of healthcare operations and services.**

[5] U.S. Cybersecurity & Infrastructure Security Agency, https://www.cisa.gov/topics/critical-infrastructure-security-and-resilience/critical-infrastructure-sectors/healthcare-and-public-health-sector, accessed March 27, 2025.

[6] Environmental Protection Agency, Summary of Public Comments and Response for Risk and Technology Review for Ethylene Oxide Commercial Sterilization Facilities, pp.334-359, February 2024.

Finally, the provision of additional time ties directly to national security concerns within the country's critical infrastructure related to healthcare safety and the availability of domestic manufacturing and processing of critical medical supplies.

In closing:

To make the emission standard changes as late as the publication of the final rule and to maintain a short compliance period has been detrimental to many commercial sterilizers. [redacted]

Ex. 4 CBI

Respectfully Submitted,

Brian C. DeBusk
CEO & President
DeRoyal Industries, Inc.

From: DConnor@Sterilization-Services.com
To: AirAction
Subject: Presidential Exemption: Sterilizer Rule (89 FR 24090): Sterilization Services of Georgia, Inc.
Date: Monday, March 31, 2025 3:57:40 PM
Attachments: image001.png
EOSA Letter re NESHAP - 2025-03-17.pdf

Caution: This email originated from outside EPA, please exercise additional caution when deciding whether to open attachments or click on provided links.

I write on behalf of Sterilization Services of Georgia, Inc. to request that the President issue a two-year exemption pursuant to his authority under CAA Section 112(i)(4) for all emission standards and associated requirements set or revised in EPA's April 4, 2024 *National Emission Standards for Hazardous Air Pollutants: Ethylene Oxide Emissions Standards for Sterilization Facilities Residual Risk and Technology Review*, 89 FR 24090 (April 5, 2024) (Sterilizer Rule).

Sterilization Services of Georgia, Inc. requests that the President issue a two-year exemption as quickly as possible, but designate it as taking effect on the compliance deadlines for the standards in the Sterilizer Rule. Specifically:

- For standards set or revised under CAA Section 112(f) and all corresponding requirements (including monitoring requirements), the exemption should apply as of April 6, 2026 (the compliance deadline for those standards);

- For standards set or revised under CAA Section 112(d) and all corresponding requirements (including monitoring requirements), the exemption should apply as of April 5, 2027 (the compliance deadlines for those standards).

As explained further in the attached letter submitted to EPA on March 17 on behalf of the Ethylene Oxide Sterilization Association (EOSA), the technology necessary to implement the standards is not available because manufacturers cannot guarantee that existing emissions control equipment will enable sources to meet the new standards; there is not a sufficient supply of the necessary technology; and there are not enough experienced installation professional and technical experts to install and test that equipment within the current compliance timeframes.

As also explained further in EOSA's March 17 letter, it is in the national security interests of the United States to issue the requested exemption because if some facilities choose to cease operations rather than attempt compliance (which is likely), that will disrupt the supply of sterilized medical devices, raise the cost of those devices, and/or force medical suppliers or providers to source sterilized medical devices from abroad.

Please don't hesitate to let me know if any additional information is needed. Sterilization Services of Georgia, Inc. appreciates EPA's attention to this important matter and urges EPA to recommend that the President issue the requested exemption as quickly as possible.



David Connor, General Manager
Sterilization Services of Georgia, Inc. (SSG)

6005 Boat Rock Boulevard SW
Atlanta, GA 30336
Office: (404) 344-8423
Cell: (804) 929-5422
Email: DConnor@Sterilization-Services.com
www.Sterilization-Services.com

From: DConnor@Sterilization-Services.com
To: AirAction
Subject: Presidential Exemption: Sterilizer Rule (89 FR 24090): Sterilization Services of Virginia, Inc.
Date: Monday, March 31, 2025 3:57:46 PM
Attachments: image002.png
EOSA Letter re NESHAP - 2025-03-17.pdf

Caution: This email originated from outside EPA, please exercise additional caution when deciding whether to open attachments or click on provided links.

I write on behalf of Sterilization Services of Virginia, Inc. to request that the President issue a two-year exemption pursuant to his authority under CAA Section 112(i)(4) for all emission standards and associated requirements set or revised in EPA's April 4, 2024 *National Emission Standards for Hazardous Air Pollutants: Ethylene Oxide Emissions Standards for Sterilization Facilities Residual Risk and Technology Review*, 89 FR 24090 (April 5, 2024) (Sterilizer Rule).

Sterilization Services of Virginia, Inc. requests that the President issue a two-year exemption as quickly as possible, but designate it as taking effect on the compliance deadlines for the standards in the Sterilizer Rule. Specifically:

- For standards set or revised under CAA Section 112(f) and all corresponding requirements (including monitoring requirements), the exemption should apply as of April 6, 2026 (the compliance deadline for those standards);

- For standards set or revised under CAA Section 112(d) and all corresponding requirements (including monitoring requirements), the exemption should apply as of April 5, 2027 (the compliance deadlines for those standards).

As explained further in the attached letter submitted to EPA on March 17 on behalf of the Ethylene Oxide Sterilization Association (EOSA), the technology necessary to implement the standards is not available because manufacturers cannot guarantee that existing emissions control equipment will enable sources to meet the new standards; there is not a sufficient supply of the necessary technology; and there are not enough experienced installation professional and technical experts to install and test that equipment within the current compliance timeframes.

As also explained further in EOSA's March 17 letter, it is in the national security interests of the United States to issue the requested exemption because if some facilities choose to cease operations rather than attempt compliance (which is likely), that will disrupt the supply of sterilized medical devices, raise the cost of those devices, and/or force medical suppliers or providers to source sterilized medical devices from abroad.

Please don't hesitate to let me know if any additional information is needed. Sterilization Services of Virginia, Inc. appreciates EPA's attention to this important matter and urges EPA to recommend that the President issue the requested exemption as quickly as possible.

David Connor, General Manager
Sterilization Services of Virginia, Inc. (SSV)

5674 Eastport Boulevard
Richmond, VA 23231-4446
Office: (804) 236-1652 ext. 115
Cell: (804) 929-5422
Email: DConnor@Sterilization-Services.com
www.Sterilization-Services.com

Message

From: Brotherman, Thomas M [TMBrotherman@CPSEnergy.com]
Sent: 6/26/2025 7:49:17 PM
To: Szabo, Aaron [Szabo.Aaron@epa.gov]; Tardif, Abigale (Abbie) [Tardif.Abigale@epa.gov]; AirAction [AirAction@epa.gov]
CC: Brockmann, Curt D. [CDBrockmann@CPSEnergy.com]; Tieken, Gregg R. [GRTieken@CPSEnergy.com]; Clyde, Lisa [MAClyde@cpsenergy.com]
Subject: CPS Energy MATS Presidential Exemption Request
Attachments: CPS Energy MATS Presidential Exemption Request.pdf

Some people who received this message don't often get email from tmbrotherman@cpsenergy.com. Learn why this is important

Caution: This email originated from outside EPA, please exercise additional caution when deciding whether to open attachments or click on provided links.

Attached is CPS Energy's request for Presidential Exemption of MATS Compliance Obligations for CPS Energy's J K Spruce Unit 1 and 2 coal fired power plants. Thank you for your consideration.

Tom Brotherman
Environmental Analyst | Environmental & Sustainability Services
CPS Energy | 500 McCullough, San Antonio, Texas 78215 | MD: RT0601
Office: 210.353.3924 | Mobile: 210.255.7622
cpsenergy.com

Message

From: EPA Press [EPAPress@govdelivery.epa.gov]
Sent: 3/13/2026 3:10:38 PM
To: Szabo, Aaron [szabo.aaron@epa.gov]
Subject: EPA Releases Proposal for Commercial Sterilizers to Safeguard the Supply of Life-Saving Medical Tools

View as a webpage / Share

EPA Releases Proposal for Commercial Sterilizers to Safeguard the Supply of Life-Saving Medical Tools

March 13, 2026

Contact Information

EPA Press Office (press@epa.gov)

WASHINGTON — U.S. Environmental Protection Agency (EPA) proposed amendments to the Biden-era 2024 National Emissions Standards for Hazardous Air Pollutants (NESHAP) for Ethylene Oxide (EtO) Commercial Sterilization Facilities to ensure consistency with the law and gold standard science. EtO is the only safe and effective sterilization method available for many medical devices, making it indispensable for life-saving medical equipment including heart valves, pacemakers, surgical kits, gowns, drapes, ventilators, syringes, and catheters—medical equipment that newborns, the elderly, and Americans undergoing surgery rely on daily to survive. EPA is concerned that the current Biden-era EtO emission standards actively threaten facilities' ability to sterilize equipment and jeopardize one of America's only options for a secure domestic supply chain of essential medical equipment. EPA is committed to a rulemaking process that follows the law, ensures that regulation will not put countless lives at risk, and advances the agency's core mission of protecting human health and the environment, including minimizing Americans' unnecessary exposure to EtO.

> *"This proposed rule shows EPA's strong commitment to protecting people's health while maintaining a stable domestic medical supply chain," **said EPA Administrator Lee Zeldin**. "The Trump EPA is committed to ensuring life-saving medical devices*

remain available for the critical care of America's children, elderly, and all patients without unnecessary exposure to communities."

Congress deliberately designed CAA section 112 with detailed implementation timelines and requirements for residual risk reviews of Maximum Achievable Control Technology (MACT) standards in NESHAP rules. In 2024, however, the Biden-Harris EPA took the unprecedented step of conducting a second, "discretionary" residual risk review despite already completing the residual risk review required by law within eight years of promulgating the NESHAP. This second risk review, done in apparent contravention of the best reading of the statute using an almost decade old risk-based value for EtO, led to the 2024 EtO Commercial Sterilizer Final Rule (2024 NESHAP). During and following the promulgation of the Biden-Harris Administration's 2024 NESHAP, the medical community, industry stakeholders and other federal agencies, including the U.S. Food and Drug Administration, raised serious concerns. These concerns included the feasibility of complying with the more stringent EtO emission standards and the significant impacts the requirements would have on maintaining a strong domestic supply chain for sterilized medical equipment essential to saving American lives. Commercial sterilizers utilize EtO to sterilize 50 percent of all medical devices in the U.S. every year—or 20 billion medical devices—with no viable alternative on the market.

As a result of the 2024 NESHAP, the Biden-Harris Administration was forced in January 2025 to establish a Presidential exemption process from the administration's own rule due to facilities' inability to meet required standards before compliance deadlines, and the grave risk that the closures of these facilities posed to American lives. In response to legal, scientific and policy concerns, including the critical medical supply chain issue the U.S. faced due to the 2024 NESHAP rule, the Trump EPA issued a press release on March 12, 2025, announcing its reconsideration of the 2024 NESHAP, and on March 21, 2025, formally granted voluntary reconsideration.

With this rule, EPA is proposing that section 112(f)(2) of the CAA prevents EPA from conducting more than the one risk review EPA completed in 2006. Therefore, the second risk review the Biden EPA conducted in 2024 violated the CAA and should never been completed. In line with congressional intent, EPA is proposing to remove the risk-based CAA section 112(f)(2) standards which justified the 2024 NESHAP. EPA is also proposing to change other requirements that were promulgated from the standards, including the requirement to use continuous emission monitoring systems, technology review standards for new aeration room vents (ARV), and requirements for permanent total enclosure. If finalized as proposed, the Trump EPA's rule would give facilities the choice between installing a new monitoring system or making adjustments to the 2024 EtO standards for technology review standards for new ARV where EtO is greater than ten tons per year. These changes better reflect the complexity of facilities and give them the flexibility to work to use safe and effective equipment to sterilize medical tools and devices without compromising clean air for all Americans. EPA is proposing to keep the 2024 NESHAP standards consistent with the CAA and that result in facilities installing attainable emission controls consistent with the latest required technology review. The Trump EPA is committed to following the law exactly as it is written, while also ensuring standards effectively protect human health and the environment.

Since 2016, new information, including new epidemiological studies, advancements in statistical methods related to dose-response modeling have continued to emerge. It is known that EtO is produced within the body via normal processes and additionally from tobacco smoke or other combustion processes. As part of this rulemaking, EPA is seeking comment on new information related to these sources of EtO exposure. EPA anticipates this information would be useful for updating the agency's understanding of EtO exposure and toxicity and determining whether the 2016 EtO IRIS value remains suitable for estimating risk to inform regulatory decision-making, including the proposed amendments

announced today. The agency will also consider comments regarding the Texas Commission of Environmental Quality's 2020 finalized alternative assessment of EtO's toxicity and potential to cause cancer or other alternative values not yet considered by the agency.

EPA estimates that this proposed action would save approximately $630 million in costs over 20 years, or about $43 million annually, not including the immeasurable value of the countless lives that would be saved from lethal or significantly debilitating infections that would result without properly sterilized medical equipment.

EPA will accept public comments on this proposal for 45 days after it is published in the *Federal Register*. EPA will hold a virtual public hearing for this proposed action 15 days after publication in the *Federal Register*.

For more information about this rulemaking and further details about the public hearing, please visit here.

Background

EtO is a colorless gas that is critical to the medical device supply chain. The EtO Commercial Sterilization NESHAP regulates EtO emitted from commercial sterilization facilities. Commercial sterilization covers the sterilizer process that uses EtO to sterilize or fumigate materials such as medical equipment and supplies, spices, and other miscellaneous products and items. This process is designed to eliminate microorganisms including bacteria, viruses, fungi, and protists from products to ensure they are safe for human use and consumption.

EtO sterilization plays a key role in the medical device supply chain, sterilizing a variety of devices ranging from general health care items, such as wound dressings, to specialized devices, such as stents. For many heat- and moisture-sensitive products, EtO sterilization is the only method that effectively sterilizes a product without damaging it.

Today, there are about 90 commercial sterilization facilities owned and operated by approximately 50 companies. EPA issued the original NESHAP under section 112(d) of the CAA in 1994, establishing emission limits for sterilization chamber vents, ARVs, and catalytic oxidizer vents (CEVs). In 2001, EPA revised the NESHAP to remove requirements for CEVs due to equipment failure. In 2006, EPA finalized a residual risk and technology review under CAA sections 112(f)(2) and (d)(6) with no further changes. On April 5, 2024, EPA finalized amendments to the EtO Sterilizers NESHAP based on the results of a residual risk and technology review outside the scope of CAA statutory authority.

EPA.GOV

Stay Connected with EPA Office of the Administrator:

SUBSCRIBER SERVICES:
Manage Subscriptions | Unsubscribe All | Help

STEVE COHEN
9TH DISTRICT, TENNESSEE
2268 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC 20515

TELEPHONE: (202) 225-3265
FAX: (202) 225-5663

ODELL HORTON FEDERAL BUILDING
167 NORTH MAIN STREET
SUITE 369
MEMPHIS, TN 38103

TELEPHONE: (901) 544-4131
FAX: (901) 544-4329

WWW.COHEN.HOUSE.GOV

Congress of the United States
House of Representatives
Washington, DC 20515-4209

COMMITTEE ON THE JUDICIARY

COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE

COMMISSION ON SECURITY AND COOPERATION IN EUROPE (U.S. HELSINKI COMMISSION)

March 31, 2025

The Honorable Lee Zeldin
Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Ave NW
Washington, DC 20460

Dear Administrator Zeldin,

I am writing to request a comprehensive list of companies that have a headquarters or facility within Tennessee's Ninth Congressional District that have requested a Presidential Exemption under the Clean Air Act, as outlined by the EPA on March 24, 2025.

Several communities in Memphis, and especially in Southwest Memphis, have long endured the cumulative effects of industrial pollution, resulting in higher rates of respiratory illness, cancer and other chronic health conditions. The potential for companies operating in these areas to obtain exemptions from critical environmental safeguards under the Clean Air Act would further exacerbate these public health disparities and increase the risk of long-term environmental harm.

In addition to the names of any companies that operate within Tennessee Ninth Congressional District that requested this exemption, please also include the details of their exemption request, including any emissions standards or limitations subject to the request, facility(ies) and/or affected sources, the length of compliance period being requested, any explanation why the technology to implement the standard is not available, and any explanation why an extension is in the national security interests of the United States. Please also include which of these companies, if any, expressed an intention to submit proprietary information.

I would also like to know how your agency plans to announce which companies are granted a presidential exemption and which applied but were denied. I expect all of this information to be made easily available to the public, as the Trump Administration repeatedly states that it is the "most transparent administration in history."

Given the existing concerns and the pressing need for stronger protections, I believe it is imperative for the community to understand which companies may be seeking to circumvent current regulations.

I appreciate your attention to this urgent request and look forward to receiving the information about requests to be exempted from the Clean Air Act by the close of this business week.

As always, I remain,

Most sincerely,

Steve Cohen
Member of Congress

Message

From: EPA Press [EPAPress@govdelivery.epa.gov]
Sent: 3/13/2026 3:10:37 PM
To: Tisa, Nathaniel [tisa.nathaniel@epa.gov]
Subject: EPA Releases Proposal for Commercial Sterilizers to Safeguard the Supply of Life-Saving Medical Tools

View as a webpage / Share

EPA.GOV/NEWSROOM

EPA Releases Proposal for Commercial Sterilizers to Safeguard the Supply of Life-Saving Medical Tools

March 13, 2026

Contact Information

EPA Press Office (press@epa.gov)

WASHINGTON — U.S. Environmental Protection Agency (EPA) proposed amendments to the Biden-era 2024 National Emissions Standards for Hazardous Air Pollutants (NESHAP) for Ethylene Oxide (EtO) Commercial Sterilization Facilities to ensure consistency with the law and gold standard science. EtO is the only safe and effective sterilization method available for many medical devices, making it indispensable for life-saving medical equipment including heart valves, pacemakers, surgical kits, gowns, drapes, ventilators, syringes, and catheters—medical equipment that newborns, the elderly, and Americans undergoing surgery rely on daily to survive. EPA is concerned that the current Biden-era EtO emission standards actively threaten facilities' ability to sterilize equipment and jeopardize one of America's only options for a secure domestic supply chain of essential medical equipment. EPA is committed to a rulemaking process that follows the law, ensures that regulation will not put countless lives at risk, and advances the agency's core mission of protecting human health and the environment, including minimizing Americans' unnecessary exposure to EtO.

> *"This proposed rule shows EPA's strong commitment to protecting people's health while maintaining a stable domestic medical supply chain,"* ***said EPA Administrator Lee Zeldin****. "The Trump EPA is committed to ensuring life-saving medical devices*

remain available for the critical care of America's children, elderly, and all patients without unnecessary exposure to communities."

Congress deliberately designed CAA section 112 with detailed implementation timelines and requirements for residual risk reviews of Maximum Achievable Control Technology (MACT) standards in NESHAP rules. In 2024, however, the Biden-Harris EPA took the unprecedented step of conducting a second, "discretionary" residual risk review despite already completing the residual risk review required by law within eight years of promulgating the NESHAP. This second risk review, done in apparent contravention of the best reading of the statute using an almost decade old risk-based value for EtO, led to the 2024 EtO Commercial Sterilizer Final Rule (2024 NESHAP). During and following the promulgation of the Biden-Harris Administration's 2024 NESHAP, the medical community, industry stakeholders and other federal agencies, including the U.S. Food and Drug Administration, raised serious concerns. These concerns included the feasibility of complying with the more stringent EtO emission standards and the significant impacts the requirements would have on maintaining a strong domestic supply chain for sterilized medical equipment essential to saving American lives. Commercial sterilizers utilize EtO to sterilize 50 percent of all medical devices in the U.S. every year—or 20 billion medical devices—with no viable alternative on the market.

As a result of the 2024 NESHAP, the Biden-Harris Administration was forced in January 2025 to establish a Presidential exemption process from the administration's own rule due to facilities' inability to meet required standards before compliance deadlines, and the grave risk that the closures of these facilities posed to American lives. In response to legal, scientific and policy concerns, including the critical medical supply chain issue the U.S. faced due to the 2024 NESHAP rule, the Trump EPA issued a press release on March 12, 2025, announcing its reconsideration of the 2024 NESHAP, and on March 21, 2025, formally granted voluntary reconsideration.

With this rule, EPA is proposing that section 112(f)(2) of the CAA prevents EPA from conducting more than the one risk review EPA completed in 2006. Therefore, the second risk review the Biden EPA conducted in 2024 violated the CAA and should never been completed. In line with congressional intent, EPA is proposing to remove the risk-based CAA section 112(f)(2) standards which justified the 2024 NESHAP. EPA is also proposing to change other requirements that were promulgated from the standards, including the requirement to use continuous emission monitoring systems, technology review standards for new aeration room vents (ARV), and requirements for permanent total enclosure. If finalized as proposed, the Trump EPA's rule would give facilities the choice between installing a new monitoring system or making adjustments to the 2024 EtO standards for technology review standards for new ARV where EtO is greater than ten tons per year. These changes better reflect the complexity of facilities and give them the flexibility to work to use safe and effective equipment to sterilize medical tools and devices without compromising clean air for all Americans. EPA is proposing to keep the 2024 NESHAP standards consistent with the CAA and that result in facilities installing attainable emission controls consistent with the latest required technology review. The Trump EPA is committed to following the law exactly as it is written, while also ensuring standards effectively protect human health and the environment.

Since 2016, new information, including new epidemiological studies, advancements in statistical methods related to dose-response modeling have continued to emerge. It is known that EtO is produced within the body via normal processes and additionally from tobacco smoke or other combustion processes. As part of this rulemaking, EPA is seeking comment on new information related to these sources of EtO exposure. EPA anticipates this information would be useful for updating the agency's understanding of EtO exposure and toxicity and determining whether the 2016 EtO IRIS value remains suitable for estimating risk to inform regulatory decision-making, including the proposed amendments

announced today. The agency will also consider comments regarding the Texas Commission of Environmental Quality's 2020 finalized alternative assessment of EtO's toxicity and potential to cause cancer or other alternative values not yet considered by the agency.

EPA estimates that this proposed action would save approximately $630 million in costs over 20 years, or about $43 million annually, not including the immeasurable value of the countless lives that would be saved from lethal or significantly debilitating infections that would result without properly sterilized medical equipment.

EPA will accept public comments on this proposal for 45 days after it is published in the *Federal Register*. EPA will hold a virtual public hearing for this proposed action 15 days after publication in the *Federal Register*.

For more information about this rulemaking and further details about the public hearing, please visit here.

Background

EtO is a colorless gas that is critical to the medical device supply chain. The EtO Commercial Sterilization NESHAP regulates EtO emitted from commercial sterilization facilities. Commercial sterilization covers the sterilizer process that uses EtO to sterilize or fumigate materials such as medical equipment and supplies, spices, and other miscellaneous products and items. This process is designed to eliminate microorganisms including bacteria, viruses, fungi, and protists from products to ensure they are safe for human use and consumption.

EtO sterilization plays a key role in the medical device supply chain, sterilizing a variety of devices ranging from general health care items, such as wound dressings, to specialized devices, such as stents. For many heat- and moisture-sensitive products, EtO sterilization is the only method that effectively sterilizes a product without damaging it.

Today, there are about 90 commercial sterilization facilities owned and operated by approximately 50 companies. EPA issued the original NESHAP under section 112(d) of the CAA in 1994, establishing emission limits for sterilization chamber vents, ARVs, and catalytic oxidizer vents (CEVs). In 2001, EPA revised the NESHAP to remove requirements for CEVs due to equipment failure. In 2006, EPA finalized a residual risk and technology review under CAA sections 112(f)(2) and (d)(6) with no further changes. On April 5, 2024, EPA finalized amendments to the EtO Sterilizers NESHAP based on the results of a residual risk and technology review outside the scope of CAA statutory authority.

EPA.GOV

Stay Connected with EPA Office of the Administrator:

SUBSCRIBER SERVICES:
Manage Subscriptions | Unsubscribe All | Help

Message

From: EPA Press [EPAPress@govdelivery.epa.gov]
Sent: 3/13/2026 3:10:37 PM
To: Vaseliou, Molly [vaseliou.molly@epa.gov]
Subject: EPA Releases Proposal for Commercial Sterilizers to Safeguard the Supply of Life-Saving Medical Tools

View as a webpage / Share

EPA.GOV/NEWSROOM

EPA Releases Proposal for Commercial Sterilizers to Safeguard the Supply of Life-Saving Medical Tools

March 13, 2026

Contact Information

EPA Press Office (press@epa.gov)

WASHINGTON — U.S. Environmental Protection Agency (EPA) proposed amendments to the Biden-era 2024 National Emissions Standards for Hazardous Air Pollutants (NESHAP) for Ethylene Oxide (EtO) Commercial Sterilization Facilities to ensure consistency with the law and gold standard science. EtO is the only safe and effective sterilization method available for many medical devices, making it indispensable for life-saving medical equipment including heart valves, pacemakers, surgical kits, gowns, drapes, ventilators, syringes, and catheters—medical equipment that newborns, the elderly, and Americans undergoing surgery rely on daily to survive. EPA is concerned that the current Biden-era EtO emission standards actively threaten facilities' ability to sterilize equipment and jeopardize one of America's only options for a secure domestic supply chain of essential medical equipment. EPA is committed to a rulemaking process that follows the law, ensures that regulation will not put countless lives at risk, and advances the agency's core mission of protecting human health and the environment, including minimizing Americans' unnecessary exposure to EtO.

> *"This proposed rule shows EPA's strong commitment to protecting people's health while maintaining a stable domestic medical supply chain,"* ***said EPA Administrator Lee Zeldin****. "The Trump EPA is committed to ensuring life-saving medical devices*

remain available for the critical care of America's children, elderly, and all patients without unnecessary exposure to communities."

Congress deliberately designed CAA section 112 with detailed implementation timelines and requirements for residual risk reviews of Maximum Achievable Control Technology (MACT) standards in NESHAP rules. In 2024, however, the Biden-Harris EPA took the unprecedented step of conducting a second, "discretionary" residual risk review despite already completing the residual risk review required by law within eight years of promulgating the NESHAP. This second risk review, done in apparent contravention of the best reading of the statute using an almost decade old risk-based value for EtO, led to the 2024 EtO Commercial Sterilizer Final Rule (2024 NESHAP). During and following the promulgation of the Biden-Harris Administration's 2024 NESHAP, the medical community, industry stakeholders and other federal agencies, including the U.S. Food and Drug Administration, raised serious concerns. These concerns included the feasibility of complying with the more stringent EtO emission standards and the significant impacts the requirements would have on maintaining a strong domestic supply chain for sterilized medical equipment essential to saving American lives. Commercial sterilizers utilize EtO to sterilize 50 percent of all medical devices in the U.S. every year—or 20 billion medical devices—with no viable alternative on the market.

As a result of the 2024 NESHAP, the Biden-Harris Administration was forced in January 2025 to establish a Presidential exemption process from the administration's own rule due to facilities' inability to meet required standards before compliance deadlines, and the grave risk that the closures of these facilities posed to American lives. In response to legal, scientific and policy concerns, including the critical medical supply chain issue the U.S. faced due to the 2024 NESHAP rule, the Trump EPA issued a press release on March 12, 2025, announcing its reconsideration of the 2024 NESHAP, and on March 21, 2025, formally granted voluntary reconsideration.

With this rule, EPA is proposing that section 112(f)(2) of the CAA prevents EPA from conducting more than the one risk review EPA completed in 2006. Therefore, the second risk review the Biden EPA conducted in 2024 violated the CAA and should never been completed. In line with congressional intent, EPA is proposing to remove the risk-based CAA section 112(f)(2) standards which justified the 2024 NESHAP. EPA is also proposing to change other requirements that were promulgated from the standards, including the requirement to use continuous emission monitoring systems, technology review standards for new aeration room vents (ARV), and requirements for permanent total enclosure. If finalized as proposed, the Trump EPA's rule would give facilities the choice between installing a new monitoring system or making adjustments to the 2024 EtO standards for technology review standards for new ARV where EtO is greater than ten tons per year. These changes better reflect the complexity of facilities and give them the flexibility to work to use safe and effective equipment to sterilize medical tools and devices without compromising clean air for all Americans. EPA is proposing to keep the 2024 NESHAP standards consistent with the CAA and that result in facilities installing attainable emission controls consistent with the latest required technology review. The Trump EPA is committed to following the law exactly as it is written, while also ensuring standards effectively protect human health and the environment.

Since 2016, new information, including new epidemiological studies, advancements in statistical methods related to dose-response modeling have continued to emerge. It is known that EtO is produced within the body via normal processes and additionally from tobacco smoke or other combustion processes. As part of this rulemaking, EPA is seeking comment on new information related to these sources of EtO exposure. EPA anticipates this information would be useful for updating the agency's understanding of EtO exposure and toxicity and determining whether the 2016 EtO IRIS value remains suitable for estimating risk to inform regulatory decision-making, including the proposed amendments

announced today. The agency will also consider comments regarding the Texas Commission of Environmental Quality's 2020 finalized alternative assessment of EtO's toxicity and potential to cause cancer or other alternative values not yet considered by the agency.

EPA estimates that this proposed action would save approximately $630 million in costs over 20 years, or about $43 million annually, not including the immeasurable value of the countless lives that would be saved from lethal or significantly debilitating infections that would result without properly sterilized medical equipment.

EPA will accept public comments on this proposal for 45 days after it is published in the *Federal Register*. EPA will hold a virtual public hearing for this proposed action 15 days after publication in the *Federal Register*.

For more information about this rulemaking and further details about the public hearing, please visit here.

Background

EtO is a colorless gas that is critical to the medical device supply chain. The EtO Commercial Sterilization NESHAP regulates EtO emitted from commercial sterilization facilities. Commercial sterilization covers the sterilizer process that uses EtO to sterilize or fumigate materials such as medical equipment and supplies, spices, and other miscellaneous products and items. This process is designed to eliminate microorganisms including bacteria, viruses, fungi, and protists from products to ensure they are safe for human use and consumption.

EtO sterilization plays a key role in the medical device supply chain, sterilizing a variety of devices ranging from general health care items, such as wound dressings, to specialized devices, such as stents. For many heat- and moisture-sensitive products, EtO sterilization is the only method that effectively sterilizes a product without damaging it.

Today, there are about 90 commercial sterilization facilities owned and operated by approximately 50 companies. EPA issued the original NESHAP under section 112(d) of the CAA in 1994, establishing emission limits for sterilization chamber vents, ARVs, and catalytic oxidizer vents (CEVs). In 2001, EPA revised the NESHAP to remove requirements for CEVs due to equipment failure. In 2006, EPA finalized a residual risk and technology review under CAA sections 112(f)(2) and (d)(6) with no further changes. On April 5, 2024, EPA finalized amendments to the EtO Sterilizers NESHAP based on the results of a residual risk and technology review outside the scope of CAA statutory authority.

EPA.GOV

Stay Connected with EPA Office of the Administrator:

SUBSCRIBER SERVICES:
Manage Subscriptions | Unsubscribe All | Help

March 31, 2025

Via electronic mail to airaction@epa.gov

U.S. Environmental Protection Agency
1200 Pennsylvania Ave. NW
Washington, DC 20460

Re: *Powering the Great American Comeback Fact Sheet, Request for two-year compliance exemption pursuant to Clean Air Act Section 112(i)(4) for New Source Performance Standards for the Synthetic Organic Chemical Manufacturing Industry and National Emission Standards for Hazardous Air Pollutants (NESHAP) for the Synthetic Organic Chemical Manufacturing Industry (SOCMI) and Group I & II Polymers and Resins Industry.*

To Whom It May Concern:

We are writing on behalf of the American Chemistry Council (ACC)[1] and the American Fuel & Petrochemical Manufacturers (AFPM)[2] to request a two-year exemption from the compliance obligations of the New Source Performance Standards for the Synthetic Organic Chemical Manufacturing Industry and National Emission Standards (NSPS) for Hazardous Air Pollutants (NESHAP) for the Synthetic Organic Chemical Manufacturing Industry (SOCMI) and Group I & II Polymers and Resins Industry (collectively referred to as the HON Rule) for sources in the categories covered by the rule.[3] Together, ACC and AFPM submit this request on behalf of our member companies that own or operate affected stationary sources and facilities as a supplement to additional materials sent directly from those companies in response to EPA's request for information.

Our members are deeply committed to responsibly operating their manufacturing sites for key stakeholders: the communities in which they operate, and their employees, customers, and shareholders. That responsibility includes working to ensure that the regulation of our industry is based on sound science and that those regulations reflect a reasonable assessment of the risks and benefits involved. Unfortunately, the HON Rule undermines those important objectives and advances improper and significantly costly requirements on an unworkable timeline. As we have

[1] ACC represents the leading companies engaged in the business of chemistry. ACC members apply the science of chemistry to make innovative products and services that make people's lives better, healthier, and safer. ACC is committed to improved environmental, health and safety performance through Responsible Care®, common sense advocacy designed to address major public policy issues, and health and environmental research and product testing.

[2] AFPM is a national trade association representing nearly all U.S. refining and petrochemical capacity, as well as midstream industries. In addition to actively pursuing emissions reductions from their operations, our members are committed to sustainably manufacturing and delivering affordable and reliable fuels powering our transportation needs and chemical building blocks integral to millions of products that make modern life possible.

[3] National Emissions Standards for Hazardous Air Pollutants (NESHAP), Powering the Great American Comeback https://www.epa.gov/system/files/documents/2025-03/neshap_powering-the-great-american-comeback_fact-sheet_2.pdf 89 Fed. Reg. 42932 (May 16, 2024).

previously detailed, the cost for the rule's risk-related requirements alone could exceed $50 billion, significantly more than the $1.8 billion for the full rule that EPA estimated at final publication.[4] We note separately that your Administration has recognized these concerns in granting reconsideration and indicating an intent to review these requirements.

For the reasons highlighted in this letter, we believe it is necessary and appropriate for the President to grant an exemption under Clean Air Act (CAA) Section 112(i)(4) for all affected stationary sources and facilities regulated by the final rule. According to the relevant statutory language, Section 112(i)(4) authorizes the President to

> "exempt any stationary source from compliance with any standard or limitation under this section for a period of not more than 2 years if the President determines that the technology to implement such standard is not available and that it is in the national security interests of the United States to do so."[5]

We urge the Administration to swiftly consider and issue such an action based on an understanding that:

- "Availability" for the purposes of this section refers not only to the lack of technology capable of achieving compliance with the rule, but also encompasses the practical challenges with the timeframes necessary to plan, procure, and install required technologies -- such activity cannot occur within the current compliance timeframe. "Availability" may also encompass consideration of cost and impact on selection of controls, as high costs may render controls functionally unavailable and unreasonable timelines may force a facility to select suboptimal often more costly control options.

- National security encompasses not only military defense applications and infrastructure, but also economic security, a perspective that has been acknowledged by the President in Executive Orders and key security agencies like the Department of Defense. Indeed, as the White House has stated regarding domestic priorities, "economic security is national security."[6]

As detailed in our comments on the proposed HON Rule, which can be found here, our attached Petition for Reconsideration, and several compliance extension requests submitted by member companies (which we ask be incorporated into the Agency's consideration), facilities are unable to meet the unrealistic compliance deadlines for many of the HON Rule's requirements, including the July 15, 2026 deadline for the rule's risk related requirements.[7] As such, we believe that a two-year Presidential exemption from compliance obligations pursuant to the Clean Air Act (CAA) Section 112(i)(4) is critical to allow EPA and regulated entities sufficient time to and address

[4] Regulatory Impact Analysis for the Final New Source Performance Standards for the Synthetic Organic Chemical Manufacturing Industry and National Emission Standards for Hazardous Air Pollutants for the Synthetic Organic Chemical Manufacturing Industry and Group I & II Polymers and Resins Industry. Docket ID: EPA-HQ-OAR-2022-0730. March 2024.
[5] 42 U.S.C. §7412(i)(4).
[6] https://www.whitehouse.gov/presidential-actions/2025/02/america-first-investment-policy/
[7] The HON Rule represents changes to six separate rulemakings that significantly impact several groups of chemical manufacturing entities that may force numerous facilities offline and create potential supply chain disruptions for critical products.

technology availability issues as discussed in this letter and our Petition for Reconsideration.

While EPA requests that "sources" provide recommendations as to why a two-year Presidential exemption is warranted under the Clean Air Act (CAA) Section 112(i)(4), we write as broader associations on behalf of our member companies because the rule's current compliance deadlines are generally unachievable.[8] We believe that information provided in this letter, our previous Petition for Reconsideration on the rulemaking, and several member company requests for extension to the compliance deadlines all provide sufficient information to justify EPA's grant of an exemption under this section on a source category-wide basis. If, however, the President determines that it is necessary to make determinations on a source-by-source basis, he should do so for all affected sources and facilities identified by the Agency, considering both the national security and general feasibility concerns presented in this letter as well as information submitted by member companies.

I. A Presidential Exemption Granting a 2-Year Compliance Extension is Necessary

ACC and AFPM request Presidential exemption(s) for regulated facilities because either there is no existing technology to implement the requirements of the Rule, or technology is not available in time to meet the Rule's compliance deadlines. As previously explained to EPA, for some facilities and requirements this may be a literal lack of availability (no technology may exist that will allow them to meet the standards), while for others a central challenge may be a lack of availability due to the practicalities of designing, procuring, permitting and installing the controls within the deadlines contained in the rule. Absent a Presidential exemption, sources will be required to make irrevocable investment decisions now and into the coming months to minimize the amount of time facilities may need to be taken offline. If implemented as written and in accordance with the current compliance schedule, domestic manufacturing production will be negatively impacted, threatening critical supply chains of chemicals that are vital to our nation's security.

Any new regulatory requirement requires facilities to review the provisions, develop a plan to comply with the new requirements, determine if process changes or additional controls are needed, determine if an air permit application is needed, prepare and submit the permit application, obtain the air permit approval from the agency, engineer and implement any process changes or additional controls, determine if new monitoring equipment is needed to meet new ethylene oxide (EO) control device and pressure relief device (PRD) monitoring requirements, install the new monitoring equipment, revise regulatory compliance plans and procedures, update recordkeeping and reporting procedures, and roll out new requirements to facility staff.

While the above process could represent a time-consuming and extensive commitment under just one rule's requirements, the HON rule is a collection of six distinct regulatory actions rolled into one which adds complexity and time needed to comply with the full range of these requirements. A centerpiece of the HON Rule is to regulate EO emissions SOCMI sources. As detailed in our comments, two years is not enough time to conduct the activities that are required to comply with these new requirements. To navigate this process, companies must complete sampling and analysis on an array of process vents and wastewater streams and review available information for equipment, heat exchange systems, and storage tanks to determine whether sources must comply with certain requirements. Once sources are identified, time is required to review the performance of existing control devices to determine whether existing controls can meet

[8] See EPA's List of Facilities Subject to the HON, Group I and Group II Polymers and Resins NESHAPs, and NSPS subparts VV, VVa, III, NNN, and RRR, March 2023 attached at Appendix _.

the emissions standards. As acknowledged in EPA's impact analyses, facilities will be required to install new closed vent systems, control devices, monitoring equipment, and develop new standard operating procedures, recordkeeping templates, and reporting methodologies. As we outlined in comments and our Petition for Reconsideration, the myriad steps in the compliance process for a facility can take 36 months or more from initial applicability determinations to equipment operation, which presumes no major hurdles or delays associated with procurement or technology availability.

As just one example on this point, one member, Indorama Ventures Oxides, LLC ("Indorama"), began discussions with vendors and consultants on potential control technology in July 2023. At the time of the HON rule's July 2024 publication, Indorama was proceeding with preliminary engineering design and evaluating controls that could meet the Rule's requirements for multiple emission control projects. By the first quarter of 2025, Indorama engaged an engineering firm to begin the next phase of engineering design for the required controls. Despite this early engagement, the company has been informed that controls are unlikely to be installed and operational before *2029* due to permitting and supply chain limitations. In addition to the concerns about the availability of controls related to capital expenditure projects, we also understand that other Rule requirements pose practical or literal availability concerns. As EPA previously heard, some companies are not able to determine if they can install a suite of controls that will allow them to comply with the Rule. In addition to these concerns, the following list highlights some specific requirements that speak to these concerns:

- **Fenceline Monitoring**--As currently written, the HON Rule requires sources to implement fenceline monitoring requirements for six chemicals (benzene, 1,3-butadiene, ethylene dichloride, vinyl chloride, EtO, and chloroprene) by July 15, 2026. As detailed above, the simple process to prepare for compliance and initiate new monitoring programs will take longer than the current time permitted. With a new fenceline monitoring program, facilities must select contractors and laboratories after a competitive bid process and then acquire an adequate supply of canisters, flow controllers, timers, and tubes in time for compliance. In fact, one member was unable to locate a laboratory to perform the Rule's required test method because it will take significant time for laboratories to increase their capacity to meet the fenceline monitoring requirements. Many facilities will also be required to make physical improvements such as roads to make their fencelines readily accessible for sampler placement and retrieval. Most contractors assisting our members with implementing the fenceline monitoring requirements stated that a pilot study is necessary to guide the development of a fenceline monitoring program specific to each facility. This pilot program will take no less than six months to complete. Sources expect they will be required to hire and train additional staff and/or contractors to implement the sampling program and perform the associated data analysis and RCA/CA. It is technically infeasible to implement all steps by the current July 15, 2026 compliance deadline.

- **Pressure Relief Devices (PRDs)**--There are also technical limitations to consider that would prevent the possibility of all PRDs being controlled. Processes are designed with these PRDs to ensure the safety of personnel and equipment, and they will need to be retained. Modifications will occur on existing air oxidation reactors, distillation operations, and reactor processes such that they will be required to comply with the new NSPS subparts. Absent plans to completely rebuild the affected source and associated infrastructure, legacy PRDs will often be retained. If there are safety concerns with routing these to control, it will be impossible for the facility to avoid releases from these PRDs directly to the atmosphere. To the extent a facility is considering trying to control PRDs either through an existing control device or building an entirely new control device, the non-

routine, infrequent, and episodic nature of these PRD releases make it infeasible to install a control system capable of accommodating all the possible release scenarios. Accordingly, for at least some PRDs with atmospheric releases, there may literally be no available technology to prevent potential releases, and thus violations under the rule.

- **Real-time Sampling**--The HON Rule also requires real-time sampling techniques if the root cause of an action level exceedance has not been determined within 30 days of determining the action level has been exceeded.[9] As discussed in our comments, our members use external contracts to employ real-time monitoring and appropriate staff and equipment are not always available within 30 days. Facilities cannot control the availability of outside resources (either contractor staff or equipment). For example, one member has indicated that even with sampling staff on-site daily, if contract laboratories are required for sample analysis, it is likely that it will take longer than 30 days to receive results from the labs due to significant increases in demand for summa canister analysis created by the requirements of this program.

- **Flow Meters**-- Flow meter technology remains a hurdle. Flares are designed to control a range of events with a wide range of materials and volumes. When designing a control system capable of accommodating all the possible flare volume scenarios that could occur, accuracy becomes impractical at low flow events when also accommodating precision at high flow events. It is unclear that an accurate control system can be designed and implemented as required by the rule's final requirements, particularly within the current timeframe.

The serious risks and burdens associated with the rule's requirements are equally pressing for facilities that do not emit EO. For example, one member facility is a major U.S. producer of purified teraphthalic acid (PTA) at an integrated site that also produces para-xylene (PX) as a feedstock to the PTA production units. PTA is a backbone chemistry for supply chains that are essential to the everyday lives American consumers, including plastic bottles, polyester clothing, and films. Although the site does not have emissions of EO, they nonetheless face severe compliance risks and substantial adverse operational impacts associated with compliance with the final HON rule. Specifically, due to the site-specific nature of the process design, any control technology must be a standalone grassroots design tailored to the unique needs of the site, increasing the required time and overall costs of any compliance process. This fact, when combined with the exponential costs associated with compliance,[10] results in a full burden of compliance obligations that will likely result in a shutdown of the site's PTA units and its feedstock PX unit. This shutdown would result in the loss of over 2 billion pounds per year of domestic PTA production loss, negatively impacting the associated supply chains and overall U.S. economic production.

The outgoing Administration's approach in the HON rulemaking jeopardizes the ability of domestic manufacturing facilities to continue to support these critical supply chains (both EO and non-EO related), while the Agency simultaneously ignores the sweeping impacts of these decisions, thus impacting the national security interests of the United States. As discussed in

[9] 40 CFR § 63.184(e)(1)(ii)(B).
[10] For one example, this member site estimates that it will need to invest over $30 million to comply just with EPA's requirement to remove the total resource effectiveness calculation for Group 1 process vents, which will impact at least 11 process vents at the site. These costs come in addition to the significant separate costs associated with developing and implementing a benzene fence line monitoring program, PRD compliance, and additional monitoring required for the PX flare.

Section II, ensuring the continued production of EO is vital to our nation's energy, economic, and food security.

II. Granting a Presidential Exemption Serves the National Security Interests of the United States

ACC, AFPM, and our members previously articulated to EPA and state agencies the risks of taking facilities off-line for extended periods to complete the process and equipment changes required by the Rule's final requirements, which will likely result in billions of pounds of lost EO production. These shutdowns will impact not only EO producers, but several supply chains given EO's varied derivatives and end products using EO-based materials throughout our economy. As just one example, because EO is an essential building block for dozens of products, production losses from the Indorama facilities will have a ripple effect to reduce production of products for the home and personal care, crop protection, energy and resources and coatings and construction markets. At one HON facility, a potential shutdown associated with the HON requirements would result in the loss of domestic production of up to 1,475 billion pounds per year of EO, with billions more lost at other sites. A shutdown would also certainly impact and seriously jeopardize the production of dozens of other products derived from EO manufactured at the site and used in home and personal care, crop protection, energy and resources and coatings and construction markets.

As stated in the President's Executive Order "Unleashing American Energy," domestic energy production is a critical component of U.S. national security as production "will restore American prosperity…[and] will also rebuild our Nation's economic and military security, which will deliver peace through strength." Further, as the Executive Order explains, any regulatory activity that impedes the development of this production "weak[ens] our national security."[11] The SOCMI sources subject to the HON Rule produce ethylene oxide (EO), which is a critical building block chemical used is dozens of domestic manufacturing. The following examples help demonstrate EO's critical role in our nation's supply chains:

- Department of Defense (DoD) Critical Sectors: in a February 2025 briefing, DoD personnel identified several "critical sectors" to national security that depend on key chemicals and their materials to support DoD infrastructure, equipment, and weapons systems.[12] In the briefing, DoD specifically cited both energy storage and batteries and microelectronics (semiconductors) as "essential" to DoD's administration of national security interests. EO manufacturing plays a key role in both sectors as detailed here:
    - For batteries, EO is used to produce ethylene carbonate, which is used in lithium-ion batteries to allow the electricity generated to travel more easily through the battery. DoD's briefing referenced that lithium batteries "are becoming increasingly critical for a wide range of operational capabilities, including unmanned systems, missiles, and munitions, directed energy, silent mobility, and platform electrification. DoD acknowledged that supply chains issues would impact the ability of the military to continue to produce and maintain these essential national security components.

[11] Presidential Executive Order "Unleashing American Energy," January 20, 2025. https://www.whitehouse.gov/presidential-actions/2025/01/unleashing-american-energy/.
[12] "Substances Critical to National Security." Department of Defense Briefing for the Committee on Armed Services of the U.S. House of Representatives. Pursuant to House Report 118-529, accompanying H.R. 8070, National Defense Authorization Act for Fiscal Year 2025. February 2025.

- For semiconductors, microelectronic technology is a central component to defense capabilities. In its briefing, DoD emphasized this notion, stating that microelectronics like semiconductors "are essential for all sectors of industry, including defense."[13] EO plays a major role in the production of a wide variety of solvents, amines, and surfactants that are essential in semiconductor chip manufacturing processes like wafer cutting, chemical mechanical planarization, photoresist, and photoresist residue cleaner. These products support the semiconductor industry's specific needs and are crucial to technologies including aerospace, automotive, cloud computing, medical devices, and telecommunications. Through this production, EO facilities play a direct role in supporting national supply chain security and competitiveness priorities.

- Medical sterilization: EO is used to produce about 20 billion medical devices each year, helping to prevent disease and infection for our nation's citizens. EO is also used in the manufacture of numerous other medical supplies and devices. Medical sterilization is independently threatened by a separate rule promulgated by the outgoing administration relying on the same flawed legal theories and science,[14] and, according to the attached information provided by the Ethylene Oxide Sterilizers Association (EOSA) who raised significant compliance concerns with that separate rulemaking. Sterile medical devices are crucial for maintaining the health and readiness of our citizens and military personnel in deployed areas.

- Energy Production: EO derivates contribute to securing our nation's energy security through applications in the production of natural gas, which was reiterated and reinforced in the current Administration's January 20, 2025 Executive Order "Unleashing American Energy."[15] The derivatives of EO are leveraged in several key contexts, including natural gas purification to reduce corrosion and scale in oil and gas processing, oil well remediation, enhanced oil recovery aids, gas dehydration, and carbon capture in gas processing, among others. The use of EO-based compounds allows for faster drilling and completion of oil and gas wells, which helps to lower the overall cost of petroleum products and reduce the frequency of replacing equipment and pipelines. These uses contribute to the strength of our domestic energy production, boosting both our nation's energy independence and overall security.

- Automotive: EO and its derivatives are also critical for the current automotive industry and are used in applications for automotive seating, hydraulic and brake fluids, anti-icing additives, and antifreeze.

- Food Processing: EO is used to sterilize dried foods, spices, nuts, fruits, vegetables, herbs, and other food products to prevent foodborne illnesses without damaging the spices or food products. It is used to eliminate pathogens like Salmonella and E. coli as

[13] Id.
[14] National Emission Standards for Hazardous Air Pollutants: Ethylene Oxide Emissions Standards for Sterilization Facilities Residual Risk and Technology Review, 89 Fed. Reg. 24,090 (April 5, 2024); *see also The Ethylene Oxide Sterilization Association* (EOSA) v. *EPA,* No. 24-1180, Brief of Petitioner EOSA (D.C. Cir.).

well as fungi, yeasts, and spore formers. It is also used as a fumigant to control insects in the storage and transport of grain, seeds, and nuts.

- Agriculture: EO derivatives are used in agricultural products to help protect crops and boost crop production. It is used to produce active ingredients in insecticides, pesticides, and herbicides. It is also used to produce surfactants (wetting agents) and dispersants which reduce the amount of pesticides, insecticides, and herbicides required in agriculture and enhances the effectiveness of the application of those products.

The HON Rule and its technically infeasible requirements will result in facility shutdowns, imperiling jobs, and threatening supply chains for a vital chemical building block critical to our national security. The substantial risk of multiple shutdowns combined across HON facilities could result in a massive strain on domestic supply of chemicals that are critical to national security and central to the U.S.'s strategic position in the global economy in key markets.

Without immediate intervention, such as a Presidential exemption under CAA Section 112(i)(4) to extend the compliance deadline for two years or, in the alternative, a compliance extension under CAA Section 112(i)(3), and an interim final rule rescinding those regulatory requirements not based on the best reading of CAA section 112(f), companies will evaluate whether to shut down units or offshore their operations to prevent the application of an imprudent and unlawful rule.

* * * * * * * * *

ACC and AFPM appreciate this opportunity to request a two-year compliance extension for all sources subject to the HON Rule. If you have questions or need more information, please do not hesitate to contact Leslie Bellas at lbellas@afpm.org or Brendan Mascarenhas at Brendan_Mascarenhas@americanchemistry.com.

Sincerely,

Leslie Bellas

Brendan Mascarenhas
Senior Director, Regulatory & Scientific Affairs
American Chemistry Council

Leslie Bellas
Vice President, Regulatory Affairs
American Fuel & Petrochemical Manufacturers

cc: Aaron Szabo, Senior Advisor to the Administrator, Office of the Administrator
Abigale Tardiff, Principal Deputy Assistant Administrator, Office of Air and Radiation
Sean Donahue, Principal Deputy General Counsel, Office of General Counsel
Alex Dominguez, Deputy Assistant Administrator for Mobile Sources, Office of Air and Radiation
[redacted], Director, Office of Air Quality Planning and Standards
[redacted] Director, Sector Policies and Programs Division, Office of Air Quality Planning and Standards
[redacted], Refining and Chemicals Group Leader, Office of Air Quality Planning and Standards
[redacted], General Engineer, Office of Air Quality Planning and Standards

Message

From: EPA Press [EPAPress@govdelivery.epa.gov]
Sent: 3/13/2026 3:10:27 PM
To: Voyles, Travis [voyles.travis@epa.gov]
Subject: EPA Releases Proposal for Commercial Sterilizers to Safeguard the Supply of Life-Saving Medical Tools

View as a webpage / Share

EPA.GOV/NEWSROOM

EPA Releases Proposal for Commercial Sterilizers to Safeguard the Supply of Life-Saving Medical Tools

March 13, 2026

Contact Information

EPA Press Office (press@epa.gov)

WASHINGTON — U.S. Environmental Protection Agency (EPA) proposed amendments to the Biden-era 2024 National Emissions Standards for Hazardous Air Pollutants (NESHAP) for Ethylene Oxide (EtO) Commercial Sterilization Facilities to ensure consistency with the law and gold standard science. EtO is the only safe and effective sterilization method available for many medical devices, making it indispensable for life-saving medical equipment including heart valves, pacemakers, surgical kits, gowns, drapes, ventilators, syringes, and catheters—medical equipment that newborns, the elderly, and Americans undergoing surgery rely on daily to survive. EPA is concerned that the current Biden-era EtO emission standards actively threaten facilities' ability to sterilize equipment and jeopardize one of America's only options for a secure domestic supply chain of essential medical equipment. EPA is committed to a rulemaking process that follows the law, ensures that regulation will not put countless lives at risk, and advances the agency's core mission of protecting human health and the environment, including minimizing Americans' unnecessary exposure to EtO.

> *"This proposed rule shows EPA's strong commitment to protecting people's health while maintaining a stable domestic medical supply chain,"* ***said EPA Administrator Lee Zeldin****. "The Trump EPA is committed to ensuring life-saving medical devices*

remain available for the critical care of America's children, elderly, and all patients without unnecessary exposure to communities."

Congress deliberately designed CAA section 112 with detailed implementation timelines and requirements for residual risk reviews of Maximum Achievable Control Technology (MACT) standards in NESHAP rules. In 2024, however, the Biden-Harris EPA took the unprecedented step of conducting a second, "discretionary" residual risk review despite already completing the residual risk review required by law within eight years of promulgating the NESHAP. This second risk review, done in apparent contravention of the best reading of the statute using an almost decade old risk-based value for EtO, led to the 2024 EtO Commercial Sterilizer Final Rule (2024 NESHAP). During and following the promulgation of the Biden-Harris Administration's 2024 NESHAP, the medical community, industry stakeholders and other federal agencies, including the U.S. Food and Drug Administration, raised serious concerns. These concerns included the feasibility of complying with the more stringent EtO emission standards and the significant impacts the requirements would have on maintaining a strong domestic supply chain for sterilized medical equipment essential to saving American lives. Commercial sterilizers utilize EtO to sterilize 50 percent of all medical devices in the U.S. every year—or 20 billion medical devices—with no viable alternative on the market.

As a result of the 2024 NESHAP, the Biden-Harris Administration was forced in January 2025 to establish a Presidential exemption process from the administration's own rule due to facilities' inability to meet required standards before compliance deadlines, and the grave risk that the closures of these facilities posed to American lives. In response to legal, scientific and policy concerns, including the critical medical supply chain issue the U.S. faced due to the 2024 NESHAP rule, the Trump EPA issued a press release on March 12, 2025, announcing its reconsideration of the 2024 NESHAP, and on March 21, 2025, formally granted voluntary reconsideration.

With this rule, EPA is proposing that section 112(f)(2) of the CAA prevents EPA from conducting more than the one risk review EPA completed in 2006. Therefore, the second risk review the Biden EPA conducted in 2024 violated the CAA and should never been completed. In line with congressional intent, EPA is proposing to remove the risk-based CAA section 112(f)(2) standards which justified the 2024 NESHAP. EPA is also proposing to change other requirements that were promulgated from the standards, including the requirement to use continuous emission monitoring systems, technology review standards for new aeration room vents (ARV), and requirements for permanent total enclosure. If finalized as proposed, the Trump EPA's rule would give facilities the choice between installing a new monitoring system or making adjustments to the 2024 EtO standards for technology review standards for new ARV where EtO is greater than ten tons per year. These changes better reflect the complexity of facilities and give them the flexibility to work to use safe and effective equipment to sterilize medical tools and devices without compromising clean air for all Americans. EPA is proposing to keep the 2024 NESHAP standards consistent with the CAA and that result in facilities installing attainable emission controls consistent with the latest required technology review. The Trump EPA is committed to following the law exactly as it is written, while also ensuring standards effectively protect human health and the environment.

Since 2016, new information, including new epidemiological studies, advancements in statistical methods related to dose-response modeling have continued to emerge. It is known that EtO is produced within the body via normal processes and additionally from tobacco smoke or other combustion processes. As part of this rulemaking, EPA is seeking comment on new information related to these sources of EtO exposure. EPA anticipates this information would be useful for updating the agency's understanding of EtO exposure and toxicity and determining whether the 2016 EtO IRIS value remains suitable for estimating risk to inform regulatory decision-making, including the proposed amendments

announced today. The agency will also consider comments regarding the Texas Commission of Environmental Quality's 2020 finalized alternative assessment of EtO's toxicity and potential to cause cancer or other alternative values not yet considered by the agency.

EPA estimates that this proposed action would save approximately $630 million in costs over 20 years, or about $43 million annually, not including the immeasurable value of the countless lives that would be saved from lethal or significantly debilitating infections that would result without properly sterilized medical equipment.

EPA will accept public comments on this proposal for 45 days after it is published in the *Federal Register*. EPA will hold a virtual public hearing for this proposed action 15 days after publication in the *Federal Register*.

For more information about this rulemaking and further details about the public hearing, please visit here.

Background

EtO is a colorless gas that is critical to the medical device supply chain. The EtO Commercial Sterilization NESHAP regulates EtO emitted from commercial sterilization facilities. Commercial sterilization covers the sterilizer process that uses EtO to sterilize or fumigate materials such as medical equipment and supplies, spices, and other miscellaneous products and items. This process is designed to eliminate microorganisms including bacteria, viruses, fungi, and protists from products to ensure they are safe for human use and consumption.

EtO sterilization plays a key role in the medical device supply chain, sterilizing a variety of devices ranging from general health care items, such as wound dressings, to specialized devices, such as stents. For many heat- and moisture-sensitive products, EtO sterilization is the only method that effectively sterilizes a product without damaging it.

Today, there are about 90 commercial sterilization facilities owned and operated by approximately 50 companies. EPA issued the original NESHAP under section 112(d) of the CAA in 1994, establishing emission limits for sterilization chamber vents, ARVs, and catalytic oxidizer vents (CEVs). In 2001, EPA revised the NESHAP to remove requirements for CEVs due to equipment failure. In 2006, EPA finalized a residual risk and technology review under CAA sections 112(f)(2) and (d)(6) with no further changes. On April 5, 2024, EPA finalized amendments to the EtO Sterilizers NESHAP based on the results of a residual risk and technology review outside the scope of CAA statutory authority.

EPA.GOV

Stay Connected with EPA Office of the Administrator:

SUBSCRIBER SERVICES:
Manage Subscriptions | Unsubscribe All | Help

Message

From: EPA Press [EPAPress@govdelivery.epa.gov]
Sent: 3/13/2026 3:10:27 PM
To: Weiner, Ben [weiner.ben@epa.gov]
Subject: EPA Releases Proposal for Commercial Sterilizers to Safeguard the Supply of Life-Saving Medical Tools

View as a webpage / Share

EPA.GOV/NEWSROOM

EPA Releases Proposal for Commercial Sterilizers to Safeguard the Supply of Life-Saving Medical Tools

March 13, 2026

Contact Information

EPA Press Office (press@epa.gov)

WASHINGTON — U.S. Environmental Protection Agency (EPA) proposed amendments to the Biden-era 2024 National Emissions Standards for Hazardous Air Pollutants (NESHAP) for Ethylene Oxide (EtO) Commercial Sterilization Facilities to ensure consistency with the law and gold standard science. EtO is the only safe and effective sterilization method available for many medical devices, making it indispensable for life-saving medical equipment including heart valves, pacemakers, surgical kits, gowns, drapes, ventilators, syringes, and catheters—medical equipment that newborns, the elderly, and Americans undergoing surgery rely on daily to survive. EPA is concerned that the current Biden-era EtO emission standards actively threaten facilities' ability to sterilize equipment and jeopardize one of America's only options for a secure domestic supply chain of essential medical equipment. EPA is committed to a rulemaking process that follows the law, ensures that regulation will not put countless lives at risk, and advances the agency's core mission of protecting human health and the environment, including minimizing Americans' unnecessary exposure to EtO.

> *"This proposed rule shows EPA's strong commitment to protecting people's health while maintaining a stable domestic medical supply chain,"* ***said EPA Administrator Lee Zeldin****. "The Trump EPA is committed to ensuring life-saving medical devices*

remain available for the critical care of America's children, elderly, and all patients without unnecessary exposure to communities."

Congress deliberately designed CAA section 112 with detailed implementation timelines and requirements for residual risk reviews of Maximum Achievable Control Technology (MACT) standards in NESHAP rules. In 2024, however, the Biden-Harris EPA took the unprecedented step of conducting a second, "discretionary" residual risk review despite already completing the residual risk review required by law within eight years of promulgating the NESHAP. This second risk review, done in apparent contravention of the best reading of the statute using an almost decade old risk-based value for EtO, led to the 2024 EtO Commercial Sterilizer Final Rule (2024 NESHAP). During and following the promulgation of the Biden-Harris Administration's 2024 NESHAP, the medical community, industry stakeholders and other federal agencies, including the U.S. Food and Drug Administration, raised serious concerns. These concerns included the feasibility of complying with the more stringent EtO emission standards and the significant impacts the requirements would have on maintaining a strong domestic supply chain for sterilized medical equipment essential to saving American lives. Commercial sterilizers utilize EtO to sterilize 50 percent of all medical devices in the U.S. every year—or 20 billion medical devices—with no viable alternative on the market.

As a result of the 2024 NESHAP, the Biden-Harris Administration was forced in January 2025 to establish a Presidential exemption process from the administration's own rule due to facilities' inability to meet required standards before compliance deadlines, and the grave risk that the closures of these facilities posed to American lives. In response to legal, scientific and policy concerns, including the critical medical supply chain issue the U.S. faced due to the 2024 NESHAP rule, the Trump EPA issued a press release on March 12, 2025, announcing its reconsideration of the 2024 NESHAP, and on March 21, 2025, formally granted voluntary reconsideration.

With this rule, EPA is proposing that section 112(f)(2) of the CAA prevents EPA from conducting more than the one risk review EPA completed in 2006. Therefore, the second risk review the Biden EPA conducted in 2024 violated the CAA and should never been completed. In line with congressional intent, EPA is proposing to remove the risk-based CAA section 112(f)(2) standards which justified the 2024 NESHAP. EPA is also proposing to change other requirements that were promulgated from the standards, including the requirement to use continuous emission monitoring systems, technology review standards for new aeration room vents (ARV), and requirements for permanent total enclosure. If finalized as proposed, the Trump EPA's rule would give facilities the choice between installing a new monitoring system or making adjustments to the 2024 EtO standards for technology review standards for new ARV where EtO is greater than ten tons per year. These changes better reflect the complexity of facilities and give them the flexibility to work to use safe and effective equipment to sterilize medical tools and devices without compromising clean air for all Americans. EPA is proposing to keep the 2024 NESHAP standards consistent with the CAA and that result in facilities installing attainable emission controls consistent with the latest required technology review. The Trump EPA is committed to following the law exactly as it is written, while also ensuring standards effectively protect human health and the environment.

Since 2016, new information, including new epidemiological studies, advancements in statistical methods related to dose-response modeling have continued to emerge. It is known that EtO is produced within the body via normal processes and additionally from tobacco smoke or other combustion processes. As part of this rulemaking, EPA is seeking comment on new information related to these sources of EtO exposure. EPA anticipates this information would be useful for updating the agency's understanding of EtO exposure and toxicity and determining whether the 2016 EtO IRIS value remains suitable for estimating risk to inform regulatory decision-making, including the proposed amendments

announced today. The agency will also consider comments regarding the Texas Commission of Environmental Quality's 2020 finalized alternative assessment of EtO's toxicity and potential to cause cancer or other alternative values not yet considered by the agency.

EPA estimates that this proposed action would save approximately $630 million in costs over 20 years, or about $43 million annually, not including the immeasurable value of the countless lives that would be saved from lethal or significantly debilitating infections that would result without properly sterilized medical equipment.

EPA will accept public comments on this proposal for 45 days after it is published in the *Federal Register*. EPA will hold a virtual public hearing for this proposed action 15 days after publication in the *Federal Register*.

For more information about this rulemaking and further details about the public hearing, please visit here.

Background

EtO is a colorless gas that is critical to the medical device supply chain. The EtO Commercial Sterilization NESHAP regulates EtO emitted from commercial sterilization facilities. Commercial sterilization covers the sterilizer process that uses EtO to sterilize or fumigate materials such as medical equipment and supplies, spices, and other miscellaneous products and items. This process is designed to eliminate microorganisms including bacteria, viruses, fungi, and protists from products to ensure they are safe for human use and consumption.

EtO sterilization plays a key role in the medical device supply chain, sterilizing a variety of devices ranging from general health care items, such as wound dressings, to specialized devices, such as stents. For many heat- and moisture-sensitive products, EtO sterilization is the only method that effectively sterilizes a product without damaging it.

Today, there are about 90 commercial sterilization facilities owned and operated by approximately 50 companies. EPA issued the original NESHAP under section 112(d) of the CAA in 1994, establishing emission limits for sterilization chamber vents, ARVs, and catalytic oxidizer vents (CEVs). In 2001, EPA revised the NESHAP to remove requirements for CEVs due to equipment failure. In 2006, EPA finalized a residual risk and technology review under CAA sections 112(f)(2) and (d)(6) with no further changes. On April 5, 2024, EPA finalized amendments to the EtO Sterilizers NESHAP based on the results of a residual risk and technology review outside the scope of CAA statutory authority.

EPA.GOV

Stay Connected with EPA Office of the Administrator:

SUBSCRIBER SERVICES:
Manage Subscriptions | Unsubscribe All | Help

Message

From: Joana Medina
Ex. 6 Personal Privacy (PP)
Sent: 6/28/2025 3:44:04 AM
To: Zeldin, Lee [Zeldin.Lee@epa.gov]
Subject: EPA Policy

You don't often get email from Ex. 6 Personal Privacy (PP) learn why this is important

Caution: This email originated from outside EPA, please exercise additional caution when deciding whether to open attachments or click on provided links.

Dear Administrator Zeldin:

I am disappointed to learn about the Environmental Protection Agency's policy allowing companies to request a Presidential Exemption to bypass clean air rules.

The law says the president can only issue these kinds of exemptions in very limited cases. That didn't happen here. There was no real analysis, no real justification, just a blanket exemption for polluters who asked via email to emit more mercury and arsenic.

Many coal power plants already meet the Mercury and Air Toxics Standards, so clearly there is no national security problem, and the pollution technology is out there, it works, and it's affordable. Giving exemptions now just rewards the few who chose not to act.

According to your own agency, the 2024 MATS rule delivers $33 million in annual health benefits and $14 million in climate benefits. It has minimal impact on the power grid, with no expected retirements of coal-fired capacity.

The real emergency is the havoc the unlawful policy will wreak on public health with increased non-fatal heart attacks, higher cancer risks, more hospitalizations for respiratory and cardiovascular diseases, and premature deaths. Why give companies the option to opt out of implementing these life-saving measures?

Communities exposed to cancer-causing pollution deserve health protections, not to be ignored in backroom deals. I am asking that the EPA prioritize people over polluter profits.

Sincerely,
Joana Medina

Sent from my iPhone

Message

From: Jessica Clough
Ex. 6 Personal Privacy (PP)
Sent: 6/28/2025 3:00:51 PM
To: Zeldin, Lee [Zeldin.Lee@epa.gov]
Subject: Environmental protections

You don't often get email from Ex. 6 Personal Privacy (PP) Learn why this is important

Caution: This email originated from outside EPA, please exercise additional caution when deciding whether to open attachments or click on provided links.

Dear Administrator Zeldin:

I am disappointed to learn about the Environmental Protection Agency's policy allowing companies to request a Presidential Exemption to bypass clean air rules.

The law says the president can only issue these kinds of exemptions in very limited cases. That didn't happen here. There was no real analysis, no real justification, just a blanket exemption for polluters who asked via email to emit more mercury and arsenic.

Many coal power plants already meet the Mercury and Air Toxics Standards, so clearly there is no national security problem, and the pollution technology is out there, it works, and it's affordable. Giving exemptions now just rewards the few who chose not to act.

According to your own agency, the 2024 MATS rule delivers $33 million in annual health benefits and $14 million in climate benefits. It has minimal impact on the power grid, with no expected retirements of coal-fired capacity.

The real emergency is the havoc the unlawful policy will wreak on public health with increased non-fatal heart attacks, higher cancer risks, more hospitalizations for respiratory and cardiovascular diseases, and premature deaths. Why give companies the option to opt out of implementing these life-saving measures?

Communities exposed to cancer-causing pollution deserve health protections, not to be ignored in backroom deals. I am asking that the EPA prioritize people over polluter profits.

Sincerely,
Jessica

Message

From: Jacob C
[redacted]
Sent: 6/28/2025 8:42:29 PM
To: Zeldin, Lee [Zeldin.Lee@epa.gov]
Subject: America Deserves Clean Air

You don't often get email from g[redacted] Learn why this is important

Caution: This email originated from outside EPA, please exercise additional caution when deciding whether to open attachments or click on provided links.

I am disappointed to learn about the Environmental Protection Agency's policy allowing companies to request a Presidential Exemption to bypass clean air rules.

The law says the president can only issue these kinds of exemptions in very limited cases. That didn't happen here. There was no real analysis, no real justification, just a blanket exemption for polluters who asked via email to emit more mercury and arsenic.

Many coal power plants already meet the Mercury and Air Toxics Standards, so clearly there is no national security problem, and the pollution technology is out there, it works, and it's affordable. Giving exemptions now just rewards the few who chose not to act.

According to your own agency, the 2024 MATS rule delivers $33 million in annual health benefits and $14 million in climate benefits. It has minimal impact on the power grid, with no expected retirements of coal-fired capacity.

The real emergency is the havoc the unlawful policy will wreak on public health with increased non-fatal heart attacks, higher cancer risks, more hospitalizations for respiratory and cardiovascular diseases, and premature deaths. Why give companies the option to opt out of implementing these life-saving measures?

Communities exposed to cancer-causing pollution deserve health protections, not to be ignored in backroom deals. I am asking that the EPA prioritize people over polluter profits.

Message

From: Himal McCarthy Ex. 6 Personal Privacy (PP)
Sent: 6/28/2025 6:18:11 AM
To: Zeldin, Lee [Zeldin.Lee@epa.gov]
Subject: Stop Coal Plants Polluting Our Air

[You don't often get email from Ex. 6 Personal Privacy (PP) Learn why this is important at https://aka.ms/LearnAboutSenderIdentification]

Caution: This email originated from outside EPA, please exercise additional caution when deciding whether to open attachments or click on provided links.

Dear Lee,

I am extremely disappointed to learn about the Environmental Protection Agency's policy allowing companies to request a Presidential Exemption to bypass clean air rules.

This is a maneuver that many Oil companies are willing to make through the simplest of means.

The law says the president can only issue these kinds of exemptions in very limited cases. That didn't happen here. There was no real analysis, no real justification, just a blanket exemption for polluters who asked via email to emit more mercury and arsenic.

Many coal power plants already meet the Mercury and Air Toxics Standards, so clearly there is no national security problem, and the pollution technology is out there, it works, and it's affordable. Giving exemptions now just rewards the few who chose not to act.

According to your own agency, the 2024 MATS rule delivers $33 million in annual health benefits and $14 million in climate benefits. It has minimal impact on the power grid, with no expected retirements of coal-fired capacity.

The real emergency is the havoc the unlawful policy will wreak on public health with increased non-fatal heart attacks, higher cancer risks, more hospitalizations for respiratory and cardiovascular diseases, and premature deaths. Why give companies the option to opt out of implementing these life-saving measures?

Communities exposed to cancer-causing pollution deserve health protections, not to be ignored in backroom deals. I am asking that the EPA prioritize people over polluter profits.

Sincerely,
Himal McCarthy

Message

From: Elizabeth Saltmarsh
Ex. 6 Personal Privacy (PP)
Sent: 7/1/2025 12:41:37 PM
To: Zeldin, Lee [Zeldin.Lee@epa.gov]
Subject:Presidential rules exemption

You don't often get email from Ex. 6 Personal Privacy (PP) Learn why this is important

Caution: This email originated from outside EPA, please exercise additional caution when deciding whether to open attachments or click on provided links.

Administrator Zeldin,

I am disappointed to learn about the Environmental Protection Agency's policy allowing companies to request a Presidential Exemption to bypass clean air rules.

The law says the president can only issue these kinds of exemptions in very limited cases. That didn't happen here. There was no real analysis, no real justification, just a blanket exemption for polluters who asked via email to emit more mercury and arsenic.

Many coal power plants already meet the Mercury and Air Toxics Standards, so clearly there is no national security problem, and the pollution technology is out there, it works, and it's affordable. Giving exemptions now just rewards the few who chose not to act.

According to your own agency, the 2024 MATS rule delivers $33 million in annual health benefits and $14 million in climate benefits. It has minimal impact on the power grid, with no expected retirements of coal-fired capacity.

The real emergency is the havoc the unlawful policy will wreak on public health with increased non-fatal heart attacks, higher cancer risks, more hospitalizations for respiratory and cardiovascular diseases, and premature deaths. - All of which are going to make the economy less productive (and affect the loves of many, too) Why give companies the option to opt out of implementing these life-saving measures?

Communities exposed to cancer-causing pollution deserve health protections, not to be ignored in backroom deals. I am asking that the EPA prioritize people over polluter profits. Respectfully, please do your job.

Sincerely,
Elizabeth Saltmarsh Wilson

Message

From: Talmage, Sarah [Talmage.Sarah@epa.gov]
Sent: 4/1/2025 7:58:53 PM
To: Barja, Jaide [Barja.Jaide@epa.gov]; [redacted]@epa.gov]
Subject: FW: Letter supporting Presidential Exemption Request
Attachments: EPA - Colstrip Presidential Exemption Request MATS - FINAL 2025.03.31.pdf; Presidential Exemption - MATS - Colstrip Units 3 and 4_FINAL.pdf

From: Devlin, Katie (Daines) <Katie_Devlin@daines.senate.gov>
Sent: Monday, March 31, 2025 5:58 PM
To: Talmage, Sarah <Talmage.Sarah@epa.gov>
Subject: Letter supporting Presidential Exemption Request

Caution: This email originated from outside EPA, please exercise additional caution when deciding whether to open attachments or click on provided links.

Hi Sarah,

Please see the attached letter from the Montana delegation supporting NorthWestern Energy and Talen Montana's joint request for a Presidential Exemption from the MATS Rule. I have also attached that request for your convenience. Let me know if you have any questions.

Thanks,
Katie

Katie Devlin
Policy Advisor
Office of Senator Steve Daines
320 Senate Hart Building
202-224-2651

Congress of the United States

Washington, DC 20515

March 31, 2025

The Honorable Lee Zeldin
Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460

Dear Administrator Zeldin,

We write in support of NorthWestern Energy and Talen Montana's request for a two-year Presidential Exemption from the "National Emission Standards for Hazardous Air Pollutants: Coal- and Oil-Fired Electric Utility Steam Generating Units Review of the Residual Risk and Technology Review" (MATS Rule). We appreciate President Trump's Executive Orders to Power the Great American Comeback and an exemption from this overreaching Biden era rule will allow for continued operation of the Colstrip Steam Electric Station (Colstrip) that is a critical baseload power source for Montana.

We previously criticized the Biden administration's Environmental Protection Agency (EPA) on this MATS Rule laying out how this ill-conceived rule oversteps congressionally delegated authority and threatens grid reliability. In fact, the Biden EPA admitted that 42% of the burden of the MATS Rule would fall on Colstrip making it clear that this rule specifically targeted this plant. In order to come into compliance with the MATS Rule, Colstrip would be required to install new fabric filters (baghouses) in addition to its current wet venturi scrubbers. This combination is untested and would come with a significant cost of $500 million for the upgrades making this both technologically and economically "unavailable". Additionally, it is possible that construction would not be completed and operational in time for the MATS Rule's compliance deadlines also making the technology "unavailable" from a timing standpoint. All of this endangers the economic viability of the plant, which if closed, would undermine the region's electric grid as there is insufficient time to plan and construct adequate replacement generation.

Without Colstrip, consumers would bear the burden of higher energy costs and grid unreliability, and its closure would stymie economic development in the region. President Trump, through Executive Order 14156, declared a "national energy emergency" and the Senate on February 26, 2025, voted to affirm that action. This emergency encompasses both energy necessary for military preparedness and defense industries but also for the economic security of the country.

We request that you approve this two-year exemption request to prevent negative impacts on Montana's electric reliability and the increased costs for consumers. Thank you for your work to ensure American energy dominance.

Sincerely,

STEVE DAINES
United States Senator

TROY DOWNING
Member of Congress

TIM SHEEHY
United States Senator

RYAN K. ZINKE
Member of Congress

March 28, 2025

To: U.S. Environmental Protection Agency

VIA E-MAIL (AIRACTION@EPA.GOV)

From: Talen Montana, LLC
NorthWestern Corporation d/b/a NorthWestern Energy

Subject: Request for Presidential Exemption from National Emission Standards for Hazardous Air Pollutants: Coal- and Oil-Fired Electric Utility Steam Generating Units Review of the Residual Risk and Technology Review, 89 Fed. Reg. 38508 (May 7, 2024): Colstrip Steam Electric Station, Units 3 and 4

Docket ID No.: EPA-HQ-OAR-2018-0794

I. EXECUTIVE SUMMARY

The emission standard subject to this Request for Presidential Exemption (Request) is the National Emission Standards for Hazardous Air Pollutants: Coal- and Oil-Fired Electric Utility Steam Generating Units Review of the Residual Risk and Technology Review, 89 Fed. Reg. 38508 (May 7, 2024) (2024 MATS Rule, or Rule). The 2024 MATS Rule set an emission limit of 0.010 lb/MMBtu limit for filterable particulate matter (fPM) emissions. *Id.* at 38530; *see also* 40 C.F.R. Pt. 63, Subpt. UUUUU, Tbl. 2 ("On or after July 6, 2027: 1.0E-2 lb/MMBtu").

The affected source is the Colstrip Steam Electric Station, Units 3 and 4, located in Rosebud County, Montana (Colstrip).

Talen Montana, LLC (Talen), the operator and part owner of Colstrip, and NorthWestern Corporation d/b/a NorthWestern Energy (NorthWestern), part owner of Colstrip, jointly request that Colstrip be exempt from the 2024 MATS Rule for two years,[1] running from the later of the Rule's compliance deadline of July 6, 2027, or July 6, 2028, if the State of Montana grants a one-year extension permissible under Section 112 of the CAA.

The President should grant this request under Section 112(i)(4) of the Clean Air Act (CAA) because (1) the technology to implement the standard is not available, and (2) the extension is in the national security interests of the United States.

Technology. The technology to implement the 2024 MATS Rule for Colstrip is "not available" from an engineering, cost, and timing standpoint.

- As applied to Colstrip, the Rule requires an untested and unproven sequencing of emission control technologies. Colstrip already employs wet venturi scrubbers, which presently achieve 99.6% control of fPM. The Biden EPA's 2024 MATS Rule would require control

[1] This two-year exemption may be extended for more than one additional period. 42 U.S.C. § 7412(i)(4).

efficiency to increase from 99.6% to 99.8%, which cannot be achieved by wet venturi scrubber technology. Colstrip would be required to install new fabric filters (also known as baghouses) downstream of the wet venturi scrubbers. This combination is unproven, untested, and raises significant risks to the operation of Colstrip and its ability to timely achieve compliance. For this reason alone, the technology necessary to increase Colstrip's PM control from 99.6% to 99.8% (as required by the 2024 MATS rule) is technologically "unavailable."

- Moreover, based on recent developments in project schedule and costs, a project to install the baghouses would cost over $500 million. These costs are uneconomic, and with respect to NorthWestern, may be unrecoverable, or not fully recoverable in electric rates. Given these costs and technological uncertainty, there is danger that Colstrip would retire instead of installing controls that could cause severe operational issues. As a result, the installation of baghouses is economically "unavailable."

- Additionally, even if Talen Montana and NorthWestern were to take the risk, there is a significant likelihood that the baghouses could not be installed and be operational to meet the compliance requirements until early 2029, far past the statutory deadline. These circumstances make the technology "unavailable" from a timing perspective for Colstrip.

National security. It would be "in the national security interests of the United States" to provide the requested exemption to Colstrip from the 2024 MATS Rule.

- Multiple Executive Orders issued by the President have reaffirmed that removing any and all regulatory burdens restricting power plants' operation would advance various national security interests.

- This is especially the case for Colstrip, a core facility that powers the western part of the United States and is a major economic driver for Montana. Colstrip is critical to grid reliability and resource adequacy, and disruption of operations or the plant's forced retirement in the face of the 2024 MATS Rule would harm the national security interests of the United States because replacement power could not be easily procured in the region. As but one example, reserve power margins are already low (10%, and are projected to worsen) in the western parts of the United States—which house numerous military bases, such as the Malmstrom Air Force Base near Great Falls, Montana. An energy emergency already exists in the western United States, as declared by one of the Executive Orders.

II. BACKGROUND

Section 112 of the CAA regulates hazardous air pollutants such as mercury or non-mercury metals. Power plants are subject to Section 112 only if EPA finds it "appropriate and necessary." 42 U.S.C. § 7412(n)(1)(A). These standards undergo a review every eight years. *Id.* § 7412(f). EPA under the first Trump Administration completed this review and determined that changes to

the existing standards were ***not*** "necessary." 85 Fed. Reg. 31286 (May 22, 2020). EPA under the Biden Administration agreed that the existing standards provide an adequate margin of safety, and further concluded that the Rule will impose far higher costs than quantifiable benefits. Nonetheless, the 2024 MATS Rule required coal-fired power plants to reduce fPM emissions by 66%. 89 Fed. Reg. 38508. Importantly, EPA admitted in the administrative record that almost half of the regulatory burden from the entire 2024 MATS Rule would fall on Colstrip. *Id.*at 38533 ("42 percent"). Talen Montana and NorthWestern encouraged EPA via the formal regulatory comment process to make changes to the Rule to avoid this outcome for Colstrip, their respective Comments included in this Request as Exhibits 1 and 2. Those calls for reasonable change were ignored by the Biden EPA.

Talen Montana and NorthWestern challenged the Rule. *Talen Montana, LLC v. EPA*, No. 24-1190 (D.C. Cir.); *NorthWestern Corp. v. EPA*, No. 24-1217 (D.C. Cir.); *see also North Dakota v. EPA*, No. 24-1119 (D.C. Cir.) (lead case). Talen Montana and NorthWestern requested the court to judicially stay the 2024 MATS Rule, but the court denied the request.

The legal challenges to the 2024 MATS Rule have been held in abeyance in light of the Trump Administration's swift action. But with no judicial stay of the Rule, Colstrip is expected to comply with all emission standards set by the 2024 MATS Rule by July 6, 2027, or one year later if the state provides a statutory extension. Because construction of control technologies takes significant time, power plants such as Colstrip must decide soon whether to make expensive and uncertain investments to comply with the Rule, with no assurance of timely compliance. Colstrip has diligently moved forward with the design of potential control technology, but it has not been able to develop assurance that it can effectively, economically, or in a timely manner comply with the Rule. Meanwhile, the time is soon coming for decisions to be made and expenditures to rise steeply. Moreover, the Colstrip owners face this major investment decision with significant challenges to complying with the Section 111 Greenhouse Gas Rule, 89 Fed. Reg. 39798 (May 9, 2024) (GHG Rule), on the horizon, in just a few short years after the 2024 MATS Rule compliance is due.

On March 12, 2025, EPA published the "Mercury and Air Toxics Standards (MATS): Powering the Great American Comeback Fact Sheet" (Fact Sheet). In this Fact Sheet, the Agency stated that it seeks to reconsider the 2024 MATS Rule. The Fact Sheet and EPA's Press Release issued the same day alerted the public and the regulated community to Section 112(i)(4) of the Clean Air Act (CAA), which allows the President of the United States to grant a compliance exemption of up to two years "if the President determines that the technology to implement such standard is not available and that it is in the national security interests of the United States to do so," 42 U.S.C. § 7412(i)(4). EPA notified the public in the Fact Sheet that any source interested in such exemption from the 2024 MATS Rule "should provide their recommendations to EPA by March 31, 2025." EPA stated that sources only need to provide why the technology is unavailable and why it is in the national security interest for an exemption. EPA's Press Release further explained that the Agency is considering exemptions via CAA Section 112(i)(4) while the Agency goes through the rulemaking process to reconsider the Rule.

III. REQUEST FOR EXEMPTION

In CAA Section 112(i)(4), Congress expressly provided the President ***the discretion*** to determine whether a technology is "not available" and whether exempting a stationary source would be in the "national security interests." In exercising this discretion, the President should consider technological unavailability and national security broadly.

As set forth in the Executive Summary, the control technology for Colstrip to meet the standard is unavailable for the following reasons:

- ***The control technology is technologically unavailable.*** The application of new baghouses following wet venturi scrubbers is unproven and untested and comes with significant risks to the operation of Colstrip.

- ***The control technology is economically unavailable.*** Applying baghouse technology to Colstrip is prohibitively expensive. When the Rule was finalized, Talen Montana estimated the compliance cost to be around $350 million. Currently the cost estimates exceed $500 million, plus operation and maintenance costs of $15 million annually. Market realities, such as difficulties in funding and rate recovery, make such a project uneconomic meaning that it is more likely that Colstrip will shut down.

- ***The control technology is unavailable from a timing standpoint.*** At a minimum, the technology to control emissions to the levels required within the statutory timelines simply does not exist. No control technology could be installed by July 6, 2027, the compliance date set by the 2024 MATS Rule. A significant risk remains that even a one-year extension would not be enough due to the unique financial and technological constraints Colstrip faces.

The President should account for the following in determining that exempting Colstrip from the Rule would advance national security interests.

- At least two Executive Orders have already declared that any emergency suspension of regulations hindering energy production would advance national security. *See* Executive Order 14154 & Executive Order 14156.

- Exempting Colstrip from the Rule falls squarely within advancing national interests because Colstrip is essential in providing much needed, reliable electricity in the western region of the United States, where there is an abundance of critical military infrastructure. Colstrip is also a core economic driver for Montana.

A. The technology to implement the 2024 MATS Rule specifically for Colstrip is unavailable.

Concerning technological availability, CAA Section 112(i)(4) states: "The President may exempt any stationary source from compliance with any standard or limitation under this section for a period of not more than 2 years if the President determines that the technology to implement such standard is not available." 42 U.S.C. § 7412(i)(4). The President should exempt Colstrip pursuant to CAA Section 112(i)(4) because Colstrip does not have a practically available technology to implement the 2024 MATS Rule.

1. Application of baghouses to Colstrip is technologically unproven and untested given Colstrip's existing pollution control technology.

It is true that baghouses, for ***new*** power plants, are widely available because the control technology is installed after the combustion device (the boiler). But in the case of Colstrip, the baghouse must be installed after the already-existing wet venturi scrubbers, which the plant currently uses to control fPM emissions and sulfur dioxide (SO_2). To utilize only a baghouse would require a complete redesign of the facility and likely a new stack, which would be cost prohibitive. The wet venturi scrubbers already capture 99.6% of the fPM, but to capture the remaining 0.2% as required by the 2024 MATS Rule, the baghouses would be needed as an addition to the backend of the wet venturi scrubbers, which would be a unique and unproven combination.

While this arrangement may be theoretically possible, it is challenging and untested in practice. The combination of wet venturi scrubbers followed by baghouses increases the risk that the condensed water droplets (from the scrubbers) would meet the fly ash emitted by the plant, creating particles similar to concrete on the filter bags, thereby crippling the baghouse. Effectively, the combination increases the likelihood that the entire facility gets clogged with concrete particles. Additionally, once the bags are plugged, they must be replaced, and a significant number of plugged bags could result in emission exceedances, the plant being derated, or the plant being forced offline. Talen Montana is unaware of such control technologies ever being applied together in this arrangement at any other facility in the entire United States. As such, there is no proof that such technology is available to capture the small, remaining amount of particulate that exists following the installed wet venturi scrubbers. And because of the short compliance deadline, Colstrip would be required to construct, test, and implement this unprecedented combination on the fly, potentially spending at least $500 million only to have the revamped control system fail. As a result, the technology to comply with the Rule is technologically unavailable.

2. The technology is financially unavailable.

When Talen Montana requested a judicial stay of the 2024 MATS Rule, it submitted a supporting declaration (Lebsack Declaration), included in this request as Exhibit 3.[2] In this declaration, Talen Montana stated that a project to comply with the emission standards would cost "$350 million,"[3] with a "$15 million annually" in operation and maintenance costs. Lebsack Declaration ¶¶ 16, 34. These cost figures already presented challenges to Colstrip, as reflected by the litigation and request for judicial stay.

With the Rule now in effect, Talen Montana has conducted further engineering studies to get a more accurate assessment of the project costs. The most recent, up-to-date engineering estimates exceed $500 million. This new projection accounts for sole source risk allowance, more accurate wage rates, structural steel install rates, scaffolding costs, duct installation costs, and total delivery costs—all of which were not accounted for in studies leading up to the Lebsack Declaration.

These costs will only increase. Because Colstrip cannot handle this project in-house, it must work with a third-party vendor. Colstrip is currently waiting on a turnkey proposal, but it is expected that costs will increase by up to 30%. This is because it will be the vendor that must procure the materials, assume liability, and hire contractors.

Such cost figures are exorbitant and burdensome to the point that it is more likely that some owners of Colstrip will forego installing the control technology altogether, and instead consider shutting down the plant. At least three market conditions cause the installation of baghouses to be financially unavailable.

First, a significant number of Colstrip's co-owners might not be interested in funding such a project. As explained in the Lebsack Declaration, some of Colstrip's co-owners are located in the Pacific Northwest. And because of shifting political sentiments against coal in the region, these co-owners would not be interested in any involvement that would allow a coal-fired power plant to continue operating. For example, the public utility commissions in Oregon and Washington do not want any electricity powered by coal. In fact, the State of Washington passed a statute that would impose ***penalties*** on utilities that provide coal-fired electricity to certain Washington customers after December 31, 2025. Wash. Rev. Code §§ 19.405.030(1)(a), (4) and 19.405.090(1)(a)(i). With express disapprovals from Pacific Northwest utility commissions, it

---

[2] Of note, even opponents to the judicial stay carefully tailored their argument and implicitly recognized Colstrip's unique constraints and challenges. They claimed that any judicial stay in favor of Colstrip should not be extended to others. *See, e.g.*, EPA Opp'n 50, *Talen Montana, LLC v. EPA* (D.C. Cir. filed July 22, 2024), ECF No. 2065849; Env't Intervenors Opp'n 13 (D.C. Cir. filed July 22, 2024), ECF No. 2065869.

[3] The Lebsack Declaration includes an "Attachment A," which provides select excerpts from a report prepared by technical consultants that assessed the cost breakdown. Table 1-1 of Attachment A (located in page 1-9) provides a summary of the cost breakdown.

would be difficult for these co-owners to justify any project that would let Colstrip to continue operate. Lebsack Declaration 9 10.

Second, it is possible that public utility commissions disapprove rate recovery for the project. This is exactly the conundrum NorthWestern currently faces as a regulated utility. In the comments submitted during the rulemaking period for the 2024 MATS Rule, NorthWestern expressly flagged this scenario as a grave area of concern. NorthWestern already planned on investing over $2.4 billion in electricity infrastructure improvements, which has spurred significant rate recovery controversy. When NorthWestern filed its comments, the Montana Public Service Commission was weighing a 28% residential electricity rate settlement that did not account for the 2024 MATS Rule. NorthWestern Comments 20 21. The Commission largely approved the settlement, allowing NorthWestern to recover for its past investments. However, to maintain the utility's health, NorthWestern filed another rate review in Summer 2024, seeking recovery of essential investments made through December 2024 to serve customers. There has been no final decision, and that filing presents no costs directly attributable to the construction of a baghouse itself.

Third, the future of EPA's GHG Rule further complicates the feasibility of such a project that the 2024 MATS Rule demands. While the Trump Administration has expressed intent to reconsider and possibly rescind the GHG Rule, it is still on the books. And as expressed by Talen Montana and NorthWestern, under this rule, Colstrip has no option but to shut down the plant by 2031. Lebsack Declaration ¶¶ 41–43.[4] This is because Colstrip cannot switch to burning natural gas instead of coal as required by the GHG Rule. Nor could Colstrip switch to natural gas to comply with the 2024 MATS Rule. *See id.* If the GHG Rule forces Colstrip to shut down, Colstrip's cost-recovery period for any technology installment would greatly decrease. While it is true that this particular concern may not materialize, it is still a financial uncertainty and a material factor that any investor must consider when deciding to commit to a project.

3. The technology is not available by July 6, 2027, and there is a significant risk that a one-year extension would be insufficient.

The 2024 MATS Rule directs all applicable facilities to comply with the new emission standard by July 6, 2027. *See, e.g.*, 40 C.F.R. § 63.9991 ("Before July 6, 2027, you must meet each operating limit in . . . this subpart . . . ."); 89 Fed. Reg. at 38508 (setting the effective date of the 2024 MATS Rule to be "July 8, 2024"); 42 U.S.C. § 7412(i)(3)(A) (directing EPA to "establish a compliance date . . . in no event later than 3 years after the effective date of such standard"). This deadline could be extended by one year by a permitting authority. 42 U.S.C. § 7412(i)(3)(B). Colstrip cannot meet the fPM emission standard of 0.010 lb/MMBtu unless it installs baghouses, a major infrastructure addition to the facility.

[4] The Lebsack Declaration includes an "Attachment B," which is a separate declaration in support of judicially staying the GHG Rule. *See West Virginia v. EPA*, No. 24-1120 (D.C. Cir.).

Meeting the July 6, 2027 compliance timeline always has been ambitious, if not impossible. Such a project, at an absolute minimum, would take 36 to 42 months to complete. Construction alone would take two years because the first year would be devoted solely to foundation work. The time necessary for preliminary investigation and design finalization prior to construction would add an additional two and a half years. This timeline tracks Colstrip's experience—the facility's engineers had commenced preliminary investigation on May 1, 2023, and only around now is the plant moving onto the design phase, projected to last another year.

When requesting a judicial stay of the 2024 MATS Rule, Talen Montana explained how the only way to meet the Rule's deadline is if detailed engineering and design work begin in the fall of 2024, and construction commences in the spring of 2025. "[E]ven if the project could begin in the fall of 2024, it will be a challenge to complete by the compliance deadline of July 8, 2027, and may still be tight for a compliance even if granted a one-year deadline extension under the rule." Lebsack Declaration ¶ 37.

These have always been best-case projections with zero margin of error. Multiple complications could delay the project. Due to its location in Montana, any construction project for Colstrip is subject to weather extremes. Cold temperature often makes concrete pouring impossible. Staff would be unable to work for an extended period once temperatures fall to 30 degrees or below or once it snows extensively.

Labor availability is also an issue. The closest "large" city is Billings, Montana, 100 miles away. It is challenging to provide temporary lodging for all workers involved in a project of this scope. In fact, skilled labor in this specific field (of installing baghouses) is limited due to the fact that most projects of this kind occurred in 2012 (when the original MATS rule was promulgated), and specialists have either retired or moved on to work on other projects. Even if labor could be procured, it will be difficult to staff personnel in both the baghouse construction project and normal plant maintenance activities. Inherent tradeoffs must be made where allocating boilermakers to the baghouse could cause labor shortage in the normal operation of the plant.

Lastly, inherent supply chain uncertainty lingers. The project requires significant amounts of steel and electrical components (such as transformers, motors, and switch gear). All of these are imported, and procurement is becoming challenging due to market conditions.

And while Talen Montana has been diligent in its efforts to ensure Colstrip's compliance with the Rule, complications have pushed back these timelines. As discussed *supra* pages 6 7, there are significant challenges funding a project of such magnitude where the project has the potential to create severe technological complications and sufficient time does not exist to recover costs (due to the Biden EPA's GHG Rule). Additionally, because the co-owners hold divergent opinions on whether such funding is justified in the first place, any agreement would likely come in January 2026 at the earliest (after certain anticipated ownership changes). Colstrip's engineers project that, as soon as funding is available the first day of 2026, the entire project could potentially be completed by Spring of 2029. That still misses the compliance deadline even if the Montana

Department of Environmental Quality grants a one-year extension that is the maximum extension allowable under law. As a result, the project is unavailable within the regulatory timeframe.

B. It is in the "national security interests of the United States" to exempt Colstrip from compliance with the 2024 MATS Rule.

The statute requires the President to determine that exempting Colstrip from the 2024 MATS Rule "is in the national security interests of the United States." 42 U.S.C. § 7412(i)(4).

As a threshold matter, Presidential determinations on national security receive the utmost deference. "[T]he Supreme Court has always been reluctant to second-guess the Executive Branch on matters of national security—especially where Congress has not acted to restrict it." *Lee v. Garland*, 120 F.4th 880, 889 (D.C. Cir. 2024); *see also Haig v. Agee*, 453 U.S. 280, 291 (1981) ("[I]n the areas of . . . national security, . . . congressional silence is not to be equated with congressional disapproval."); *United States v. Curtiss-Wright Exp. Corp.*, 299 U.S. 304, 320 (1936) (discussing "the very delicate, plenary and exclusive power of the President as the sole organ of the federal government in the field of international relations").[5]

And the President has spoken. Through Executive Order 14156, the President declared a "national energy emergency" concerning energy resources and costs. 90 Fed. Reg. 8433 (Jan. 29, 2025) ("Declaring a National Energy Emergency"). According to the President, "a reliable, diversified, and affordable supply of energy" is necessary for the nation's "defense industries" and "military preparedness." *Id.* Further, "an affordable and reliable domestic supply of energy is a fundamental requirement for the national and economic security of any nation," especially when "hostile state and non-state foreign actors have targeted our domestic energy infrastructure, [and] weaponized our reliance on foreign energy." *Id.*

The national security implications of reliable, unrestrained energy production echoes in Executive Order 14154 as well. 90 Fed. Reg. 8353 (Jan. 29, 2025) ("Unleashing American Energy"). Through this Executive Order, the President determined that various regulations have impeded resource development, "limited the generation of reliable and affordable electricity," and inflicted high energy costs, all of which "weaken[s] our national security." *Id.* Thus, the President determined that it is "in the national interest to unleash America's affordable and reliable energy and natural resources" which, in turn, will "rebuild our Nation's economic and military security." *Id.*

As such, the President directed all agencies to "exercise any lawful emergency authorities" to facilitate "production, transportation, refining, and generation of domestic energy resources," including "in and through the West Coast of the United States." 90 Fed. Reg. at 8434. Likewise, the President directed all agencies to "suspend, revise, or rescind" all regulations that "impose an

[5] Because CAA Section 112(i)(4) is fundamentally concerned with national security, this same high level of discretion must be afforded to Presidential determinations on all elements of the Section, including determinations that a particular control technology is "not available."

undue burden" on the use of coal as "expeditiously as possible" in the interest of national security. *See* 90 Fed. Reg. at 8353 54 (discussing the Executive Order's policy goals of "reduc[ing] the global influence of malign and adversarial states," and "protect[ing] the United States's economic and national security and military preparedness by ensuring . . . an abundant supply of reliable energy").

The slew of passages in the Executive Orders make clear: The President has already determined that ***any*** reduction of regulatory burden when it comes to energy production including an emergency exemption of the 2024 MATS Rule for any power plant—would be in the national security interest. This is unsurprising. Coal still supplies 16% of America's electricity. U.S. Energy Information Administration, *What is U.S. electricity generation by energy source?* (Feb. 2024).[6] This share is especially important because coal provides efficient, low-cost, reliable 24/7 baseload power. In doing so, it stabilizes electrical grids under increasing threats. Moreover, the United States has abundant coal reserves, providing a secure and reliable supply, and generating domestic jobs and economic activity.

The continued operation of Colstrip fits comfortably into President Trump's directives, as evinced by the Executive Orders discussed. Therefore, specifically exempting Colstrip from the 2024 MATS Rule would be in the national security interests of the United States.

As Talen Montana submitted in its comments to EPA when the 2024 MATS Rule was proposed, "Colstrip is one of Montana's most important energy assets, especially as demand for reliable baseload power in the western U.S. continues to grow." Talen Montana Comments 7. Colstrip "is vital to ensuring that Montanans have affordable and reliability electricity, especially during peak winter and summer months." *Id.*

NorthWestern, the largest public utility in Montana, also extensively commented on Colstrip's importance to the grid. In the lawsuit challenging the Rule and as part of the request for a judicial stay, NorthWestern submitted a declaration as well (Hines Declaration), included in this recommendation as Exhibit 4. Both these documents flag the importance of Colstrip to the nation's grid and electricity supply, and how the 2024 MATS Rule hinders national security by disrupting Colstrip's operations.

- The 2024 MATS Rule will increase electricity rates for Montana ratepayers. Hines Declaration 7 10; NorthWestern Comments 21. In fact, the diversion of funds alone for compliance with the Rule would complicate meeting generation demand. NorthWestern Comments 2–3.

- Replacement electrical generation and transmission capacity does not exist for Colstrip. In other words, Colstrip is truly irreplaceable from an electricity production standpoint, at

[6] Available at https://www.eia.gov/tools/faqs/faq.php?id=427&t=3.

least in the near future. Hines Declaration ¶¶ 45–52; NorthWestern Comments 13–16 ("Transmission limitations on the ability to import power").

- "Colstrip plays a critical voltage-maintenance function." Hines Declaration ¶ 65. Without Colstrip and its uninterrupted operation, there is a significant blackout risks which would affect businesses and "important infrastructure." *Id.* ¶¶ 66, 67. This is especially the case because NorthWestern, as a regulated utility, made targeted capital investments improving grid reliability, which had not planned for the 2024 MATS Rule and its costs. NorthWestern Comments 21–22.

The economic consequences of grid disruptions are severe and well-documented, and they pose a national security concern in and of themselves. If Colstrip is forced to reduce or cease operations because it cannot timely comply with the 2024 MATS Rule, there would be an increased risk of the kinds of devastating disruptions that have recently hit California and Texas. Hines Declaration ¶¶ 52, 64 67. All these issues warrant heightened attention when considering military readiness. Colstrip powers the northwestern region generally, including the military bases located in the area. The State of Washington alone is home to nine known military bases. And Oregon, Montana, and Idaho collectively house seven more. Any risk to power disruption in and around these bases affect core national security issues.

External sources confirm Talen Montana and NorthWestern's grid reliability concerns. The Western Power Pool projects that for July to August, the planning reserve margin falls below 10% for most of 2026 to 2029. The North American Electric Reliability Corporation (NERC) projects that reserve margins reach levels of 10% or below ***overall*** starting in 2031. NERC, *2024 Long Term Reliability Assessment* 127 (Dec. 2024).[7]

Lastly, Colstrip is also vital to protecting "economic security" as expressed in the two Executive Orders discussed above. *See* 90 Fed. Reg. at 8433; 90 Fed. Reg. at 8353. Colstrip supports more than 3,000 jobs in the local economy, provides $240.3 million in income for Montana households, and about $102.8 million in state tax revenue to Montana. Indeed, it has been calculated that Montana benefits in economic activity worth over $1 billion from Colstrip in the form of electricity costs and reliability, inter-region trade, and lower state government spending. Lebsack Declaration ¶ 58 (including Attachment C);[8] Talen Montana Comments 6 7.

[7] Available at https://www.nerc.com/pa/RAPA/ra/Reliability%20Assessments%20DL/NERC Long%20Term%20Reliability%20Assessment 2024.pdf.

[8] The Lebsack Declaration includes an "Attachment C," which is a study of Colstrip's economic contributions prepared by Dr. Patrick M. Barkey, Ph.D.

IV. CONCLUSION

Talen Montana and NorthWestern appreciate the opportunity to submit its request to exempt Colstrip from the 2024 MATS Rule. Talen Montana and NorthWestern respectfully request that the President exercise his discretion to exempt Colstrip from the 2024 MATS Rule.

Respectfully submitted,

John Wander
General Counsel
Talen Energy Corporation
Talen Montana, LLC

Shannon Heim
General Counsel, Vice President,
Federal Governmental Affairs and
FERC Compliance Officer
NorthWestern Corporation
d/b/a NorthWestern Energy

Enclosures:

- Exhibit 1 Talen Montana Comments
- Exhibit 2 – NorthWestern Comments
- Exhibit 3 Lebsack Declaration (including Attachments A to C)
- Exhibit 4 – Hines Declaration

Message

From: Mavian, Kari (K) [KMavian@dow.com]
Sent: 3/5/2025 10:06:29 PM
To: Tardif, Abigale (Abbie) [Tardif.Abigale@epa.gov]
CC: [redacted]@epa.gov]; [redacted]@epa.gov]; [redacted]@epa.gov]; Donahue, Sean [donahue.sean@epa.gov]; Szabo, Aaron [Szabo.Aaron@epa.gov]; Dominguez, Alexander [dominguez.alexander@epa.gov]; [redacted]@epa.gov]
Subject: Dow follow-up to ACC/AFPM HON meeting
Attachments: 2025-03-4 HON Reconsideration Letter__Dow Final.pdf; 2025-03-4 HON Reconsideration Letter__UCC Final.pdf

Caution: This email originated from outside EPA, please exercise additional caution when deciding whether to open attachments or click on provided links.

Dear Principal Deputy Assistant Administrator Tardif,

Please find attached two follow-up letters from Dow and Dow's subsidiary, Union Carbide, reiterating our immediate request for an extension of the compliance date for the HON. Thank you again for meeting with us in February to discuss this rule and the urgent nature of this request. As we mentioned in our meeting, and in our comments and meetings with EPA during the HON rulemaking process, the two-year compliance deadline is not practical for the types of projects needed to comply with this rule. That has been confirmed by our project teams and further detailed in the attached letters. In addition, we express support for the ACC and AFPM petition for reconsideration due to the technically unachievable requirements in the final rule, also further detailed in the attachments.

Please contact me with any questions or information you may need to assist with this request. Thank you for your attention to this.

Best regards,
Kari

Kari Mavian

Dow

kmavian@dow.com



Seek Together

General Business

March 4, 2025

Abigale Tardif
Principal Deputy Assistant Administrator
Office of Air and Radiation
Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, DC 20460

RE: Request for Extension of the Compliance Deadline and Letter of Support for ACC/AFPM Petition for Reconsideration In Re: New Source Performance Standards for the Synthetic Organic Chemical Manufacturing Industry and National Emission Standards for Hazardous Air Pollutants for the Synthetic Organic Chemical Manufacturing Industry and Group I & II Polymers and Resins Industry (89 Fed. Reg. 42932). Docket ID: EPA-HQ-OAR-2022-0730 ("HON rule").

Dear Principal Deputy Assistant Administrator Tardif:

We are writing on behalf of The Dow Chemical Company ("Dow") to thank you for meeting with us on February 18[th] to discuss our concerns with the final HON rule and express our support for the petition for reconsideration filed by the American Chemistry Council ("ACC") and the American Fuel & Petrochemical Manufacturers ("AFPM") urging the Environmental Protection Agency ("EPA") to reconsider its final HON rule. First and foremost, Dow requests immediate relief and a one-year extension to the impractical compliance deadlines, which are fast approaching, as the final rule's deadlines are unrealistic and cannot be met. Without an extension, this will lead to facility shutdowns and jeopardize important ethylene oxide supply chains including military jet fuels, aircraft deicing fluids, semiconductors, pharmaceuticals, and sterilization.

We also support the call to revoke the regulatory provisions promulgated under Clean Air Act section 112(f) because they exceed EPA's statutory authority and do not comply with the requirements of reasoned decision-making. While the petition filed by ACC and AFPM speaks to the general need for immediate relief and the rule's consequences from a national perspective, we wanted to ensure that you also had input from a regulated entity that is subject to EPA's final HON rule. The final rule's deadlines are unrealistic and there is a need for immediate relief. The final rule also harms the national interest because it exceeds EPA's statutory authority and imposes undue burdens and costs that impede private enterprise and far outweigh any public benefit.

Dow and its subsidiaries have long been committed to high operational and safety practices that consistently meet or exceed regulations and applicable laws wherever it operates. Dow works proactively and collaboratively with regulators to ensure compliance with all applicable federal, state, and local regulations and continues to advocate for sensible, risk-based emissions standards based on the best available science. Long before EPA promulgated its final HON rule, Dow established an Ethylene Oxide (EO) Emissions Reduction Program overseen by the Corporate EO Steering Team, which consists of members from the company's business, engineering, procurement, strategy, and leadership teams. The Corporate EO Steering Team has focused on five key steps (1) compliance (establishing confidence in EO emission data); (2) robust operation (preventing EO releases and limit exceedances); (3) risk reduction (preventing unplanned events resulting in EO emissions); (4) operating discipline (accomplishing sustained improvement); and (5) communications. Dow's efforts to implement these steps significantly decreased EO emissions. In 2021, Dow's EO emissions declined by more than 70% from a 2018 baseline[1]. Dow has also engaged with its local communities to listen to the concerns, questions, and needs of community members.

EPA Should Extend Upcoming Deadlines

Dow and its subsidiary (which will send its own separate communication), have submitted requests to extend the compliance deadline of July 15, 2026 by one year for five of their twenty-eight projects that are being implemented to comply with the ethylene oxide provisions of the HON rule. We are continuing to work with EPA on their request for more information related to these extension requests.

In preparing to comply with the HON rule, Dow has undertaken an extensive amount of work to sample and test individual process vents and process wastewater streams to determine if these sources meet the definition of "In Ethylene Oxide Service". Dow has also expended significant financial resources on project scoping and engineering for all the projects, and devoting significant employee time, including new hires and reallocation of human capital away from other workstreams. Beginning in April 2024, Dow commenced comprehensive sampling and monitoring at two of its facilities (and two of its subsidiary's facilities) to identify which projects would need upgrades to comply with the HON rule and which projects are "in ethylene oxide service" (meaning that the projects include equipment that processes ethylene oxide ("EO")). Because of the sheer number of product lines and the vastness of Dow equipment that is involved in EO-related processes, those efforts remain ongoing. The breadth of projects that Dow must implement to comply with the final rule is constantly evolving, as Dow has been forced to add and subtract projects as new sampling information becomes available.

Dow is required to undertake an extensive assessment process to determine whether equipment is in EO service, and how Dow can and should upgrade its equipment to meet the HON rule's extraordinarily stringent limits. That process requires (1) testing vents for flow rate and composition; (2) scoping out potential solutions to bring EO emissions into compliance with

the final rule; and (3) sourcing bids from external vendors who may be able to develop the required technology. Each of these steps presents significant practical challenges. For example, there are few vendors who are qualified to build the necessary devices and, because every EO emitting industry needs to comply simultaneously, industry faces a significant backlog. Similarly, some of the technologies needed to comply with EPA's requirements have known reliability issues.

In addition to this detailed assessment process, each of the five separate projects, for which Dow seeks an extension, independently require (1) six months to determine if equipment is in EO service; (2) 12 months for front-end engineering design; (3) nine months of detailed design engineering; (4) 19 months for procurement of vendor bids, vendor questions and selection, equipment fabrication and delivery (overlaps with front end engineering design); (5) ten months for construction of required equipment, piping, and instrumentation (overlaps with detailed design engineering); and (6) 1-1.5 months to develop operating procedures, commissioning the equipment, and placing it into service. This information was provided to EPA several times with our comments on the rule and in meetings with the Agency.

Without an extension, Dow will not be able to meet the compliance timeline and potentially will have to shut down some of its facilities until we complete these projects. Dow will also be forced to implement projects at a rate that increases safety risks; diverts resources from other previously planned projects; and limits Dow's ability to innovate and develop new products to help the American people in everyday life. Therefore, an extension is needed ***now*** to avoid expending significant resources to comply with the final rule's unreasonable deadlines.

EPA Should Grant the Motion for Reconsideration

EO serves as an important chemical precursor used to produce a wide range of other chemicals, including home and personal care products, pharmaceuticals, agricultural products, antifreeze, military jet fuels, plastics, detergents, and textiles. It also performs a crucial role as a sterilizing agent for heat-sensitive medical equipment that cannot be sterilized with steam or radiation. Dow estimates that its U.S. manufactured EO supplies the requirements of 75% of the U.S. government's jet fuel additive, 35% of the osmotic laxative market, 25% of the automotive brake fluid market, and nearly 10% of aircraft deicing fluids – all essential products required for national safety and the smooth functioning of the U.S. economy.

Dow may have to shut down some facilities that produce or use ethylene oxide in the second half of 2026 to comply with the HON rule, which is likely to have downstream impacts on the derivatives of EO with consequences for all of the sectors mentioned above. If Dow were to shut down the facilities simultaneously, the cascading impacts of the loss of EO production would be widespread and felt throughout the U.S., both economically and from an essential products perspective. During these outages, hourly employees will also face loss of work, negatively impacting the local community and individual American families' households.

There are several provisions of the final rule that are untenable. Two of the most challenging are EPA's decision to regulate process wastewater streams at a level of 1 ppmw without any allowance for low mass flows or any consideration that some of the ethylene oxide in the process wastewater streams will react with water to form ethylene glycol. EPA's assumption that 50% of the ethylene oxide in the wastewater streams will be emitted to the atmosphere is much higher than fraction emitted values calculated by Dow's estimating tools, which predict 5 to 15% will be emitted. These wastewater streams require additional unit operations to react or remove the ethylene oxide from the process wastewater. In addition, EPA's decision to regulate small process vent streams at a level of 1 ppmv without regard to the stream pressure, flowrate or net heating value also create engineering challenges when determining how to collect and transport these streams to a control device and then what type of control system to design.

In addition to these engineering concerns, EPA has finalized requirements that would actually increase ethylene oxide emissions. For example, EPA has eliminated the Delay of Repair option for addressing small equipment leaks. This means that if a manufacturer cannot fix a small leak within fifteen days, the entire plant must be shut down to address that leak. By removing this delay of repair option, manufacturers estimate this could lead to 4-6 more plant shutdowns a year. Shutting down and starting up plants would emit more ethylene oxide emissions than allowing a small leak to continue until it can be safely fixed. And this may not only impact the ethylene oxide unit but could also force units offline that rely on ethylene oxide as an input in making other products.

In addition, EPA has finalized requirements that are not technically feasible. For thermal oxidizers, EPA is requiring continuous monitoring of flue gas. Flue gas temperatures are 1300 1600°F for smaller thermal oxidizers with no heat recovery. Technology is not available to continuously measure flowrates at these high temperatures. This makes compliance impossible.

EPA has finalized a fenceline monitoring action level of 0.2 μ/m^3 of ethylene oxide based on a new ambient air monitoring method (Method 327). There are many technical concerns with the new Method 327 and the ability of commercial labs to run the new method and analyze the number of canisters required for each site. The final action level is also below background levels taken at areas where there is no ethylene oxide being manufactured or used. This makes compliance impossible.

Finally, these requirements are all based on an overly conservative scientific assessment. EPA is relying on a risk value from the EPA EO IRIS assessment, which has been challenged as flawed and overly conservative. Further, EPA is utilizing this IRIS value without taking other scientific and peer-reviewed data into consideration. The IRIS risk value is 23,000 times lower than what is naturally occurring in the human body and below background levels.[ii]

Despite the critical role EO plays in everyday life and the substantial work Dow has taken to reduce EO emissions, EPA refused to incorporate several of Dow's comments into the HON rule. Nor has it adequately addressed the objections that EPA has exceeded its authority and imposed burdensome regulations that do not reflect the best and most appropriate reading of the statutory requirements. The rule imposes significant costs that are not outweighed by the expected public benefits, and it will harm national interests. As a result, EPA should grant the petition for reconsideration and take time to impose a HON rule that is appropriate, cost-effective, and consistent with the national interest.

Respectfully submitted,

Louis Vega
President, Dow North America

Cc: Aaron Szabo, Senior Advisor to the Administrator, Office of the Administrator
Sean Donahue, Principal Deputy General Counsel, Office of General Counsel
Alex Dominguez, Deputy Assistant Administrator for Mobile Sources, Office of Air and Radiation
[redacted], Director, Office of Air Quality Planning and Standards
[redacted], Director, Sector Policies and Programs Division, Office of Air Quality Planning and Standards
[redacted], Refining and Chemical Group Leader, Office of Air Quality Planning and Standards
[redacted], General Engineer, EPA Office of Air Quality Planning and Standards

[i] EPA used 2017 data in this final rule, which does not accurately estimate current risk since many facilities began emission reduction programs in 2018 when the new risk value was announced.
[ii] https://www.americanchemistry.com/chemistry-in-america/chemistries/ethylene-oxide

Union Carbide Corporation
A Subsidiary of The Dow Chemical Company
7501 State Highway 185 North
Seadrift, TX 77983

March 4, 2025

Abigale Tardif
Principal Deputy Assistant Administrator
Office of Air and Radiation
Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, DC 20460

RE: Request for Extension of the Compliance Deadline and Letter of Support for ACC/AFPM Petition for Reconsideration In Re: New Source Performance Standards for the Synthetic Organic Chemical Manufacturing Industry and National Emission Standards for Hazardous Air Pollutants for the Synthetic Organic Chemical Manufacturing Industry and Group I & II Polymers and Resins Industry (89 Fed. Reg. 42932). Docket ID: EPA-HQ-OAR-2022-0730 ("HON rule").

Dear Principal Deputy Assistant Administrator Tardif:

We are writing on behalf of Union Carbide Corporation ("UCC"), a wholly owned subsidiary of The Dow Chemical Company to express our support for the petition for reconsideration filed by the American Chemistry Council ("ACC") and the American Fuel & Petrochemical Manufacturers ("AFPM") urging the Environmental Protection Agency ("EPA") to reconsider its final HON rule. First and foremost, UCC requests immediate relief and a one-year extension to the impractical compliance deadlines, which are fast approaching, as the final rule's deadlines are unrealistic and cannot be met. Without an extension, this will lead to facility shutdowns and jeopardize important ethylene oxide supply chains including military jet fuels, aircraft deicing fluids, semiconductors, pharmaceuticals, and sterilization.

We also support the call to revoke the regulatory provisions promulgated under Clean Air Act section 112(f) because they exceed EPA's statutory authority and do not comply with the requirements of reasoned decision-making. While the petition filed by ACC and AFPM speaks to the general need for immediate relief and the rule's consequences from a national perspective, we wanted to ensure that you also had input from a regulated entity that is subject to EPA's final HON rule. The final rule's deadlines are unrealistic and there is a need for immediate relief. The final rule also harms the national interest because it exceeds EPA's statutory authority and imposes undue burdens and costs that impede private enterprise and far outweigh any public benefit.

EPA Should Extend Upcoming Deadlines

UCC has submitted requests to extend the compliance deadline of July 15, 2026 by one year for four projects that are being implemented to comply with the ethylene oxide provisions

of the HON rule. We are continuing to work with EPA on their request for more information related to these extension requests.

In preparing to comply with the HON rule, UCC has undertaken an extensive amount of work to sample and test individual process vents and process wastewater streams to determine if these sources meet the definition of "In Ethylene Oxide Service". UCC has also expended significant financial resources on project scoping and engineering for all of the projects, and devoting significant employee time, including new hires and reallocation of human capital away from other workstreams. Beginning in April 2024, UCC commenced comprehensive sampling and monitoring at two of its facilities to identify which projects would need upgrades to comply with the HON rule and which projects are "in ethylene oxide service" (meaning that the projects include equipment that processes ethylene oxide ("EO")). Because of the sheer number of product lines and the vastness of UCC equipment that is involved in EO-related processes, those efforts remain ongoing. The breadth of projects that UCC must implement to comply with the final rule is constantly evolving, as UCC has been forced to add and subtract projects as new sampling information becomes available.

UCC is required to undertake an extensive assessment process to determine whether equipment is in EO service, and how UCC can and should upgrade its equipment to meet the HON rule's extraordinarily stringent limits. That process requires (1) testing vents for flow rate and composition; (2) scoping out potential solutions to bring EO emissions into compliance with the final rule; and (3) sourcing bids from external vendors who may be able to develop the required technology. Each of these steps presents significant practical challenges. For example, there are few vendors who are qualified to build the necessary devices and, because every EO emitting industry needs to comply simultaneously, industry faces a significant backlog. Similarly, some of the technologies needed to comply with EPA's requirements have known reliability issues.

Without an extension, UCC will not be able to meet the compliance timeline and potentially will have to shut down some of its facilities until we complete these projects. UCC will also be forced to implement projects at a rate that increases safety risks; diverts resources from other previously planned projects; and limits UCC's ability to innovate and develop new products to help the American people in everyday life. An extension is therefore needed ***now*** to avoid expending significant resources to comply with the final rule's unreasonable deadlines.

EPA Should Grant the Motion for Reconsideration

EO serves as an important chemical precursor used to produce a wide range of other chemicals, including home and personal care products, pharmaceuticals, agricultural products, antifreeze, military jet fuels, plastics, detergents, and textiles. It also performs a crucial role as a sterilizing agent for heat-sensitive medical equipment that cannot be sterilized with steam or radiation.

UCC may have to shut down some facilities that produce or use ethylene oxide in the second half of 2026 to comply with the HON rule, which is likely to have downstream impacts on the derivatives of EO with consequences for all of the sectors mentioned above.

Despite the critical role EO plays in everyday life, EPA refused to incorporate several of industry's comments into the HON rule. Nor has it adequately addressed the objections that EPA has exceeded its authority and imposed burdensome regulations that do not reflect the best and most appropriate reading of the statutory requirements. The rule imposes significant costs that are not outweighed by the expected public benefits, and it will harm national interests. As a result, EPA should grant the petition for reconsideration and take time to impose a HON rule that is appropriate, cost-effective, and consistent with the national interest.

Respectfully submitted,



Andrew J. Switalski
Vice President, General Counsel and Secretary

Cc: Aaron Szabo, Senior Advisor to the Administrator, Office of the Administrator
Sean Donahue, Principal Deputy General Counsel, Office of General Counsel
Alex Dominguez, Deputy Assistant Administrator for Mobile Sources, Office of Air and Radiation
[redacted], Director, Office of Air Quality Planning and Standards
[redacted] Director, Sector Policies and Programs Division, Office of Air Quality Planning and Standards
[redacted], Refining and Chemical Group Leader, Office of Air Quality Planning and Standards
[redacted], General Engineer, EPA Office of Air Quality Planning and Standards

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF THE DISTRICT OF COLUMBIA

MINNESOTA CENTER FOR ENVIRONMENTAL ADVOCACY
1919 University Avenue West, Suite 515,
Saint Paul, Minnesota 55104; *and*

NATURAL RESOURCES DEFENSE COUNCIL, INC.
40 West 20th Street, 11th Floor,
New York, New York 10011;

Plaintiffs,

v.

DONALD TRUMP, President of the United States, in his official capacity;

U.S. ENVIRONMENTAL PROTECTION AGENCY; *and*

LEE ZELDIN, Administrator of the U.S. Environmental Protection Agency, in his official capacity;

Defendants.

Case No. 1:26-cv-287

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

1. On July 17, 2025, President Donald Trump seized on a narrow and, until last year, never-before-used provision of the Clean Air Act, 42 U.S.C. § 7412(i)(4), to exempt the entirety of the taconite iron ore processing industry for two years from the 2024 updates to the National Emission Standards for Hazardous Air Pollutants ("NESHAP") for the Taconite Iron Ore Processing source category (known as the "2024 Taconite Rule"). Proclamation No. 10958,

ED_021114_00001748-00001

Regulatory Relief for Certain Stationary Sources to Promote American Iron Ore Processing Security, 90 Fed. Reg. 34,743 (July 17, 2025) ("Taconite Proclamation" or "Proclamation"). Taconite processing emits mercury – a known neurotoxin linked to IQ loss, deficiencies in attention-span, motor function, language, and visual spatial ability that is especially of concern for developing fetuses and young children – among other toxic air pollutants. After nearly 20 years of regulatory delay, the 2024 Taconite Rule established the first and only federally enforceable mercury emission standard for the taconite source category.

2. Besides establishing mercury standards, the 2024 Taconite Rule revised the standards for hydrogen chloride and hydrogen fluoride ("acid gas") by directly regulating them rather than using particulate matter ("PM") emissions limits as a surrogate. EPA estimated that these more stringent emissions standards will reduce combined acid gas emissions by 719 tons per year (hydrogen chloride and hydrogen fluoride emissions by 683 tons per year and 36 tons per year, respectively) and mercury emissions by 247 pounds per year. *National Emission Standards for Hazardous Air Pollutants: Taconite Iron Ore Processing*, 89 Fed. Reg. 16,420 (Mar. 6, 2024). EPA determined the 2024 Taconite Rule will reduce the risk or incidence of premature death, aggravated asthma, and non-fatal heart attacks. *Id.* at 16,421.

3. EPA issued the 2024 Taconite Rule in part to comply with the D.C. Circuit's decision in *Louisiana Environmental Action Network v. EPA*, 955 F.3d. 1088 (D.C. Cir. 2020) ("*LEAN*"), which held that EPA must set emission standards for all unregulated hazardous air pollutants ("HAPs") emitted by a major source category when conducting its required 8-year technology review under Section 7412(d)(6) of the Clean Air Act. EPA's "gap filling" in the 2024 Taconite Rule established for the first time—as required under the *LEAN* Court's mandate—

standards for mercury emissions from the Taconite Iron Ore Processing source category. *See* 89 Fed. Reg. at 16,409.

4. There are seven active and one indefinitely idled taconite iron ore processing facilities in the United States, located in Minnesota and Michigan as illustrated in Figure 1, below. President Trump's Taconite Proclamation exempts all of them, effectively suspending the 2024 Taconite Rule for two years and, putting communities at risk from toxic air pollutants emitted by taconite facilities. The eight facilities are owned by just two parent companies: U.S. Steel and Cleveland-Cliffs. The cost of compliance with the 2024 Taconite Rule is less than 1 percent of the annual sales revenue per ultimate owner. 89 Fed. Reg. 16,421. By granting these exemptions, President Trump has given a free pass to the industry to continue delaying controls at the expense of environmental protection and public health: due to these exemptions, facilities may continue to emit mercury in whatever amounts result from their operations with no federally enforceable emissions limit.

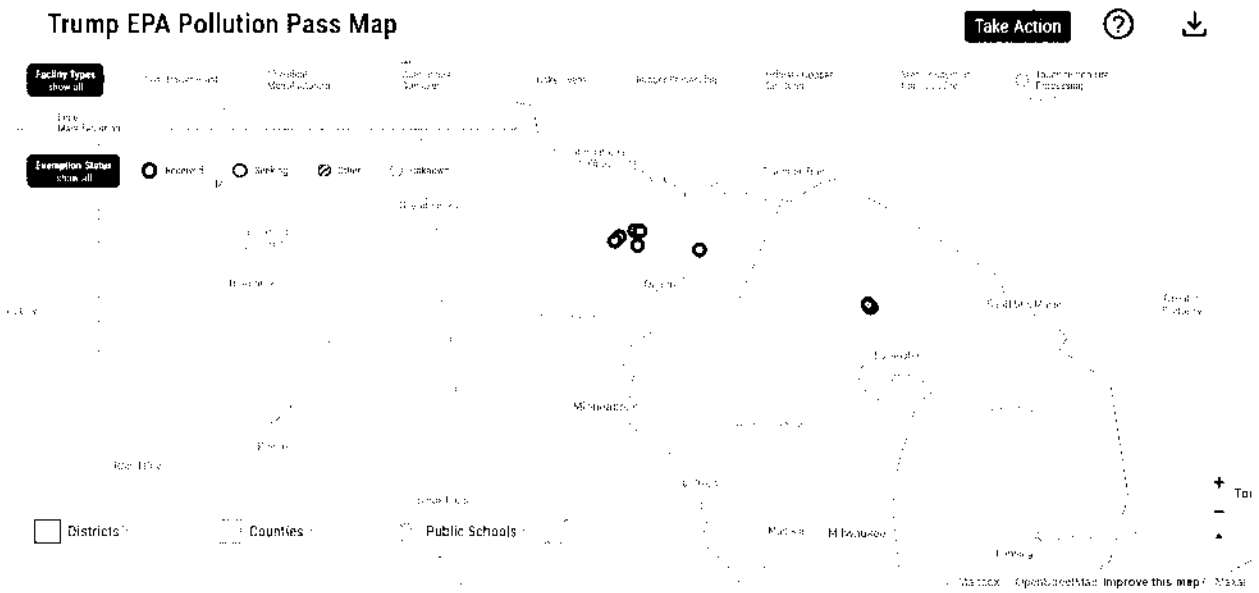


Image from https://www.edf.org/maps/epa-pollution-pass/ (last accessed Jan. 12, 2026)

5. The never-before-used provision of the Clean Air Act invoked in the Taconite Proclamation allows the President to exempt a source from a hazardous air pollutant standard for up to two years only if "the technology to implement" the relevant standard is "not available" *and* if exempting the source "is in the national security interests of the United States." 42 U.S.C. § 7412(i)(4). Both predicates are not met here.

6. In the fifty-five years since Congress enacted Section 7412(i)(4), no President had ever used that exemption authority. In just the first year of his second term, President Trump has done so seven times for more than 180 facilities. Besides the Taconite Proclamation that exempted the entire taconite iron ore processing industry from mercury standards, President Trump issued proclamations exempting nearly one-third of U.S. coal-fired power plants from mercury and other air toxics standards, nearly half of commercial sterilizers from ethylene oxide standards, 50 chemical manufacturers from ethylene oxide and other hazardous air pollutant standards, one of two primary copper smelters from mercury and other HAP standards, and all eleven coke oven facilities from applicable hazardous air pollutant standards.

7. President Trump's far-reaching Taconite Proclamation grossly exceeds the bounds of the Section 7412(i)(4) exemption authority. The Proclamation exempts all operating facilities regulated by the 2024 Taconite Rule from complying with any part of the Rule without any standard or facility-specific analysis to show that any (let alone all) of the eight exempted facilities meet the statutory standard. The air pollution control technology needed to comply with the acid gas standards already exists at the majority of operating facilities and effectively controls both acid gas and mercury pollution. The technology needed to comply with the mercury standards has been piloted by taconite facilities and has been used for many years to effectively reduce mercury emissions from plants in other industries. That the control technology

for mercury has not previously been required for taconite ore processing due to the lack of federally enforceable emission standards—and thus that the technology has not been installed at those facilities does not mean the technology to implement it is "not available."

8. The scope, content, and context of the Taconite Proclamation show it for what it really is: a pretext to relieve polluters from working to comply with the 2024 Taconite Rule while EPA works administratively to repeal those critical protections. Congress explicitly prohibited the agency from staying the effective date of such a rule, during reconsideration, by more than three months. *See* 42 U.S.C. § 7607(d)(7)(B).

9. The Taconite Proclamation violates the Clean Air Act and exceeds the President's lawful authority. Plaintiffs ask the Court to enter appropriate relief declaring the Proclamation unlawful and invalid and enjoining EPA and its Administrator from implementing or giving effect to it.

JURISDICTION AND VENUE

10. This Court has subject matter jurisdiction under 28 U.S.C. § 1331 because this is a civil action arising under laws of the United States, including the Clean Air Act.

11. Venue is proper in this Court under 28 U.S.C. § 1391(e) because Defendants reside in this judicial district, and because a substantial part of the events giving rise to the claim occurred in this judicial district.

12. The Court has authority to enter a declaratory judgment and to provide injunctive relief pursuant to Rules 57 and 65 of the Federal Rules of Civil Procedure; the Declaratory Judgment Act, 28 U.S.C. §§ 2201-2202; the All-Writs Act, 28 U.S.C. § 1651; and the Court's inherent equitable powers.

PARTIES

The Plaintiffs

13. Plaintiff Minnesota Center for Environmental Advocacy ("MCEA") is a Minnesota 501(c)(3) nonprofit organization with members residing across Minnesota and has offices in St. Paul and Duluth. MCEA's mission is to use law and science to protect Minnesota's environment, its natural resources, and the health of its people. MCEA has worked to reduce pollution from the taconite industry and improve water quality for more than fifty years as a means of protecting Minnesota communities, particularly those that are disparately impacted by mercury emissions, such as Indigenous communities and those residing, working, and recreating in Northeastern Minnesota. It has done so across multiple program areas, including Healthy Communities, Northeastern Minnesota, and its Water program. MCEA was established in 1974 and is located at 1919 University Ave. W., Suite 515, St. Paul, Minnesota 55104. MCEA has members that live, work, and recreate near facilities that received exemptions and the Taconite Proclamation will directly harm these members by depriving them of the protections afforded by the Taconite Rule.

14. Plaintiff Natural Resources Defense Council, Inc. ("NRDC") is a national 501(c)(3) nonprofit environmental membership organization with hundreds of thousands of members nationwide. NRDC's purpose is to safeguard the Earth—its people, its plants and animals, and the natural systems on which all life depends. Part of NRDC's core mission is to improve air quality and safeguard public health by combating hazardous air pollutant emissions. NRDC has members that live, work, and recreate near facilities that received exemptions and the Taconite Proclamation will directly harm these members by depriving them of the protections afforded by the Taconite Rule.

15. Plaintiffs' members live, work, and recreate in areas affected by the excess pollution that is and will be emitted from the exempted facilities. They are harmed by breathing air pollution from the exempted facilities and are concerned that exposure to hazardous air pollutants from the exempted facilities could have harmful effects on their health.

16. Plaintiffs' members stood to benefit from the mercury and acid gas standards in the 2024 Taconite Rule, which existing facilities were required to comply with by March 8, 2027, the latest allowable timeframe in Section 7412(i)(3) of three years after the effective date of the Rule. Exempted facilities are now not required to comply with the emission controls in the 2024 Taconite Rule and will be able to emit toxic air pollution at higher levels than otherwise would be allowed. Plaintiffs and Plaintiffs' members are harmed by the excess emissions that will result from the Taconite Proclamation exemptions.

17. Exposure to mercury, acid gases, and other hazardous air pollutants emitted by exempted facilities causes adverse health effects. These exemptions increase the likelihood of hazardous pollutant exposure and related harms in the communities surrounding the exempted facilities.

18. Craig Beveroth is a member of MCEA. He owns a cabin on Lake Vermillion in Tower, Minnesota, less than 30 miles from the U.S. Steel Corp Minntac facility. His cabin is a year-round residential home, and Mr. Beveroth resides in this cabin every other week in the summer and approximately once per month in the winter. When he travels to his cabin, Mr. Beveroth shops at one of several grocery stores in the area proximate to his cabin including the Walmart located one mile from the Minntac facility. Mr. Beveroth is concerned about mercury contamination and sulfation and the impacts of that pollution on Lake Vermillion. Due to these concerns about mercury contamination, he eats less fish from the area.

19. Robin Raplinger is a member of NRDC. He lives in Virginia, Minnesota within three miles of the ArcelorMittal/Cleveland-Cliffs Minorca facility and five miles of the U.S. Steel Corp Minntac facility. He has had a stroke in the past and is concerned that his health conditions will be exacerbated by living in an area that is in such proximity to the processing facilities. Mr. Raplinger spends significant time outdoors engaging in recreational activities including mountain biking, snowshoeing, and skiing on trails that are within one mile of the Minorca facility, and is concerned about the air pollution from the facilities getting into his own lungs during these outdoor activities. He also fishes in the Boundary Water Canoe Area Wilderness and is aware of advisories that warn against eating too many fish due to mercury accumulation in the fish. Although he recreationally fishes, he rarely eats the fish he catches due to concerns about mercury accumulation. He has taken measures including installing a reverse osmosis filtration system in his home because he is concerned about the negative health impacts of hazardous air pollutants from the taconite ore processing facilities. As a result of the Taconite Proclamation, Mr. Raplinger is concerned that the Minorca and Minntac facilities will emit more hazardous air pollutants during the two-year exemption period.

20. Plaintiffs and their members are therefore harmed by the Taconite Proclamation exemptions.

The Defendants

21. Defendant Donald Trump is the President of the United States. He resides and conducts his duties in Washington, D.C. He is sued in his official capacity.

22. Defendant U.S. Environmental Protection Agency ("EPA") is a federal agency of the United States. Its mission is to protect human health and the environment, and

responsibilities include issuing and enforcing hazardous air pollutant standards, including the Taconite Rule at issue here. EPA is headquartered in Washington, D.C.

23. Defendant Lee Zeldin is the Administrator of the U.S. Environmental Protection Agency. He resides and conducts his duties in Washington, D.C. He is sued in his official capacity.

LEGAL BACKGROUND

The Clean Air Act's Program to Address Hazardous Air Pollution

24. Clean Air Act Section 7412, 42 U.S.C. § 7412, establishes the framework for EPA's regulation of "hazardous air pollutants" from stationary sources, including industrial facilities.

25. "Hazardous air pollutants" for Section 7412 purposes are a group of 188 air pollutants determined by Congress and EPA to be particularly harmful to human health. Mercury and acid gases are hazardous air pollutants. Section 7412 requires EPA to regulate hazardous air pollutants by issuing emissions standards for categories and subcategories of stationary sources of such pollutants. Emissions standards must require the maximum degree of reduction that EPA deems "achievable," taking into consideration cost and any non-air quality health and environmental impacts and energy requirements. *Id.* § 7412(d)(2).

26. After EPA establishes Section 7412 standards for a source category, the Clean Air Act requires EPA to perform recurring reviews to ensure that the standards adequately address risks to health and welfare from hazardous air emissions and that they reflect advancements in technology and practice that allow sources to achieve even greater emission reductions. These reviews are often done together and are known as the "residual risk and technology review."

27. In a technology review, EPA must "review, and revise" the Section 7412 standards "as necessary (taking into account developments in practices, processes, and control technologies)." *Id.* § 7412(d)(6).

28. In a risk review, EPA determines whether unacceptable risk to public health remains, or is likely to remain, from hazardous air pollutant emissions even after the application of Section 7412 standards. If unacceptable risk remains, EPA must promulgate additional standards that eliminate the unacceptable risk, "provide an ample margin of safety to protect public health," and prevent "an adverse environmental effect." *Id.* § 7412(f)(2)(A).

29. Congress also prescribed strict compliance schedules for Section 7412 standards. Residual risk-based emissions standards "shall become effective upon promulgation" for new sources, or 90 days after the effective date for existing sources. *Id.* §§ 7412(f)(3), (4). EPA may waive compliance for up to two years only if it determines "such period is necessary for the installation of controls and that steps will be taken during the period of the waiver to assure that the health of persons will be protected from imminent endangerment." *Id.* § 7412(f)(4)(B).

30. For standards revised as the result of a technology review, EPA must require existing sources to comply "as expeditiously as practicable," and generally no later than three years after the effective date. *Id.* § 7412(i)(3)(A). EPA may grant a source up to one additional year to comply only where "such additional period is necessary for the installation of controls." *Id.* § 7412(i)(3)(B).

Clean Air Act Procedural Requirements

31. The Clean Air Act sets out rulemaking requirements that apply to "the promulgation or revision of any . . . emission standard or limitation under Section 7412(d)." *Id.* § 7607(d)(1)(C). EPA must establish a rulemaking docket, publish a notice of proposed

rulemaking in the Federal Register, and provide a statement of basis and purpose for the rule that includes the factual data on which the proposed rule is based, the methodology used in obtaining and analyzing the data, and the major legal interpretations and policy considerations underlying the proposed rule. *Id.* § 7607(d)(3). EPA must also provide, along with the proposal, any comments by the Scientific Review Committee and the National Academy of Sciences and data, information, and documents on which the proposed rule relies. *Id.*

32. The Clean Air Act also requires EPA to allow any person to submit written comment, and to provide an opportunity for oral presentation of data, views, or arguments, on a proposed rule. *Id.* § 7607(d)(5); *see also id.* § 7607(h). In promulgating a final rule, EPA must provide a statement of basis and purpose as required at the proposal stage and must explain major changes from the proposed to final rule. *Id.* § 7607(d)(6)(A). EPA must also provide a response to each of the significant comments, criticisms, and new data submitted during the comment period. *Id.* § 7607(d)(6)(B). EPA may not base a promulgated rule on "any information or data which has not been placed in the docket as of the date of such promulgation." *Id.* § 7607(d)(6)(C).

33. The Clean Air Act also provides procedures for reconsidering a promulgated rule. The EPA Administrator can "convene a proceeding for reconsideration of the rule" but must "provide the same procedural rights as would have been afforded" in the original proceeding. *Id.* § 7607(d)(7)(B). The Clean Air Act states, however, that reconsideration "shall not postpone the effectiveness of the rule," except that the Administrator or a reviewing court may stay the effectiveness of the rule "for a period not to exceed three months." *Id.* Section 7607(d)(7)(B) is the sole authority EPA has to stay a rule after its effective date has passed. *See Clean Air Council v. Pruitt*, 862 F.3d 1, 9 (D.C. Cir. 2017).

ED_021114_00001748-00011

Presidential Exemption Provision

34. Section 7412(i)(4) of the Clean Air Act authorizes the President, in narrowly prescribed circumstances, to "exempt any stationary source from compliance" with hazardous air pollutant standards promulgated under Section 7412, "for a period of not more than 2 years if the President determines [1] that the technology to implement such standard is not available and [2] that it is in the national security interests of the United States to do so." 42 U.S.C. § 7412(i)(4).

35. The President may extend the original exemption "for 1 or more additional periods, each period not to exceed 2 years." *Id.*

FACTUAL AND PROCEDURAL BACKGROUND

Taconite Iron Ore Processing Industry NESHAP

36. In 2003, EPA promulgated the first hazardous air pollutant standards for taconite iron ore processing facilities at 40 C.F.R. part 63, subpart RRRRR. National Emission Standards for Hazardous Air Pollutants: Taconite Iron Ore Processing, 68 Fed. Reg. 61,868 (Oct. 30, 2003) ("2003 Taconite Rule"). EPA completed a residual risk and technology review for the Taconite Rule in 2020. National Emission Standards for Hazardous Air Pollutants: Taconite Iron Ore Processing Residual Risk and Technology Review, 85 Fed. Reg. 45,476 (July 28, 2020) ("2020 Taconite Rule").

37. The taconite iron ore processing facility source category comprises any facility engaged in the separation and concentration of iron ore from taconite to produce taconite pellets, including taconite ore crushing and handling operations, indurating furnaces, finished pellet handling operations, and ore dryers. *Id.* at 45,478. The taconite pellets produced by this source category serve as raw materials for the manufacture and production of steel. U.S. EPA, *Economic Impact Analysis for the Final National Emission Standards for Hazardous Air Pollutants:*

Taconite Iron Ore Processing Amendments, No. EPA-HQ-OAR-2017-0664-0309, at 1-1 (Jan. 2024). Currently, the U.S. has eight total taconite ore processing facilities, located in Minnesota and Michigan. One of these facilities, the Empire Mine in Ishpeming, Michigan, is idled and has no plans to resume operations. *Id.* at 3-2. The six operating taconite plants in Minnesota account for approximately half of the state's mercury emissions.

38. Emissions from taconite iron ore processing facilities are a major driver of adverse health effects.

39. Mercury is an environmentally persistent neurotoxin that bioaccumulates in humans and leads to especially troublesome health effects in developing fetuses and young children. 89 Fed. Reg. at 16,415, 16,421. Indigenous communities around the Great Lakes are particularly impacted by mercury exposure from taconite iron ore processing facilities because fish are an important subsistence resource for these communities. *Id.* at 16,414-16,415.

40. Acid gases such as hydrochloric acid and hydrofluoric acid cause irritation and inflammation of the respiratory tract, heart attacks, asthma, and even premature death. *Id.* at 16,421; *see also* U.S. EPA, *Fact Sheet: Final Amendments to Air Toxics Standards for Taconite Iron Ore Processing*, https://perma.cc/WA9S-KS73.

The 2003 Taconite Rule

41. In the 2003 Taconite Iron Ore Processing NESHAP, EPA promulgated the first maximum achievable control technology ("MACT") standards for the taconite source category under Section 7412(d). 68 Fed. Reg. 61,868. Because this was the initial regulation of HAPs from taconite processing, EPA's task was limited to establishing the MACT floor for new and existing major sources using the statutory formula set forth in Section 7412(d)(2)-(3), rather than conducting any risk review under Section 7412(f). *See id.* at 61,869.

42. EPA identified the relevant affected emission points – ore crushing and handling, ore dryers, indurating furnaces, and finished pellet handling operations – and determined that these units collectively represent the predominant sources of HAP emissions in the source category. *Id.* at 61,869.

43. The 2003 Taconite Rule included a descriptive summary of the health effects associated with taconite HAPs, including mercury, noting chronic and acute adverse effects on blood, the heart, kidneys, and the reproductive, respiratory, and central nervous systems. It further recognized that some of the HAPs emitted by this source category are carcinogens. *Id.* at 61,868.

44. Although the 2003 Taconite Rule recognized mercury as a listed metal HAP emitted by taconite iron ore processing facilities, it did not set any emission standards for mercury. *Id.* at 61,869.

The 2020 Taconite Rule

45. In 2020, EPA completed its required residual risk review under Clean Air Act Section 7412(f)(2) and technology review under Section 7412(d)(6) for the taconite source category. 85 Fed. Reg. at 45,479. It made no revisions to the numerical emissions limits of the 2003 Taconite Rule, only amendments to monitoring, compliance, and implementation. *Id.*

46. At the time EPA conducted the 2020 risk and technology review, it found that risks due to emissions of air toxics from this source category, not including mercury, were acceptable and that the existing emission standards provided an ample margin of safety to protect public health and prevent adverse environmental effects. *Id.* at 45,484; *see also* U.S. EPA, *Residual Risk Assessment for the Taconite Iron Ore Processing Source Category in Support of*

the 2019 Risk and Technology Review Proposed Rule, No. EPA HQ OAR 2017 0664 0130 (Aug. 1, 2019).

47. It determined that no revision of the 2003 MACT standards was warranted and therefore continued to rely on the existing 2003 standards which used PM as a surrogate for metal HAP emissions. 85 Fed. Reg. at 45,476, 45,479.

48. EPA explained that Section 7412(f)(2) requires it to determine whether the existing MACT standards established in 2003 provide an "ample margin of safety" to protect public health and whether additional standards are necessary to prevent adverse environmental effects. *Id.* at 45,478. It went on to explain that it was required under Section 7412(d)(6) to review technological developments and revise MACT standards "as necessary," but that it read this as a "limited provision" that did not "direc[t]" the Agency to "develop new emission standards to address HAP . . .for which standards were not previously promulgated." *Id.* at 45,485. Notably, it acknowledged that "as [it] was preparing the final rule for signature, a decision was issued in *[LEAN]* in which the Court held that the EPA has an obligation to set standards for unregulated pollutants as part of technology reviews under CAA section 112(d)(6)" but that "[a]t the time of signature, the mandate in [*LEAN*] had not been issued and the EPA is continuing to evaluate the decision." *Id.* at 45,485 n.2.

49. Accordingly, EPA did not comply with the *LEAN* mandate at the time of the 2020 risk and technology review. That compliance would not come until the 2024 Taconite Rule, when the Agency would address the regulatory gap and establish new standards for mercury emissions.

The 2024 Taconite Rule

50. In the 2024 Taconite Rule, EPA promulgated revised NESHAP amendments for the taconite iron ore processing source category to close previously identified regulatory gaps

and to satisfy Clean Air Act residual risk and technology review obligations. 89 Fed. Reg. at 16,409.

51. EPA discussed the health effects of mercury and acid gases, explaining that mercury is a persistent, bioaccumulative neurotoxin that poses particular risks to developing fetuses, children, and subsistence fishers like Tribal communities. *Id.* at 16,413-15. It acknowledged record evidence linking mercury deposition in the Upper Great Lakes Region to fish consumption advisories and adverse impacts on wildlife and human health. *Id.*

52. Similarly, it explained that the rule would limit emissions of directly emitted particulate matter which would reduce non-fatal heart attacks, cases of aggravated asthma, and other adverse health effects. *Id.* at 16,421.

53. The revisions EPA made were demanded by updated emissions data revealing that mercury, an unregulated HAP under the previous taconite rules, was being emitted from taconite iron ore processors. *Id.* at 16,409-10.

54. The new emissions data prompting the review were acquired through a 2022 information collection request under Section 7414 of the Clean Air Act. *Id.* at 16,410; *see also id.* at 16,417 (citing David Putney, U.S. EPA, *Final Emissions Data Collected in 2022 for Indurating Furnaces Located at Taconite Iron Ore Processing Plants*, No. EPA-HQ-OAR-2017-0664-0301 (Sept. 2023)). In that information request, EPA gathered stack testing data on PM and acid gas emissions from indurating furnaces at all taconite facilities. It produced exhaust stack testing and a dataset much more robust and representative of current conditions, revealing that the indurating furnaces emit mercury. *Id.* at 16,417.

55. The D.C. Circuit held in *LEAN* that EPA has an obligation to address regulatory gaps, such as missing standards for HAPs known to be emitted from a major source category,

when it conducts the eight-year technology review required by Section 7412(d)(6) of the Clean Air Act. 955 F.3d. at 1098-99.

56. Consistent with *LEAN*, the Agency was obligated to establish standards for mercury emissions under the taconite iron ore processing NESHAP because mercury emissions were not regulated under the existing NESHAP. 89 Fed. Reg. at 16,409 (citing *LEAN*, 955 F.3d 1088).

57. For mercury, EPA conducted a technology-based review as mandated in Section 7412(d)(2)-(3) to establish a MACT standard for the mercury emitted from taconite indurating furnaces. *Id.* at 16,409.

58. In establishing the MACT floor for existing sources, EPA identified the five best-performing existing units with respect to each pollutant and used their emissions performance as the basis, consistent with Section 7412(d)(3). *Id.* at 16,414. EPA identified the five best-performing indurating furnaces based on stack test data received and calculated the MACT floor using a 99-percent upper prediction limit reflecting emissions achieved in practice by those units. *Id.* at 16,410-11. This method ensured that the floor reflects achievable performance while accounting for operational variability. *See id.* at 16,419. EPA finalized mercury emission limits of 1.4×10^{-5} pounds of mercury emitted per long ton of taconite pellets produced for existing sources. *Id.* at 16,415.

59. For new sources, EPA set the MACT standard equal to the emissions level achieved in practice by the single best-controlled similar source. *Id.* at 16,414. EPA finalized mercury emission limits of 2.6×10^{-6} pounds of mercury emitted per long ton of taconite pellets produced for new sources, with an emissions-averaging compliance option for facilities with multiple furnaces. *Id.* at 16,415. This would reduce mercury emissions from taconite facilities by

about 247 pounds per year, which EPA expects to result in corresponding reductions in mercury deposition and improved public health outcomes. *Id.* at 16,420-21.

60. EPA explained that, in setting the MACT floor, it may not consider cost, energy impacts, or economic feasibility because Section 7412(d)(2)-(3) requires the MACT floor to be based solely on emissions performance actually achieved in practice. *Id.* at 16,414.

61. EPA found activated carbon injection systems to be an accessible control technology for complying with the new mercury standards. David Putney, U.S. EPA, *Development of Impacts for the Final Amendments to the NESHAP for Taconite Iron Ore Processing*, No. EPA-HQ-OAR-2017-0664-0307, at 6-7 (Jan. 29, 2024) ("Impacts of 2024 Rule Analysis"). An activated carbon injection system is an add-on air pollution control system that injects activated carbon or brominated activated carbon into the flue gas steam upstream of a particulate matter control device.The activated carbon absorbs mercury, and this mercury-laden carbon is then collected in the particulate matter control device. 89 Fed. Reg. at 16,437-38.

62. The Agency also separately evaluated a range of add-on control technologies to determine whether standards more stringent than the MACT floor (beyond-the-floor standards) were warranted for mercury, but it ultimately declined to adopt beyond-the-floor mercury standards and finalized the mercury standards at the MACT floor. *Id.* at 16,415.

63. EPA also set revised standards for acid gases following a technology review. *Id.* at 16,409. The Agency relied on the updated emissions data from the 2022 information request and corrected data errors identified through public comments from industry to derive revised MACT standards. *Id.* at 16,416-17. It explained that existing PM-based surrogate standards no longer accurately reflect current emissions performance or technological developments. *Id.* at 16,417.

64. EPA recalculated the MACT floor for acid gases using corrected data and finalized numerical limits that reflect emissions achieved by the best-performing existing units. *Id.* at 16,416.

65. The Agency found wet scrubbers and dry sorbent injection to be feasible control technologies to meet the revised acid gas standards. *Id.* at 16,417. A wet scrubber is an air pollution control device that removes PM and acid gases from a coal gas stream by introducing a liquid solution which dissolves the pollutants and is collected for disposal. U.S. EPA, *Control Cost Manual*, § 5, ch. 1, at 1-3 (Apr. 2021), https://perma.cc/6G6T-PYXF. A venturi scrubber[1] is a type of wet scrubber that cleans exhaust air by forcing it through a set of narrow parallel metal pipes, called venturi throats, where an injected liquid forms droplets that capture the pollutants. *Id.* at 1-5; 68 Fed. Reg. at 61,902. Dry sorbent injection systems inject an alkaline sorbent into the flue gas stream, where the sorbent reacts with acid gases to produce salts that are collected by a downstream particulate control device. Impacts of Final 2024 Rule Analysis, No. EPA-HQ-OAR-2017-0664-0307, at 11 (Jan. 29, 2024).

66. A number of groups submitted public comment on the proposed rule. 89 Fed. Reg. at 16,410-19. In response to industry concerns about the proposed mercury MACT standards, EPA responded that it had incorporated the revised emissions data of several facilities shared by industry commenters and "recalculated the baseline emissions, MACT floor emission limits, emission reductions, and estimated capital and annual costs . . . for the final rule." *Id.* at 16,410. EPA further appropriately adjusted the estimated capital and operating costs for mercury controls

[1] In the final 2024 NESHAP, EPA identifies wet scrubbers as a feasible control technology to limit acid gas emissions. 89 Fed. Reg. at 16,417. The specific type of wet scrubber that EPA discusses in its technical memoranda as an accessible control option is called a "wet venturi scrubber." Impacts of Final 2024 Rule Analysis, No. EPA-HQ-OAR-2017-0664-0307, at 8-9 (Jan. 29, 2024).

based on industry commenters' provided information that costs were underestimated in the proposed rule. *Id.* at 16,411.

67. EPA determined that the controls required by the 2024 Taconite Rule are feasible and reasonably achievable. It considered developments in practices, processes, and control technologies as well as the costs of compliance and determined that the facilities could achieve these standards in a manner that did not impose a significant financial burden on industry. *Id.* at 16,412, 16,414, 16,417. It further explained that six of the seven operational facilities would not need to install additional controls to comply with the revised MACT standards for acid gases and two of the seven would not need to install additional controls to comply with the MACT standard for mercury. *Id.* at 16,420, 16,423.

68. EPA set March 8, 2027, as the deadline for all existing taconite facilities to comply with the requirements of the 2024 Taconite Rule. *Id.* at 16,425.

EPA Announces Reconsideration, Solicits Exemption Requests

69. Industry groups complained about the 2024 Taconite Rule to the EPA Administrator in a letter dated June 14, 2024, where they stated that the final rule was one of a set of rules that would "undermine. . . national security." Pet'rs' Mot. Stay at 69, *Cleveland-Cliffs Inc. v. U.S. EPA*, Case No. 0:2024rev01211 (D.C. Cir. June 26, 2024), Doc. #2061787). Weeks later, the owners of the facilities subject to the 2024 Taconite Rule moved for a stay of the 2024 Taconite Rule. *Id.* at 8. They contended, among other arguments, that "there are no gaps to fill where EPA made an affirmative determination not to regulate" mercury, *id.* at 9, attempting to evade the *LEAN* court's unequivocal mandate. The D.C. Circuit denied the motion for stay, finding that industry groups had failed to make a "strong showing" that they were likely to succeed in arguments that EPA "was not required to regulate mercury emissions from taconite

iron ore processing facilities or that it should have considered costs in setting a floor standard." Order Den. Pet'rs' Mot. to Stay at 2, *Cleveland-Cliffs Inc. v. U.S. E.P.A.*, Case No. 0:2024rev01211, Doc. #2078098 (D.C. Cir.), filed Oct. 3, 2024. The Court went on to hold that the industry groups had also failed to demonstrate that their compliance costs were "certain and great" during the time it would take for the Court to resolve the petitions for review. *Id.* at 3.

70. On March 12, 2025, in a press event billed as "the greatest day of deregulation our nation has seen," EPA announced that it would "reconsider" the 2024 Taconite NESHAP and dozens of other regulations protecting human health and the environment. U.S. EPA, *EPA Launches Biggest Deregulatory Action in U.S. History* (Mar. 12, 2025), https://perma.cc/EXL5-FAMQ.

71. Along with its press release, EPA published a "fact sheet" about its planned reconsideration of the 2024 Taconite Rule and seven other recent hazardous air pollutant rules. That fact sheet included an invitation that "[a]ny source interested in a Presidential exemption," from any of the eight rules "should provide their recommendations to EPA by March 31, 2025." U.S. EPA, *National Emission Standards for Hazardous Air Pollutants (NESHAP): Powering the Great American Comeback Fact Sheet* 3, https://perma.cc/E8UM-RN3K. It further explained, "Sources need only provide why technology is unavailable and why it is in the national security interests of the United States to provide the exemption." *Id.*

72. Following up on its invitation to request exemptions, on or about March 24, 2025, EPA posted a new webpage announcing it had established "an electronic mailbox to allow the regulated community to request a Presidential Exemption under section 112(i)(4)." U.S. EPA, *Clean Air Act Section 112 Presidential Exemption Information* (last updated Apr. 14, 2025),

ED_021114_00001748-00021

https://perma.cc/WKL5-44FC. EPA asked that requests be submitted by March 31, 2025, a week after the webpage was posted.[2]

73. EPA did not solicit any information from the public or provide any opportunity for public comment.

74. Facility owners sent exemption requests to that email inbox. In a 9-page letter, Cleveland-Cliffs explained that it needed relief from the 2024 Taconite Rule because of the cost to evaluate compliance with the Rule. And in its own 14-page letter, the owner of the remaining processing facilities, U.S. Steel, requested an exemption because the Rule would require immediate actions that would unfairly burden it.

The Taconite Proclamation

75. On July 17, 2025, President Trump issued a proclamation that exempted "certain stationary sources . . . as identified in Annex I of this proclamation" from the 2024 Taconite Rule "for a period of 2 years beyond the Taconite Rule's relevant compliance dates." Regulatory Relief for Certain Stationary Sources to Promote American Iron Ore Processing Security, 90 Fed. Reg. at 34,743. Every facility subject to the Taconite NESHAP was included in Annex I.

76. The Taconite Proclamation cited "authority vested in [the President] by the Constitution and the laws of the United States, including section 112(i)(4) of the Clean Air Act, 42 U.S.C. 7412(i)(4)." *Id.* It stated that it "applies to all compliance deadlines established under the Taconite Rule, with each such deadline extended by 2 years from the date originally required for such deadline." *Id.*

[2] EPA removed much of the information it initially posted in an April 14, 2025 update to the webpage. *See* U.S. EPA, *Clean Air Act Section 112 Presidential Exemption Information* (last updated Apr. 14, 2025), https://perma.cc/WKL5-44FC.

77. The Taconite Proclamation included what it referred to as two "determinations." *Id.* at 34,743-44.

78. First, the Taconite Proclamation purported to determine that "[t]he technology to implement the Taconite Rule is not available," stating that "[s]uch technology does not exist in a commercially viable form sufficient to allow implementation of and compliance with the Taconite Rule by the compliance dates in the Taconite Rule." *Id.*

79. Second, the Taconite Proclamation purported to determine that "[i]t is in the national security interests of the United States to issue this Exemption for the reasons stated in paragraphs 1 and 3 of this proclamation." *Id.* at 34,744. Paragraph 1 asserted that "[t]aconite iron ore processing is fundamental to the United States' steel production and manufacturing sectors," and "[p]reserving and enhancing domestic taconite processing capabilities is vital to reducing reliance on foreign sources and ensuring resilience of American industrial supply chains." *Id.* at 34,743. Paragraph 3 asserted that "[t]he Taconite Rule places significant burdens on a sector [the steel industry] critical to the Nation's industrial foundation," and provides a compliance timeline that "risks forcing shutdowns, reducing domestic production, and undermining the Nation's ability to supply steel for defense, energy, and critical manufacturing." *Id.*

80. The Taconite Proclamation and "Annex I" were published in the Federal Register on July 23, 2025. *Id.*

81. The Taconite Proclamation included no facility-, standard-, or technology-specific determinations. Instead, the Taconite Proclamation broadly and conclusory purported to "determin[e]" that the technology to implement the 2024 Taconite Rule (in its entirety) was not available and that exemptions are in the national security interests of the United States.

82. The Taconite Proclamation indiscriminately exempted an entire industry from compliance with the 2024 Taconite Rule. Indeed, it purports to exempt the Empire Mining facility in Ishpeming, Michigan from the 2024 Taconite Rule a facility which is idle and has no plans to resume operations.

83. The Taconite Proclamation's purported determination regarding technological unavailability is in direct conflict with EPA's findings that the technologies to implement the mercury and acid gas standards imposed by the 2024 Taconite Rule are used by facilities regulated by the 2024 Taconite Rule and other regulated sources.

Technology to Implement the Rule's Requirements is Feasible

84. The Taconite Proclamation's unsupported determinations are unambiguously contradicted by factual evidence on the grounds of technological availability, including EPA's own findings and record for the 2024 Taconite Rule.

85. *Controls for Acid Gas Standards*: Technology to implement the acid gas limits is accessible.

86. EPA reviewed air pollution controls for acid gases and expressly stated that the controls "are available and cost-effective." 89 Fed. Reg. at 16,417.

87. Wet venturi scrubbers are a demonstrated control technology that can be used to comply with the acid gas standard. EPA determined as much in the 2024 Taconite Rule.

88. Wet venturi scrubbers are already being used by the majority of operating taconite plants to meet the preexisting PM standards. Impacts of Final 2024 Rule Analysis, No. EPA-HQ-OAR-2017-0664-0307, at 8 (Jan. 29, 2024). In fact, wet venturi scrubbers have been in use at many operating taconite plants for decades, even before the promulgation of the 2003 Taconite

ED_021114_00001748-00024

NESHAP. 67 Fed. Reg. 77,562, 77,565 (Dec. 18, 2002); 68 Fed. Reg. 61,868, 61,884 (Oct. 30, 2003).

89. Five of the seven operating facilities in this source category already use wet scrubbers to meet preexisting PM limits for the Taconite NESHAP. U.S. EPA. *Economic Impact Analysis for the Final National Emission Standards for Hazardous Air Pollutants: Taconite Iron Ore Processing Amendments*, at 3-2 (Jan. 2024). At least four of those facilities use wet venturi scrubbers specifically. *Id.* at 3-3; David Putney, U.S. EPA, *Development of Impacts for the Proposed Amendments to the NESHAP for Taconite Iron Ore Processing*, No. EPA-HQ-OAR-2017-0664-0257, at 8 (Mar. 21, 2023). The MACT standard that EPA decided on in the 2024 Taconite Rule reflects existing, demonstrated performance. 89 Fed. Reg. at 16,419.

90. Dry sorbent injection is a demonstrated control technology that can be used to comply with the acid gas standard. EPA determined as much in the 2024 Taconite Rule.

91. In the 2024 Taconite Rule, EPA found that dry sorbent injection systems are low cost and have been used to control acid gas emissions since the late 1980s in industries such as coal-fired utilities, cement plants, pulp and paper mills, and brick kilns. Impacts of Final 2024 Rule Analysis, No. EPA-HQ-OAR-2017-0664-0307, at 11 (Jan. 29, 2024).

92. Compliance with the acid gas standards imposed by the 2024 Taconite Rule will not require significant retrofits or additional controls.

93. EPA estimated that all existing indurating furnaces would be able to comply with the revised hydrogen fluoride limits without add-on control devices. 89 Fed. Reg. at 16,416-17, 16423; *see also* National Emission Standards for Hazardous Air Pollutants: Taconite Iron Ore Processing Amendments, 88 Fed. Reg. 30,917, 30,927 (May 15, 2023). The agency further estimated that all but two furnaces would be able to comply with the revised hydrogen chloride

limits without additional controls. Impacts of Final 2024 Rule Analysis, No. EPA-HQ-OAR-2017-0664-0307, at 10 (Jan. 29, 2024); *see also* 88 Fed. Reg. at 30,927. For the two furnaces that require additional controls to meet the revised hydrogen chloride standard, EPA found dry sorbent injection, with existing dry electrostatic precipitators, to be a feasible and cost-effective control option. Impacts of Final 2024 Rule Analysis, No. EPA-HQ-OAR-2017-0664-0307, at 11 (Jan. 29, 2024); 89 Fed. Reg. at 16,417.

94. *Controls for Mercury Standards*: Technology to implement the mercury standards is accessible.

95. Wet venturi scrubbers are a demonstrated control technology that can be used to comply with the mercury standard. EPA determined as much in the 2024 Taconite Rule.

96. Wet venturi scrubbers, in addition to effectively controlling acid gases, also have the ability to control mercury. Impacts of Final 2024 Rule Analysis, No. EPA-HQ-OAR-2017-0664-0307, at 8-9 (Jan. 29, 2024).

97. Activated carbon injection is a demonstrated control technology that can be used to comply with the mercury standard. EPA determined as much in the 2024 Taconite Rule.

98. Activated carbon injection is a widely accessible control technology that can be used by taconite facilities to comply with the mercury standard. EPA identified activated carbon injection to be a "commonly used method[ ] for controlling mercury emissions." *Id.* at 8.

99. EPA found activated carbon injection to be a feasible control technology because, when combined with venturi scrubbers that already exist at the majority of operating facilities in the source category, this technology enables each furnace to meet the new mercury standard. *Id.* at 8-9.

100. Activated carbon injection systems have been a well-established technology for several decades, as far back as the 2003 Taconite NESHAP. 68 Fed. Reg. at 61,878, 61,880.

101. Other regulated industries have used activated carbon injection to effectively control mercury emissions, such as facilities operating coal-fired boilers. *See* Minn. Pollution Control Agency, *Estimated Costs Related to the Implementation of the Mercury Reduction Rules*, No. EPA-HQ-OAR-2017-0664-0213, at 2 (July 2013); 68 Fed. Reg. at 61,880.

102. Taconite facilities have piloted activated carbon injection systems, and test results found carbon injection to be the most feasible and least costly method of reducing mercury emissions compared to other controls. *See* Minn. Pollution Control Agency, *Estimated Costs Related to the Implementation of the Mercury Reduction Rules*, at 3-4.

103. Compliance with the 2024 Taconite Rule only requires performance testing and establishment of operating limits for mercury and the installation of a continuous emission monitoring system. Many furnaces would meet the revised limits by using activated carbon injection in combination with existing or upgraded wet venturi scrubbers. Impacts of 2024 Rule Analysis, No. EPA-HQ-OAR-2017-0664-0307, at 9 (Jan. 29, 2024). In fact, using activated carbon injection systems in conjunction with preexisting wet venturi scrubbers would yield a maximum mercury removal efficiency of 85 percent. *Id.*

104. EPA found that the combination of activated carbon injection systems and wet venturi scrubbers would allow facilities to meet the new mercury standards, and the revised acid gas limits, set forth in the 2024 Taconite Rule. *Id.* Venturi scrubbers are already installed at each furnace that requires additional controls to meet the new limits, and venturi scrubbers can remove acid gas and mercury emissions. Impacts of Final 2024 Rule Analysis, No. EPA-HQ-OAR-2017-0664-0307, at 9 (Jan. 29, 2024). The control combination of activated carbon

injection systems and venturi scrubbers allows facilities to effectively meet both acid gas and mercury limits.

105. Industry commenters asserted that any updated MACT requirements would impose substantial capital and operating costs that would require multi-year outages and impossible equipment retrofits.

106. EPA's docket demonstrates that these industry arguments are misdirected. EPA explained in the 2024 Taconite Rule that it was not possible to assess the accuracy of industry's proffered cost estimates where industry's capital cost information included no detailed breakdown from which to ascertain what was included in the purported cost and had little supporting documentation. 89 Fed. Reg. at 16,411-12.

107. The 2024 Taconite Rule does not require major installation for most of the existing indurating furnaces in the first place. Although 11 of the existing indurating furnaces would require improved performance to comply with the mercury MACT floor limit, the Agency estimated that installation and operation of activated carbon injection with a high efficiency venturi scrubber would provide the level of required mercury reduction at these furnaces. 88 Fed. Reg. at 30,924.

The Court's Equitable Authority to Review Ultra Vires Executive Action

108. The Taconite Proclamation exceeds the bounds of the President's Section 7412(i)(4) authority by granting sweeping exemptions to all of the regulated sources without making facility-, standard-, or technology-specific determinations.

109. The Taconite Proclamation unlawfully amends the compliance dates of EPA's 2024 Taconite Rule, thus exceeding the bounds of Section 7412(i)(4). Section 7412(i)(4) is a narrow exemption applicable in specific statutorily defined circumstances; it does not give the

ED_021114_00001748-00028

President authority to amend EPA standards or their compliance deadlines. Only EPA may amend those standards and only after notice-and-comment rulemaking.

110. This Circuit allows for review of presidential actions to ensure conformity with statutory requirements, provided that "the authorizing statute or another statute places discernible limits on the President's discretion." *Mountain States Legal Found. v. Bush*, 306 F.3d 1132, 1136 (D.C. Cir. 2002) (citing, *inter alia*, *Chamber of Com. v. Reich*, 74 F.3d 1322, 1331 (D.C. Cir. 1996)).

111. The statutory provision at issue, Section 7412(i)(4), provides such discernable limits on the President's discretion by requiring a determination that, for specific facilities, "technology to implement" a standard "is not available" *and* that the exemption "is in the national security interests of the United States." 42 U.S.C. § 7412(i)(4).

112. The Court therefore has authority to review the Taconite Proclamation to determine whether the President's exercise of statutory authority complied with the statutory conditions on that authority.

113. Indisputable facts demonstrate that the President was applying an unreasonable construction of the statutory conditions under which he may exercise the Section 7412(i)(4) exemption authority.

114. Because a necessary factual predicate required by the Clean Air Act—that the technology to implement "is not available" is not present, the Taconite Proclamation unlawfully exercises authority not conveyed by Section 7412(i)(4).

115. The Court has the power to declare that the Taconite Proclamation is unlawful and *ultra vires* because the necessary factual predicate required by the Clean Air Act is not present, and because the Taconite Proclamation unlawfully exercises authority not conveyed by Section

7412(i)(4), contrary to Congress's explicit restrictions on stay regulations and extensions of compliance deadlines.

CLAIMS FOR RELIEF

COUNT ONE:
Unlawful Executive Action in Violation of the Clean Air Act
(Nonstatutory Review for Violations of Federal Law by Federal Officials; Against All Defendants)

116. Plaintiffs incorporate by reference Paragraphs 1-115.

117. The President has limited authority to exempt stationary sources from duly promulgated hazardous air pollutant regulations solely by virtue of the authority delegated by Congress in 42 U.S.C. § 7412(i)(4). The President lacks any independent authority under the U.S. Constitution to issue the exemptions.

118. Section 7412(i)(4) permits the President to exempt a source from a hazardous air pollutant standard only if "the technology to implement such standard is not available" and if an exemption "is in the national security interests of the United States."

119. Section 7412(i)(4) establishes a judicially manageable standard with clear and precise limits of the sort federal courts routinely construe to determine whether officials have acted consistent with law.

120. Whether technology to implement a standard is or is not available is a discrete, yes-or-no factual inquiry that limits the President's discretion to grant exemptions.

121. There is no statutory basis for the President's indiscriminately broad determination that technology to implement the 2024 Taconite Rule is not available. The President patently misconstrued the statutory terms "technology" and "not available" in purporting to exercise the Section 7412(i)(4) exemptions authority.

122. The Taconite Proclamation's purported determination that technology needed to implement the various new standards of the 2024 Taconite Rule is not available for all taconite iron ore processing facilities is a conclusory statement without specific findings as to any specific standard, any specific technology, or any specific facility.

123. Technology to implement the 2024 Taconite Rule is in fact available. The relevant technologies to implement each aspect of the 2024 Taconite Rule standards are in use among facilities regulated by the 2024 Taconite Rule and/or similar regulated sources. The technology to implement the acid gas standards imposed by the 2024 Taconite Rule already exists at the majority of facilities in the source category, with minimal add-on controls required. And the technology to implement the mercury standards imposed by the 2024 Taconite Rule has been piloted by the taconite industry and used by other regulated industries to effectively reduce mercury emissions.

124. The Taconite Proclamation's purported determination that technology to implement the various standards of the 2024 Taconite Rule is not available is unambiguously contradicted by factual evidence. The Taconite Proclamation contains cursory and conclusory statements without specific findings as to any particular standard, technology, or facility.

125. The President's purported determination that the technology to implement the 2024 Taconite Rule is not available instead rests on an unlimited, untenable interpretation and application of the authority conveyed by Section 7412(i)(4) of the Clean Air Act.

126. Because the President grossly exceeded the bounds of his statutory authority by purporting to exempt stationary sources from standards for which the technology to implement is available, the Taconite Proclamation is plainly in excess of the President's delegated powers and contrary to the statute's specific limitations on those powers.

127. The President's action is contrary to the Clean Air Act and is *ultra vires*.

128. The Court possesses inherent equitable power to "grant injunctive relief . . . with respect to violations of federal law by federal officials." *Armstrong v. Exceptional Child Ctr.*, 575 U.S. 320, 326-27 (2015). Congress has nowhere foreclosed review of the interpretation and application of 42 U.S.C. § 7412(i)(4). There is no alternative statutory procedure for review of Plaintiffs' claim.

129. Because the Taconite Proclamation violates the Clean Air Act and is *ultra vires*, EPA actions implementing or giving effect to the Proclamation likewise violate the Clean Air Act and are *ultra vires*.

COUNT TWO:
Ultra Vires, De Facto Rulemaking Without Statutory Authority
(Nonstatutory Review of Action in Excess of Statutory Authority by federal officer; against all Defendants)

130. Plaintiffs incorporate by reference the allegations of Paragraphs 1-115.

131. Congress required EPA to provide for existing sources' compliance with hazardous air pollutant standards "as expeditiously as practicable" and set concrete boundaries on EPA's flexibility to set compliance deadlines "in no event later than 3 years after the effective date of such standard" with certain exceptions not relevant here. 42 U.S.C. § 7412(i)(3)(A).

132. Congress gave EPA and state permitting authorities discrete, limited authority to grant an existing source "up to 1 additional year to comply with standards" promulgated under subsection (d) "if such additional period is necessary for the installation of controls." 42 U.S.C. § 7412(i)(3)(B).

133. Congress further conferred discrete, limited authority on EPA to stay the effectiveness of rules, including hazardous air pollutant standards, for no more than three

months, during EPA's reconsideration of a rule under certain circumstances. 42 U.S.C. § 7607(d)(7)(B).

134. Congress directed EPA to provide for public notice and comment on EPA actions to revise hazardous air pollutant standards, to alter their compliance dates, or to grant source-specific deadline extensions. 42 U.S.C. § 7607(d)(5), (h).

135. The exemption authority conveyed in Section 7412(i)(4) must be construed congruously with the authorities and limitations Congress enacted in Sections 7412 and 7607.

136. EPA and the President are bound by the Clean Air Act's duties with respect to implementing Section 7412(i)(4), including following rulemaking procedures, and being bound by lawfully adopted regulations.

137. Reading Section 7412(i)(4) to authorize exemptions for the entirety of the regulated source category, from every single standard and other requirement of a rule, without facility- or standard-specific justifications tied to the statutory factors, is contrary to the context, purpose, and structure of the Clean Air Act.

138. The content, context, and scope of the Taconite Proclamation demonstrates that the Proclamation is not a true "exemption" within the meaning of Section 7412(i)(4).

139. The Taconite Proclamation's extremely broad sweep reflects an interpretation of the Section 7412(i)(4) authority that would swallow and render superfluous statutory limits.

140. The Taconite Proclamation is functionally a rulemaking and/or stay pending reconsideration granted without observance of the procedural and substantive limitations Congress enacted in Sections 7412 and 7607 of the Clean Air Act.

141. EPA explicitly invited requests for presidential exemptions explicitly in the context of its announced reconsideration of the 2024 Taconite Rule. It stated that the exemptions

are offered "while EPA reconsiders" the underlying rule. *See* EPA, Clean Air Act Section 112 Presidential Exemption Information, https://perma.cc/24UT-J3KW (last accessed Dec. 8, 2025).

142. The President granted sweeping exemptions from all compliance obligations of the 2024 Taconite Rule to all regulated sources. He did so without particularized consideration of facilities and their particular products and processes, or of the specific standards, technologies, or practices needed to comply. All of these are necessary to determine whether technology is not available to implement the standards.

143. The Taconite Proclamation's purported exercise of Section 7412(i)(4) exemption authority is in fact an exercise of rulemaking and/or stay authority despite the President lacking such power. The Clean Air Act gives only EPA that authority and only after following certain procedures in certain circumstances.

144. The sweeping Taconite Proclamation exceeds the narrow bounds of Section 7412(i)(4) to achieve improper goals prohibited by other provisions of the Clean Air Act. In granting compliance relief that far exceeds the Section 7412(i)(4) authority, the President bypassed and contravened the statutory requirements on rulemaking and stays pending reconsideration to accomplish sweeping compliance exemptions unauthorized by law and in excess of the President's statutory authority.

145. The Taconite Proclamation is beyond the authority conveyed by the Clean Air Act and is *ultra vires*.

146. Because the Taconite Proclamation is beyond the Clean Air Act authority and *ultra vires*, EPA actions implementing or giving effect to the proclamation are similarly *ultra vires*.

RELIEF REQUESTED

WHEREFORE Plaintiffs request that the Court:

A. Declare that the Taconite Proclamation is unlawful and invalid and that the Annex I sources remain subject to the 2024 Taconite Rule as promulgated;

B. Issue injunctive relief:

   i. prohibiting EPA and Administrator Lee Zeldin from implementing, relying on, or giving effect to the Taconite Proclamation, including through implementation of the Clean Air Act's Title V operating permit program where applicable; and

   ii. directing EPA to promptly notify, in writing, the operators of facilities listed in Annex I and relevant state, local, and/or Tribal permitting authorities that the Taconite Proclamation is unlawful and invalid, and that any facilities that the Taconite Proclamation purported to exempt may not lawfully delay or avoid compliance with the deadlines promulgated by the 2024 Taconite Rule by relying on the Taconite Proclamation.

C. Award Plaintiffs their fees and costs of litigation as authorized by law;

D. Grant such other relief as the Court deems just and proper.

Dated: February 2, 2026

Respectfully submitted,

/s/ Shampa Panda
Shampa Panda (D.C. Bar No. 90030605)
Natural Resources Defense Council, Inc.
1152 15th Street NW, Suite 300
Washington, D.C. 20005
spanda-bryant@nrdc.org
Tel: (202) 836-9333

/s/ Sarah A. Buckley
Sarah A. Buckley (D.C. Bar No. 90035401)

ED_021114_00001748-00035

Natural Resources Defense Council, Inc.
1152 15th Street NW, Suite 300
Washington, D.C. 20005
sbuckley@nrdc.org
Tel: (202) 836-9555

Counsel for Plaintiffs Minnesota Center for Environmental Advocacy and Natural Resources Defense Council

CIVIL COVER SHEET

JS 44 (Rev. 11/2020 DC)

I. (a) PLAINTIFFS

Minnesota Center For Environmental Advocacy, et al.

(b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF _____
(EXCEPT IN U.S. PLAINTIFF CASES)

DEFENDANTS

U.S. Enviornmental Protection Agency; Lee Zeldin, in his official capacity of Administrator; and Donald J. Trump, in his official capacity as President of the United States.

COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT _____
(IN U.S. PLAINTIFF CASES ONLY)
NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED

(c) ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER)

Shampa Panda
Natural Resources Defense Council, Inc.,
1152 15th St NW #300, Washington, DC 20005
(202) 289-6868

ATTORNEYS (IF KNOWN)

II. BASIS OF JURISDICTION
(PLACE AN x IN ONE BOX ONLY)

- ○ 1 U.S. Government Plaintiff
- ○ 3 Federal Question (U.S. Government Not a Party)
- ◉ 2 U.S. Government Defendant
- ○ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (PLACE AN x IN ONE BOX FOR PLAINTIFF AND ONE BOX FOR DEFENDANT) **FOR DIVERSITY CASES ONLY!**

	PTF	DFT		PTF	DFT
Citizen of this State	○ 1	○ 1	Incorporated or Principal Place of Business in This State	○ 4	○ 4
Citizen of Another State	○ 2	○ 2	Incorporated and Principal Place of Business in Another State	○ 5	○ 5
Citizen or Subject of a Foreign Country	○ 3	○ 3	Foreign Nation	○ 6	○ 6

IV. CASE ASSIGNMENT AND NATURE OF SUIT

(Place an X in one category, A-N, that best represents your Cause of Action and one in a corresponding Nature of Suit)

○ **A. *Antitrust***

- ☐ 410 Antitrust

○ **B. *Personal Injury/ Malpractice***

- ☐ 310 Airplane
- ☐ 315 Airplane Product Liability
- ☐ 320 Assault, Libel & Slander
- ☐ 330 Federal Employers Liability
- ☐ 340 Marine
- ☐ 345 Marine Product Liability
- ☐ 350 Motor Vehicle
- ☐ 355 Motor Vehicle Product Liability
- ☐ 360 Other Personal Injury
- ☐ 362 Medical Malpractice
- ☐ 365 Product Liability
- ☐ 367 Health Care/Pharmaceutical Personal Injury Product Liability
- ☐ 368 Asbestos Product Liability

◉ **C. *Administrative Agency Review***

- ☐ 151 Medicare Act

Social Security
- ☐ 861 HIA (1395ff)
- ☐ 862 Black Lung (923)
- ☐ 863 DIWC/DIWW (405(g))
- ☐ 864 SSID Title XVI
- ☐ 865 RSI (405(g))

Other Statutes
- ☐ 891 Agricultural Acts
- ☒ 893 Environmental Matters
- ☐ 890 Other Statutory Actions (If Administrative Agency is Involved)

○ **D. *Temporary Restraining Order/Preliminary Injunction***

Any nature of suit from any category may be selected for this category of case assignment.

(If Antitrust, then A governs)

○ **E. *General Civil (Other)*** OR ○ **F. *Pro Se General Civil***

Real Property
- ☐ 210 Land Condemnation
- ☐ 220 Foreclosure
- ☐ 230 Rent, Lease & Ejectment
- ☐ 240 Torts to Land
- ☐ 245 Tort Product Liability
- ☐ 290 All Other Real Property

Personal Property
- ☐ 370 Other Fraud
- ☐ 371 Truth in Lending
- ☐ 380 Other Personal Property Damage
- ☐ 385 Property Damage Product Liability

Bankruptcy
- ☐ 422 Appeal 28 USC 158
- ☐ 423 Withdrawal 28 USC 157

Prisoner Petitions
- ☐ 535 Death Penalty
- ☐ 540 Mandamus & Other
- ☐ 550 Civil Rights
- ☐ 555 Prison Conditions
- ☐ 560 Civil Detainee – Conditions of Confinement

Property Rights
- ☐ 820 Copyrights
- ☐ 830 Patent
- ☐ 835 Patent – Abbreviated New Drug Application
- ☐ 840 Trademark
- ☐ 880 Defend Trade Secrets Act of 2016 (DTSA)

Federal Tax Suits
- ☐ 870 Taxes (US plaintiff or defendant)
- ☐ 871 IRS Third Party 26 USC 7609

Forfeiture/Penalty
- ☐ 625 Drug Related Seizure of Property 21 USC 881
- ☐ 690 Other

Other Statutes
- ☐ 375 False Claims Act
- ☐ 376 Qui Tam (31 USC 3729(a))
- ☐ 400 State Reapportionment
- ☐ 430 Banks & Banking
- ☐ 450 Commerce/ICC Rates/etc
- ☐ 460 Deportation
- ☐ 462 Naturalization Application
- ☐ 465 Other Immigration Actions
- ☐ 470 Racketeer Influenced & Corrupt Organization
- ☐ 480 Consumer Credit
- ☐ 485 Telephone Consumer Protection Act (TCPA)
- ☐ 490 Cable/Satellite TV
- ☐ 850 Securities/Commodities/ Exchange
- ☐ 896 Arbitration
- ☐ 899 Administrative Procedure Act/Review or Appeal of Agency Decision
- ☐ 950 Constitutionality of State Statutes
- ☐ 890 Other Statutory Actions (if not administrative agency review or Privacy Act)

○ G. *Habeas Corpus/ 2255* ☐ 530 Habeas Corpus – General ☐ 510 Motion/Vacate Sentence ☐ 463 Habeas Corpus – Alien Detainee	○ H. *Employment Discrimination* ☐ 442 Civil Rights – Employment (criteria: race, gender/sex, national origin, discrimination, disability, age, religion, retaliation) *(If pro se, select this deck)*	○ I. *FOIA/Privacy Act* ☐ 895 Freedom of Information Act ☐ 890 Other Statutory Actions (if Privacy Act) *(If pro se, select this deck)*	○ J. *Student Loan* ☐ 152 Recovery of Defaulted Student Loan (excluding veterans)
○ K. *Labor/ERISA (non-employment)* ☐ 710 Fair Labor Standards Act ☐ 720 Labor/Mgmt. Relations ☐ 740 Labor Railway Act ☐ 751 Family and Medical Leave Act ☐ 790 Other Labor Litigation ☐ 791 Empl. Ret. Inc. Security Act	○ L. *Other Civil Rights (non-employment)* ☐ 441 Voting (if not Voting Rights Act) ☐ 443 Housing/Accommodations ☐ 440 Other Civil Rights ☐ 445 Americans w/Disabilities – Employment ☐ 446 Americans w/Disabilities – Other ☐ 448 Education	○ M. *Contract* ☐ 110 Insurance ☐ 120 Marine ☐ 130 Miller Act ☐ 140 Negotiable Instrument ☐ 150 Recovery of Overpayment & Enforcement of Judgment ☐ 153 Recovery of Overpayment of Veteran's Benefits ☐ 160 Stockholder's Suits ☐ 190 Other Contracts ☐ 195 Contract Product Liability ☐ 196 Franchise	○ N. *Three-Judge Court* ☐ 441 Civil Rights – Voting (if Voting Rights Act)

V. ORIGIN

◉ 1 Original Proceeding ○ 2 Removed from State Court ○ 3 Remanded from Appellate Court ○ 4 Reinstated or Reopened ○ 5 Transferred from another district (specify) ○ 6 Multi-district Litigation ○ 7 Appeal to District Judge from Mag. Judge ○ 8 Multi-district Litigation – Direct File

VI. CAUSE OF ACTION (CITE THE U.S. CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE A BRIEF STATEMENT OF CAUSE.)

The Declaratory Judgement Act, 28 U.S.C. §§ 2201-2202

VII. REQUESTED IN COMPLAINT ☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 **DEMANDS** **JURY DEMAND:** Check YES only if demanded in complaint YES ☐ NO ☒

VIII. RELATED CASE(S) IF ANY (See instruction) YES ☒ NO ☐ If yes, please complete related case form

DATE: February 2, 2026 **SIGNATURE OF ATTORNEY OF RECORD** /s/ Shampa Panda

INSTRUCTIONS FOR COMPLETING CIVIL COVER SHEET JS 44
Authority for Civil Cover Sheet

The JS-44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and services of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. Listed below are tips for completing the civil coversheet. These tips coincide with the Roman Numerals on the cover sheet.

I. COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF/DEFENDANT (b) County of residence: Use 11001 to indicate plaintiff if resident of Washington, DC, 88888 if plaintiff is resident of United States but not Washington, DC, and 99999 if plaintiff is outside the United States.

III. CITIZENSHIP OF PRINCIPAL PARTIES: This section is completed only if diversity of citizenship was selected as the Basis of Jurisdiction under Section II.

IV. CASE ASSIGNMENT AND NATURE OF SUIT: The assignment of a judge to your case will depend on the category you select that best represents the primary cause of action found in your complaint. You may select only one category. You must also select one corresponding nature of suit found under the category of the case.

VI. CAUSE OF ACTION: Cite the U.S. Civil Statute under which you are filing and write a brief statement of the primary cause.

VIII. RELATED CASE(S), IF ANY: If you indicated that there is a related case, you must complete a related case form, which may be obtained from the Clerk's Office.

Because of the need for accurate and complete information, you should ensure the accuracy of the information provided prior to signing the form.

AO 440 (Rev. 06 12) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

District of Columbia

Minnesota Center For Environmental Advocacy, et al.

Plaintiff(s)

v.

Donald Trump, et al.

Defendant(s)

Civil Action No. 1:26-cv-287

SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)* United States Attorney's Office for the District of Columbia
Civil Process Clerk
U.S. Attorney' s Office for D.C.
601 D Street, NW
Washington, DC 20530

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are: Shampa Panda
Natural Resources Defense Council Inc.
1152 15th St NW #300,
Washington, DC 20005

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date:

Signature of Clerk or Deputy Clerk

Civil Action No. 1:26-cv-287

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for *(name of individual and title, if any)*

was received by me on *(date)* .

☐ I personally served the summons on the individual at *(place)*

on *(date)* ; or

☐ I left the summons at the individual's residence or usual place of abode with *(name)*

, a person of suitable age and discretion who resides there,

on *(date)* , and mailed a copy to the individual's last known address; or

☐ I served the summons on *(name of individual)* , who is

designated by law to accept service of process on behalf of *(name of organization)*

on *(date)* ; or

☐ I returned the summons unexecuted because ; or

☐ Other *(specify)*:

My fees are $ for travel and $ for services, for a total of $ 0.00 .

I declare under penalty of perjury that this information is true.

Date:

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc:

AO 440 (Rev. 06 12) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

District of Columbia

Minnesota Center For Environmental Advocacy, et al.

Plaintiff(s)

v.

Donald Trump, et al.

Defendant(s)

Civil Action No. 1:26-cv-287

SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)* Pamela Bondi, Attorney General of the United States
U.S. Department of Justice
950 Pennsylvania Ave. NW
Washington, D.C. 20530-0001

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are: Shampa Panda
Natural Resources Defense Council Inc.
1152 15th St NW #300,
Washington, DC 20005

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date:

Signature of Clerk or Deputy Clerk

Civil Action No. 1:26-cv-287

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for *(name of individual and title, if any)*

was received by me on *(date)* .

❒ I personally served the summons on the individual at *(place)*

on *(date)* ; or

❒ I left the summons at the individual's residence or usual place of abode with *(name)*

, a person of suitable age and discretion who resides there,

on *(date)* , and mailed a copy to the individual's last known address; or

❒ I served the summons on *(name of individual)* , who is

designated by law to accept service of process on behalf of *(name of organization)*

on *(date)* ; or

❒ I returned the summons unexecuted because ; or

❒ Other *(specify)*:

My fees are $ for travel and $ for services, for a total of $ 0.00 .

I declare under penalty of perjury that this information is true.

Date:

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc:

AO 440 (Rev. 06 12) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

District of Columbia

Minnesota Center For Environmental Advocacy, et al.

Plaintiff(s)

v.

Donald Trump, et al.

Defendant(s)

Civil Action No. 1:26-cv-287

SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)* Environmental Protection Agency
Office of General Counsel 2310A
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

Shampa Panda
Natural Resources Defense Council Inc.
1152 15th St NW #300,
Washington, DC 20005

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date:

Signature of Clerk or Deputy Clerk

Civil Action No. 1:26-cv-287

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for *(name of individual and title, if any)*

was received by me on *(date)* .

☐ I personally served the summons on the individual at *(place)*

on *(date)* ; or

☐ I left the summons at the individual's residence or usual place of abode with *(name)*

, a person of suitable age and discretion who resides there,

on *(date)* , and mailed a copy to the individual's last known address; or

☐ I served the summons on *(name of individual)* , who is

designated by law to accept service of process on behalf of *(name of organization)*

on *(date)* ; or

☐ I returned the summons unexecuted because ; or

☐ Other *(specify)*:

My fees are $ for travel and $ for services, for a total of $ 0.00 .

I declare under penalty of perjury that this information is true.

Date:

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc:

AO 440 (Rev. 06 12) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

District of Columbia

Minnesota Center For Environmental Advocacy, et al.

Plaintiff(s)

v.

Donald Trump, et al.

Defendant(s)

Civil Action No. 1:26-cv-287

SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)* Donald J. Trump
President of the United States of America
1600 Pennsylvania Ave. NW
Washington, D.C. 20500

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

Shampa Panda
Natural Resources Defense Council Inc.
1152 15th St NW #300,
Washington, DC 20005

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date:

Signature of Clerk or Deputy Clerk

Civil Action No. 1:26-cv-287

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for *(name of individual and title, if any)*

was received by me on *(date)* .

❒ I personally served the summons on the individual at *(place)*

on *(date)* ; or

❒ I left the summons at the individual's residence or usual place of abode with *(name)*

, a person of suitable age and discretion who resides there,

on *(date)* , and mailed a copy to the individual's last known address; or

❒ I served the summons on *(name of individual)* , who is

designated by law to accept service of process on behalf of *(name of organization)*

on *(date)* ; or

❒ I returned the summons unexecuted because ; or

❒ Other *(specify)*:

My fees are $ for travel and $ for services, for a total of $ 0.00 .

I declare under penalty of perjury that this information is true.

Date:

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc:

AO 440 (Rev. 06 12) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

District of Columbia

Minnesota Center For Environmental Advocacy, et al.

Plaintiff(s)

v.

Donald Trump, et al.

Defendant(s)

Civil Action No. 1:26-cv-287

SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)* Lee Zeldin
Administrator, United States Environmental Protection Agency
Office of the Administrator, 1101 A
1200 Pennsylvania Ave. NW
Washington, D.C. 20460

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

Shampa Panda
Natural Resources Defense Council Inc.
1152 15th St NW #300,
Washington, DC 20005

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date:

Signature of Clerk or Deputy Clerk

Civil Action No. 1:26-cv-287

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for *(name of individual and title, if any)*

was received by me on *(date)* .

❒ I personally served the summons on the individual at *(place)*

on *(date)* ; or

❒ I left the summons at the individual's residence or usual place of abode with *(name)*

, a person of suitable age and discretion who resides there,

on *(date)* , and mailed a copy to the individual's last known address; or

❒ I served the summons on *(name of individual)* , who is

designated by law to accept service of process on behalf of *(name of organization)*

on *(date)* ; or

❒ I returned the summons unexecuted because ; or

❒ Other *(specify)*:

My fees are $ for travel and $ for services, for a total of $ 0.00 .

I declare under penalty of perjury that this information is true.

Date:

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc:

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

TEXAS ENVIRONMENTAL JUSTICE ADVOCACY SERVICES, et al.,

Plaintiffs,

v.

DONALD TRUMP, et al.

Defendants.

Civil No. 1:25-cv-03745

DEFENDANTS' MEMORANDUM IN SUPPORT OF MOTION TO DISMISS PLAINTIFFS' COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

ADAM R.F. GUSTAFSON
Principal Deputy Assistant Attorney General
ROBERT N. STANDER
Deputy Assistant Attorney General
Environment & Natural Resources Division

HALI KERR
Attorney-Advisor
EPA Office of General Counsel
Washington, DC

DANIEL J. MARTIN
LAURA BROWN
U.S. Department of Justice
Environment & Natural Resources Division
Environmental Defense Section
P.O. Box 7611
Washington, D.C. 20044
(202) 598-1869
Daniel.Martin3@usdoj.gov

TABLE OF CONTENTS

TABLE OF CONTENTS i

TABLE OF AUTHORITIES ii

INTRODUCTION 1

BACKGROUND 2

1. The Clean Air Act 2

2. EPA's 2024 HON Rule 3

3. The President's 2025 HON Proclamation 4

4. Plaintiffs' Challenges 5

STANDARD OF REVIEW 5

ARGUMENT 6

1. The Clean Air Act's Comprehensive Judicial Review Scheme Bars Review of the President's HON Proclamation. 7

2. To the Extent Ultra Vires Review is Available Outside of the Clean Air Act, How the President Exercised his Exemption Discretion Remains Unreviewable 9

3. EPA Has Not Taken Action to Implement the HON Proclamation and is Not a Proper Party Here. 13

4. Plaintiffs Lack Standing to Challenge the HON Proclamation's Exemptions for 39 Facilities. 16

A. Plaintiffs Have Not Sufficiently Alleged Injury Resulting from All Exempted Facilities. 17

B. Plaintiffs Cannot Establish Standing Based on an Informational Injury. 18

CONCLUSION 20

ED_021114_00001917-00002

TABLE OF AUTHORITIES

Cases

Am. Anti-Vivisection Soc'y v. U.S. Dep't of Agric.,
946 F.3d 615 (D.C. Cir. 2020) 19

Am. Soc. for Prevention of Cruelty to Animals v. Feld Ent., Inc.,
659 F.3d 13 (D.C. Cir. 2011) 17

Bates v. Rumsfeld,
271 F. Supp. 2d 54 (D.D.C. 2002) 6

Bennett v. Spear,
520 U.S. 154 (1997) 14

Biden v. Texas,
597 U.S. 785 (2022) 11

Block v. Cmty. Nutrition Inst.,*
467 U.S. 340 (1984) 8

Chi. & S. Air Lines, Inc. v. Waterman S. S. Corp.,*
333 U.S. 103 (1948) 9, 15

Colon v. Carter,
633 F.2d 964 (1st Cir. 1980) 9

Ctr. for Biological Diversity v. U.S. Dep't of the Interior,
144 F.4th 296 (D.C. Cir. 2025) 19

Dakota Cent. Tel. Co. v. South Dakota ex rel. Payne,
250 U.S. 163 (1919) 9

Dalton v. Specter,*
511 U.S. 462 (1994) 9, 10, 13, 15

Dart v. United States,
848 F.2d 217 (D.C. Cir. 1988) 14

Davis v. Sarles,
134 F. Supp. 3d 223 (D.D.C. 2015) 6

El-Shifa Pharm. Indus. Co. v. United States,
607 F.3d 836 (D.C. Cir. 2010) 11

Fla. Audubon Soc'y v. Bentsen,
94 F.3d 658 (D.C. Cir. 1996) 16

ED_021114_00001917-00003

Food & Drug Admin. v. All. for Hippocratic Med.,
602 U.S. 367 (2024) 18

Franklin v. Massachusetts,
505 U.S. 788 (1992) 9

Friends of Animals v. Jewell,
828 F.3d 989 (D.C. Cir. 2016) 19

Glob. Health Council v. Trump,*
153 F.4th 1 (D.C. Cir. 2025) 9, 10

Gustave-Schmidt v. Chao,
226 F. Supp. 2d 191 (D.D.C. 2002) 6

Harrison v. PPG Indus., Inc.,
446 U.S. 578 (1980) 8

Heckler v. Chaney,
470 U.S. 821 (1985) 11

Hinton v. Corr. Corp. of Am.,
624 F. Supp. 2d 45 (D.D.C. 2009) 6

Hunt v. Wash. State Apple Adver. Comm'n,
432 U.S. 333 (1977) 16

Indep. Mkt. Monitor for PJM v. FERC,
162 F.4th 1167 (D.C. Cir. 2025) 19, 20

Jama v. ICE,
543 U.S. 335 (2005) 11

Kokkonen v. Guardian Life Ins. Co. of Am.,
511 U.S. 375 (1994) 5, 6

Leatherman v. Tarrant Cnty. Narcotics Intel. & Coordination Unit,
507 U.S. 163 (1993) 6

Lujan v. Defs. of Wildlife,
504 U.S. 555 (1992) 16

Lujan v. Nat'l Wildlife Fed'n,
497 U.S. 871 (1990) 18

NRC v. Texas,*
605 U.S. 665 (2025) 7, 10, 12

NRDC v. Bodine,
471 F. Supp. 3d 524 (S.D.N.Y. 2020) 19

Oljato Chapter of Navajo Tribe v. Train,
515 F.2d 654 (D.C. Cir. 1975) 8

Parrino v. FHP, Inc.,
146 F.3d 699 (9th Cir. 1998) 6

PETA v. Dep't of Agric.,
797 F.3d 1087 (D.C. Cir. 2015) 19, 20

Sierra Club v. EPA,
873 F.3d 946 (D.C. Cir. 2017) 13

Sierra Club v. Morton,
405 U.S. 727 (1972) 18

Spokeo, Inc. v. Robins,
578 U.S. 330 (2016) 16

Steel Co. v. Citizens for a Better Env't,
523 U.S. 83 (1998) 6

Summers v. Earth Island Inst.,
555 U.S. 488 (2009) 18

Trump v. Hawai'i,*
585 U.S. 667 (2018) 9, 10, 11, 12, 13

Trump v. Orr,
146 S. Ct. 44 (2025) 15

United States v. Gaubert,
499 U.S. 315 (1991) 6

United States v. George S. Bush & Co.,
310 U.S. 371 (1940) 9

Utah Ass'n of Cntys. v. Bush,
316 F. Supp. 2d 1172 (D. Utah 2004) 10

Warth v. Seldin,
422 U.S. 490 (1975) 16

Statutes

5 U.S.C. § 704 13

ED_021114_00001917-00005

22 U.S.C. § 211a 15

42 U.S.C. § 7401(b) 2

42 U.S.C. § 7412 ..... 2, 4

42 U.S.C. § 7412(b) 2

42 U.S.C. § 7412(d) 2, 14

42 U.S.C. § 7412(d)(6) 2

42 U.S.C. § 7412(f)(2)(A) 2

42 U.S.C. § 7412(i) 2

42 U.S.C. § 7412(i)(3) 14

42 U.S.C. § 7412(i)(3)(A) 2

42 U.S.C. § 7412(i)(4)* 3, 4, 9, 11, 14, 15

42 U.S.C. § 7414(c) 19

42 U.S.C. § 7604 ..... 7, 8

42 U.S.C. § 7607* 7

42 U.S.C. § 7607(b) 13

42 U.S.C. § 7607(b)(1) 7, 8

42 U.S.C. § 7607(d) 7

42 U.S.C. § 7607(e) 8

Code of Federal Regulations

40 C.F.R. pt. 63, subpt. F 3

40 C.F.R. pt. 63, subpt. G 3

40 C.F.R. pt. 63, subpt. H 3

40 C.F.R. pt. 63, subpt. I 3

40 C.F.R. pt. 63, subpt. U 3

40 C.F.R. pt. 63, subpt. W 3

ED_021114_00001917-00006

Federal Register Notices

59 Fed. Reg. 19402 (Apr. 22, 1994) 3

60 Fed. Reg. 12670 (Mar. 8, 1995) 3

61 Fed. Reg. 46906 (Sept. 5, 1996) 3

88 Fed. Reg. 25080 (Apr. 25, 2023) 3

89 Fed. Reg. 42932 (May 16, 2024) 3

90 Fed. Reg. 34587 (July 23, 2025) 4, 5, 12

ED_021114_00001917-00007

INTRODUCTION

The Clean Air Act protects the nation's air quality through a broad range of programs, each tailored by Congress to address an air pollution problem. As relevant to this action, the Act directs the Environmental Protection Agency ("EPA") to regulate hazardous air pollutants by setting emission standards based on the emissions reductions that are achievable and sufficient to protect public health and the environment.

As a general matter, the statute instructs EPA to promulgate compliance deadlines for emission standards that come into effect within three years. But, recognizing that neither Congress nor EPA could foresee all eventualities, the Clean Air Act reserves a special place for the President to relieve emissions sources from those deadlines. In particular, the President may exempt any stationary source from compliance with an emission standard for a period of not more than two years if the President determines that the technology to implement that standard is not available and that it is in the national security interests of the United States to do so.

President Trump exercised this authority in July 2025, exempting certain chemical manufacturing plants from EPA's 2024 emission standards governing the chemical manufacturing industry. As authorized by the Clean Air Act, the President chose to issue this exemption after determining: (1) that the technology to achieve these standards is not available; and (2) that the exemption is in the national security interests of the United States.

Plaintiffs' Complaint challenges these exemptions on the grounds that the President's technology and national security determinations are erroneous. But Congress has foreclosed review of those determinations by enacting the Clean Air Act's comprehensive judicial review scheme without providing for review of such determinations. The Court should dismiss the Complaint.

BACKGROUND

1. The Clean Air Act

The Clean Air Act contains seven subchapters, each designed to address a particular air pollution problem while advancing the Act's overall goal of "protect[ing] and enhanc[ing] the quality of the Nation's air resources so as to promote the public health and welfare and the productive capacity of its population." 42 U.S.C. § 7401(b). Relevant here, Subchapter I addresses air quality and emission limitations.

This case concerns one method of addressing air quality and emission limitations, the National Emission Standards for Hazardous Air Pollutants. Clean Air Act § 112; 42 U.S.C. § 7412. These standards regulate hazardous air pollutants that can cause adverse health or environmental effects, such as asbestos, benzene, and chlorine. *Id.* § 7412(b). The Clean Air Act requires EPA to set standards for categories of sources that emit air toxics. *Id.* § 7412(d). Eight years after setting those standards, EPA must complete a risk review, assessing whether the standards provide "an ample margin of safety" for public health and the environment. *Id.* § 7412(f)(2)(A). Separately, EPA must complete a recurring technology review of these standards every eight years. *Id.* § 7412(d)(6).

When EPA promulgates an emission standard for a category or subcategory of existing sources under CAA section 112, EPA generally must establish a compliance date that provides for compliance as expeditiously as practicable, but in no event later than three years after the standard's effective date. *Id.* § 7412(i)(3)(A). Consistent with other environmental statutes, Congress also provided for certain compliance exemptions. *Id.* § 7412(i).

Specifically as relevant here, when an emission standard implicates national security, the President, rather than EPA, may exempt any source from compliance for a period of not more than two years "if the President determines that the technology to implement such standard is not

available and that it is in the national security interests of the United States to do so." *Id.* § 7412(i)(4). The President may extend this exemption period for additional two-year periods and must report each exemption (or extension) to Congress. *Id.* In contrast to its provisions governing EPA's rulemaking authority, *see id.* § 7607(d), the Act establishes no procedural requirements for the President's exemption authority, *see id.* § 7412(i)(4), and does not subject the President's determinations to judicial review, *see id.* § 7607(b)(1).

2. EPA's 2024 HON Rule

EPA first promulgated emission standards for the synthetic organic chemical manufacturing industry in 1994. 59 Fed. Reg. 19402 (Apr. 22, 1994). Those standards are generally reflected in 40 C.F.R. part 63, subparts F, G, H, and I. EPA first promulgated national emission standards for certain polymer and resins manufacturing sources in 1995 and 1996. 60 Fed. Reg. 12670 (Mar. 8, 1995); 61 Fed. Reg. 46906 (Sept. 5, 1996). Those standards are generally reflected in 40 C.F.R. part 63, subparts U and W.

In April 2023, EPA proposed amendments to these standards based on its periodic technology review of those standards. 88 Fed. Reg. 25080 (Apr. 25, 2023). After considering public comments on the proposed rule, EPA promulgated a final rule in May 2024 entitled, "New Source Performance Standards for the Synthetic Organic Chemical Manufacturing Industry and National Emission Standards for Hazardous Air Pollutants for the Synthetic Organic Chemical Manufacturing Industry and Group I & II Polymers and Resins Industry." 89 Fed. Reg. 42932 (May 16, 2024). That rule is commonly referred to (including by Plaintiffs in their Complaint) as the "HON Rule" because it mainly concerns the various standards for the synthetic organic chemical manufacturing industry, which EPA collectively refers to as the Hazardous Organic NESHAP or HON. The HON Rule set compliance deadlines for meeting the standards as July

15, 2026, or July 15, 2027, depending on the particular standard. HON Rule, 89 Fed. Reg. at 43236.

3. The President's 2025 HON Proclamation

On July 17, 2025, President Trump issued a proclamation under his Clean Air Act section 112(i)(4) authority, 42 U.S.C. § 7412(i)(4), exempting a specified list of stationary sources (Annex I) from the HON Rule for two years. Regulatory Relief for Certain Stationary Sources To Promote American Chemical Manufacturing Security (the "HON Proclamation"), 90 Fed. Reg. 34587 (July 23, 2025). Specifically, the HON Proclamation stated that the President was exempting the Annex I sources from compliance with "those aspects of the HON Rule that were promulgated under section 112 of the Clean Air Act, 42 U.S.C. § 7412 for a period of 2 years beyond the HON Rule's relevant compliance dates[.]" *Id.* at 34587. Thus, for the sources in Annex I the HON Rule will not apply until two years after the rule's compliance deadlines (*i.e.*, until July 15, 2028, for the 2026 compliance deadlines and until July 15, 2029, for the 2027 compliance deadlines). *Id.* The Annex I sources remain regulated by the emission standards in effect before the HON Rule's promulgation.

In support of the exemption, the HON Proclamation stated that the nation's domestic chemical manufacturing sector was vital to "safeguarding the supply chains that underpin our economy and to reducing the Nation's dependence on foreign control over materials critical to national resilience," citing the need for continued domestic production in light of expanded adversary influence over foreign manufacture. *Id.* The HON Proclamation also stated that many of the HON Rule's testing and monitoring requirements were not available because they have not been demonstrated at the necessary scale or cannot be implemented safely or consistently under real-world conditions, considering the "significant variation in site conditions, permitting realities, and equipment configurations" across diverse facilities. *Id.*

Based on the foregoing, the President made two determinations in support of the exemption. First, he determined that the technology to implement the HON Rule was not available because it "does not exist in a commercially viable form sufficient to allow implementation of and compliance with the HON Rule" by the compliance deadlines. *Id.* Second, he determined that it is "in the national security interests of the United States to issue this Exemption for the reasons stated" in the Proclamation. *Id.*

4. Plaintiffs' Challenges

Plaintiffs are ten organizations and associations that allege they have members who "live, work, and recreate in areas affected by the excess pollution that is and will be emitted from the exempted facilities." Dkt. No. 1 ¶ 129. Plaintiffs brought the instant suit against President Trump, EPA, and EPA Administrator Lee Zeldin on October 22, 2025, and upon Defendants' motion the Court extended the deadline to answer to January 29, 2026. Minute Order (Dec. 5, 2025), Dkt. No. 32.

In their Complaint, Plaintiffs seek a declaration that the HON Proclamation is unlawful and they seek an injunction preventing EPA from effectuating the exemption. Compl. ¶¶ 149–183; ¶¶ A–B. Plaintiffs identify two claims for relief in their Complaint, both styled as "nonstatutory review." *Id.* at pp. 37, 40. Count One alleges that the President has violated the Clean Air Act by issuing the exemption. *Id.* at p. 37. Count Two alleges that the President lacked authority to issue the exemption here. *Id.* at p. 40.

STANDARD OF REVIEW

Federal courts have "limited jurisdiction" and "possess only that power authorized by Constitution and statute." *Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375, 377 (1994) (citations omitted). Thus, before a federal district court may consider the merits of a lawsuit, it

ED_021114_00001917-00012

must determine it has subject matter jurisdiction to preside over the issue(s) raised. *Steel Co. v. Citizens for a Better Env't*, 523 U.S. 83, 94 (1998). There is a presumption against subject matter jurisdiction, and "the burden of establishing the contrary rests upon the party asserting jurisdiction." *Kokkonen*, 511 U.S. at 377 (citation omitted).

In deciding a Rule 12(b)(1) motion to dismiss for lack of subject matter jurisdiction, the court must "accept as true all the factual allegations in the complaint." *Leatherman v. Tarrant Cnty. Narcotics Intel. & Coordination Unit*, 507 U.S. 163, 164 (1993) (citing *United States v. Gaubert,* 499 U.S. 315, 327 (1991)). But the court is not limited to the allegations in the complaint; the court may also consider "such materials outside the pleadings as it deems appropriate to resolve the question whether it has jurisdiction in the case." *Bates v. Rumsfeld*, 271 F. Supp. 2d 54, 60 (D.D.C. 2002) (citation omitted).

A motion under Rule 12(b)(6) "challenges the adequacy of a complaint on its face, testing whether a plaintiff has properly stated a claim." *Davis v. Sarles*, 134 F. Supp. 3d 223, 226 (D.D.C. 2015). In making its determination on a 12(b)(6) motion, the court may "consider the facts alleged in the complaint, documents attached as exhibits or incorporated by reference in the complaint, and matters about which the Court may take judicial notice." *Gustave-Schmidt v. Chao*, 226 F. Supp. 2d 191, 196 (D.D.C. 2002) (citation omitted). The court may also consider "documents 'upon which the plaintiff's complaint necessarily relies' even if the document is produced not by the plaintiff in the complaint but by the defendant in a motion to dismiss." *Hinton v. Corr. Corp. of Am.*, 624 F. Supp. 2d 45, 46 (D.D.C. 2009) (quoting *Parrino v. FHP, Inc.*, 146 F.3d 699, 706 (9th Cir. 1998)).

ARGUMENT

Plaintiffs' Complaint disavows a cause of action against the President and EPA under either the Clean Air Act or the Administrative Procedure Act. *See* Compl. at pp. 37, 40

ED_021114_00001917-00013

("nonstatutory review"). Thus, it appears Plaintiffs attempt to "dress up a typical statutory-authority argument as an ultra vires claim." *NRC v. Texas*, 605 U.S. 665, 682 (2025). However, ultra vires review is extremely narrow and is "unavailable . . . if a statutory review scheme forecloses all other forms of judicial review" and only applies if an agency taken action "entirely in excess of its delegated powers and contrary to a *specific prohibition*" in a statute. *Id.* at 681 (emphasis in original, quotation and internal citation omitted).

The Court should dismiss the Complaint on this basis. First, ultra vires review is unavailable because the Clean Air Act forecloses such review. Second, even if review were available, the President has not acted in excess of his delegated powers or contrary to a specific prohibition in the Clean Air Act. Third, EPA has not taken any reviewable final action and so is not a proper party to this challenge to presidential action. Fourth, as an alternative, the Court should significantly narrow the scope of the Complaint because Plaintiffs lack standing to challenge many of the exempted facilities.

1. The Clean Air Act's Comprehensive Judicial Review Scheme Bars Review of the President's HON Proclamation.

The Court should dismiss the Complaint because Congress has foreclosed Plaintiffs' nonstatutory review claims in the context of Clean Air Act presidential exemptions.

The Clean Air Act sets forth a comprehensive and unambiguous judicial review scheme that governs both review of governmental action, 42 U.S.C. § 7607, and governmental inaction, 42 U.S.C. § 7604. Clean Air Act section 307 governs review of EPA action by individually listing each type of EPA action seriatim and then assigning review of those actions to either the regional courts of appeals or the District of Columbia Circuit. 42 U.S.C. § 7607(b)(1). In such cases, section 307 also establishes the record for review, the standard of review, and the available causes of action. *Id.* § 7607(d). And finally, if that was not enough, it provides that other methods

of judicial review are not authorized "except as provided in this section." *Id.* § 7607(e); *see Oljato Chapter of Navajo Tribe v. Train*, 515 F.2d 654, 664 (D.C. Cir. 1975) (Clean Air Act supplants APA review). The Supreme Court has interpreted section 307(b)(1) broadly to cover every way EPA may exercise its power under the Clean Air Act. *See Harrison v. PPG Indus., Inc.*, 446 U.S. 578, 587 89 (1980) (phrase "any other final action" is to be construed literally to reach any final EPA action). For cases of agency inaction, Congress created a specific cause of action in district court to challenge an alleged failure to perform "any act or duty under this chapter which is not discretionary," 42 U.S.C. § 7604(a)(2), subject to the express condition of advance notice, *id.* § 7604(b).

Where, as here, Congress has provided "a detailed mechanism for judicial consideration of particular issues at the behest of particular persons," the Court has rejected challenges falling outside of that scheme. *Block v. Cmty. Nutrition Inst.*, 467 U.S. 340, 349 (1984). In *Block*, for instance, the Secretary of Agriculture was authorized to issue orders regulating the milk market under the Agricultural Marketing Agreement Act of 1937. *Id.* at 342. The statute authorized dairy handlers to challenge those orders using a bespoke statutory procedure but was silent about milk consumers' rights. *Id.* at 346–347. Notwithstanding the lack of an express statement that such judicial review was precluded, the Court had no difficulty in concluding that "congressional intent to preclude judicial review [was] 'fairly discernible' in the detail of the legislative scheme." *Id.* at 351.

Likewise with the Clean Air Act, Congress has clearly indicated that judicial review of presidential exemptions under section 112(i)(4) is unavailable. First, Congress did not include presidential exemptions in the list of actions that the Clean Air Act subjects to judicial review, despite its near-exhaustive list of other types of reviewable actions. *See* 42 U.S.C. § 7607(b)(1)

ED_021114_00001917-00015

(listing only actions of "the Administrator"). Second, Congress required the President to "report" each exemption to itself. *Id.* § 7412(i)(4). While congressional supervision "does not provide the immediate protection that the [plaintiff] seeks, it does evince a congressional intent to review the President's decisions and safeguard the environmental interests at stake itself." *Colon v. Carter*, 633 F.2d 964, 967 (1st Cir. 1980).

Plaintiffs accordingly cannot satisfy the first prong of ultra vires review—that Congress has not already acted to foreclose judicial review. The Court should dismiss the Complaint on that basis.

2. To the Extent Ultra Vires Review is Available Outside of the Clean Air Act, How the President Exercised his Exemption Discretion Remains Unreviewable.

Even assuming that Plaintiffs may seek judicial review outside of the narrow confines of the Clean Air Act, the Court should nonetheless dismiss this action. As an unbroken line of Supreme Court precedent makes clear, where a statute "commits decisionmaking to the discretion of the President, judicial review of the President's decision is not available." *Dalton v. Specter*, 511 U.S. 462, 477 (1994); *see also Trump v. Hawai'i*, 585 U.S. 667 (2018); *Franklin v. Massachusetts*, 505 U.S. 788 (1992); *Chi. & S. Air Lines, Inc. v. Waterman S. S. Corp.*, 333 U.S. 103 (1948); *United States v. George S. Bush & Co.*, 310 U.S. 371 (1940); *Dakota Cent. Tel. Co. v. South Dakota ex rel. Payne*, 250 U.S. 163 (1919).

As stated above, Plaintiffs' Complaint does not appear to include claims under the Administrative Procedure Act's or Clean Air Act's judicial review mechanisms and so Defendants assume that Plaintiffs are attempting to bring a nonstatutory ultra vires claim. The scope of review in such a challenge is extremely narrow, comprising at most review for constitutionality and whether the President exceeded a specific statutory prohibition on his authority. *See Franklin*, 505 U.S. at 801 (presidential acts may be reviewed for constitutionality

but not abuse of discretion.);); *see also Glob. Health Council v. Trump*, 153 F.4th 1, 20 (D.C. Cir. 2025) ("To prevail on an ultra vires claim, a plaintiff must establish that (1) review is not expressly precluded by statute, (2) there is no alternative procedure for review of the statutory claim and (3) the challenged action is plainly in excess of [the President's] delegated powers and contrary to a specific prohibition in the statute that is clear and mandatory." (internal quotations omitted)).

Plaintiffs assert no constitutional challenge. Therefore, this Court's review is limited to whether the President has exceeded the statute's limitations. For that analysis, this Court must circumscribe its review to asking (a) whether the statute confers the discretion that the President has exercised; and (b) whether the President exceeded a specific statutory prohibition on his authority. *See Hawai'i*, 585 U.S. at 686 88 (first discussing whether the Immigration and Nationality Act gives the President discretion to suspend entry of noncitizens based on nationality, then reviewing whether the President's action comported with "any textual limit on the President's authority"); *NRC*, 605 U.S. at 681 (ultra vires review applies only when an agency has taken action both (1) entirely in excess of delegated powers and (2) contrary to a specific prohibition). Judicial review is not available to evaluate "the President's judgment as to the existence of the facts on which his discretionary judgment is based," or "to assess a particular exercise of presidential discretion." *Utah Ass'n of Cntys. v. Bush*, 316 F. Supp. 2d 1172, 1186 (D. Utah 2004); *see also Dalton*, 511 U.S. at 474 (assuming *arguendo* that courts may review whether the President has violated a statutory mandate outside the framework of the Administrative Procedure Act, "longstanding authority holds that such review is not available when the statute in question commits the decision to the discretion of the President").

Applied to the HON Proclamation in this case, Clean Air Act section 112(i)(4) fits squarely within the category of statutes that commit discretion to the President. In contrast to the remainder of section 112, which instructs that EPA "shall" take various actions in a specific sequence, section 112(i)(4) states that the President "may" exempt any stationary source from compliance with "any standard or limitation under" section 112, so long as the President makes the necessary determinations, limits the exemption to two years, and reports to Congress. 42 U.S.C. § 7412(i)(4). "May" does "not just suggest discretion, it clearly connotes it." *Biden v. Texas*, 597 U.S. 785, 802 (2022) (emphasis and internal quotation marks omitted). "That connotation is particularly apt where, as here, 'may' is used in contraposition to the word 'shall.'" *Id.* (quoting *Jama v. ICE*, 543 U.S. 335, 346 (2005)). Likewise, Congress's use of the word "determines" reflects the culmination of Presidential decision-making, as opposed to discrete and easily discernible procedural checkboxes more amenable to judicial second-guessing. *Cf. Heckler v. Chaney*, 470 U.S. 821, 831 (1985) ("[A]n agency's decision not to prosecute or enforce, whether through civil or criminal process, is a decision generally committed to an agency's absolute discretion."). The statute's explicit reference to national security concerns reinforces that conclusion. The D.C. Circuit has cautioned that "courts are not a forum for reconsidering the wisdom of discretionary decisions made by the political branches in the realm of foreign policy or national security." *El-Shifa Pharm. Indus. Co. v. United States*, 607 F.3d 836, 842 (D.C. Cir. 2010). Thus, there can be no doubt from the plain text of the statute that President Trump was within the boundaries of the authority Congress conferred upon him when he issued the exemption. *See Hawai'i*, 585 U.S. at 684 ("[8 U.S.C. §] 1182(f) vests the President with 'ample power' to impose entry restrictions." (citation omitted)).

ED_021114_00001917-00018

Moreover, Plaintiffs cannot satisfy the next prong of ultra vires review that the President violated a "*specific prohibition*" against his action in the Clean Air Act. *NRC*, 605 U.S. at 681. The exemption applies only to specific "standards" set by EPA — namely, "those aspects of the HON Rule that were promulgated under section 112 of the Clean Air Act." 90 Fed. Reg. at 34587. The exemption lasts only the duration allowed by the statute — two years. *Id.* And the exemption is predicated on the determinations required by statute—that the "technology to implement the HON Rule is not available" and the exemption is "in the national security interests of the United States[.]" *Id.* at 34588. The President therefore complied with the Clean Air Act by exercising no more than the discretion entrusted to him in the statute and by complying with the limitations Congress placed on that discretion; that is, by making the required determinations in support of an exemption that clearly falls within the statute. *See Hawai'i*, 585 U.S. at 686–88; *NRC*, 605 U.S. at 681.

The Complaint's proposed scope of judicial review vastly exceeds the limited jurisdiction recognized by the precedents cited above. Though Plaintiffs attempt to set up a dispute over the Clean Air Act's meaning by casting their claim as the President "misconstru[ing]" the Clean Air Act, *e.g.*, Compl. ¶¶ 154, 160, the gravamen of the Complaint is that Plaintiffs disagree with the President's determinations on technology availability and national security. For instance, Plaintiffs would have this Court make factual inquiries into whether "[t]echnology to implement the 2024 HON Rule is in fact available" *id.* ¶ 156, and whether the domestic chemical manufacturing industry's inputs and outputs actually "have any national security nexus," *id.* ¶ 162. Likewise, Plaintiffs allege that the President "grossly exceeded the bounds of his statutory authority" because "the technology to implement is available and the exemptions do not further national security interests." *Id.* ¶ 165.

The Court should reject Plaintiffs' requests to expand judicial review of the President's factual determinations in violation of Supreme Court precedent. Even setting aside the mind-boggling discovery and trial proofs that would be necessary for this Court to complete a nationwide review of the chemical manufacturing industry, available technology, and the nexus to national security, engaging in that sort of review would enmesh this Court in questions of "Presidential discretion as to political matters beyond the competence of the courts to adjudicate." *Dalton*, 511 U.S. at 475 (quotation omitted). Indeed, Plaintiffs' request for "a searching inquiry into the persuasiveness of the President's justifications is inconsistent with the broad statutory text and the deference traditionally accorded the President in this sphere." *Hawai'i*, 585 U.S. at 686. In such circumstances, the Supreme Court has never required the President to make a predicate determination in "sufficient detail to enable judicial review." *Id.*

The Court should therefore dismiss Counts One and Two against the President for lack of jurisdiction and failure to state a claim.

3. EPA Has Not Taken Action to Implement the HON Proclamation and is Not a Proper Party Here.

Even assuming that ultra vires review is available here despite the Clean Air Act's comprehensive scheme, the Complaint likewise fails to state a claim against EPA because EPA has not taken any action susceptible to review under the Clean Air Act, Administrative Procedure Act, or ultra vires review.

First, under the Clean Air Act, EPA is not a proper party here. As with the Administrative Procedure Act, which does not permit judicial review before "agency action" is "final," 5 U.S.C. § 704, lawsuits against EPA under the Clean Air Act are not ripe until EPA has taken "final action." 42 U.S.C. § 7607(b); *see also Sierra Club v. EPA*, 873 F.3d 946, 951 (D.C. Cir. 2017) ("[F]inal action" in the Clean Air Act is synonymous with "final agency action" in the

Administrative Procedure Act.). "Final action" means "action" that (1) marks the "consummation of the agency's decisionmaking process" and (2) is one "by which rights or obligations have been determined, or from which legal consequences will flow." *Bennett v. Spear*, 520 U.S. 154, 177–78 (1997) (citations and internal quotation marks omitted). Plaintiffs have failed to identify any official EPA act that even remotely qualifies as "action" under this standard; nor can they, as EPA has done nothing to implement the HON Proclamation.

Second, assuming that EPA can be sued for Clean Air Act violations on an ultra vires theory, Plaintiffs fail to allege that EPA has taken action that violates a specific provision of the Clean Air Act. The Clean Air Act is comprehensive and unambiguous in its division of authority between EPA, States, and the President. In the normal course, Congress entrusted EPA with setting standards and compliance deadlines for regulating hazardous air pollutants. *Id.* § 7412(d), (i)(3). But in the unique case of national security, Congress entrusted the President, and *only* the President, with the authority to issue an exemption. *Id.* § 7412(i)(4). The statutory text is clear that EPA has no role in effectuating such national security exemptions, and the Complaint does not allege that EPA has taken any action to do so here. Accordingly, the Complaint fails to allege that EPA is violating or plans to violate federal law. *See Dart v. United States*, 848 F.2d 217, 224 (D.C. Cir. 1988) ("When an executive *acts* ultra vires, courts are normally available to reestablish the limits on his authority." (emphasis added)).

Moreover, to the extent that Plaintiffs seek to include EPA in this case on the speculative theory that EPA might take some action *in the future* to implement the HON Proclamation, that theory is neither ripe nor an avenue for relief where the real party in question is the President. Certainly, final agency action is traditionally reviewable when Congress has entrusted authority and discretion to act to an agency head, even if the President directs how he wishes that agency

to proceed. But, as discussed above, when Congress enacts a statute entrusting discretion to the President, how the President exercises that discretion is not reviewable. *Dalton*, 511 U.S. at 476. The mere fact that a plaintiff sues an agency defendant who will ministerially implement that exercise of discretion does not transmute the claim from unreviewable to justiciable. *Id.*; *see also Chi. & S. Air Lines, Inc.*, 333 U.S. at 113–14 (no review of Civil Aeronautics Board decision where statute committed discretion to review decision to President, even though organic act generally permitted judicial review).

The Supreme Court reaffirmed this longstanding distinction between agency action delegated to an agency head and agency action implementing discretion vested in the President only last year. *See Trump v. Orr*, 146 S. Ct. 44, 46 (2025). In the context of the federal passport issuance law, the State Department issues passports "under such rules as the President shall designate and prescribe." 22 U.S.C. § 211a. When certain plaintiffs sought to challenge President Trump's executive order governing sex on passports, the Supreme Court granted a stay application from the State Department seeking relief from an order against its implementation of that directive. *See Orr*, 146 S. Ct. at 46. The Court explained that respondents were not likely to prevail in "arguing that the State Department acted arbitrarily and capriciously by declining to depart from *Presidential rules that Congress expressly required it to follow*." *Orr*, 146 S. Ct. at 46 (emphasis added; citing 22 U.S.C. § 211a).

So too here. The Clean Air Act entrusts the decision whether to grant an exemption entirely to the President. 42 U.S.C. § 7412(i)(4). Any future EPA action to implement an exemption (in addition to being unripe, not plausibly alleged, and speculative) would be merely ministerial and not subject to review. The Court should therefore dismiss EPA and Administrator Zeldin as Defendants because they have taken no action susceptible to challenge.

4. Plaintiffs Lack Standing to Challenge the HON Proclamation's Exemptions for 39 Facilities.

Finally, Plaintiffs lack Article III standing to challenge the HON Proclamation's exemptions for 39 of the 50 facilities identified in Annex I. To the extent the Court does not dismiss the Complaint in full for the reasons described above in Sections I and II, it should narrow the Complaint and consider relief only with regard to the 11 facilities that Plaintiffs have alleged concretely affect their members.

Standing requires that a plaintiff have "a personal stake in the outcome of the controversy [so] as to warrant his invocation of federal-court jurisdiction." *Warth v. Seldin*, 422 U.S. 490, 498 (1975). A plaintiff seeking relief must establish the three elements constituting the "irreducible constitutional minimum" of Article III standing. *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560 (1992). The plaintiff has the burden of showing: "that it has suffered a concrete and particularized injury that is: (1) actual or imminent; (2) caused by or fairly traceable to, an act that the litigant challenges in the instant litigation; and (3) redressable by the court." *Fla. Audubon Soc'y v. Bentsen*, 94 F.3d 658, 663 (D.C. Cir. 1996) (internal quotation and citation omitted). The injury cannot be "'conjectural or hypothetical.'" *Spokeo, Inc. v. Robins*, 578 U.S. 330, 339 (2016) (quoting *Lujan*, 504 U.S. at 560).

A plaintiff organization, like the ten Plaintiffs here, may establish "associational standing" based on injury to its members by showing that "(a) its members would otherwise have standing to sue in their own right; (b) the interests it seeks to protect are germane to the organization's purpose; and (c) neither the claim asserted nor the relief requested requires the participation of individual members in the lawsuit." *Hunt v. Wash. State Apple Adver. Comm'n*, 432 U.S. 333, 343 (1977). Alternatively, to show standing on its own behalf, the organization itself must meet the same standing test that applies to individuals: an actual or threatened injury

in fact that is fairly traceable to the defendant's allegedly unlawful conduct and likely to be redressed by a favorable court decision. *Am. Soc. for Prevention of Cruelty to Animals v. Feld Ent., Inc.*, 659 F.3d 13, 24 (D.C. Cir. 2011).

Plaintiffs' Complaint asserts standing based on two types of alleged injuries: (1) harm from "increased exposure to hazardous air pollutants as a result of the HON Proclamation," Compl. ¶ 134, and their members' concerns about such increased exposure, Compl. ¶ 142–148; and (2) an informational injury on the grounds that exempt facilities are no longer required to conduct "fenceline monitoring," reports of which Plaintiffs allege must be made available to the public, Compl. ¶¶ 134 141.[1] As for relief, Plaintiffs seek a declaration from this Court that the Proclamation "is unlawful and invalid and that the Annex I sources remain subject to the 2024 HON Rule." *See* Compl. § "Relief Requested." But, as detailed below, Plaintiffs have not pleaded facts sufficient to support their allegations of injury from the increased emissions at 39 of the exempted facilities listed in Annex I. Additionally, Plaintiffs claim of informational injury fails because they do not have a right to the information they seek.

A. Plaintiffs Have Not Sufficiently Alleged Injury Resulting from All Exempted Facilities.

As noted above, Plaintiffs allege that their members are harmed by "excess" exposure to hazardous air pollutants because the HON Proclamation exempted 50 facilities listed in its Annex I from compliance with the HON Rule. Compl. ¶¶ 1, 129–134. Yet Plaintiffs allege facts supporting harm to their members arising from "excess" emissions at only 11 of the facilities listed in Annex I.[2] Compl. ¶¶ 142–148. With respect to the remaining 39 facilities, Plaintiffs have

[1] Fenceline monitoring refers to monitoring for specific air pollutants along the perimeter of the facility's property line.

[2] Plaintiffs identify members with concerns regarding the following exempted facilities: (1) Citgo Petroleum Corporation's Lemont Refinery in Illinois; (2) Denka Performance's

ED_021114_00001917-00024

not pleaded any facts to support their assertion that their members have been or will be harmed by excess emissions from those facilities. And Plaintiffs' generic assertion that their members will be harmed by breathing air pollution from exempted facilities lacks any factual support. *See* Compl. ¶ 129. It is long accepted that allegations of "generalized harm to . . . the environment will not alone support standing." *Summers v. Earth Island Inst.*, 555 U.S. 488, 494 (2009); *see also Lujan v. Nat'l Wildlife Fed'n*, 497 U.S. 871, 889 (1990) (holding that requirements of standing are not met when plaintiff alleges harm in an "immense tract of territory"). Moreover, any alleged general harm caused by potential "excess" emissions is nonsensical because the exemptions are, at most, delaying *reductions* by a period of two years, not allowing for increased emissions. *See* 90 Fed. Reg. at 34587.

Similarly, Plaintiffs have not alleged a specific injury to their organizations that could support standing in their own right. Plaintiffs' alleged injury to their advocacy efforts, *see* Compl. ¶ 139, is not sufficient because organizations that "seek to do no more than vindicate their own value preferences through the judicial process" generally cannot establish standing. *Sierra Club v. Morton*, 405 U.S. 727, 740 (1972); *see also Food & Drug Admin. v. All. for Hippocratic Med.*, 602 U.S. 367, 381 (2024). Thus, Plaintiffs have not alleged facts sufficient to support associational standing.

B. Plaintiffs Cannot Establish Standing Based on an Informational Injury.

Moreover, Plaintiffs cannot establish standing (for the 39 facilities described above, or any other facility) based on an alleged informational injury because they are not entitled to the

---

Elastomer facility in Louisiana; (3) DuPont Specialty Products' Pontchartrain facility in Louisiana; (3) BASF's North Geismar facility in Louisiana; (4) BASF's Geismar facility in Louisiana; (5) Shell's Geismar facility in Louisiana; (6) Westlake Vinyl's facility in Ascension Parrish, Louisiana; (7) Formosa Plastics' facility in Baton Rouge, Louisiana; (8) Dow's facility in Plaquemine, Louisiana; (9) BASF's facility in Freeport, Texas; (10) Celanese's Clear Lake facility in Texas; and (11) Ineos Styrolution's facility in Texas. Compl. ¶¶ 142–148.

fenceline monitoring reports they seek. To establish injury in fact based on informational interests, Plaintiffs must demonstrate: (1) they have been deprived of information that, in their interpretation, *a statute* requires the government or a third party to disclose to them; and (2) they suffer, by being denied access to that information, the type of harm Congress sought to prevent by requiring disclosure. *Friends of Animals v. Jewell*, 828 F.3d 989, 992 (D.C. Cir. 2016). Although the D.C. Circuit has, in the past, found that an organization may have standing based on informational harm even though the organization had no legal right to it, *Am. Anti-Vivisection Soc'y v. U.S. Dep't of Agric.*, 946 F.3d 615, 619 (D.C. Cir. 2020) (citation omitted), "the Supreme Court has since 'cautioned against'" that approach, *Indep. Mkt. Monitor for PJM v. FERC*, 162 F.4th 1167, 1173 (D.C. Cir. 2025) (quoting *Ctr. for Biological Diversity v. U.S. Dep't of the Interior*, 144 F.4th 296, 315 (D.C. Cir. 2025)). Moreover, even if a plaintiff organization can show that its interests are harmed, it must, to establish standing, also show that it has used resources to counteract that harm. *PETA v. Dep't of Agric.*, 797 F.3d 1087, 1094 (D.C. Cir. 2015).

Here, Plaintiffs have not established that they (or their members) are legally entitled to the fenceline monitoring reports that they seek. It is true that the HON Rule requires facilities to conduct fenceline monitoring and submit monitoring reports to EPA. HON Rule, 89 Fed. Reg. at 43227 34, 43254, 43260. Additionally, under the Clean Air Act, to the extent EPA receives monitoring reports, it must make them available to the public. *See* 42 U.S.C. § 7414(c). However, *the Clean Air Act* does not require that EPA collect fenceline monitoring reports in the first instance; that requirement came from EPA's decision to impose such reporting in the HON Rule. Absent that legal duty, Plaintiffs cannot claim an entitlement to monitoring reports that the statute does not require. *See Jewell*, 828 F.3d at 992; *NRDC v. Bodine*, 471 F. Supp. 3d 524, 535

(S.D.N.Y. 2020) (finding no informational injury to support standing where plaintiff had not demonstrated legal entitlement to information).

But, even if the Court were to find that such entitlement exists and accept as true Plaintiffs' allegation that their organizational missions have been harmed by EPA's failure to provide monitoring reports (that are not statutorily required), Plaintiffs must also show that they have "used [their] resources to counteract that harm." *PETA,* 797 F.3d at 1094. Plaintiffs' Complaint does not contain any allegations that they have expended resources to ameliorate the alleged harm to their missions. *See Indep. Mkt. Monitor for PJM*, 162 F.4th at 1174 (finding no standing based on alleged informational injury where plaintiff "does not identify programmatic expenditures it must make to fill the gap caused by [the] absence" of information) (internal quotations omitted). Thus, Plaintiffs have not adequately alleged an informational injury.

CONCLUSION

The Complaint seeks injunctive relief against the President for exercising discretion conferred upon him by Congress and for which Congress foreclosed judicial review. That exercise of discretion is accordingly unreviewable, and including EPA as a party makes no difference to that fundamental principle. The Court should dismiss the Complaint.

ED_021114_00001917-00027

Dated: January 29, 2026

Respectfully submitted,

ADAM R.F. GUSTAFSON
Principal Deputy Assistant Attorney General

ROBERT N. STANDER
Deputy Assistant Attorney General
Environment & Natural Resources Division

/s/ *DanielJMartin*
DANIEL J. MARTIN
LAURA BROWN
U.S. Department of Justice
Environment & Natural Resources Division
Environmental Defense Section
P.O. Box 7611
Washington, D.C. 20044
(202) 598-1869
Daniel.Martin3@usdoj.gov

ED_021114_00001917-00028

Message

From: [redacted]@epa.gov]
Sent: 6/18/2025 8:11:50 PM
To: Szabo, Aaron [Szabo.Aaron@epa.gov]
Subject: FW: Iron and steel
Attachments: IIS.zip; Iron_Steel_Summary.xlsx

All of the iron and steel sources were verified – note that for some reason we have US Steel included twice. Since it was on the original spreadsheet we shared we didn't want to remove it and confuse anyone.

From: [redacted]@epa.gov>
Sent: Wednesday, June 18, 2025 2:34 PM
To: [redacted]@epa.gov>
Cc: [redacted]@epa.gov>
Subject: Iron and steel

- Spreadsheet has summary of requests.
- Material in zipped file, the number after the Rule name (Iron and Steel Rule.) corresponds to the ID in the spreadsheet.

Best,
[redacted]

[redacted]
OAR/OAQPS
Office: [redacted]
[redacted]@epa.gov

From: [redacted]
Sent: Wednesday, June 18, 2025 2:29 PM
To: [redacted]@epa.gov>
Cc: [redacted]@epa.gov>
Subject: Coke Ovens

Just want to confirm the attached files are what you want.

- Spreadsheet has summary of requests.
- Material in zipped file, the number after the Rule name (Coke Ovens Rule.) corresponds to the ID in the spreadsheet.

Best,
[redacted]

[redacted]
OAR/OAQPS
Office: [redacted]

[redacted]@epa.gov

From: [redacted]@epa.gov>
Sent: Wednesday, June 18, 2025 2:00 PM
To: [redacted]@epa.gov>
Cc: [redacted]@epa.gov>
Subject: are you going to be able to do those e-mails?

Re: presidential exemption?

From:	Piscitelli, Alexis S
To:	AirAction; Zeldin, Lee
Cc:	Szabo, Aaron; tardif.abilgale@epa.gov; [redacted] Woodwell, Tishie W; Herdin, Christopher W; Turro, Brett J
Subject:	Presidential Exemption: Integrated Iron and Steel MACT RTR Rule (2024): U. S. Steel's Edgar Thomson Plant, Gary Works, Granite City Works, and Great Lakes Works
Date:	Monday, March 31, 2025 4:58:48 PM
Attachments:	US Steel Request for Presidential Exemption Iron and Steel MACT RTR 3-31-2025.pdf

Caution: This email originated from outside EPA, please exercise additional caution when deciding whether to open attachments or click on provided links.

Dear Administrator Zeldin,

Please see U. S. Steel's attached request for Clean Air Act Section 112(i)(4) Presidential Exemption from National Emission Standards for Hazardous Air Pollutants: Integrated Iron and Steel Manufacturing Facilities, 89 Fed. Reg. 23,294 (April 3, 2024)

Thank you for the opportunity to provide this Request for a Presidential Exemption.

Sincerely,

Alexis Piscitelli
U. S. Steel Gary Works, Granite City and Great Lakes Works
Senior Director, Environmental
North American Flat Rolled Manufacturing

DISCLAIMER & CONFIDENTIALITY NOTICE: This email neither constitutes an agreement to conduct transactions by electronic means nor creates any legally binding contract or enforceable obligation in the absence of a fully signed written contract. The information contained in this email and any attachments may be confidential, legally privileged and/or exempt from disclosure under applicable law. It has been sent for the sole use of the intended recipient(s). If the reader of this message is not an intended recipient, or the employee or agent responsible for delivering the message to the intended recipient, you are hereby notified that any unauthorized review, use, disclosure, dissemination, distribution, or copying of this communication, or any of its contents, is strictly prohibited. Any inadvertent or accidental disclosure of confidential, legally privileged and/or exempt information contained in this email does not constitute a knowing waiver of any rights regarding such information or materials. If you have received this communication in error, please reply to the sender and destroy all copies of the message (including any attachments).

United States Steel

March 31, 2025

Hon. Lee M. Zeldin
Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Ave., NW
Washington, DC 20460

VIA E-MAIL
airaction@cpa.gov

Dear Administrator Zeldin:

Re: ***United States Steel Corporation – Edgar Thomson Plant, Gary Works, Granite City Works, and Great Lakes Works***
Request for Clean Air Act Section 112(i)(4) Presidential Exemption from National Emission Standards for Hazardous Air Pollutants: Integrated Iron and Steel Manufacturing Facilities, 89 Fed. Reg. 23,294 (April 3, 2024)

United States Steel Corporation (U. S. Steel) respectfully requests a two-year Presidential Exemption for the compliance with the 2024 amendments to the National Emission Standards for Hazardous Air Pollutants for Integrated Iron and Steel Manufacturing Facilities, 89 Fed. Reg. 23,294 (April 3, 2024 (the "IIS RTR Rule") for the following U. S. Steel integrated iron and steel manufacturing facilities[1]:

- **United States Steel Corporation - Mon Valley Works, Edgar Thomson Plant**
  13th Street and Braddock Avenue
  Braddock, Pennsylvania 15104

- **United States Steel Corporation - Gary Works**
  One North Broadway
  Gary, Indiana 46402

- **United States Steel Corporation – Granite City Works**
  20th and State Street
  Granite City, Illinois 62040

- **United States Steel Corporation – Great Lakes Works**
  1 Quality Drive
  Ecorse, Michigan 48229

[1] U. S. Steel is requesting a Presidential Exemption for its Granite City Works located at 20th and State Street in Granite City Illinois, and its Great Lakes Works located at 1 Quality Drive, Ecorse, Michigan. The facilities are currently idled but could be put back online, and if so, an exemption is necessary and appropriate for these facilities as well.

As specifically noted herein, technology to implement the requirements to comply with the IIS RTR Rule is not available, which has been recognized as including "unavailable in time for installation and operation,"[2] and it is in the national security interests which includes economic security,[3] interests of the United States that a two-year Presidential Exemption be granted.

On March 12, 2025, EPA announced that it was taking appropriate action to advance President Trump's initiative of "Powering the Great American Comeback." As part of that effort, EPA indicated that it was reconsidering the IIS RTR Rule as well as several other rules; and advised that "any source interested in a Presidential exemption, should provide their recommendations to EPA by March 31, 2025;" and that sources need only provide why technology is unavailable and why it is in the national security interests of the United States to provide the exemption. In response to that announcement, and consistent with our previously submitted petition for judicial review, and petition for administrative stay and reconsideration, U. S. Steel is submitting its request for a Presidential Exemption pursuant to Clean Air Act Section 112(i)(4) for the IIS RTR Rule for the above-referenced integrated iron and steel facilities owned by U. S. Steel.

EXECUTIVE SUMMARY

U. S. Steel is respectfully requesting a two-year Clean Air Act § 112(i)(4) Presidential Exemption from all of the 2024 amendments to the IIS RTR Rule because, as U. S. Steel has clearly shown in prior submissions to EPA, no integrated iron and steel facility is actually meeting the HAP limits; nor does any integrated iron and steel facility employ technology that demonstrates the limits can consistently be met. Furthermore, even outside the integrated iron and steel industry, no technology exists that has demonstrated that the limits can consistently be met. U. S. Steel's efforts to comply with the 2024 amendments would result in significant, adverse financial and operational impacts to the company and the domestic steel industry. Without a Presidential Exemption, U. S. Steel's and the domestic steel industry's ability to provide for infrastructure, investments and national security would be significantly compromised.

EXEMPTION REQUEST

The President has the authority to grant exemptions from NESHAP emissions standards of up to two years pursuant to Clean Air Act (CAA) § 112(i)(4) and 40 C.F.R. § 63.6(j).

U. S. Steel is requesting a two-year Presidential Exemption, with the possibility to extend the exemption for additional periods if necessary and appropriate as authorized under the Clean

[2] 90 Fed. Reg. 6,773, 6,774 (Jan. 17, 2025).

[3] *See* America First Investment Policy, https://www.whitehouse.gov/presidential-actions/2025/02/america-first-investment-policy/ (Feb. 21, 2025) ("Economic security is national security.")

Air Act, for the IIS RTR Rule compliance requirements for its three integrated iron and steel manufacturing facilities, as identified above. U. S. Steel specifically requests a two-year Presidential Exemption to the amendments to the 2024 National Emission Standards for Hazardous Air Pollutants (NESHAP) for its Integrated Iron and Steel Manufacturing Facilities, which imposes unavailable technology and impractical, impossible, unsafe requirements including:

- New fugitive emissions work practices, observations, planning, reporting, recordkeeping and other requirements for Blast Furnace Bell Leaks, Unplanned Bleeder Valve Openings, Planned Bleeder Valve Openings, Slag Processing, Handling, and Storage Operations; and Beaching; (*See amendments to 40 CFR 63 Subpart FFFFF, including but not limited to 40 CFR §§ 63.7793(c), (c)(1), and (c)(2); 63.7793(d), (d)(1), and (d)(2); 63.7793(e), (e)(1), and (e)(2)); 63.7783(g), (g)(1), (g)(2), (g)(3) and (g)(4); 63.7800(b)(8) and (b)(9); 63.7821(i) 63.7821(k),(k)(1) and (k)(2); 63.7821(l); 63.7823(f), (f)(1) and(f)(2); 63.7823(g), (g)(1), (g)(2) and (g)(3); 63.7823(h)(1)-(2); 63.7833(j), (j)(1) and (j)(2); and 63.7842(d);); and 63.7783(g); 63.7793(b), (b)(2)-(7)* (b)(3); *63.7821(j); 63.7823(f); 63.7823(g), (g)(1), and (g)(2); 63.7823(h); and Subpart FFFFF Tables 1, 2, 3, 4, 5, and 6).*

- New carbonyl sulfide (COS), carbon disulfide (CS2), mercury (Hg), hydrochloric acid (HCl), and hydrogen fluoride (HF) standards and associated performance testing, monitoring, reporting, and recordkeeping requirements; and revised standards and associated monitoring, reporting, and recordkeeping requirements for D/F (TEQ) and polycyclic aromatic hydrocarbons (PAH) for sinter plants; (*See amendments to 40 CFR 63 Subpart FFFFF, including but not limited to 40 CFR §§ 63.7783(g), (g)(1), (g)(2), (g3), and (g)(4); 63.7821(f);63.7821(g) and Subpart Tables 1, 2, 3, 4, 5, and 6.)*

- New Total hydrocarbons (THC), HCl, and dioxins/furans (D/F) or TEQ standards and associated performance testing, monitoring, reporting, and recordkeeping requirements for blast furnace (BF) stoves and basic oxygen process furnaces (BOPF); (*See amendments to 40 CFR 63 Subpart FFFFF, including but not limited to 40 CFR §§ 63.7783(g), (g)(1), (g)(2), (g3), and (g)(4); 63.7821(f); 63.7821(g);and Subpart FFFFF Tables 1, 2, 3, 4, 5, and 6.)*

- New or revised THC and HCl and associated monitoring, reporting, and recordkeeping requirements standards for blast furnace primary control devices; (*See amendments to 40 CFR 63 Subpart FFFFF, including but not limited to 40 CFR §§ 63.7783(g), (g)(1), (g)(2), (g3), and (g)(4);63.7821(f); 63,7821(g); and Subpart FFFFF Tables 1, 2, 3, 4, 5, and 6.)*

- New work practice standards and modified monitoring, reporting and recordkeeping requirements for blast furnaces and basic oxygen process furnace (BOPF) shops; *See amendments to 40 CFR 63 Subpart FFFFF, including but not*

limited to 40 CFR §§ 63.7793(a), 63.7793(b), (b)(1), (b)(2), and (b)(3); 63.7793(c), (c)(1), and (c)(2); 63.7793(d), (d)(1), and (d)(2); 63.7793(e), (e)(1), and (e)(2); and 63.7793(f), including (f)(1) through (f)(8);

- New fenceline monitoring, reporting and recordkeeping requirements for total chromium (Cr), including requirements for root cause analyses and purported corrective actions at integrated iron and steel facilities. *See amendments to 40 CFR 63 Subpart FFFFF, including but not limited to 40 CFR §§ 63.7792; 63.7841(h); and 63.7842(f)).*

A two-year Presidential Exemption for these requirements is in the national security interest because it is necessary and appropriate to prevent irreparable harm to the domestic steel industry, which is vital to national security, and is supported for the reasons below.

BACKGROUND

In CAA § 112(i)(4), Congress gave exclusive authority to the President to "exempt any stationary source from compliance with any standard or limitation under this section [Clean Air Act Section 112] for a period of not more than 2 years if the President determines that the technology to implement such standard is not available and that it is in the national security, which includes economic security,[4] interests of the United States to do so. An exemption under this paragraph may be extended for 1 or more additional periods, each period not to exceed 2 years. The President shall report to Congress with respect to each exemption (or extension thereof) made under this paragraph." While the provision has very little precedent in being exercised, if there were ever a time to exercise such authority, the time to do so is now with respect to the IIS RTR Rule as the IIS RTR Rule, without such an exemption and if left in place, would result in materially adverse consequences on U. S. Steel and domestic steel industry. These consequences would significantly and harmfully alter domestic steel production as well as the United States' infrastructure, investments and economic security landscape which as the current and prior administrations have determined the domestic steel industry is a key, vital component.

While the President has broad authority in issuing such exemptions and while not controlling to issuing Presidential Exemptions, we note that in implementing extensions under Clean Air Act Section 112(i)(3)(B), EPA has broadly construed "standards" to include compliance measures. (See 66 Fed. Reg. 16318, 16328 (Mar. 23, 2001) Such "other compliance measures" include, among other things, "… obtaining or implementing technology hardware or software systems and process changes to accommodate pollution prevention or other emission reduction measures." *Id.*

It is significant to note that in 2020, EPA conducted a residual risk and technology review for the II&S source category. 85 Fed. Reg. 42,074 (July 13, 2020). There, EPA concluded that "risks due to emissions of air toxics from this source category are acceptable and that the current

[4] *See* America First Investment Policy, https://www.whitehouse.gov/presidential-actions/2025/02/america-first-investment-policy/ (Feb. 21, 2025) ("Economic security is national security.")

NESHAP provides an ample margin of safety to protect public health." *Id.* Further, "[u]nder the technology review, we found no developments in practices, processes, or control technologies that necessitate revision of the standards." *Id.*

Just three years later, without identifying any error in the original 2003 rule or 2020 residual risk and technology review, and while affirming the risks are acceptable and provide and ample margin of safety, EPA inexplicably proposed a raft of revisions, purportedly to "complete the required CAA section 112(d)(6) technology review promulgated on July 13, 2020." 88 Fed. Reg. 49,402 (July 31, 2023). EPA asserted that several amendments were necessary due to a broad overarching interpretation of the D.C. Circuit's decision in *Louisiana Environmental Action Network v. EPA*, 955 F.3d 1088 (D.C. Cir. 2020) ("*LEAN*"). It also proposed several revisions to existing standards, purportedly to "improve the emissions standards for this source category based on new information regarding developments in practices, processes and control technologies" in direct contrast to what it determined in 2020.

The concerns noted herein are the subject of petitions for administrative reconsideration and stay of the IIS RTR Rule that are currently pending with EPA[5] as well as petitions for judicial review with the United States Court of Appeals for the District of Columbia Circuit. We are pleased that EPA granted reconsideration and a 90-day administrative stay of the rule, but a two-year Presidential Exemption is necessary to prevent irreparable harm to the domestic steel industry while EPA reconsiders the IIS RTR Rule and proceeds with any necessary rule changes. Granting the Presidential Exemption is in the interest of national security as it is critical to prevent disruption of the domestic steel industry and the critical supply chain; and is appropriate while EPA reconsiders the IIS RTR Rule.

TECHNOLOGY IS UNAVAILABLE

A. Planned Bleeder Valve Openings (40 CFR §§ 63.7821(i); 63.7823(f), (f)(1) and(f)(2); Subpart FFFF Table 1 (16), Table 2 (16), and Table 3 (16))

The rule imposes an 8% opacity limit on planned bleeder openings and a requirement that all planned bleeder openings be monitored. 40 CFR 63. § 7821(i). These requirements are arbitrary and capricious. First, the dataset EPA used does not support an 8% opacity limit. EPA's own data suggests that the limit should be higher. EPA's dataset also does not capture variability in actual performance of both large and small furnaces. Significantly, the data does not establish a limit with which the best-performing sources have or can consistently comply. Furthermore, there is no known technology that would ensure that sources can consistently comply with an opacity limit for planned bleeder valve openings; nor has EPA identified any such technology or work practice. Therefore, if the requirement remains, sources with planned

[5] *See* U. S. Steel Petition for Reconsideration and of the National Emission Standards for Hazardous Air Pollutants: Integrated Iron and Steel Manufacturing Facilities, EPA-HQ-OAR-2002-0083, 89 Fed. Reg. 23,294 (April 3, 2024), dated June 3, 2024; and Cleveland-Cliffs, Inc. Petition for Reconsideration and Request for Administrative Stay of the National Emission Standards for Hazardous Air Pollutants: Integrated Iron and Steel Manufacturing Facilities Technology Review, 89 Fed. Reg. 23294 (April 3, 2024) dated June 3, 2024.

bleeders with opacity exceeding 8% are either forced to incur potential significant penalties or shutdown.

Second, the Method 9 testing requirements are not possible over every operating scenario. While called "planned" bleeder openings, EPA has defined this term to include any opening that is performed by an operator. 89 Fed. Reg. at 23,298. A planned bleeder opening can therefore occur at any time without any real notice, even to the operator who initiates it. There are times an operator must immediately initiate furnace curtailment procedures to prevent catastrophic injury to personnel or damage to equipment, resulting in a bleeder opening which meets the definition of "planned," but provides no opportunity for a trained observer to begin collecting valid compliance data. As a result, reading each planned bleeder opening would require having a reader onsite, in position, and available at any time and even then, depending on the timing and daylight, etc, the observation may not be able to be made. In addition, such a requirement poses significant safety concerns as to needing an observer in a specific area to meet the Method 9 requirements.

EPA has not shown that it is a requirement necessary to control HAP emissions; nor has it identified any technology that would ensure the limit could be consistently met and that required observations of the event could be made on a moment's notice.

B. Bell Leaks - (40 CFR §§ 63.7793(c), (c)(1), and (c)(2); 63.7793(d), (d)(1), and (d)(2); 63.7800(b)(8); 63.7821(k),(k)(1) and (k)(2); 63.7821(l); 63.7823(h)(1)-(2); 63.7833(j), (j)(1) and (j)(2); and 63.7842(d)

Large Bells

The visible emission observation requirements for large bells are unclear and inconsistent. In addition, the IIS RTR Rule includes monitoring provisions for large bells that were not part of the proposed IIS RTR rule nor are they a logical outgrowth from the proposed rule as they are not logical in any case. In addition, in the IIS RTR Rule, EPA assumes that a reader will know when the large bell is open, which is not observable from where a Method 9 reader will need to be positioned. Further, there is no way to correlate the large bell seal to relief valve emissions due to the physical construction of the furnace. The conditions compromise the integrity of the data collected and would yield results that are not compliant with Method 9 because the source of any opacity cannot necessarily be identified with specificity and Method 9 requires such specificity and it requires that no more than one plume be read at a time. Furthermore, the IIS RTR Rule arbitrarily requires sources to "repair or replace" the bell seal within 4 months if the "average of 3 instantaneous visible emission readings" exceeds 20 percent. EPA has not provided any basis for this "repair or replace" requirement based upon the presence of emissions. Occasional visible emissions from the inter relief valve or large bell is not necessarily an indication that any corrective action is necessary; nor is it an indication that the bell needs to be replaced. There is no technology (or work practice) that can consistently ensure that emissions from an interbell relief valve will not occur or ensure that three instantaneous visible emission readings taken while the interbell relief valve is exhausting are under 20%; nor is there a technology or practice available to read the furnace tops to the specificity required. The IIS RTR Rule would require unnecessary down time; and would arbitrarily require repairs or replacements

for large bells that are not in need of repair or replacement; and has the potential to require some large bells to be replaced every four months even if the bell is in good, proper condition.

Small Bells

For small bells, EPA is effectively imposing a zero-opacity limit, through which corrective action is required when any visible emissions are observed. This is unsupported by data and inconsistent with the Clean Air Act.

First, there is no direct way to distinguish any opacity from the small bell seal from opacity originating from the blast furnace top from other sources and activities. This includes material from skip cars charging the blast furnace and/or material buildup when the small bell is open for the material to feed into the blast furnace. Any readings would be partly based on assumptions. U. S. Steel is not aware of any technology or methodology that would enable such a distinction.

Second, there is no substantive evidence that small bells have visible emissions only if there is improper operation or a need for maintenance. Even more inexplicably, the IIS RTR Rule appears to be based on the assumption that there is a direct correlation between time or metal throughput and emissions. EPA cites no data or documentation to support this conclusion and U. S. Steel is aware of none. Emissions from the small bell are not strictly correlated with metal throughput. New bells with low throughput can on occasion have visible emissions. Other bells can operate for an extended period of time and metal throughput without visible emissions. There is no metal throughput value that U. S. Steel can specify with certainty that has been proven and documented to produce no opacity from the small bell on its double-bell furnaces. Requiring new "metal throughput limits" every time any opacity is observed results in unnecessarily shortening the use of small bells and could result in very small values. This could result in having a short bell throughput of only a few thousand tons if visible emissions are observed after a short period of time. There is no technology available that can ensure that even a new small bell consistently will not result in any visible emissions.

C. Beaching (40 CFR §§ 63.7783(g)(3); and 63.7793(e), (e)(1), and (e)(2)); and as incorporated as applied into 40 CFR Subpart FFFFF Table 4

EPA has not justified the enclosure and work practice requirements in the IIS RTR Rule. EPA has not shown in the record that the beaching requirements are "the average emission limitation achieved" by these sources. 42 U.S.C. § 7412(d)(3). The IIS RTR Rule imposes overly prescriptive requirements for beaching; and EPA inexplicably disregarded comments suggesting alternative work practices. EPA has not shown how its prescriptive requirements, including carbon dioxide shielding and/or full or partial enclosure, comply with the Clean Air Act. By EPA's own interpretation, because of the relative infrequency and short durations associated with it, and EPA's determination that the risks provide an ample margin of safety, spending millions of dollars with no meaningful improvement is not justified.

Even accepting that partial enclosure, CO_2 shielding, and work practices can reduce emissions from beaching, EPA must show more than that before forcing industry to uniformly adopt those controls and practices as a MACT requirement. Even under EPA's reading of the Clean Air Act, which U. S. Steel disagrees with, EPA must show that the requirements it is imposing are the "emission control that is achieved in practice by the best controlled similar source." 42 U.S.C. § 7412(d)(3). EPA has no record basis for finding that the requirements in the Rule meet this requirement.

D. Slag Handling and Processing (40 CFR §§ 63.7783(g); 7821(j); 63.7823(g), (g)(1), and (g)(2); Subpart FFFFF Table 1 (17); Table 2(17); Table 3 (17); and Table 4.

In the IIS RTR Rule, EPA imposes a 10% opacity limit on slag processing, handling and storage based on what it claims is a "straight average of the top five performing facilities." 89 Fed. Reg. at 23,301. First, it is important to note that when promulgating the Iron and Steel MACT in 2003, EPA was aware of slag handling and processing but determined it was not appropriate to impose any Federal standards. In the 2003 and 2020 IIS MACT rules, EPA did not include slag handling, processing and storage as part of the source category. In promulgating the IIS RTR Rule, EPA inconsistently describes slag processing, handling and storage activities, creating both material ambiguities in the IIS RTR Rule requirements and an inadequate record basis for the IIS RTR Rule's requirements. Furthermore, EPA's determination of setting a 10% opacity limit is not supported by the data; and is inconsistent with EPA' own UPL methodology to develop limits. (Without any sound basis, EPA simply asserted that the UPL approach is not appropriate.)

In requesting data from sources, EPA requested that the sources conduct Method 9 readings from "each operating piece of equipment handing slag" and "each of the following: slag dumping to a pile, digging from a pile, and dumping to stationary equipment." *See* Information Collection Request to U. S. Steel, Enclosure 2, EPA-HQ-OAR-2002-0083-1337-attachment 3, at Table 2. EPA knew at the time that this was only a subset of the slag processing, handling, and storage activities that can lead to visible emissions. As noted in the information request, "[p]rocessing operations include, but are not limited to, crushing, grinding, screening, and sizing. Handling and storage events include, but are not limited to: slag flowing in the runners; slag dropping into a slag container (if applicable); slag dropping into the pit; slag flowing and cooling in the pit; end-loader digging and dumping; in-plant truck dumping; use of conveyors, stackers, and reclaimers; storage piles; and loadout for shipping slag offsite, if applicable." *Id.* at 2, n.1.

The IIS RTR Rule, however, EPA requires that initial compliance be demonstrated by conducting Method 9 readings at a different list of activities, including "slag dumping to BF pit, BOPF slag dumping to pit, BF pit digging, BOPF pit digging, slag dumping to a pile, slag dumping to a piece of slag handling equipment such as crusher." 89 Fed. Reg. at 23,324-25. Subsequent performance tests are then to be conducted on "BF pit filling; BOPF slag pit filling; BF pit digging; BOPF slag pit digging; and one slag handling (either truck loading or dumping slag to slag piles)." *Id.* at 23,324. It is not clear if EPA intended any distinction between the list of activities to be monitored for initial and subsequent testing. For example, it is unclear whether "dumping to" a "BF pit" is meant to be the same as "BF pit filling." None of these terms are defined in the Rule and they are not commonly used in the industry, leaving operators with no

clear guidance as to what activities EPA is even trying to require be read. But it is equally clear that these activities are not the same as those for which EPA collected data. EPA cannot claim that its opacity limits are reasonably based on the record when the record has no relevant data.

The IIS RTR Rule slag handling and processing requirements present an additional problem by requiring Method 9 observations "at each" listed step in the processing, handling and storage of slag. *See* 89 Fed. Reg. at 23,324-25. This presents not only an unduly burdensome monitoring requirement, but in some cases, it will present a safety hazard to Method 9 readers and requires monitoring that is, at best, impractical or, at times, simply impossible. Even if a reader could be positioned despite the risk, the readings would not be reliable given the lack of contrast necessary to make valid Method 9 readings.

Many of the IIS RTR Rule slag handing and processing requirements are inconsistent, impractical and impossible. For this reason, U. S. Steel has significant concerns on whether it can compliantly implement such requirements. Furthermore, the IIS RTR Rule opacity limits for slag handling were not properly determined – as EPA did not collect any opacity data for some operations - and it is not clear if a technology is available to ensure the IIS RTR Rule slag handling and processing requirements, including the opacity limits, can consistently be met. If EPA intends to regulate slag handling and processing with opacity limits, a significant departure from the original IIS MACT Rule promulgated in 2003, EPA must determine such limits with valid data and in a manner consistent with the Clean Air Act.

E. Unplanned Bleeder Openings (40 CFR §§ 63.7783(g)(3); 63.7793(b), (b)(1), (b)(2), and (b)(3); 63.7841(b)(14), (b)(14)(i), (b)(14)(ii), and (b)(14)(iii); Subpart FFFFF Table 1 (7)(e), (8)(e); Table 2 (7)(e), (8)(e); Table 3 (7)(f), (8(f)); and Table 4.

The Rule limits the number of unplanned bleeder valve openings in a given year. 89 Fed. Reg. at 23,333. While there are certain furnace-specific work practices that can be employed to minimize the *risks* of occurrences of unplanned bleeder openings, work practices cannot be used to eliminate or reduce unplanned bleeder valve openings to a specific value. Placing a "limit" on unplanned bleeder valves itself is not a "work practice." In placing a limit to unplanned bleeders, EPA is pitting environmental against safety risks. This is problematic because the steel industry has acknowledged that the valves must be able to open "to mitigate safety issues."

EPA's expectations are also based on a misstatement of the cause of unplanned bleeder openings, insufficient data, and improper use of the limited data EPA chose to use. First, EPA's response to comments makes clear that EPA's expectation is based on the assumption that unplanned bleeder valve openings arise only from large burden slips, and thus can be managed by attentive material management, monitoring of stockline descent, and timely "checking" of the furnace. As U. S. Steel pointed out in comments, and again in our petition for reconsideration, by placing a hard limit on the number of unplanned bleeder openings, EPA's actions are not consistent with the real-world operating experiences of industry. Unexpected pressure buildup can occur for several reasons. Burden hanging in the furnace is one possibility, but it is not the only cause. For example, pressure can increase rapidly, simply because a new pathway has opened in the burden that rapidly changes the upward flow of gas. In placing a hard limit, EPA does not appear to understand the multitude of potential causes for unplanned bleeder openings.

Second, even with respect to burden hangs, EPAs required purported "work practices" will not necessarily prevent or reduce unplanned bleeder openings. When the burden hangs, a stockline monitor alarm could sound to warn the operators that a problem has occurred, but checking the furnace at that time is not likely to address the problem as it most likely will be too late to prevent the occurrence. Further, stockline monitoring will provide no warning of other causes. Third, EPA's asserted connection between the number of unplanned bleeder openings and the mass of HAP emitted is arbitrary and capricious. It is largely based on unwarranted assumptions and oversimplifications that imply a relationship for which there is none

Finally, the timeline for implementing screening is not justified or sufficient. The Rule provides 2 years in which to implement unplanned bleeder valve requirements. 89 Fed. Reg. at 23,320. Additional screening will require permitting and purchasing equipment which cannot be guaranteed to be completed within 2 years. In some cases, a new screening area may need to be designed into the existing footprint. This may not be technically feasible, but if required, the work will easily exceed two years.

In sum, while it is true that some practices can assist in reducing the risks for the occurrences of certain unplanned bleeder events, which U. S. Steel currently employs, the technology to ensure that unplanned bleeder events do not exceed a set number is not available. If a blast furnace reaches the limit of such events, the source would be left with a Hobson's choice of shutting down to void exceeding the "limit" and potential associated penalties or continue to operate knowing that it will be in violation the next time an unplanned bleeder event occurs.

F. IIS RTR Rule New HAP Limits for sinter plants, blast furnaces and basic oxygen furnaces (40 CFR §§ 63.7783(g), (g)(1) and (g)(2); and as provided in 40 CFR 63 Subparts FFFFF Tables 1, 2, 3, 4, 5 and 6)

The IIS RTR Rule includes several new MACT standards covering multiple hazardous air pollutants (HAP). However, the technology to control these HAP at these sources is not available because no such technology has been demonstrated to control and meet the IIS RTR HAP limits for the integrated iron and steel industry, either in the US or internationally.

A Presidential Exemption is warranted for several reasons:

- No technologies employed at any sinter plant, blast furnace or basic oxygen furnace have demonstrated the ability to meet the new MACT standards. No integrated iron and steel facility has installed such controls for the new HAPs; nor are the facilities subject to any existing limits for the new HAPs. EPA's approach to completing the RTR and purported "gap filling" pursuant to the *LEAN* decision are contrary to a plain reading of the Clean Air Act and are due no deference.

- Contrary to the Clean Air Act, the IIS RTR Rule imposes requirements that no source, domestically or globally, is known to *actually achieve*.

- The new HAP limits were erroneously determined, as more fully explained in U. S. Steel's comments to the proposed IIS RTR rule and in our petition for reconsideration. For example, EPA ignored data with no justified basis when determining the MACT floor. EPA's excuse that it did not have time to consider the data is not sufficient; and is inconsistent with the Clean Air Act and legal precedent. Because the IIS RTR Rule is based upon insufficient data, attempts to continuously comply with the new limits will require the addition of controls. Furthermore, even with the installation of and operation of additional controls, continuous compliance with the new limits remains uncertain because no technology has demonstrated that it is able to continuously achieve such standards. The estimated cost effectiveness of controls for the integrated iron and steel industry would be unprecedented and exorbitant. Because the new limits are not based upon proven technologies as Congress intended and as EPA has historically done to comply with Section 112 of the Clean Air Act, U. S. Steel must incur substantial unrecoverable costs in its attempt to design and implement controls that will attempt to consistently meet the new limits in an impossible time period resulting in irreparable harm to U. S. Steel. Data in EPA's possession suggests that continuous compliance cannot be met without modifications at integrated iron and steel facilities; and there is no technology that has demonstrated the ability to consistently meet the limits.

- U. S. Steel's integrated iron and steel facilities need to generate additional data to better account for raw material and process variability and to determine technology feasibility. The MACT floor datasets are too limited, are not representative of the integrated iron and steel industry, and do not adequately reflect variability in operating conditions. As a result, no technology is available that has demonstrated that the new limits are achievable under all reasonably foreseeable conditions.

- Controlling multiple pollutants and retrofitting controls into existing equipment and operations adds complexity and time due to interactions of the requirements for control, including pollutant interactions, flow rates, chemistry, and temperatures.

- Any additional controls would require permitting, which takes 6-12 months - and sometimes longer - after engineering is completed.

- Contrary to the Clean Air Act and EPAs obligations, EPA failed to consider the IIS RTR Rule's impacts to the domestic integrated iron and steel industry and the nation's economic security and national growth interests.

- EPA relied on fewer than five sources for its MACT "pool" as required by Clean Air Act, Section 112(d)(3). EPA's failure was specifically acknowledged by Judge Walker in his dissenting option to the U. S. Court of Appeals for the District of Columbia Circuit's order denying U. S. Steel's motion to stay the effectiveness of the rule. Judge Walker recognized that the IIS RTR Rule "likely violates the Clean Air Act by using fewer than 5 sources to set emission floors. See 42 U.S.C. § 7412(d)(3)(B). That error likely forces the applicants to incur "nonrecoverable" compliance costs during the pendency of this litigation — an irreparable harm. See Ohio v. EPA, 144 S. Ct. 2040, 2053 (2024)." Judge

Walker further explained that the IIS RTR Rule "will likely cause irreparable harm by forcing applicants ***to develop novel technology*** [emphasis added]." Thus, Judge Walker recognized that the technology to comply with the new HAPs was not available. U. S. Steel has given EPA additional data that needs to be included in any limit determination.

- The IIS RTR Rule relies on fewer than 10 data points to calculate many of the Upper Predictive Limits (UPLs) which is contrary to EPA precedent and guidance.[6]

- Many of the IIS RTR Rule new HAP limits are barely above detection limits, and therefore, the derivation of the limits as well as the ability to consistently demonstrate compliance with the new HAP limits may be compromised.

- EPA failed to appropriately consider cost impacts when promulgating the IIS RTR Rule. Furthermore, EPA incorrectly estimated costs for the controls for new HAPs, as more fully explained in our petition for reconsideration.

- Changes to the sinter plants, blast furnaces and basic oxygen furnaces would require several plant outages, affecting the sources' abilities to produce steel.

- Limited available physical space within the areas of the sinter plants, blast furnaces and basic oxygen furnaces add complexity and time to all related construction and may be infeasible altogether.

- Adding controls to existing controls on existing equipment involves unique engineering challenges compared to installing controls when a facility is being constructed.

- EPA failed to appropriately address start-up, shutdown and malfunction (SSM) events in setting the MACT limits and requirements. U. S. Steel believes a work practice requirement in lieu of hard limits is appropriate to account for SSM events.

- EPA failed to address specific concerns and data submitted by U. S. Steel and other commenters showing that no integrated iron and steel facility is actually meeting all of the HAP limits; nor does any IIS facility employ technology that demonstrates the limits can consistently be met. Furthermore, no technology exists that has demonstrated that the limits can consistently be met.

Unfortunately, U. S. Steel's concerns as provided in comments submitted to EPA as well as those raised with the Office of Management and Budget before the IIS RTR rule was finalized were almost entirely ignored. First, during the rule development, EPA grossly underestimated the cost impacts of the rule to the domestic steel industry which is already significantly financially challenged by unfair trade practices by competitors whose operations are not subject to strict, if any, environmental standards that the United States has required for domestic integrated iron and steel facilities for decades. In addition, EPA cherry-picked data to be used in

[6] United States Environmental Protection Agency, ProUCL Version 5.1 User Guide; Statistical Software for Environmental Applications for Data Sets with and without Nondetect Observations. October 2015

the derivation of limits and requirements, and, most astonishingly, excluded valid data as the process fell short of EPA's statutory obligation and precedent in setting MACT floors.

Contrary to the plain language of the Clean Air Act and decades of precedent, EPA has turned the establishment and determination of MACT Standards under the Clean Air Act Section 112 into a research and development statute. Because technology to meet the limits is currently unavailable, U. S. Steel and other sources will need to conduct research, including bench scale testing, to determine the potential technologies that could be used to meet the limits. This research time could be extensive – therefore the three-year time frame to meet the IIS RTR Rule new limits is insufficient. Congress envisioned a three-year time frame to install controls and meet new limits because it intended that the technology would be proven and known during the rule development. This is not the case for the IIS RTR Rule. U. S. Steel needs more time to better determine process and raw material variability impacts on emissions, evaluate additional emission controls and to assess technical feasibility and to test, engineer, permit, fabricate, and install the new equipment and other controls before the date compliance is required. Additional compliance time would also be needed to retrofit new equipment into existing facilities with limited space and to allow facilities to streamline and consolidate compliance testing of sinter plants, blast furnaces, and basic oxygen furnaces; and the associated control devices at integrated iron and steel facilities with other required source testing. The Presidential Exemption is necessary to account for these factors and to prevent irreparable harm to the domestic steel industry; and is appropriate as EPA reconsiders the IIS RTR Rule.

G. New work practice standards and modified monitoring, reporting and recordkeeping requirements for blast furnaces and basic oxygen process furnace (BOPF) shops; (40 CFR §§ 63.7793(a), 63.7793(b), (b)(1), (b)(2), and (b)(3); 63.7793(c), (c)(1), and (c)(2); 63.7793(d), (d)(1), and (d)(2); 63.7793(e), (e)(1), and (e)(2); and 63.7793(f), including (f)(1) through (f)(8)

Complying with the new work practice standards and modified monitoring, reporting and recordkeeping requirements for blast furnaces and basic oxygen process furnace shops is impractical if not impossible. While not part of the *LEAN* decision, in the IIS RTR Rule, during the proposed rule stage, EPA announced a "reconsideration" of casthouse and BOPF Shop fugitive emissions standards pursuant to 42 U.S.C. § 7412(d)(6). 88 Fed. Reg. at 49,412. U. S. Steel and other commenters raised significant concerns with the proposed standards, including with EPA's authority to impose standards before finding that revisions were necessary considering new technological developments, as required by 42 U.S.C. § 7412(d)(6). EPA has not considered, let alone shown, that revised fugitive emissions requirements for casthouses and BOPF Shops are necessary. These requirements should therefore be removed from the IIS RTR Rule.

There are practical problems with conducting Method 9 readings as required by the IIS RTR Rule. Method 9 observations require several conditions, including a safe place to observe the opening and proper orientation to ensure a valid reading and avoid interference. These conditions cannot always be satisfied at the same time for all openings at a BOPF Shop and casthouse.

For example, conducting Method 9 observations from "all" openings at the BOPF shops and blast furnace casthouses present numerous challenges: safe location to observe all the potential openings, being perpendicular to the openings, and distinguishing potential overlapping plumes at each opening. EPA is making an improper assumption that just because there is an opening that there is potential for emissions from that opening. The BOP buildings and casthouses are very large and process knowledge and airflow inside the buildings can determine if an opening needs to be observed or not as U. S. Steel currently implements the monitoring required by the 2003 and 2020 IIS rules. It's unnecessary and wasteful to require multiple observers at all openings. Additionally, Method 9 does not allow for reading overlapping plumes. By treating each opening separately, the Rule does not allow for a valid Method 9 position. By nature of the design, it would be impossible to read perpendicular to the opening and not have overlapping plumes from the casthouse. The point of highest opacity should be read wherever it comes from, consistent with current Method 9 practices. U. S. Steel recognizes that this may be an error in the Rule language, as the Preamble to the Rule states that EPA's intent was to require monitoring "from all openings, or from the one opening known to have the highest opacity." 89 Fed. Reg. At 23,305-06. The preamble language is consistent with how the 2003 and 2020 visible emissions monitoring was conducted; and how U. S. Steel intends to implement the IIS RTR Rule, but the IIS RTR Rule language – if strictly applied – is impossible as there is no technology or methodology to implement the monitoring consistent with a strict application of the IIS RTR Rule for the reasons expressed above.

H. Fenceline Monitoring (40 CFR §§ 63.7792; 63.7841(h); and 63.7842(f))

The fenceline monitoring requirements are infeasible and unhelpful. The IIS RTR Rule specifically recognizes that the technology to implement the fenceline monitoring is not yet available. It is also significant to note that the EPA has asserted that the authority to implement the fenceline monitoring requirements are based upon an improper and unprecedented application of Section 114 of the Clean Air Act. U. S. Steel and other commenters raised significant concerns with even being on notice as to what EPA had proposed, noting that the methodology and technology to implement is unknown and the methodology impacts almost every important aspect of the program, from its feasibility to its basic requirements, such as the number and location of monitors to the sampling duration, action levels, and time periods in which parties must take, interpret, and respond to results. EPA acknowledges the fenceline monitoring method for metals has not yet been proposed or promulgated. (See EPA's response to comments at 159.) EPA stated that it needs to "further investigate and revise these approaches for a stationary source regulatory program to ensure improved precision and accuracy in the method" and stating that "EPA is evaluating alternative approaches/methods for metals sampling at the fenceline and when the EPA can validate these method(s) we will move forward with notice and comment rulemaking to formally propose their use."). Yet, despite all the uncertainties in the yet-to-be determined method, the Rule includes a detailed program for performing fenceline monitoring for chromium, including the very details, such as number of monitors, sampling frequency, sampling duration, action level, and sunset provisions, that will necessarily depend on a new methodology that may differ from the methods facilities employed for the 6-month data collection during the ICR. 89 Fed. Reg. at 23,308. This puts the cart far in front of the horse.

EPA appears to acknowledge this flaw. *See EPA's Response to Comments on the IIS RTR Rule on page* 158 (recognizing that the monitoring method and Rule will require notice and comment rulemaking to incorporate the method). But U. S. Steel is troubled by EPA's decision to, in the absence of a method, "stipulate[] the number of monitors, the frequency and duration of sampling in the rule." *Id.* EPA must base its decision on the record. *State Farm*, 463 U.S. at 43. EPA cites no authority to "stipulate" to facts that are not in the record and EPA's assertion that it can stipulate to the central facts of a monitoring program before it has a methodology that will support those facts is inconsistent with 42 U.S.C. § 7607(d)(6)(C), which provides that "[t]he promulgated rule may not be based (in part or whole) on any information or data which has not been placed in the docket as of the date of such promulgation."

What will each monitor cost? How accurate will it be? How long will it take to get results? U. S. Steel lacks the information to answer these questions. EPA does not yet know the answers either, and the Clean Air Act and APA do not permit it to guess. Indeed, EPA's acknowledgement that the method will need to undergo public notice and comment is a recognition that the final form of the method cannot be known. Nor, to U. S. Steel's knowledge, has the technology for monitoring chromium undergone assessment through the U.S. Environmental Technology Verification program, which is intended to provide key information on relative accuracy, precision, bias, drift, and detection limits. Without this type of assessment, any newly proposed or implemented method for chromium monitoring will not have qualified data to support fenceline measurement results for the intended use. Having already recognized that it does not yet have a sampling method for fenceline monitoring, and without even the data needed to propose a potential methodology, EPA cannot now finalize a fenceline monitoring requirement.

The monitoring methodology inherently affects the results, making any conclusions based upon past data generated with other methods suspect and unreliable. Different methods frequently have different interferences and factors unique to the method. The fenceline monitoring methods, including the action levels, root cause analyses and corrective actions cannot be determined until the technology becomes available regarding the test method and data generated using the test method.

It is also significant to note that EPA has made no nexus between the monitored parameter, chromium, and the action level. The action level bears no relationship to the Occupational Health and Safety Administration's (OSHA's) Permissible Exposure Limit (PEL) for CR^{6+}, which is 50 times higher at 5 µg/m3 and, being based on a single six-month dataset from a single facility, it reflects no consideration of seasonal or annual variability, let alone differences in II&S facilities, which vary greatly in location, age, configuration, processes, alloys, products footprints, and weather patterns.

In sum, a two-year Presidential Exemption is necessary and appropriate for the IIS RTR Rule fenceline monitoring requirements because, as EPA acknowledges, the technology to implement the IIS RTR Rule fenceline monitoring requirements has not yet been determined. The IIS RTR Rule language to not require the monitoring until one year after a method is codified is insufficient to address the concerns identified above, namely the fact that no data is currently available using the yet-to-be codified method to determine if EPA's action level is

otherwise appropriate, noting, too, that EPA has failed to provide any reasonable basis or nexus to the Cr action level in the IIS RTR Rule.

THE EXEMPTION IS IN THE INTEREST OF NATIONAL SECURITY

A. U. S. Steel's Integrated Iron and Steel Facilities are Vital to the Production of Steel at U. S. Steel

U. S. Steel's integrated iron and steel facilities are key and essential operations of U. S. Steel; and are critical for U. S. Steel to produce steel. The facilities have a tremendous impact on the local, regional, and national economy. The facilities employ several thousands of highly skilled United Steelworkers union-represented and non-represented employees. In addition, these integrated operations have a multiplier effect in supporting thousands of additional steel, maintenance, construction, energy, transportation, and supplier jobs, not only in the regions in which they are located, but also across the United States.

B. U.S. Steel Contributes to the Economic Security of the United States, and Economic Security is National Security

U. S. Steel is a leading steel manufacturer in the United States and Europe. U. S. Steel has over 22,000 dedicated employees and produces over 1,000 grades of steel. For more than 100 years, while consistently meeting new challenges, U. S. Steel has been a vital part of America's history, economy, and infrastructure. U. S. Steel's operations located throughout the United States include, among others, coke production, taconite production and integrated iron and steel production, which contribute to the U.S. economy and key industries.

Continued domestic production, including the production by U.S. Steel, is critical to national infrastructure investments and national economic growth. The domestic steel industry is responsible for over $520 billion in economic output, supporting over 2 million jobs. It generates over $56 billion in tax revenues annually. U. S. Steel specifically supplies steel to the U.S. transportation and automotive sectors, including major U.S. automakers; the construction sector; containers and packaging sector; appliances and electrical equipment sector; and oil, gas, and petrochemicals sector. For these industries – which are critical to U.S. economic security –U. S. Steel provides high quality domestically produced steel. U. S. Steel is also a major contributor to the communities in which it operates – including, among others, in Alabama, Arkansas, Pennsylvania, Indiana, Illinois, Minnesota, and Michigan – directly and indirectly supporting jobs and economic growth, which underpin the United States' economic security. As stated in the President's America First Investment Policy, "economic security is national security." Consistent with this, the Federal government has determined that the steel industry is "critical to minimum operations of the *economy* and *government*."[7]

In the case of steel, the history of U.S. Government actions to ensure the continued viability of the domestic steel industry demonstrates that, across decades and Administrations,

---

[7] Department of Commerce, Bureau of Export Administration; *The Effect of Imports of Iron Ore and Semi-Finished Steel on the National Security*, October 2001

there has been consensus that domestic steel production is vital to our national interest. The overall security of the nation is dependent upon a strong economy and investments in industry and infrastructure. All of these goals are supported by the steel industry, and it needs to have protection from the proposed rules until such time as a proper review can take place.

The unprecedented and exorbitant costs that U. S. Steel would need to incur to attempt to comply with the IIS RTR Rule would risk U. S. Steel losing viable commercial production capabilities and will jeopardize the domestic industry's ability to meet the full spectrum of infrastructure and investment needs. Ensuring that U. S. Steel and other steel producers are able to continue to produce steel in the market for U.S. commercial and infrastructure needs is necessary to grow the U. S. market and economy.

The IIS RTR Rule, as well as the other rules affecting the domestic steel industry, will result in unprecedented costs which will jeopardize the long-term operations of U. S. Steel (and other steel producers.) If U. S. Steel is not financially viable to invest in the latest technologies, facilities, and long-term research and development, nor retain skilled workers while attracting a next-generation workforce, it will be unable to support the nation's infrastructure, economy and commercial needs.

C. Cumulative Burden

In 2024, EPA promulgated three new steel sector rules[8] resulting in dozens of new emission limits and work practices materially impacting the domestic iron and steel critical operations in the United States. A Presidential Exemption is necessary to prevent significant direct adverse impacts and irreparable harm to domestic steel production and infrastructure.

The promulgation of these three rules, simultaneously with other recent significant EPA actions, including most notably, the lowering of the PM2.5 NAAQS and the adoption of the overreaching Good Neighbor Rule, harm the competitiveness of the domestic steel industry and jeopardizes the domestic steel industry's ability to support the economy, growth and critical needs of the nation. These rules, individually and collectively, result in marginal, if any, benefits, yet result in unprecedented capital expenditures of billions of dollars for the domestic steel industry. These draconian, job-killing, unlawful rules were promulgated notwithstanding that EPA determined that the existing MACT regulations provide acceptable risks with an ample margin of safety.

---

[8] The three rules at issue are:

1) National Emission Standards for Hazardous Air Pollutants: Integrated Iron and Steel Manufacturing Facilities (EPA-HQ-EPA-OAR-2002-0083), April 3, 2024, *Federal Register*, (89 Fed. Reg. 23294)
2) National Emission Standards for Hazardous Air Pollutants for Coke Ovens: Pushing, Quenching, and Battery Stacks, and Coke Oven Batteries. (EPA–HQ–OAR–2002–0085 and EPA– HQ–OAR–2003–0051), July 5, 2024, *Federal Register*, (89 Fed. Reg. 55684); and
3) National Emission Standards for Hazardous Air Pollutants: Taconite Iron Ore Processing Amendments (EPA-HQ-OAR-2017-0664), March 6, 2024, *Federal Register*, (89 Fed. Reg. 16408).

In addition, it is significant to note that in 2020 EPA previously completed its statutory obligation to determine risks and to review technological developments for the taconite and integrated iron and steel categories and determined that no significant revisions to these rules were necessary. However, in 2024, EPA unilaterally reversed course and mandated that the industry comply with dozens of new limits and requirements that will require hundreds of millions if not billions in capital expenditures – and even then – compliance with some of the new limits cannot be assured as the limits are based upon insufficient data and are based upon unproven, untested technologies for the limits imposed. If left in place, the domestic steel industry may be left to choose between prematurely shuttering mills, resulting in job losses and irreparable harm to their local communities, or making huge investments to develop technologies that have no proven application in the steel sector. In short, these rules stand to paralyze an industry that currently leads the world in the pathway to clean steel production. These rules, if left in place, would further skew the market to the benefit of foreign manufacturers and state-owned enterprises – in particular, Chinese state-owned steel producers, which dominate the global steel industry – and which are held to less stringent environmental standards.

Without a Presidential Exemption, the IIS RTR Rule would create significant, unprecedented burdens for domestic steel industry and manufacturers and negatively impact the workforce, who are a vital part of the U.S. economy. In addition, the IIS RTR Rule would substantially raise costs to consumers across the country and would likely cause harm to the domestic economy and supply of materials for infrastructure and growth.

The importance of avoiding these harms to the coke and steel industry is emphasized in a December 6, 2023 letter from eight U.S. Senators – including then-Senator JD Vance – to EPA warning that the Coke Ovens Rule and two other rules aimed at the steel sectors "… would dramatically undermine the domestic steel industry and national security while driving production overseas likely resulting in no net reduction in emissions from the steel industry globally."[9]

Likewise, in a June 14, 2024, letter six U.S. Senators – again including then-Senator Vance – urged EPA to reconsider the Coke Ovens Rule and two other rules aimed at the steel industry, warning that "… the steel industry will be forced to proceed with planning and spending for unproven technologies and work practices while the final provisions of the rules remain uncertain. Given that these regulations will impact nearly every aspect of the integrated iron and steelmaking process, it is imperative that EPA grant both the petitions for reconsideration and requests for stay of the rules."[10] Similar concerns were raised in a letter to EPA from Congress Members Crawford and Mrvan of the Congressional Steel Caucus.[11]

Without a Presidential Exemption, the IIS RTR Rule would require immediate actions by U. S. Steel that unfairly burden U. S. Steel, impose actions that are either unsafe, unlawful,

---

[9] Letter from U.S. Senators Vance, Brown, Braun, Manchin, Casey, Klobuchar, Capito, and Young to Administrator Regan, p. 1 (Dec. 6, 2023) (Att. A).
[10] Letter from U.S. Senators Vance, Brown, Braun, Casey, Klobuchar, and Young to Administrator Regan, p. 2 (June 14, 2024) (Att. B).
[11] Letter from Congressmen Crawford and Mrvan to Administrator Regan, p. 1 (Dec. 18, 2023) (Att. C).

impossible, impractical and/or are ineffective; and require U. S. Steel to spend tens of millions if not hundreds of millions of dollars on unproven technologies, thereby impacting its ability to support the nation's growing economy, infrastructure needs, and continued thriving national investments.

CONCLUSION

Thank you for the opportunity to provide this Request for a Presidential Exemption. The bases of granting an exemption are well grounded in the facts that support a clear finding that the technologies to implement the IIS RTR Rule are not available, and because of the financial and infrastructure implications, it is in the interest of national security to grant the request. Furthermore, while not a factor specifically listed as a basis for the exemption, it is important to note that granting the request will not result in any unacceptable risks to the public or the environment as EPA has determined that the integrated iron and steel source category presents acceptable risks with an ample margin of safety with the present controls, and requirements and limits already in effect to which U. S. Steel consistently demonstrates compliance. If you have questions or need additional information, please contact Matthew DeLibero at (412) 233-1200 or Alexis Piscitelli at (219) 888-5280.

Sincerely,

Matthew J. DeLibero
U. S. Steel Mon Valley Works
Director Environmental, Reliability, & Operational Excellence

Alexis Piscitelli
U. S. Steel Gary Works, Granite City Works, and Great Lakes Works
Senior Director, Environmental
North American Flat Rolled Manufacturing

cc: A. Szabo, EPA OA
A. Tardif, EPA OAR
[redacted], EPA OAR
[redacted], EPA OAQPS
[redacted], EPA OAQPS
C. Hardin, USS
B. Tunno, USS
T. Woodwell, USS

ATTACHMENT A

United States Senate

WASHINGTON, DC 20510

December 6, 2023

The Honorable Michael S. Regan
Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue NW
Washington, D.C. 20460

Dear Administrator Regan:

We write to you today regarding the U.S. Environmental Protection Agency's (EPA) three proposed rules related to steel manufacturing and related supply chains. We have serious concerns with these proposed rules because they would dramatically undermine the domestic steel industry and national security while driving production overseas likely resulting in no net reduction in emissions from the steel industry globally. Reducing the emission of harmful air pollutants should be done based upon sound science and with proven technology that is both technically and economically feasible. The irony is that the United States' steel industry is world's cleanest major producer of steel[1]. American steel manufacturers take seriously their commitment to protecting the environment; however, rules that drive production overseas are bad for our economy, bad for national security, and bad for the environment.

These rules:

1) National Emission Standards for Hazardous Air Pollutants: Integrated Iron and Steel Manufacturing Facilities (EPA-HQ-EPA-OAR-2002-0083), 2) National Emission Standards for Hazardous Air Pollutants for Coke Ovens: Pushing, Quenching, and Battery Stacks, and Coke Oven Batteries. (EPA–HQ–OAR–2002–0085 and EPA– HQ–OAR–2003–0051), and 3) National Emission Standards for Hazardous Air Pollutants: Taconite Iron Ore Processing Amendments (EPA-HQ-OAR-2017-0664), if finalized as proposed, would require billions of dollars in capital investments and increased annual operating costs for the U.S. steel industry.

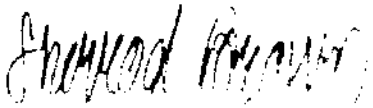
We support reducing harmful air pollution. We also support rules that are durable, realistic, and based upon proven technology and reflect a consensus view among stakeholders on how to best improve public health while protecting good paying jobs and supporting industries essential to our national and economic security. These rules fail to meet those standards.

As you move forward with these rulemakings, we urge you to take an inclusive approach – working directly with major stakeholders in developing technically-sound final rules that achieve further emissions reductions while not harming the competitiveness of our American steel companies. Written properly, regulations can help American steel manufacturers lead the world in clean steel production. Poorly written rules undermine domestic manufacturing and promote reliance upon inputs made by foreign manufacturers – manufacturers that pollute more than their American counterparts. Regulations that cost

[1] "Steel Climate Impact - An International Benchmarking of Energy and CO_2 Intensities." Found at: https://www.bluegreenalliance.org/wp-content/uploads/2022/04/Steelclimateimpact-benchmarkingreport7April2022.pdf

American jobs, undermine national security, and are likely to result in no net reduction in emissions globally must be rejected.

Sincerely,



Sherrod Brown
United States Senator



J.D. Vance
United States Senator



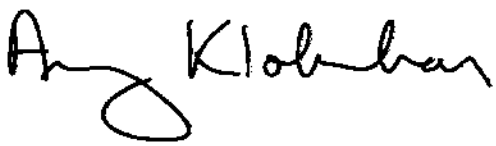
Mike Braun
United States Senator



Joe Manchin
United States Senator



Robert P. Casey, Jr.
United States Senator



Amy Klobuchar
United States Senator



Shelley Moore Capito
United States Senator



Todd Young
United States Senator

ATTACHMENT B

United States Senate

WASHINGTON, DC 20510

June 14, 2024

The Honorable Michael S. Regan
Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue NW
Washington, D.C. 20460

Dear Administrator Regan:

We write to you today regarding three U.S. Environmental Protection Agency (EPA) rules that together threaten the economic competitiveness of the American integrated steel industry. We urge EPA to grant the petitions filed by the domestic integrated steel industry seeking administrative reconsiderations and stays of all three final rules until the EPA can complete a comprehensive review of each rule through the administrative reconsideration process.

Working together, EPA and industry have achieved notable reductions in environmental impacts to air, water, and land over the past 50 years. The steel industry in the U.S. is the world's cleanest major producer of steel and is already subject to more environmental regulation than its global competitors, resulting in a cleaner environment. While we appreciate EPA's efforts to address concerns raised by multiple stakeholders – including steel companies, the United Steelworkers (USW), coke producers, and numerous Members of Congress throughout the rulemaking process, we remain concerned that the final rules contain flaws that will undermine the domestic steel industry and national security while driving production overseas. We are specifically concerned about the following three rules:

- National Emission Standards for Hazardous Air Pollutants: Taconite Iron Ore Processing (EPA-HQ-OAR-2017-0664)
- National Emission Standards for Hazardous Air Pollutants: Integrated Iron and Steel Manufacturing Facilities (EPA-HQ-OAR-2002-0083)
- National Emission Standards for Hazardous Air Pollutants for Coke Ovens: Pushing, Quenching, and Battery Stacks, and Coke Oven Batteries (EPA–HQ OAR 2002–0085 and EPA– HQ–OAR–2003–0051).

A failure to get these regulations right will not only have a negative impact on domestic steel production and American steelworkers, but it will also likely fail to achieve a net reduction in emissions from the steel industry globally. In fact, emissions will likely rise as production moves to countries, like China, with far less stringent rules and regulations. By granting the requested administrative reconsideration and stay of the rules, the EPA and industry can build on their shared track record of success and continue to work together in a constructive manner to achieve durable rules that both protect the environment and our domestic integrated steel industry.

Throughout the rulemaking process, EPA worked to address technical and analytical flaws with these rules raised by multiple stakeholders. The modifications incorporated into the final rules in response to stakeholder feedback were important steps in the right direction, but we remain concerned they did not go far enough in addressing fundamental flaws with the rules. Further modifications are needed to address new information provided to EPA by stakeholders to ensure the rules are achievable by the industry, as required by the Clean Air Act, and that the regulations do not induce unintended consequences, such as loss of domestic steelmaking capacity and jobs. Given all that is at stake in terms of our country's advanced steel manufacturing capabilities and the good-paying, middle class union jobs the steel industry sustains, it is critically important that these rules are technically and economically feasible and do not undermine the competitiveness of the industry.

A stay of these rules will allow EPA to continue to work with industry stakeholders, including domestic companies and the USW, to obtain a complete and thorough understanding of the new information, equipment, and processes and ensure regulations moving forward are sound policy. Absent a stay, the steel industry will be forced to proceed with planning and spending for unproven technologies and work practices while the final provisions of the rules remain uncertain. Given that these regulations will impact nearly every aspect of the integrated iron and steelmaking process, it is imperative that EPA grant both the petitions for reconsideration and requests for stay of the rules.

We urge EPA to grant the industry's petitions for reconsideration and stay requests to ensure that these regulations both safeguard our environment and preserve production capacity and jobs in our strategically important integrated iron and steel sector. Thank you for your work to date with us on these important matters.

Sincerely,

Sherrod Brown
United States Senator

Mike Braun
United States Senator

Robert P. Casey, Jr.
United States Senator

J.D. Vance
United States Senator

Amy Klobuchar
United States Senator

Todd Young
United States Senator

cc: Janet McCabe, Deputy Administrator, U.S. Environmental Protection Agency

ATTACHMENT C

Congress of the United States
House of Representatives
Washington, DC 20515

December 18, 2023

The Honorable Michael S. Regan
Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue NW
Washington, D.C. 20460

Dear Administrator Regan:

As Chairman and Vice Chairman of the Congressional Steel Caucus, we write to express our concerns regarding the proposed rules below from the U.S. Environmental Protection Agency (EPA):

- National Emission Standards for Hazardous Air Pollutants: National Emission Standards for Hazardous Air Pollutants: Taconite Iron Ore Processing Amendments (EPA-HQ-OAR-2017-0664)
- Integrated Iron and Steel Manufacturing Facilities (EPA-HQ-EPA-OAR-2002-0083)
- National Emission Standards for Hazardous Air Pollutants for Coke Ovens: Pushing, Quenching, and Battery Stacks, and Coke Oven Batteries (EPA–HQ–OAR–2002–0085 and EPA–HQ–OAR–2003–0051).

The American steel industry and its manufacturing workforce produces the world's cleanest steel, made possible by years of substantial investments into climate initiatives. According to the American Iron and Steel Institute, the steel industry has reduced its energy intensity per ton of production by 35 percent and carbon dioxide emissions intensity by 37 percent in the past three decades. We also would highlight that these efforts will continue to be augmented by research and technology investments being made under current law.

We are grateful for your efforts to assist in the implementation of these laws and want to ensure that the proposed rules do not hinder the ability of the American steel industry to make robust investments into these important environmental initiatives.

Industry leaders have shared with us that these rules, as drafted, pose a threat to the competitiveness of steel producers and tens of thousands of good-paying union jobs. Our understanding is that these rules do not consider current technology capabilities and economic feasibility and may jeopardize the industry's ability to meet other environmental initiatives and health requirements for workers. We also are concerned that any action to diminish the ability of the American steel industry to meet the demands of our economy will be manufactured by

foreign-made and illegally subsidized steel entities that do not meet our current environmental, labor, and accountability standards.

As you move forward, we would strongly encourage you to more openly communicate with steel industry experts and other stakeholders to ensure that proposed requirements are based on proven technology and robust scientific data. It is essential to ensure that proposed rules are technically feasible, financially reasonable, and continue protecting the livelihoods, health, and safety of workers and steel-producing communities throughout our nation.

Sincerely,

Eric A. "Rick" Crawford
Member of Congress
Chair, Congressional Steel Caucus

Frank Mrvan
Member of Congress
Vice-Chair, Congressional Steel Caucus

Outlook

FW: Presidential Exemption: Integrated Iron and Steel MACT RTR Rule (2024): U. S. Steel's Edgar Thomson Plant, Gary Works, Granite City Works, and Great Lakes Works

From [redacted]@epa.gov>
Date Tue 4/1/2025 7:45 AM
To AirAction <AirAction@epa.gov>

1 attachment (22 MB)
US Steel Request for Presidential Exemption Iron and Steel MACT RTR 3-31-2025.pdf;

From: [redacted]@epa.gov>
Sent: Tuesday, April 1, 2025 7:08 AM
To: [redacted]@epa.gov>; [redacted]@epa.gov>
Subject: FW: Presidential Exemption: Integrated Iron and Steel MACT RTR Rule (2024): U. S. Steel's Edgar Thomson Plant, Gary Works, Granite City Works, and Great Lakes Works

FYI

[redacted]

From: Piscitelli, Alexis S <APiscitelli@uss.com>
Sent: Monday, March 31, 2025 4:58 PM
To: AirAction <AirAction@epa.gov>; Zeldin, Lee <Zeldin.Lee@epa.gov>
Cc: Szabo, Aaron <Szabo.Aaron@epa.gov>; tardif.abilgale@epa.gov; [redacted]@epa.gov>; [redacted]@epa.gov>; [redacted]@epa.gov>; Woodwell, Tishie W <TWoodwell@uss.com>; Hardin, Christopher W <CWHardin@uss.com>; Tunno, Brett J <BJTunno@uss.com>
Subject: Presidential Exemption: Integrated Iron and Steel MACT RTR Rule (2024): U. S. Steel's Edgar Thomson Plant, Gary Works, Granite City Works, and Great Lakes Works

Caution: This email originated from outside EPA, please exercise additional caution when deciding whether to open attachments or click on provided links.

Dear Administrator Zeldin,

Please see U. S. Steel's attached request for Clean Air Act Section 112(i)(4) Presidential Exemption from National Emission Standards for Hazardous Air Pollutants: Integrated Iron and Steel Manufacturing Facilities, 89 Fed. Reg. 23,294 (April 3, 2024)

Thank you for the opportunity to provide this Request for a Presidential Exemption.

Sincerely,
Alexis Piscitelli

U. S. Steel Gary Works, Granite City and Great Lakes Works
Senior Director, Environmental
North American Flat Rolled Manufacturing

DISCLAIMER & CONFIDENTIALITY NOTICE: This email neither constitutes an agreement to conduct transactions by electronic means nor creates any legally binding contract or enforceable obligation in the absence of a fully signed written contract. The information contained in this email and any attachments may be confidential, legally privileged and/or exempt from disclosure under applicable law. It has been sent for the sole use of the intended recipient(s). If the reader of this message is not an intended recipient, or the employee or agent responsible for delivering the message to the intended recipient, you are hereby notified that any unauthorized review, use, disclosure, dissemination, distribution, or copying of this communication, or any of its contents, is strictly prohibited. Any inadvertent or accidental disclosure of confidential, legally privileged and/or exempt information contained in this email does not constitute a knowing waiver of any rights regarding such information or materials. If you have received this communication in error, please reply to the sender and destroy all copies of the message (including any attachments).

United States Senate

WASHINGTON, DC 20510

December 6, 2023

The Honorable Michael S. Regan
Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue NW
Washington, D.C. 20460

Dear Administrator Regan:

We write to you today regarding the U.S. Environmental Protection Agency's (EPA) three proposed rules related to steel manufacturing and related supply chains. We have serious concerns with these proposed rules because they would dramatically undermine the domestic steel industry and national security while driving production overseas likely resulting in no net reduction in emissions from the steel industry globally. Reducing the emission of harmful air pollutants should be done based upon sound science and with proven technology that is both technically and economically feasible. The irony is that the United States' steel industry is world's cleanest major producer of steel[1]. American steel manufacturers take seriously their commitment to protecting the environment; however, rules that drive production overseas are bad for our economy, bad for national security, and bad for the environment.

These rules:

1) National Emission Standards for Hazardous Air Pollutants: Integrated Iron and Steel Manufacturing Facilities (EPA-HQ-EPA-OAR-2002-0083), 2) National Emission Standards for Hazardous Air Pollutants for Coke Ovens: Pushing, Quenching, and Battery Stacks, and Coke Oven Batteries. (EPA HQ OAR 2002 0085 and EPA HQ OAR 2003 0051), and 3) National Emission Standards for Hazardous Air Pollutants: Taconite Iron Ore Processing Amendments (EPA-HQ-OAR-2017-0664), if finalized as proposed, would require billions of dollars in capital investments and increased annual operating costs for the U.S. steel industry.

We support reducing harmful air pollution. We also support rules that are durable, realistic, and based upon proven technology and reflect a consensus view among stakeholders on how to best improve public health while protecting good paying jobs and supporting industries essential to our national and economic security. These rules fail to meet those standards.

As you move forward with these rulemakings, we urge you to take an inclusive approach – working directly with major stakeholders in developing technically-sound final rules that achieve further emissions reductions while not harming the competitiveness of our American steel companies. Written properly, regulations can help American steel manufacturers lead the world in clean steel production. Poorly written rules undermine domestic manufacturing and promote reliance upon inputs made by foreign manufacturers manufacturers that pollute more than their American counterparts. Regulations that cost

[1] "Steel Climate Impact - An International Benchmarking of Energy and CO_2 Intensities." Found at: https://www.bluegreenalliance.org/wp-content/uploads/2022/04/Steelclimateimpact-benchmarkingreport7April2022.pdf

American jobs, undermine national security, and are likely to result in no net reduction in emissions globally must be rejected.

Sincerely,

Sherrod Brown
United States Senator

J.D. Vance
United States Senator

Mike Braun
United States Senator

Joe Manchin
United States Senator

Robert P. Casey, Jr.
United States Senator

Amy Klobuchar
United States Senator

Shelley Moore Capito
United States Senator

Todd Young
United States Senator

United States Senate

WASHINGTON, DC 20510

June 14, 2024

The Honorable Michael S. Regan
Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue NW
Washington, D.C. 20460

Dear Administrator Regan:

We write to you today regarding three U.S. Environmental Protection Agency (EPA) rules that together threaten the economic competitiveness of the American integrated steel industry. We urge EPA to grant the petitions filed by the domestic integrated steel industry seeking administrative reconsiderations and stays of all three final rules until the EPA can complete a comprehensive review of each rule through the administrative reconsideration process.

Working together, EPA and industry have achieved notable reductions in environmental impacts to air, water, and land over the past 50 years. The steel industry in the U.S. is the world's cleanest major producer of steel and is already subject to more environmental regulation than its global competitors, resulting in a cleaner environment. While we appreciate EPA's efforts to address concerns raised by multiple stakeholders – including steel companies, the United Steelworkers (USW), coke producers, and numerous Members of Congress – throughout the rulemaking process, we remain concerned that the final rules contain flaws that will undermine the domestic steel industry and national security while driving production overseas. We are specifically concerned about the following three rules:

- National Emission Standards for Hazardous Air Pollutants: Taconite Iron Ore Processing (EPA-HQ-OAR-2017-0664)
- National Emission Standards for Hazardous Air Pollutants: Integrated Iron and Steel Manufacturing Facilities (EPA-HQ-OAR-2002-0083)
- National Emission Standards for Hazardous Air Pollutants for Coke Ovens: Pushing, Quenching, and Battery Stacks, and Coke Oven Batteries (EPA–HQ–OAR–2002–0085 and EPA HQ OAR 2003 0051).

A failure to get these regulations right will not only have a negative impact on domestic steel production and American steelworkers, but it will also likely fail to achieve a net reduction in emissions from the steel industry globally. In fact, emissions will likely rise as production moves to countries, like China, with far less stringent rules and regulations. By granting the requested administrative reconsideration and stay of the rules, the EPA and industry can build on their shared track record of success and continue to work together in a constructive manner to achieve durable rules that both protect the environment and our domestic integrated steel industry.

Throughout the rulemaking process, EPA worked to address technical and analytical flaws with these rules raised by multiple stakeholders. The modifications incorporated into the final rules in response to stakeholder feedback were important steps in the right direction, but we remain concerned they did not go far enough in addressing fundamental flaws with the rules. Further modifications are needed to address new information provided to EPA by stakeholders to ensure the rules are achievable by the industry, as required by the Clean Air Act, and that the regulations do not induce unintended consequences, such as loss of domestic steelmaking capacity and jobs. Given all that is at stake in terms of our country's advanced steel manufacturing capabilities and the good-paying, middle class union jobs the steel industry sustains, it is critically important that these rules are technically and economically feasible and do not undermine the competitiveness of the industry.

A stay of these rules will allow EPA to continue to work with industry stakeholders, including domestic companies and the USW, to obtain a complete and thorough understanding of the new information, equipment, and processes and ensure regulations moving forward are sound policy. Absent a stay, the steel industry will be forced to proceed with planning and spending for unproven technologies and work practices while the final provisions of the rules remain uncertain. Given that these regulations will impact nearly every aspect of the integrated iron and steelmaking process, it is imperative that EPA grant both the petitions for reconsideration and requests for stay of the rules.

We urge EPA to grant the industry's petitions for reconsideration and stay requests to ensure that these regulations both safeguard our environment and preserve production capacity and jobs in our strategically important integrated iron and steel sector. Thank you for your work to date with us on these important matters.

Sincerely,

Sherrod Brown
United States Senator

Mike Braun
United States Senator

Robert P. Casey, Jr.
United States Senator

J.D. Vance
United States Senator

Amy Klobuchar
United States Senator

Todd Young
United States Senator

cc: Janet McCabe, Deputy Administrator, U.S. Environmental Protection Agency

Congress of the United States
House of Representatives
Washington, DC 20515

December 18, 2023

The Honorable Michael S. Regan
Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue NW
Washington, D.C. 20460

Dear Administrator Regan:

As Chairman and Vice Chairman of the Congressional Steel Caucus, we write to express our concerns regarding the proposed rules below from the U.S. Environmental Protection Agency (EPA):

- National Emission Standards for Hazardous Air Pollutants: National Emission Standards for Hazardous Air Pollutants: Taconite Iron Ore Processing Amendments (EPA-HQ-OAR-2017-0664)
- Integrated Iron and Steel Manufacturing Facilities (EPA-HQ-EPA-OAR-2002-0083)
- National Emission Standards for Hazardous Air Pollutants for Coke Ovens: Pushing, Quenching, and Battery Stacks, and Coke Oven Batteries (EPA–HQ–OAR–2002–0085 and EPA– HQ–OAR–2003–0051).

The American steel industry and its manufacturing workforce produces the world's cleanest steel, made possible by years of substantial investments into climate initiatives. According to the American Iron and Steel Institute, the steel industry has reduced its energy intensity per ton of production by 35 percent and carbon dioxide emissions intensity by 37 percent in the past three decades. We also would highlight that these efforts will continue to be augmented by research and technology investments being made under current law.

We are grateful for your efforts to assist in the implementation of these laws and want to ensure that the proposed rules do not hinder the ability of the American steel industry to make robust investments into these important environmental initiatives.

Industry leaders have shared with us that these rules, as drafted, pose a threat to the competitiveness of steel producers and tens of thousands of good-paying union jobs. Our understanding is that these rules do not consider current technology capabilities and economic feasibility and may jeopardize the industry's ability to meet other environmental initiatives and health requirements for workers. We also are concerned that any action to diminish the ability of the American steel industry to meet the demands of our economy will be manufactured by

foreign-made and illegally subsidized steel entities that do not meet our current environmental, labor, and accountability standards.

As you move forward, we would strongly encourage you to more openly communicate with steel industry experts and other stakeholders to ensure that proposed requirements are based on proven technology and robust scientific data. It is essential to ensure that proposed rules are technically feasible, financially reasonable, and continue protecting the livelihoods, health, and safety of workers and steel-producing communities throughout our nation.

Sincerely,

Eric A. "Rick" Crawford
Member of Congress
Chair, Congressional Steel Caucus

Frank Mrvan
Member of Congress
Vice-Chair, Congressional Steel Caucus

CLIFFS

CLEVELAND-CLIFFS INC

March 31, 2025

U.S. Environmental Protection Agency
1200 Pennsylvania Ave., NW
Washington, DC 20460
Submitted by Electronic Mail to: airaction@epa.gov

RE: REQUEST FOR PRESIDENTIAL EXEMPTION from "National Emission Standards for Hazardous Air Pollutants: Integrated Iron and Steel Manufacturing Facilities Technology Review" (89 FR 23294; April 3, 2024) on Behalf of Cleveland-Cliffs Inc. Integrated Iron and Steel Manufacturing Facilities[1]

Pursuant to Section 112(i)(4) of the Clean Air Act ("CAA"), Cleveland-Cliffs Inc. ("Cliffs") hereby requests that the President issue a two-year exemption from the compliance deadlines for emission limits and work practice standards promulgated in the final rule *"National Emission Standards for Hazardous Air Pollutants: Integrated Iron and Steel Manufacturing Facilities Technology Review"* (the "II&S Rule"), published in the *Federal Register* at 89 Fed. Reg. 23,294 (April 3, 2024). This request encompasses extending the compliance dates by two years for each of Cliffs' integrated iron and steel manufacturing ("II&S") plants subject to the rule, pending EPA's reconsideration of the II&S Rule. Cliffs and the American Iron & Steel Institute ("AISI") submitted several rounds of extensive comments and scientific data and analysis on the II&S Rule.

Cliffs is a leading North America-based steel producer and owns five of the eight II&S facilities in the United States (the other three are operated by a separate steel company, which will submit a separate request). Cliffs' facilities include Burns Harbor and Indiana Harbor East and West in Indiana, Cleveland Works and Middletown Works in Ohio, and Dearborn Works in Michigan.

This request explains why an exemption is appropriate for Cliffs' sources impacted by the II&S Rule, because, as specified in section CAA §112(i)(4), the technologies to implement the standards are not available and an exemption is in the national security interests of the United States.

[1] Cleveland-Cliffs Inc. Facilities: Cleveland-Cliffs Burns Harbor Inc.; Cleveland-Cliffs Cleveland Works LLC; Cleveland-Cliffs Steel Corp. Dearborn Works; Cleveland-Cliffs Steel LLC-Indian Harbor East and West; Cleveland-Cliffs Holdings Corp. Middletown Works.

A. BACKGROUND

EPA first promulgated the NESHAPs for the II&S industry pursuant to CAA §112(d) on May 20, 2003, 68 Fed. Reg. 27,646, establishing emissions limitations for HAPs emitted from new and existing sinter/recycling plants, blast furnaces ("BFs"), and basic oxygen process furnace ("BOPF") shops. This rulemaking required all sources to meet HAP emission standards through application of maximum achievable control technology ("MACT"). It included particulate matter emissions limitations and opacity limits for capture systems and control devices. EPA found that "[p]articulate matter and opacity serve as surrogate measures of HAP emissions."[2]

In 2020, the Trump EPA issued a final rule for the II&S source category to fulfill its obligations under CAA sections 112(d)(6) and (f)(2), known as the "risk and technology review" ("RTR"). The 2020 II&S RTR Rule concluded that the original 2003 II&S Rule addressed the risk from hazardous air pollutants with an adequate margin of safety to public health, and that there were no new technologies that justified revisions to the 2003 MACT standards under CAA §112(d)(6).[3]

On April 3, 2024, the Biden EPA promulgated the II&S Rule, revising the Trump EPA's 2020 RTR rulemaking for the II&S source category. The Agency maintains in the 2024 II&S Rule that the residual risk to human health and environment from the II&S source category continues to be acceptable within an ample margin of safety, based on its analysis in the 2020 RTR.[4]

As to the technology review under CAA section 112(d)(6), however, the 2024 II&S Rule establishes new hazardous air pollutant ("HAP") emissions limits at Sinter/Recycling plants (polycyclic aromatic hydrocarbon, carbonyl sulfide, mercury, hydrochloric acid, dioxin/furan toxicity equivalence), BOPFs (total hydrocarbons, hydrochloric acid, dioxin/furan toxicity equivalence), BF stoves (total hydrocarbon, hydrochloric acid), and BF casthouses (total hydrocarbon, hydrochloric acid); and new standards, in the form of opacity limits, operating limits, and work practice standards, for five Unmeasurable Fugitive Intermittent Particulate ("UFIP") sources (unplanned bleeder valve openings; planned bleeder valve openings; small and large bell leaks; iron beaching; and slag processing, handling and storage operations) based on the flawed conclusion that no new technology is required to meet these standards.

EPA justified the slew of new HAP emissions limitations and UFIP source standards based purportedly on a new technology review. Relying on an aggressive interpretation of the D.C. Circuit's decision in *Louisiana Environmental Action Network v. EPA* ("*LEAN*"), 955 F.3d 1088 (D.C. Cir. 2020), the Biden EPA unlawfully and erroneously established new emission limits and work practice standards without consideration of the underlying CAA §112(d) obligation to only "revise as necessary (taking into account developments in practices, processes, and control technologies)." The record does not support the Biden EPA's new technology review and resulting II&S Rule standards. As the Trump EPA had properly concluded in 2020, there is no demonstrated technically feasible or economically reasonable technology that II&S facilities can use to meet the

[2] *Id.* at 27,467.
[3] 85 Fed. Reg. 42,074, 42,074 (July 13, 2020).
[4] *Id.* at 23,312.

new standards in the II&S Rule. Instead, the Biden EPA reached an unsupported conclusion that no new technologies would be necessary to comply with the new standards. This conclusion ignores the plethora of data in the record demonstrating that the standards are unachievable by even the best performing sources, in contravention of the CAA. The II&S Rule require the development and implementation of unproven control equipment that has never been applied in the II&S industry domestically or internationally.

Cliffs filed a petition for judicial review of the final II&S Rule in the D.C. Circuit and a petition for administrative reconsideration and stay of the rule with EPA. A request for judicial stay of the II&S Rule was denied on October 24, 2024, by the D.C. Circuit Court of Appeals after being opposed by the Biden EPA. EPA sent a letter on August 14, 2024, which was supplemented by a letter on March 5, 2025, to those including Cliffs who had submitted administrative petitions for reconsideration on the II&S Rule, announcing its intent to reconsider the Rule. On March 7, 2025, the Trump EPA moved to hold the II&S appeals in abeyance for at least 120 days pending its reconsideration. On March 12, 2025, the EPA Administrator also announced the Agency's intention broadly to reconsider a group of rules establishing or modifying various National Emission Standards for Hazardous Air Pollutants ("NESHAP") including the II&S Rule. On March 31, 2025, EPA issued a temporary stay of the II&S Rule pursuant to section 307(d)(7)(B) of the CAA requirements for 90 days. Cliffs strongly supports EPA's plan to reconsider the II&S Rule for the numerous legal and technical reasons previously raised in industry comments during the notice and comment period preceding the II&S Rule, in Cliffs' lawsuit, and in Cliffs' petition for reconsideration.

EPA further indicated that the President was considering issuing exemptions from compliance dates under CAA §112(i)(4) where appropriate, and that affected sources should provide requests for such exemptions to EPA by March 31, 2025. Cliffs is timely submitting such request herein.

B. NO TECHNICALY FEASIBLE OR COST-EFFECTIVE TECHNOLOGY IS AVAILABLE TO IMPLEMENT THE 2024 II&S RULE

No technically feasible or cost-effective technology is available, or could be available, to implement the standards established in the 2024 II&S Rule. The rule places emission limitations on (1) HAPs and (2) opacity limitations and work practice standards on UFIP sources. These limitations and work practice standards are not feasible to meet due to a lack of technology and flawed implementation of the rulemaking that shows a lack of understanding of the sources in question. Cliffs provided detailed comments explaining why EPA should decline to set new standards, or in the alternative, should set standards that were reasonable, less costly and more likely achievable by the industry. Nevertheless, the Biden EPA promulgated the final II&S Rule imposing onerous, unreasonable and extremely costly standards.

1. Technology to Implement the Hazardous Air Pollutant Emission Standards is Not Feasible

Cliffs has provided numerous technical reports and declarations[5] evidencing that new HAP limitations in the II&S Rule for the Cliffs' facilities listed above are unachievable and require development and installation of unproven control technologies and/or retrofitting that have never been installed domestically or internationally for these sources because the technologies are not available and have not been demonstrated in practice. The II&S Rule fails to consider that not only is this untested technology, but that the facilities also require time for development, trialing, design, procurement, fabrication, and testing to ensure the technology could even achieve its intended purpose. As one industry engineering expert notes: "Typical capital project delivery steps for a major emission control project of this scale typically require 2 – 3 years to implement. The research and development required to conceive of, test and validate a novel solution which does not exist today could easily add another 2-3 years to this typical implementation timeline, provided that a solution is identified."[6]

The affected sources and specific issues with the feasibility of HAP emission limit control technologies are summarized as follows:[7]

- **BOPFs:** Together, the five Cliffs' facilities have fifteen (15) BOPF furnaces, and there is no existing emission control system that can be added to a BOPF furnace that is known to address dioxin/furan, total hydrocarbons, or hydrogen chloride to meet the limits provided in the 2024 II&S Rule. Addressing HAPs for BOPF furnaces will require significant retrofit upgrades to the current systems, the extent of which will depend on whether there is dry electrostatic precipitator or wet scrubber technology already in place. These system upgrades are expected to be particularly challenging, given they will likely need to incorporate (or in the case of wet scrubbers, completely replace with) novel treatment technology such as a recirculating baghouse system with injected lime and/or carbon, which are not commercially available.

- **BF Casthouses:** Together, the five Cliffs' facilities have seven (7) BF casthouses, and there is no existing add-on emission control that is proven to meet the HAP limitations for hydrogen chloride or total hydrocarbons. Moving forward with the limits in the rulemaking

---

[5] *See* Comments of the American Iron and Steel Institute [including member Cliffs] and United States Steel Corporation on National Emission Standards for Hazardous Air Pollutants: Integrated Iron and Steel Manufacturing Facilities Technology Review; Proposed Rule, 88 Fed. Reg. 49,402 (July 31, 2023), submitted September 29, 2023 ("AISI Comments"), Docket No. EPA-HQ-OAR-2002-0083-1631; Cliffs' Petition for Reconsideration and Request for Administrative Stay ("Cliffs' Reconsideration Petition"), submitted June 3, 2024; Cliffs' Motion for Stay, filed June 28, 2024, in *Cleveland-Cliffs Inc. v. U.S. EPA*, Case No. 24-1170 (D.C. Cir.) ("Cliffs' Motion for Stay"; Cliffs' Reply in Support of Motion for Stay, filed September 19, 2024, in *Cleveland-Cliffs Inc. v. U.S. EPA*, Case No. 24-1170 (D.C. Cir.) ("Cliffs' Reply") and associated exhibits/attachments.

[6] Declaration of David Mysko, P.E. of Hatch Associates Consultants, Inc. (Sept. 17, 2024) (attached as Exhibit L to Cliffs' Reply). *See also* Declaration of Stephen Palmer, Cleveland-Cliffs Enterprise Director Engineering (June 13, 2024) (attached as Exhibit C to Cliff's Motion for Stay).

[7] Declaration of David Mysko, P.E. of Hatch Associates Consultants, Inc. (Sept. 17, 2024) (attached as Exhibit L to Cliffs' Reply); Declaration of Ryan Siats of Barr Engineering (June 18, 2024) (attached as Exhibit E to Cliff's Motion for Stay).

will require application of novel treatments such as carbon lime and/or bicarbonate injection systems, which are not commercially available.

- **BF Stoves:** Together, the five Cliffs' facilities have seven (7) clusters of BF stoves, and there is no existing add-on emission control that is proven to meet the HAP limitations for hydrogen chloride or total hydrocarbons. Moving forward with the limits in the rulemaking will require application of novel treatments such as carbon lime and/or bicarbonate injection systems that are not commercially available.

- **Sinter Recycling Plants**: One Cliffs' facility, Burns Harbor, has a sinter recycling plant with a wet scrubber. This plant would need to install a new sinter plant windbox emission control system paired with activated carbon injection ("ACI") to meet the new standards. A fatal flaw, however, is that use of ACI is not actually feasible as an add-on control because there is not sufficient residence time for contact with the carbon and absorbing material (in this case, mercury, dioxin/furan, and/or polycyclic aromatic hydrocarbons). The technology of ACI is primarily intended for use with recirculating baghouses and the effects when paired with a wet scrubber are unclear and may include negative consequences such as unintended localized emissions and significant carbon waste generation in the resulting sludge.

As noted above and in more detail with our numerous technical reports and declarations[8], the II&S Rule "will require development and installation of unproven control technologies that have never been installed domestically or internationally for these source categories."[9] Cliffs must evaluate, develop, trial, permit, design, procure, fabricate, and install novel technology and emission control systems. This industry specific technology which may or may not achieve the standards in the end needs to be developed for the first time.[10] EPA's erroneous assumptions about the transfer of control technology demonstrate a poor understanding of this industry sector and warrant time for thorough reconsideration. A Presidential exemption is important to achieve this extended timeline.

2. Technology to Implement UFIP Standards Is Not Feasible

For the UFIP sources, the opacity limitations and work practice standards are so fundamentally flawed that there is no existing technology capable of complying with the Rule. In order to meet the UFIP standards, experts have opined that "[s]ources unable to achieve compliance with the final standards may require the development and implementation of control equipment or control measures that has never been applied in the II&S industry."[11] Cliffs submitted

---

[8] *See* AISI Comments, Docket No. EPA-HQ-OAR-2002-0083-1631; Cliffs' Reconsideration Petition to EPA (June 3, 2024); Cliffs' Motion for Stay, Case No. 24-1170 (D.C. Cir.)(June 28, 2024); Cliffs' Reply in Support of Stay, Case No. 24-1170 (D.C. Cir.)(September 19, 2024), and associated exhibits/attachments.

[9] Declaration of David Mysko, P.E. of Hatch Associates Consultants, Inc. (Sept. 17, 2024) (attached as Exhibit I. to Cliffs' Reply).

[10] *See* Declaration of Stephen Palmer, Cleveland-Cliffs Enterprise Director Engineering (June 13, 2024) (attached as Exhibit C to Cliff's Motion for Stay).

[11] *See* Declaration of Mike Remsberg of Trinity Consultants (Sept. 17, 2024) (attached as Exhibit M to Cliffs' Reply).

ED_021114_00002868-00005

data demonstrating that even the best performing sources are not able to continuously achieve the new limits. [12] In addition, new limits set by the Rule, even assuming technology existed, pose safety dangers in the facilities in direct conflict with the CAA's General Duty Clause in Section 112(r).

The affected sources and specific UFIP control feasibility issues are summarized as follows:

- **Unplanned Bleeder Valve Openings:** Bleeder valves are emergency release devices that relieve pressure from a BF to prevent explosions or other catastrophic events. EPA took the extraordinary step of attempting to set numeric limits on the unplanned opening of bleeder valves, pitting environmental compliance against worker health and safety, by discouraging valve opening, in direct conflict with the stated intent of Congress (H.R. 101-490, Part 1 (328)). However, technical data demonstrates that three of four MACT Floor (or "best performing") sources for large BFs cannot achieve this limitation and are therefore unachievable without adding control equipment.[13] Specifically, bleeder valves are intended to reduce the risk of catastrophic overpressure conditions in a BF. Not only are the limits unachievable, but experts have explained that the work practice standards "prescribes technologies that may not result in the reduction of valve openings or may be infeasible on certain BF units."[14] Moving forward with the limits in the rulemaking will require the application of control equipment which is not commercially available.

- **Planned Bleeder Valve Openings:** Not only are the standards unrepresentative of the data, but the calculation of the opacity standard for planned bleeder valve openings used a calculation method that did not adequately account for the underlying long-term operational variability. This incorrect calculation directly resulted in three of the five MACT Floor sources for Blast Furnaces being unable to achieve this limitation.[15] Moving forward with the limits in the rulemaking will require the application of control equipment which is not commercially available.

- **Iron Beaching:** Emissions generated by the transfer and pouring of hot molten iron (beaching) are not only de minimis in nature but were already adequately controlled by existing work practices that require flexibility in approach given the spacing and safety limitations based on different facility configurations. EPA's proposed technologies include "infeasible (and unsafe) enclosure of beaching operations and/or installation of CO2 suppression."[16] This is particularly the case where [t]he installation of enclosures would be infeasible at facilities with space limitations," such as four of the eight facilities with such limited space that the "retrofit construction of an enclosure [is] virtually impossible."

---

[12] *See* AISI Comments; Cliffs' Petition for Reconsideration; Cliffs' Motion for Stay; and Cliffs' Reply for detailed technical support regarding the fundamental flaws with the II&S Rule UFIP limits.
[13] *See* Declaration of Mike Remsberg of Trinity Consultants, p. 6-7 (June 18, 2024) (attached as Exhibit D to Cliffs' Motion for Stay.)
[14] *Id.* at 7.
[15] *Id.* at 7.
[16] *Id.*

ED_021114_00002868-00006

- **Small and Large Bells**: Bells are part of the charging system on top of the BF that allows for materials to be loaded into the furnace or next bell (as in the case of small bells) without letting BF gas escape). Every furnace, and its corresponding bells are unique in "age, size, design, air flow, raw material usage, and production specification."[17] Additionally, "[e]very bell top campaign is unique, and both small and large bell replacements and repairs (depending on the repair required) are large capital projects that require indefinite lead times for equipment design, project planning (i.e., engineering, safety protocols, and logistical coordination) and corporate approval and funding authorizations for capital expenditures",[18] making the short timeframe for taking action in the II&S Rule technically infeasible.

- **Slag Processing, Handling and Storage**: New opacity limits for slag processing, handling, and storage operations relied on a dataset that did not represent all categories of operations ultimately regulated by the II&S Rule. The resulting limits are unachievable by the best performing sources and fail to adequately account for variability across the different types of processes that EPA attempted to capture with a single opacity limit. Further, the II&S Rule's restrictions on slag operations may require design controls (e.g., enclosures) that create unsafe operating conditions given slag can be highly reactive, especially in contained areas.[19] As discussed in the Declaration of Charles Ochola, President of the National Slag Association, "one of the direct results of using water to control emissions is the creation of pooled water. Standing water associated with emission controls, nature, or any source creates an extremely hazardous condition anywhere molten slag is managed. Pouring molten slag into the smallest puddle of water will create a reaction very similar to an explosion, putting operators and the community at risk for serious if not deadly injury … The use of emission controls that rely upon water are limited by the extreme hazard caused from adding molten slag, iron or steel to standing water."[20]

A Presidential exemption is warranted here, where safe and technically feasible control technology is not available to implement the standard.

3. Technology to Implement the II&S Rule Standards Is Not Cost Effective

Due to the II&S Rule's onerous implementation and compliance schedule for these standards, Cliffs is in an impossible position of designing and engineering novel systems with unproven technology within a short time frame. The cost of compliance is disproportionately high and the amount of work leading up to the compliance date is enormous.

Even EPA's March 12, 2025, Fact Sheet supporting reconsideration of multiple NESHAP rules including the II&S Rule grossly understated costs to comply, citing "[e]stimated costs of $45 million over the next decade (including $7.1 million in capital investment or $5.3 million

[17] *Id.* at p. VI-32.
[18] *Id.* at p. VI-35.
[19] Declaration of Mike Remsberg of Trinity Consultants, p. 8 (June 18, 2024) (attached as Exhibit D to Cliffs' Motion for Stay.)
[20] Declaration of Charles Ochola, President of the National Slag Association (May 31, 2024) (Attachment E to Cliffs' Reconsideration Petition).

annually)."[21] In reality, "[d]ue to the high variability of the process and raw materials, if all facilities required installation of new emission control equipment," industry "estimated initial costs to achieve compliance with the new gap filling HAP limits will be approximately $3.2 billion in capital investment and $749 million annually going forward."[22] For the Cliffs' Burns Harbor Sinter/Recycling Plant alone, the corrected average cost effectiveness for application of control technology "is more than $500,000 per *gram* of dioxin furan controlled, or $237.3 million per pound controlled. This is without considering prior industry comments regarding US EPA's underestimation of control costs, which would only serve to increase the cost per mass controlled."[23]

Similarly, industry estimates for UFIP removal placed annual costs at $290 million per year, with a cost-effectiveness rate of $819 million per ton of HAP removed.[24] For unplanned bleeder valve openings alone, the cost effectiveness rate is $1.3 million per ton of HAP removed (using corrected EPA data) or even potentially $10 million per ton of HAP removed (using industry data).[25] Further, EPA failed to correct erroneous HAP emissions, resulting in overstated HAP emissions and inflated benefits. Reductions in HAPs for bells is so small, at barely 100 pounds for 15 BFs, that there is no estimate that makes this cost-effective. Reductions in HAPs for beaching is likewise not meaningful given how infrequently beaching occurs and industry estimates ranging in reduction of only 5 to 20 pounds per year across all eight II&S facilities.

As noted above, EPA's own risk assessment showed that even without controls, emissions from the industry presented an acceptable level of risk with an ample margin of safety. As a result, any costs expended to meet these standards are unreasonable, and, by definition, not cost-effective.

C. IT IS IN THE NATIONAL SECURITY INTERESTS OF THE UNITED STATES TO PROVIDE AN EXEMPTION FROM THE II&S RULE COMPLIANCE DATES

The II&S Rule will have far-reaching consequences, given that the American iron and steel industry is the backbone of the nation's defense and transportation industries and is critical to national security. The U.S. Department of Commerce recognized that domestic steel production is essential for national security applications which it indicated encompasses transportation systems, the electric power grid, water systems, and energy generation systems in its report summarizing the findings of an investigation conducted by the Department of Commerce pursuant to Section 232 of the Trade Expansion Act of 1962, as amended (19 U.S.C. § 1862 ("Section 232")), into the effect of imports of steel mill products ("steel") on the national security of the United States.[26] In a 2021, Congressional Research Service Report on U.S. Steel Manufacturing:

---

[21] U.S. EPA, *National Emission Standards for Hazardous Air Pollutants (NESHAP), Powering the Great American Comeback Fact Sheet*, https://www.epa.gov/system/files/documents/2025-03/neshap_powering-the-great-american-comeback_fact-sheet_2.pdf

[22] AISI Comments, p. VII-60.

[23] Declaration of Ryan Siats of Barr Engineering (June 18, 2024) (attached as Exhibit E to Cliff's Motion for Stay).

[24] AISI Comments, p. VI-3.

[25] *Id.* at p. VI-29.

[26] *See* U.S. Department of Commerce Bureau of Industry and Security Office of Technology Evaluation, *The Effect of Imports of Steel on the National Security Report, Report by the January 11, 2018*, https://www.commerce.gov/sites/default/files/the_effect_of_imports_of_steel_on_the_national_security_-_with_redactions_-_20180111.pdf

National Security and Tariffs, it was noted that under the Defense Production Act, 50 U.S.C. §4533, "Congress provides the President with a broad set of authorities …, including Title III, which authorizes the use of economic incentives to secure domestic industrial capabilities essential to meet national defense and homeland security needs. DOD has funded several Title III projects to increase domestic production of steel products," including a $56 million agreement in 2020 to boost steel plate production signed by the predecessor owner of a Cliffs' facility.[27]

The II&S Rule, if implemented, would both increase the cost of producing steel and the products derived therefrom. This would have a negative impact on multiple other industries and activities, harming the national security interests of the United States. Ensuring the strength and global competitiveness of this industry is of vital importance to the nation's economy, security, and manufacturing prowess. Supporting this is the fact the industry provides more than **$520 billion** in economic output, nearly **two million jobs,** more than **$130 billion in wages and benefits** to employees, and **$56 billion in federal, state and local taxes**. Cliffs alone employs approximately 27,000 people, most of whom are members of unions such as the United Steelworkers and the International Association of Machinists and Aerospace workers.

The American iron and steel industry is already among the most regulated and cleanest steel industries in the world. Rulemaking must take into consideration the necessary role that the domestic integrated iron and steel industry plays in our country. Members of Congress have already expressed their concern on this rulemaking. Eight current or former U.S. Senators (Senators Brown, Vance, Braun, Manchin, Casey, Klobuchar, Capito and Young) wrote a letter to EPA warning the Agency that its three proposed rules aimed at the steel industry – impacting taconite iron ore processing, coke manufacturing, and integrated iron and steelmaking – "would dramatically undermine the domestic steel industry and national security while driving production overseas …."[28] Similarly, Congressmen Crawford and Mrvan, Chair and Vice-Chair of the Congressional Steel Caucus, respectively, wrote a letter to then EPA Administrator Regan, expressing their concerns over the proposed rulemakings targeting the steel industry, concluding that the rulemakings, including the II&S Rule, would threaten advancements already made by the industry into environmental initiatives while "pos[ing] a threat to the competitiveness of steel producers and tens of thousands of good-paying union jobs."[29]

The II&S Rule could further "diminish the ability of the American steel industry to meet the demands of our economy" which may lead to those demands being met by "foreign made and illegal subsidized steel entities that do not meet our current environmental, labor, and accountability standards." These fears ring true, as the U.S. Department of Commerce has already found excessive quantities of imports displacing domestic steel – steel that is not produced as clean as in the United States. Such a result is counterintuitive to the purpose of the CAA and threatens the nation's domestic steelmaking supply chain. The Congressmen conclude in their letter by "strongly

[27] Congressional Research Service Report, *U.S. Steel Manufacturing: National Security and Tariffs* (August 12, 2021), https://www.congress.gov/crs-product/IF11847.
[28] Letter from U.S. Senators Brown, Vance, Braun, Manchin, Casey, Klobuchar, Capito, and Young to Michael Regan, EPA Administrator (Dec. 6, 2023), pp. 1-2.
[29] Letter from Congressmen Crawford and Mrvan, Chair and Vice-Chair of the Congressional Steel Caucus, to Michael Regan, EPA Administrator (Dec. 18, 2023).

encourage[ing]" EPA to communicate with "industry experts and other stakeholders" and ensure that the final rulemakings are "technically feasible, financially reasonable, and continue to protect the livelihoods, health, and safety of workers and steel-producing communities throughout our nation." That is exactly what this Administration is doing by providing outreach in the form of a Presidential Exemption, and we ask that you consider this request on its merits.

The threat of global steel imports raised by the Senators in the letters to EPA is a material threat. Foreign steel imports risk the competitiveness and advancement of the domestic steel industry, to the point of potentially threatening U.S. domestic production capacity and continued investment in taconite iron mining, coke manufacturing, and iron and steelmaking capacity based on the costs outlined above. As emphasized by the U.S. Department of the Treasury's Committee on Foreign Investment in the United States ("CFIUS"), without such domestic steelmaking investment, there could be ripple effects on the supply chains that depend on such steel, particularly supply chains that are part of our national defense infrastructure such as "critical manufacturing, energy, transportation, and communications (all vital to national security)."[30] National defense infrastructure, for example, needs ready access to high purity steel from blast furnaces.[31] Once these complicated iron and steel making operations are shut down and/or idled, it is no simple matter to restart them. In short: "The loss of domestic production is a critical national security concern given the ubiquitous nature of steel throughout multiple critical industries."[32]

For all the reasons stated above, Cliffs urges the issuance of a two-year exemption from the compliance deadlines in the final II&S Rule, pending EPA's review of the rule for possible revision. If you have questions or need additional information, please contact Walter Tamukong at 216-694-4862 or at walter.tamukong@clevelandcliffs.com.

Respectfully submitted,



Traci L. Forrester
Executive Vice President, Environmental & Sustainability
Cleveland-Cliffs Inc.

cc: [redacted], U.S. EPA OAQPS Director, tsirigotis.peter@epa.gov
[redacted], U.S. EPA OAQPS Director of Sector Policies and Programs Division
lassiter.penny@epa.gov

[30] Letter from Andrew Fair, Acting Assistant Secretary for Investment Security, U.S. Department of the Treasury, to Ama Adams, Ropes & Gray LLP, and Mark Plotkin, Covington & Burling LLP, Re: CFIUS Case 24-154 (Dec. 14, 2024) ("CFIUS Letter"), p. 28.
[31] *Id.* at p. 24.
[32] *Id.* at p. 28.

From:	Tamukong, Walter
To:	AirAction
Cc:	[redacted]; Forrester, Traci L
Subject:	REQUEST FOR PRESIDENTIAL EXEMPTION "National Emission Standards for Hazardous Air Pollutants: Integrated Iron and Steel Manufacturing Facilities Technology Review" (89 FR 23294; April 3, 2024) on Behalf of Cleveland-Cliffs Inc.
Date:	Monday, March 31, 2025 4:08:21 PM
Attachments:	Presidential Exemption Req IIS MACT (03-31-2025 FINAL) w TLF signature.pdf Exh A.pdf Exh B.pdf Exh C.pdf

Caution: This email originated from outside EPA, please exercise additional caution when deciding whether to open attachments or click on provided links.

Dear Administrator, Hon. Lee M. Zeldin:

On behalf of Cleveland-Cliffs Inc., Please see attached request for **presidential exemption from "National Emission Standards for Hazardous Air Pollutants: Integrated Iron and Steel Manufacturing Facilities Technology Review" (89 FR 23294; April 3, 2024) on Behalf of Cleveland-Cliffs Inc. Integrated Iron and Steel Manufacturing Facilities**

We are requesting two-years presidential exemption in accordance with CAA § 112(i)(4) for Cliffs' facilities which includes Burns Harbor and Indiana Harbor East and West in Indiana, Cleveland Works and Middletown Works in Ohio, and Dearborn Works in Michigan.

Granting the extension will not result in any unacceptable risks to the public or the environment because EPA has determined that the source category presents an acceptable risk to human health with an ample margin of
safety with the present controls, requirements, and limits already in effect.

Also attached are three referenced documents (**Congressional letters**) to support the request for **Presidential exemption of steel manufacturers and related supply chains from:**

- National Emission Standards for Hazardous Air Pollutants: Integrated Iron and Steel Manufacturing Facilities Technology Review (89 FR 23294; April 3, 2024)
- National Emission Standards for Hazardous Air Pollutants: Lime Manufacturing Plants Technology Review, EPA Docket No. OAR-2017-0015, RIN 2060-AV59, 89 Fed. Reg. 57,738
- National Emission Standards for Hazardous Air Pollutants for Coke Ovens: Pushing, Quenching, and Battery Stacks, and Coke Oven Batteries; Residual Risk and Technology Review, and Periodic Technology Review (89 FR 55684; July 5, 2024) (Coke Ovens Rule)
- National Emission Standards for Hazardous Air Pollutants: Taconite Iron Ore Processing, EPA Docket No. OAR-, RIN, 89 Fed. Reg. 16408 (March 6, 2024)

If you have questions or need additional information, please contact Walter Tamukong at 216-694-4862 or at walter.tamukong@clevelandcliffs.com

Sincerely

Walter Tamukong



CLEVELAND-CLIFFS INC.
200 Public Square, 3300
Cleveland, OH 44114
P: (216) 694-5700 www.clevelandcliffs.com

This electronic message and any attachments included with this message are for the exclusive use of the individual or entity to which it is intended to be addressed. This message may contain information that is privileged or confidential and thereby exempt and protected from unauthorized disclosure under applicable law. If the reader of this message is not the intended recipient, or an employee or agent responsible for delivering the message to the intended recipient, be aware that any disclosure, dissemination, distribution or copying of this communication, or the use of its contents, is not authorized and is strictly prohibited. If you have received this communication and are not the intended recipient, please notify the sender immediately and permanently delete the original message from your e-mail system.

Message

From: [redacted]@epa.gov]
Sent: 6/18/2025 8:18:18 PM
To: Szabo, Aaron [Szabo.Aaron@epa.gov]
Subject: #5 Copper
Attachments: Copper.zip; Coppper_Summary.xlsx

Ex. 5 Deliberative Process (DP), Shieldon Industries. We have removed that from the list and did not include their letter.

From: Weaver, Todd
To: AirAction
Cc: Szabo, Aaron; Tardif, Abigale (Abbie); Traylor, Patrick
Subject: Clear Air Act Section 112 Presidential Exemption Request
Date: Monday, March 31, 2025 5:13:34 PM
Attachments: FMMI--Presidential Exemption Request (March 31 2025).pdf

Caution: This email originated from outside EPA, please exercise additional caution when deciding whether to open attachments or click on provided links.

Please find the attached request for a two year Presidential Exemption under Section 112(i)(4) of the Clean Air Act for Freeport McMoRan Miami Inc.

If you have any questions or need any additional information, please let us know.

Thank you,

Todd Weaver

Senior Counsel – Environmental
Freeport McMoRan Inc.
333 N. Central Ave.
Phoenix, AZ 85004
(602) 366 7818
tweaver1@fmi.com

From: James Stewart
To: AirAction; [redacted]
Cc: gtsiolis@rjrr.com; Manuel Hallivis Perez
Subject: ASARCO LLC's Response to March 24 Invitation to Request an Exemption under CAA Section 112(i)(4)
Date: Friday, March 28, 2025 6:37:13 PM

Caution: This email originated from outside EPA, please exercise additional caution when deciding whether to open attachments or click on provided links.

Dear [redacted],

I am sending this e-mail on behalf of ASARCO LLC (Asarco), in response to your March 24 invitation to the regulated community to submit requests for exemption from any of nine different NESHAPs pursuant to Clean Air Act § 112(i)(4).

As you may know, Asarco owns and operates one of the last three primary copper smelters in the United States. Asarco's smelter, in Hayden, Arizona, is presently inactive pending the completion of several federal regulatory proceedings that, depending on their outcomes, will determine whether it would be financially viable for Asarco to reactivate the smelter. In the ten years preceding the smelter's inactivation in 2019, the smelter produced 1.3 million metric tons of primary-refined copper, which was roughly 7% of the United States' domestic demand for refined copper during the same period.

Asarco's request for § 112(i)(4) exemption, further below, concerns four provisions of the new 40 C.F.R. Part 63, Subpart QQQ rules, which were finalized in the Federal Register on May 13, 2024, 89 Fed. Reg. 41648, and are hereinafter referred to as the Copper Rules.

Please note, the same four provisions of the Copper Rules are similarly addressed in a petition for administrative reconsideration of the rules that Asarco filed with EPA on July 12, 2024. Asarco's corresponding petition for judicial review of the Copper Rules, before the 9th Circuit Court of Appeals, is presently held in abeyance while EPA considers Asarco's petition for administrative reconsideration. Asarco believes it would be appropriate for the § 112(i)(4) exemption requested below to be granted during the pendency of EPA's final action on the petition for administrative reconsideration. Asarco also believes it would be appropriate for EPA's final action on the petition for administrative reconsideration ultimately to be consistent with the § 112(i)(4) exemption if the exemption is granted.

The four provisions of the Copper Rules that merit a § 112(i)(4) exemption are as follows:

1. The test methods specified at 40 C.F.R. § 63.1450(e) for determining compliance with the smelter roofline PM emissions-rate limit in 40 C.F.R. § 63.1444(h), on the grounds that:

a. Method 17, which is central to the test methods specified, cannot practicably or safely be employed at the smelter roofline vents, in conjunction with the

other test methods that are specified, to determine roofline PM emissions rates in pounds per hour.

b. Satisfying the requirement, at § 63.1450(e)(v), to "waive" isokinetic calculations will inevitably cause the roofline PM emissions rates that are calculated using the methods specified to be unrepresentative of actual PM emissions rates at the roofline.

2. The PM emissions-rate limit in 40 C.F.R. § 63.1444(h), on the grounds that, absent a test method that can practicably and safely be implemented or result in calculated PM emissions rates that are representative of actual PM emissions rate at the roofline, a roofline PM emissions-rate limit, such as that specified in § 63.1444(h), should not be imposed. Rather, the comprehensive design and work practice standards that are separately imposed in the Copper Rules specifically to control process-fugitive PM emissions should constitute the extent of the Copper Rules' provisions that are geared to limit PM emissions at the roofline.

3. The test methods specified at 40 C.F.R. § 63.1450(g) for determining compliance with the smelter roofline Pb emissions-rate limit in 40 C.F.R. § 63.1444(p)(1), on the grounds that:

a. Method 17, which is central to the test methods specified, cannot practicably or safely be employed at the smelter roofline vents, in conjunction with the other test methods that are specified, to determine roofline Pb emissions rates in pounds per hour; and,

b. Satisfying the requirement, at § 63.1450(e)(v), to "waive" isokinetic calculations will inevitably cause the roofline Pb emissions rates that are calculated using the methods specified to be unrepresentative of actual Pb emissions rates at the roofline.

4. The Pb emissions-rate limit in 40 C.F.R. § 63.1444(p)(1), on the grounds that, absent a test method that can practicably and safely be implemented or result in calculated Pb emissions rates that are representative of actual Pb emissions rate at the roofline, a roofline Pb emissions-rate limit, such as that specified in § 63.1444(p)(1), should not be imposed. Rather, the comprehensive design and work practice standards that are separately imposed in the Copper Rules specifically to control process-fugitive Pb emissions should constitute the extent of the Copper Rules' provisions that are geared to limit Pb emissions at the roofline.

Asarco's concerns regarding the Copper Rules' imposition of Method 17 and "waiver" of isokinetic calculations, in 40 C.F.R. §§ 63.1450(e) and § 63.1450(g), are amplified as follows:

A. It is basically impossible to accomplish Method 17 sampling across and within the large vent-openings of the smelter building. Those vent-openings are situated along the roofline of the smelter building in conditions of extreme heat that arise from the smelting, converting and anode-refining operations below—which are further

exacerbated during the hot Arizona summers. The temperatures at the roofline often exceed 150 degrees Fahrenheit. We are justifiably reluctant to require an Asarco employee or contractor to stand at the vent-openings and maneuver the sampling probe, across and within the vent-openings, in that environment, to the degree and for the duration needed to collect a robust set of samples according to the procedures specified in 40 C.F.R. §§ 63.1450(e) and § 63.1450(g).

B. The purpose of isokinetic sampling, which is a standard feature of Method 17, is amply stated in the administrative record, as to in-stack sampling to determine compliance with process stack emissions. That purpose is to ensure a representative collection by drawing the sample from the stack at the same velocity as the gas stream, which is crucial for accurate emissions measurements and demonstrations of compliance with numeric emissions limits. The Copper Rules' "waiver" of isokinetic calculations, at 40 C.F.R. §§ 63.1450(e)(1)(v) and 63.1450(g)(1)(v), reflects EPA's recognition that such sampling cannot occur across and within the large vent-openings of the smelter roofline, given the "low flow rates and high variability" of flow. But the "waiver" leaves entirely unaddressed the problem that sampling and calculations that are not isokinetic are incapable of yielding accurate emissions measurements for purposes of demonstrating compliance with numeric emissions limits. Without the "isokinetic" requirement, there would be no assurance that the velocity of flow entering the sampling probe's nozzle is representative of actual flow, making the corresponding calculations of the emission rates in pounds per hour meaningless for purposes of demonstrating compliance with the PM and Pb emissions-rate limits specified in 40 C.F.R. §§ 63.1444(h) and 63.1444(p)(1).

Based on the information provided above, Asarco recommends that owners and operators of primary copper smelters be exempted, under Clean Air Act § 112(i)(4), from having to comply with 40 C.F.R. §§ 63.1444(h), 63.1450(e), 63.1444(p)(1), and 63.1450(g).

Thank you for the opportunity to provide this information.

Please do not hesitate to let me know if you have any questions regarding the information; or would like to convene a virtual meeting to discuss the information further—including, perhaps, Freeport McMoRan, which operates the primary copper smelter in Miami, Arizona.

Sincerely,

James M. Stewart
Director of Environmental, Governmental and Community Affairs
ASARCO LLC

From: [redacted]@epa.gov>
Sent: Monday, March 24, 2025 2:35 PM
Subject: Presidential Exemption under CAA Section 112(i)(4)

Hello --

EPA wanted to share with you information about submitting a request for an exemption from nine different NESHAPS using Clean Air Act section 112 (i)(4). Requests can be emailed to airaction@epa.gov by March 31, 2025. The link below provides more information:

https://www.epa.gov/stationary-sources-air-pollution/clean-air-act-section-112-presidential-exemption-information

[redacted], Senior Advisor
Office of Air Quality Planning and Standards
U.S. Environmental Protection Agency
109 T.W. Alexander Drive
Research Triangle Park, NC 27711
[redacted]
[redacted]@epa.gov

CLIFFS

CLEVELAND-CLIFFS INC.

September 30, 2025

The Honorable Donald J. Trump
President of the United States
The White House
1600 Pennsylvania Avenue, NW
Washington, DC 20500

Re: Supplement to Request by Cleveland-Cliffs Inc. (Cleveland-Cliffs) for Presidential Exemptions Pursuant to Section 112(i)(4) of the Clean Air Act

Dear President Trump:

Due to important recent developments, Cleveland-Cliffs is submitting this supplement to its two pending requests for a two-year Presidential Exemption pursuant to section 112(i)(4) of the Clean Air Act.

On March 31, 2025, Cleveland-Cliffs submitted requests for Presidential Exemptions under 42 U.S.C. §7412(i)(4) for the following rules and facilities:

Rule	Facilities
2024 Coke Ovens Rule[1]	Cleveland-Cliffs Burns Harbor LLC Cleveland-Cliffs Cleveland Works LLC, Warren Location Cleveland-Cliffs Monessen Coke LLC
2024 Integrated Iron and Steel (II&S) Risk and Technology Rule[2]	Cleveland-Cliffs Burns Harbor LLC Cleveland-Cliffs Cleveland Works LLC Cleveland-Cliffs Steel Corp. Dearborn Works Cleveland-Cliffs Steel LLC-Indian Harbor East and West. Cleveland-Cliffs Holdings Corp. Middletown Works

A copy of each Presidential Exemption request is enclosed herein.

[1] National Emission Standards for Hazardous Air Pollutants for Coke Ovens: Pushing, Quenching, and Battery Stacks, and Coke Oven Batteries; Residual Risk and Technology Review, and Periodic Technology Review, 89 Fed. Reg. 55684 (July 5, 2024) (collectively, the "2024 Coke Ovens Rule").

[2] National Emission Standards for Hazardous Air Pollutants: Integrated Iron and Steel Manufacturing Facilities Technology Review, 89 Fed. Reg. 23,294 (April 3, 2024) (the "2024 II&S Rule").

ED_021114_00002884-00001

These requests detail the many reasons why a Presidential Exemption is justified because the technologies needed to implement the requirements of the 2024 Coke Ovens Rule and 2024 II&S Rule are not currently available and a two-year exemption advances U.S. national security interests by promoting a strong U.S. steelmaking industry; avoiding unnecessary and counterproductive government mandates that lead to coke, iron, and steel shortages; avoiding offshoring of coke, iron, and steel production; and promoting the economic and job growth made possible by the coke, iron and steel industries.

After these requests were submitted, EPA published interim final rules ("IFRs") extending 2025 and 2026 compliance deadlines for the 2024 Coke Ovens Rule and 2024 II&S Rule to new deadlines in 2027. *See* 90 Fed. Reg. 29,997 (July 8, 2025) ("Coke IFR"); 90 Fed. Reg. 29,485 (July 3, 2025) ("II&S IFR"). The purpose of the IFRs was to provide U.S. coke and integrated iron and steel producers additional time to take necessary steps to comply with the 2024 rules in light of EPA's conclusion that they contained numerous errors, ambiguities, and technically infeasible requirements that demonstrated that the 2025 and 2026 deadlines in the rules were not practicable and in some instances were impossible. In light of these findings, the IFRs extend 2025 and 2026 deadlines to 2027, which is the longest compliance period EPA can grant by statute for existing sources, absence of a Presidential Exemption. *See* 42 U.S.C. §7412(i)(3).

Recent developments in the litigation brought by several environmental organizations challenging the Coke IFR and II&S IFR makes granting these requests for Presidential Exemptions even more time sensitive. In the Coke IFR litigation, **EPA has stated that it intends to sign a final action withdrawing the Coke IFR by October 2, 2025**. The effect of withdrawing the Coke IFR is that the original compliance dates in the 2024 Coke Ovens Rule—one of which has already passed—will be restored. Without the issuance of a Presidential Exemption, U.S. coke producers, including Cleveland-Cliffs' facilities, face non-compliance with illegal, unnecessary, and infeasible requirements imposed by the previous administration. Unless relief is granted, our company and the entire coke making industry would be subject to infeasible requirements even though the technologies needed to comply are currently unavailable or not demonstrated to work in the coke byproduct recovery industry.

The requested two-year Presidential Exemption would allow additional time to develop and demonstrate new compliance technologies and needed time to retrofit facilities as needed for compliance with a revised Coke Ovens Rule, without losing coke production that is critical to the U.S. steel industry and national security.

Similar grounds support issuance of a Presidential Exemption now for the 2024 II&S Rule. Environmental organizations have challenged the II&S IFR, both before the Agency and before the D.C. Circuit. The II&S IFR itself remains under review at EPA, with a comment period open until October 3, and briefing of the environmental organizations' judicial challenge is complete, placing the issue directly before the D.C. Circuit. As a result, while EPA has defended the II&S IFR to date, industry has no assurance that EPA will preserve the II&S IFR after its announced withdrawal of the Coke IFR or that the D.C. Circuit will not act in a manner

that undermines or eliminates the vital protection the IFR provides. Because the status of the II&S IFR is at risk, a Presidential Exemption now is the only tool available to ensure that unsafe and impracticable requirements will not snap back into place with little or no notice.

Presidential Exemptions for the 2024 Coke Ovens Rule and 2024 II&S Rule are also needed even if the IFRs remain in place. The IFRs extend immediate deadlines in each rule to 2027, but they leave the substantive requirements in each rule. As the IFR's themselves reflect, the new deadlines are not to offer breathing room while EPA completes reconsideration of the 2024 rules. Rather, they are intended only to establish new deadlines that the agency considers to be "as expeditiously as practicable." 42 U.S.C. §7412(i)(3)(A). The 2024 Coke Ovens Rule and 2024 II&S Rule require substantial new developments in technology, including research, engineering, permitting, construction, installation, and shakedown, that cannot be implemented in less than three years and in many cases will require substantially longer, if they can be achieved at all. Industry has urged the withdrawal of these illegal and impracticable and in some instances unsafe—standards, and industry fully supports EPA's revision of these requirements through reconsideration, but while the 2024 rules are in place, they are causing ongoing harm even with 2027 compliance deadlines.

For example, on July 17, 2025, you granted much-needed relief for the U.S. taconite industry in the form of a Presidential Exemption because a 2024 rulemaking (the "Taconite Rule") placed "significant burdens on a sector critical to the Nation's industrial foundation" by mandating "compliance with standards that rely on emissions-control technologies that have not been demonstrated to work in the taconite industry, are untested at commercial scale, or are not reasonably achievable under current operational conditions."[3] As you appropriately found, if "enforced under the current timeline as set forth at 89 FR 16408, the Taconite Rule risks forcing shutdowns, reducing domestic production, and undermining the Nation's ability to supply steel for defense, energy, and critical manufacturing. The United States must not allow inflexible regulatory deadlines to jeopardize a material critical to our industrial base. Maintaining this capacity is essential to our national security and economic resilience."[4] These very same considerations support Presidential Exemptions for the coke and integrated iron and steel industries, which are also vital to maintaining the nation's ability to supply steel for defense, energy, and critical manufacturing.

Cleveland-Cliffs respects that EPA is working diligently to establish sensible and scientifically sounds regulations, but this process also takes time. The damage caused by the 2024 Coke Ovens Rule and 2024 II&S Rule is ongoing and, absent a Presidential Exemption, unavoidable. The harm will be exponentially worsened if the IFRs are withdrawn or vacated on short notice. For the 2024 Coke Ovens Rule, that result is imminent considering EPA's own statements. For the 2024 II&S Rule, it is a risk the industry must be prepared to address. **A timely Presidential Exemption covering both the 2024 Coke Ovens Rule and the 2024 II&S**

[3] https://www.whitehouse.gov/presidential-actions/2025/07/regulatory-relief-for-certain-stationary-sources-to-promote-american-iron-ore-processing-security/
[4] *Id.*

Rule will therefore save the coke and integrated iron and steel industries from significant confusion, wasted resources, and likely protracted litigation. This is of particular importance at a time when the Country is reasserting the dominance of its domestic manufacturing capabilities, shoring up its national security infrastructure, and needs a robust and dependable domestic supply of coke, iron, and steel for these purposes.

For the reasons set forth in the applications submitted previously, and enclosed with this letter, Cleveland-Cliffs respectfully urges your attention to this vital matter and requests that you provide the relief needed to protect U.S. national and economic security interests through the issuance of Presidential Exemptions for the above rules and facilities.

Thank you for considering this important and time sensitive request. Please contact me at Terry.Fedor@clevelandcliffs.com if any additional information is needed regarding this request.

Respectfully submitted,

Terry G. Fedor
Executive Vice President Engineering & Technology
Cleveland-Cliffs Inc.

Cc (by email):
Mr. Jarrod Agen, Executive Director, National Energy Dominance Council
Mr. Blake Deeley, Deputy Director, National Energy Dominance Council
Mr. John Reiten, National Energy Dominance Council, Executive Assistant to the President
Mr. Wells King, White House Domestic Policy Council, Executive Assistant to the President

CLEVELAND-CLIFFS INC.

March 31, 2025

U.S. Environmental Protection Agency
1200 Pennsylvania Ave., NW
Washington, DC 20460
Submitted by Electronic Mail to: airactions@epa.gov

Re: Presidential Exemption: National Emission Standards for Hazardous Air Pollutants for Coke Ovens: Pushing, Quenching, and Battery Stacks, and Coke Oven Batteries; Residual Risk and Technology Review, and Periodic Technology Review (89 FR 55684; July 5, 2024) (Coke Ovens Rule)

Cleveland-Cliffs Inc. hereby requests a Presidential Exemption under Clean Air Act (CAA) section 112(i)(4) for Cleveland-Cliffs Burns Harbor LLC; Cleveland-Cliffs Cleveland Works LLC, Warren Location; and Cleveland-Cliffs Monessen Coke LLC (collectively "Cleveland-Cliffs") from compliance with the standards and limitations in the National Emission Standards for Hazardous Air Pollutants for Coke Ovens: Pushing, Quenching, and Battery Stacks, and Coke Oven Batteries; Residual Risk and Technology Review, and Periodic Technology Review, 89 Fed. Reg. 55684 (July 5, 2024) (collectively, the "Coke Ovens Rule").

Cleveland-Cliffs operates three coke oven plants that feed our five integrated steel mills across Indiana, Michigan, and Ohio. We also purchase coke from merchant suppliers including Sun Coke and ESS Coke. Cliffs invested $1 billion to build a facility to produce Hot Briquetted Iron (HBI), consumption of which in our furnaces has reduced coke consumption. However, Cliffs' ironmaking operations must still rely on coke as a key raw material to meet critical production needs.

On July 5, 2024, EPA promulgated the final Coke Ovens Rules, which establishes:

1) New maximum achievable control technology (MACT) standards for acid gases (AG), dioxin and furans (D/F), formaldehyde, hydrogen cyanide (HCN), mercury (Hg), polycyclic aromatic hydrocarbons (PAH), and volatile organic HAP (VOHAP) from coke oven pushing operations;

2) MACT and work practice standards for AG, D/F, HCN, Hg, PAH, particulate matter (PM), HAP metals, and VOHAP from coke oven battery stacks;

3) New facility fenceline emission monitoring and corrective action requirements; and

ED_021114_00002885-00001

4) Lowered limits for leaks from coke oven doors, lids, and offtakes.

The American Coke and Coal Chemicals Institute (ACCCI) and Coke Oven Environmental Task Force (COETF), in which Cleveland-Cliffs participates, filed a petition for reconsideration and administrative stay of the Coke Ovens Rule, urging EPA to reconsider numerous aspects of the Coke Ovens Rule and to stay the effective date pending promulgation of replacement regulations.[1] On March 12, 2025, EPA announced it will reconsider several National Emission Standards for Hazardous Air Pollutants (NESHAPs) affecting a broad range of American industry, including the Coke Ovens Rule. On March 21, 2025, EPA informed the COETF that it will reconsider all the issues included in our petition for reconsideration for the Coke Ovens Rule.

CAA section 112(i)(4) provides that the President may exempt any stationary source from compliance with any standard or limitation under section 112 for up to two years if the President determines that the technology to implement such standard is not available and it is in the national security interests of the United States to do so. Section 112(i)(4) further provides that an exemption may be extended one or more additional periods, each additional period not to exceed two years.

Cleveland-Cliffs is requesting a two-year Presidential Exemption for each of the following Coke Ovens Rule requirements:

1) Fenceline monitoring, root cause and corrective action, and related reporting requirements;

2) Limits for allowable leaks from coke oven battery doors, lids, and offtakes and related reporting requirements; and

3) New MACT and work practice standards for coke oven pushing and battery stacks and related testing and reporting requirements.

A Presidential Exemption is warranted for the reasons detailed below.

I. This Request is Timely

This request has been submitted by the March 31, 2025 date indicated in EPA's Clean Air Act Section 112 Presidential Exemption Information fact sheet.

[1] The ACCCI/COETF's comments on the proposed rule and petition for reconsideration and stay are hereby incorporated by reference in support of this request. *See* ACCCI/COETF Petition for Reconsideration and Stay of the National Emission Standards for Hazardous Air Pollutants for Coke Ovens: Pushing, Quenching, and Battery Stacks, and Coke Oven Batteries; Residual Risk and Technology Review, and Periodic Technology Review (Sept. 3, 2024) ("ACCCI/COETF Petition for Reconsideration and Stay"); COETF Comments on the Proposed Rule National Emission Standards for Hazardous Air Pollutants for Coke Ovens: Pushing, Quenching, and Battery Stacks, and Coke Oven Batteries; Residual Risk and Technology Review, and Periodic Technology Review (Oct. 2, 2023) ("COETF Comments"), available at https://www.regulations.gov/comment/EPA-HQ-OAR-2003-0051-1380.

II. The Technology Needed to Implement the Coke Ovens Rule is Not Available

A. Fenceline Monitoring Requirements

For the reasons set forth in the ACCCI/COETF petition for reconsideration, the fenceline monitoring benzene action level in the Coke Ovens Rule is overly stringent and is not based on modeling showing the correct highest benzene concentration at the facility fenceline using allowable (vs. actual) emissions. As a result, new and currently unavailable emission controls and leak detection/repair technology would be necessary to comply with the unlawful action level. Due to the complex nature of coke facilities, developing new control strategies and technologies would involve engineering suitable capture and control systems at multiple locations. The technologies needed to identify and engineer controls suitable for each location are not currently demonstrated or available for the coke ovens or associated coke byproducts recovery systems.

Likewise, the "root cause" investigation and corrective action requirements add significant complexity and technology challenges, considering the many miles of piping and thousands of valves and flanges at a coke facility. Methods to further reduce benzene emissions are not currently demonstrated for coke facilities and would include redesign or modification of process vessels, tar decanters, gas blanketing and vapor collection systems, replacing sections of coke oven gas piping, and redesign of tar and light oil loadout systems to reduce fugitive emissions and/or leak rates.

B. Revised Standards for Coke Oven Battery Doors, Lids, and Offtakes

The Coke Ovens Rule lowers the long-standing allowable leak limits for coke battery doors, lids, and offtakes including for the first time more stringent leak rate allowables on a single coke facility based on annual coke production. However, industry commenters informed EPA that there have been no changes or improvements in leak control technology or practices across the industry, which means facilities cannot consistently achieve the lower leak rate limits without developing novel new leak control methods or technologies for both coke ovens and associated coke byproduct operations.

For coke oven doors, this requires a technical evaluation to identify new ways to reduce the number of already very low door leaks in order to comply with the new Coke Ovens Rule limits. This may include replacing door machines, rebuilding or replacing oven doors, and redesigning door-jamb cleaning mechanisms, or other currently unidentified means to control leaks around coke oven doors. For coke battery lids and offtakes, this requires research and trials on new ways to reduce leaks to comply with the revised limits. Control methods could include redesigning or replacing lids or developing different sealing materials.

None of the technologies needed to comply with these new standards are currently available or demonstrated in the coke byproduct recovery industry.

C. New MACT and Work Practice Standards for Coke Oven Pushing and Battery Stacks

The Coke Ovens Rule imposes numerous new MACT and work practice standards covering multiple hazardous air pollutants (HAP), which EPA claimed are in response to the D.C. Circuit decision in *Louisiana Environmental Action Network v. EPA* (*LEAN*), 955 F.3d 1088 (D.C. Cir. 2020). However, the technologies that would be needed to control these HAP are not available and have not been demonstrated to work for the coke byproduct recovery industry, either in the US or internationally.

The very short 18-month compliance period (i.e., January 5, 2026) in the Coke Ovens Rule is one-half the time allowed under the Clean Air Act and was based on EPA's incorrect and unsupported assumption that facilities would only need to do testing to confirm EPA's assumption that all coke facilities *can meet* the new MACT limits. EPA failed to address specific concerns and data submitted by commenters showing that facilities *cannot meet* the new standards without costly and undemonstrated control technologies. EPA also did not address data submitted by commenters showing raw material (i.e., coal) and process variability that affect emission performance, which make these limits unachievable without developing and installing novel emission control technology that is not commercially available.

As provided in numerous technical reports and declarations,[2] emission control technologies to achieve compliance with the PQBS emission limitations and coke oven leak rates and benzene action levels are not commercially available.[3] Even assuming that facilities are ultimately able to research and develop the new technologies needed to implement these new MACT standards, facilities need much longer than the 18-month compliance period under the Coke Ovens Rule. A Presidential Exemption is warranted for several reasons:

- The technologies used in some other industries to control these HAP have not been demonstrated to work in the coke byproduct recovery industry. Controlling multiple pollutants and retrofitting controls into existing equipment and operations adds technical and engineering complexity due to process interactions of the requirements for control, including pollutant interactions, flow rates, chemistry, and temperatures.

- The Coke Ovens Rule includes first-time emission limits for hydrogen cyanide (HCN); however, it is widely acknowledged that there are no existing technologies available to control HCN. Air pollution control vendors indicate that any potential solution for control of HCN is not technically feasible for coke battery combustion stack or pushing emissions.[4]

- The coke battery underfiring system is naturally drafted, with the underfire gas stream predominantly located underground. Added equipment such as heat exchangers, sorbent injection systems, etc., result in static pressure loss, necessitating installation of an induced draft fan. The impacts of added fans and equipment need to be studied to ensure adequate

[2] *See* ACCCI/COETF Petition for Reconsideration and Stay (Sept. 3, 2024); COETF Comments (Oct. 2, 2023); COETF Motion for Stay, filed Sept. 30, 2024, in *Am. Coke and Coal Chemicals Inst. and Coke Oven Env't Task Force v. U.S. EPA*, Case No. 24-1287 (D.C. Cir.) ("COETF Motion for Stay"); COETF Reply, filed November 5, 2024, in *Am. Coke and Coal Chemicals Inst. and Coke Oven Env't Task Force v. U.S. EPA*, Case No. 24-1287 (D.C. Cir.) ("COETF Reply") and associated exhibits/attachments.
[3] *Id.*
[4] *Id.*

ED_021114_00002885-00004

heating of the batteries have never been implemented for a by-product battery. Furthermore, enough physical space to install potential additional new equipment may not be feasible. This poses obstacles and engineering challenges for any new add-on equipment, which could include construction of a new battery combustion stack.[5]

- Changes to the underfiring system requires coke battery outages, during which purchased natural gas is needed to keep the battery hot. All coke production would cease; and battery refractory brick and other equipment could suffer unanticipated damage, which takes more time and expense to correct.

- Limited available physical space within coke oven battery areas requires vertical construction, adding complexity and time to all related construction, and may be infeasible altogether.

- Retrofitting additional controls on mobile pushing emission control devices involves unique engineering challenges compared to non-mobile sources, this type of retrofit is not commercially available.

III. An Exemption is in the National Security Interests of the United States

The impact of the Coke Rule is far-reaching and undermines U.S. national security interests given that metallurgical coke is an essential raw material input for the integrated iron and steel industry, which is an industry critical to national security interests of the U.S. The Coke Ovens Rule will have far-reaching consequences, given that the American iron and steel industry is the backbone of the nation's defense and transportation industries and is critical to national security. Steel is one of the most important building materials in America and an essential component for all types of buildings, transportation infrastructure, and military hardware. Currently, approximately 70% of steel produced globally is made using metallurgical coke, a high-quality fuel and reductant used in blast furnaces to separate iron from iron ore to make steel.[6] A strong, competitive coke and steel manufacturing industry is vital to building and maintaining critical infrastructure and military readiness.

The U.S. Department of Commerce recognized that domestic steel production is essential for national security applications which it indicated encompasses transportation systems, the electric power grid, water systems, and energy generation systems in its report summarizing the findings of an investigation conducted by the Department of Commerce pursuant to Section 232 of the Trade Expansion Act of 1962, as amended (19 U.S.C. § 1862 ("Section 232")), into the effect of imports of steel mill products ("steel") on the national security of the United States.[7] In a 2021 Congressional Research Service Report on U.S. Steel Manufacturing: National Security

[5] *Id.*

[6] See R. Nolan, *Build Back Better with America's Met Mines* (May 20, 2021) https://mma.org/2021/05/20/met-coal-steel-infrastructure

[7] See U.S. Department of Commerce Bureau of Industry and Security Office of Technology Evaluation, *The Effect of Imports of Steel on the National Security Report, Report by the January 11, 2018*, https://www.commerce.gov/sites/default/files/the_effect_of_imports_of_steel_on_the_national_security_-_with_redactions_-_publication.pdf

and Tariffs, it was noted that under the Defense Production Act, 50 U.S.C. §4533, "Congress provides the President with a broad set of authorities …, including Title III, which authorizes the use of economic incentives to secure domestic industrial capabilities essential to meet national defense and homeland security needs. DOD has funded several Title III projects to increase domestic production of steel products," including a $56 million agreement in 2020 to boost steel plate production signed by the predecessor owner of a Cliffs' facility.[8]

A Presidential Exemption would advance all of the following national security interests while EPA goes about reconsidering and revising the Coke Ovens Rule: (1) maintaining a strong domestic steelmaking industry; (2) avoiding regulatory mandates that lead to coke and steel shortages, offshoring of coke production, and resulting supply chain impacts; (3) promoting economic and job growth made possible by the coke and steel industries; and (4) avoiding wasteful commitments of resources on regulatory mandates that provide no discernable public health or environmental benefit.

Without a Presidential Exemption, the coke production industry would be faced with an estimated $1.3 billion in new capital costs, plus more than $220 million in annual operating costs. Coke facilities would be forced to install new, unproven pollution control technologies in an effort to comply with the new standards, even though compliance may not be feasible using available technology. The cost associated with the Coke Ovens Rule would substantially impact local and national economies and would undermine the coke and steel sectors' vital role in producing the iron and steel needed to support critical infrastructure, defense, and national security.

The importance of avoiding these harms to the coke and steel industry is emphasized in a December 6, 2023 letter from eight current and former U.S. Senators — including then-Senator JD Vance — to EPA warning that the Coke Ovens Rule and two other rules aimed at the steel sectors "… would dramatically undermine the domestic steel industry and national security while driving production overseas likely resulting in no net reduction in emissions from the steel industry globally."[9] Likewise, in a June 14, 2024 letter six current and former U.S. Senators — again including then-Senator Vance — urged EPA to reconsider the Coke Ovens Rule and two other rules aimed at the steel industry, warning that "… the steel industry will be forced to proceed with planning and spending for unproven technologies and work practices while the final provisions of the rules remain uncertain. Given that these regulations will impact nearly every aspect of the integrated iron and steelmaking process, it is imperative that EPA grant both the petitions for reconsideration and requests for stay of the rules."[10] Similar concerns were raised in a letter to EPA from Congress Members Crawford and Mrvan of the Congressional Steel Caucus.[11]

[8] Congressional Research Service Report, U.S. Steel Manufacturing: National Security and Tariffs (August 12, 2021), https://www.congress.gov/crs-product/IF11838.
[9] Letter from U.S. Senators Vance, Brown, Braun, Manchin, Casey, Klobuchar, Capito, and Young to Administrator Regan, p. 1 (Dec. 6, 2023).
[10] Letter from U.S. Senators Vance, Brown, Braun, Casey, Klobuchar, and Young to Administrator Regan, p. 2 (June 14, 2024).
[11] Letter from Congressmen Crawford and Mrvan to Administrator Regan, p. 1 (Dec. 18, 2023).

ED_021114_00002885-00006

The threat of global steel imports raised by the Senators in the letters to EPA is a material threat. Foreign steel imports risk the competitiveness and advancement of the domestic steel industry, to the point of potentially threatening U.S. domestic production capacity and continued investment in taconite iron mining, coke manufacturing, and iron and steelmaking capacity based on the costs outlined above. As emphasized by the U.S. Department of the Treasury's Committee on Foreign Investment in the United States ("CFIUS"), without such domestic steelmaking investment, there could be ripple effects on the supply chains that depend on such steel, particularly supply chains that are part of our national defense infrastructure such as "critical manufacturing, energy, transportation, and communications (all vital to national security)."[12] National defense infrastructure, for example, needs ready access to high purity steel from blast furnaces.[13] Once these complex iron and steel making operations are shut down and/or idled, it is no simple matter to restart them. In short: "The loss of domestic production is a critical national security concern given the ubiquitous nature of steel throughout multiple critical industries."[14]

IV. Conclusion

For all the reasons stated above, Cliffs urges the issuance of a 2-year exemption from the compliance deadlines in the Coke Ovens Rule, pending EPA's review of the rule.

Thank you for your consideration of this Presidential Exemption request. If additional information is needed, please contact Walter Tamukong at walter.tamukong@clevelandcliffs.com or 216-649-4862.

Sincerely,



Traci L. Forrester
Executive Vice President, Environmental & Sustainability
Cleveland-Cliffs Inc.

cc: [redacted], EPA OAQPS @ [redacted]
[redacted], EPA OAQPS @ [redacted]
M. Long, Cleveland-Cliffs Inc

[12] Letter from Andrew Fair, Acting Assistant Secretary for Investment Security, U.S. Department of the Treasury, to Ama Adams, Ropes & Gray LLP, and Mark Plotkin, Covington & Burling LLP, Re: CFIUS Case 24-154 (Dec. 14, 2024) ("CFIUS Letter"), p. 28.
[13] *See id.* at p. 24.
[14] *Id.* at p. 28.

ED_021114_00002885-00007

CLIFFS

CLEVELAND-CLIFFS INC

March 31, 2025

U.S. Environmental Protection Agency
1200 Pennsylvania Ave., NW
Washington, DC 20460
Submitted by Electronic Mail to: airaction@epa.gov

RE: REQUEST FOR PRESIDENTIAL EXEMPTION from "National Emission Standards for Hazardous Air Pollutants: Integrated Iron and Steel Manufacturing Facilities Technology Review" (89 FR 23294; April 3, 2024) on Behalf of Cleveland-Cliffs Inc. Integrated Iron and Steel Manufacturing Facilities[1]

Pursuant to Section 112(i)(4) of the Clean Air Act ("CAA"), Cleveland-Cliffs Inc. ("Cliffs") hereby requests that the President issue a two-year exemption from the compliance deadlines for emission limits and work practice standards promulgated in the final rule *"National Emission Standards for Hazardous Air Pollutants: Integrated Iron and Steel Manufacturing Facilities Technology Review"* (the "II&S Rule"), published in the *Federal Register* at 89 Fed. Reg. 23,294 (April 3, 2024). This request encompasses extending the compliance dates by two years for each of Cliffs' integrated iron and steel manufacturing ("II&S") plants subject to the rule, pending EPA's reconsideration of the II&S Rule. Cliffs and the American Iron & Steel Institute ("AISI") submitted several rounds of extensive comments and scientific data and analysis on the II&S Rule.

Cliffs is a leading North America-based steel producer and owns five of the eight II&S facilities in the United States (the other three are operated by a separate steel company, which will submit a separate request). Cliffs' facilities include Burns Harbor and Indiana Harbor East and West in Indiana, Cleveland Works and Middletown Works in Ohio, and Dearborn Works in Michigan.

This request explains why an exemption is appropriate for Cliffs' sources impacted by the II&S Rule, because, as specified in section CAA §112(i)(4), the technologies to implement the standards are not available and an exemption is in the national security interests of the United States.

[1] Cleveland-Cliffs Inc. Facilities: Cleveland-Cliffs Burns Harbor Inc.; Cleveland-Cliffs Cleveland Works LLC; Cleveland-Cliffs Steel Corp. Dearborn Works; Cleveland-Cliffs Steel LLC-Indian Harbor East and West; Cleveland-Cliffs Holdings Corp. Middletown Works.

A. BACKGROUND

EPA first promulgated the NESHAPs for the II&S industry pursuant to CAA §112(d) on May 20, 2003, 68 Fed. Reg. 27,646, establishing emissions limitations for HAPs emitted from new and existing sinter/recycling plants, blast furnaces ("BFs"), and basic oxygen process furnace ("BOPF") shops. This rulemaking required all sources to meet HAP emission standards through application of maximum achievable control technology ("MACT"). It included particulate matter emissions limitations and opacity limits for capture systems and control devices. EPA found that "[p]articulate matter and opacity serve as surrogate measures of HAP emissions."[2]

In 2020, the Trump EPA issued a final rule for the II&S source category to fulfill its obligations under CAA sections 112(d)(6) and (f)(2), known as the "risk and technology review" ("RTR"). The 2020 II&S RTR Rule concluded that the original 2003 II&S Rule addressed the risk from hazardous air pollutants with an adequate margin of safety to public health, and that there were no new technologies that justified revisions to the 2003 MACT standards under CAA §112(d)(6).[3]

On April 3, 2024, the Biden EPA promulgated the II&S Rule, revising the Trump EPA's 2020 RTR rulemaking for the II&S source category. The Agency maintains in the 2024 II&S Rule that the residual risk to human health and environment from the II&S source category continues to be acceptable within an ample margin of safety, based on its analysis in the 2020 RTR.[4]

As to the technology review under CAA section 112(d)(6), however, the 2024 II&S Rule establishes new hazardous air pollutant ("HAP") emissions limits at Sinter/Recycling plants (polycyclic aromatic hydrocarbon, carbonyl sulfide, mercury, hydrochloric acid, dioxin/furan toxicity equivalence), BOPFs (total hydrocarbons, hydrochloric acid, dioxin/furan toxicity equivalence), BF stoves (total hydrocarbon, hydrochloric acid), and BF casthouses (total hydrocarbon, hydrochloric acid); and new standards, in the form of opacity limits, operating limits, and work practice standards, for five Unmeasurable Fugitive Intermittent Particulate ("UFIP") sources (unplanned bleeder valve openings; planned bleeder valve openings; small and large bell leaks; iron beaching; and slag processing, handling and storage operations) based on the flawed conclusion that no new technology is required to meet these standards.

EPA justified the slew of new HAP emissions limitations and UFIP source standards based purportedly on a new technology review. Relying on an aggressive interpretation of the D.C. Circuit's decision in *Louisiana Environmental Action Network v. EPA* ("*LEAN*"), 955 F.3d 1088 (D.C. Cir. 2020), the Biden EPA unlawfully and erroneously established new emission limits and work practice standards without consideration of the underlying CAA §112(d) obligation to only "revise as necessary (taking into account developments in practices, processes, and control technologies)." The record does not support the Biden EPA's new technology review and resulting II&S Rule standards. As the Trump EPA had properly concluded in 2020, there is no demonstrated technically feasible or economically reasonable technology that II&S facilities can use to meet the

[2] *Id.* at 27,467.
[3] 85 Fed. Reg. 42,074, 42,074 (July 13, 2020).
[4] *Id.* at 23,312.

new standards in the II&S Rule. Instead, the Biden EPA reached an unsupported conclusion that no new technologies would be necessary to comply with the new standards. This conclusion ignores the plethora of data in the record demonstrating that the standards are unachievable by even the best performing sources, in contravention of the CAA. The II&S Rule require the development and implementation of unproven control equipment that has never been applied in the II&S industry domestically or internationally.

Cliffs filed a petition for judicial review of the final II&S Rule in the D.C. Circuit and a petition for administrative reconsideration and stay of the rule with EPA. A request for judicial stay of the II&S Rule was denied on October 24, 2024, by the D.C. Circuit Court of Appeals after being opposed by the Biden EPA. EPA sent a letter on August 14, 2024, which was supplemented by a letter on March 5, 2025, to those including Cliffs who had submitted administrative petitions for reconsideration on the II&S Rule, announcing its intent to reconsider the Rule. On March 7, 2025, the Trump EPA moved to hold the II&S appeals in abeyance for at least 120 days pending its reconsideration. On March 12, 2025, the EPA Administrator also announced the Agency's intention broadly to reconsider a group of rules establishing or modifying various National Emission Standards for Hazardous Air Pollutants ("NESHAP") including the II&S Rule. On March 31, 2025, EPA issued a temporary stay of the II&S Rule pursuant to section 307(d)(7)(B) of the CAA requirements for 90 days. Cliffs strongly supports EPA's plan to reconsider the II&S Rule for the numerous legal and technical reasons previously raised in industry comments during the notice and comment period preceding the II&S Rule, in Cliffs' lawsuit, and in Cliffs' petition for reconsideration.

EPA further indicated that the President was considering issuing exemptions from compliance dates under CAA §112(i)(4) where appropriate, and that affected sources should provide requests for such exemptions to EPA by March 31, 2025. Cliffs is timely submitting such request herein.

B. NO TECHNICALY FEASIBLE OR COST-EFFECTIVE TECHNOLOGY IS AVAILABLE TO IMPLEMENT THE 2024 II&S RULE

No technically feasible or cost-effective technology is available, or could be available, to implement the standards established in the 2024 II&S Rule. The rule places emission limitations on (1) HAPs and (2) opacity limitations and work practice standards on UFIP sources. These limitations and work practice standards are not feasible to meet due to a lack of technology and flawed implementation of the rulemaking that shows a lack of understanding of the sources in question. Cliffs provided detailed comments explaining why EPA should decline to set new standards, or in the alternative, should set standards that were reasonable, less costly and more likely achievable by the industry. Nevertheless, the Biden EPA promulgated the final II&S Rule imposing onerous, unreasonable and extremely costly standards.

1. Technology to Implement the Hazardous Air Pollutant Emission Standards is Not Feasible

Cliffs has provided numerous technical reports and declarations[5] evidencing that new HAP limitations in the II&S Rule for the Cliffs' facilities listed above are unachievable and require development and installation of unproven control technologies and/or retrofitting that have never been installed domestically or internationally for these sources because the technologies are not available and have not been demonstrated in practice. The II&S Rule fails to consider that not only is this untested technology, but that the facilities also require time for development, trialing, design, procurement, fabrication, and testing to ensure the technology could even achieve its intended purpose. As one industry engineering expert notes: "Typical capital project delivery steps for a major emission control project of this scale typically require 2 – 3 years to implement. The research and development required to conceive of, test and validate a novel solution which does not exist today could easily add another 2-3 years to this typical implementation timeline, provided that a solution is identified."[6]

The affected sources and specific issues with the feasibility of HAP emission limit control technologies are summarized as follows:[7]

- **BOPFs:** Together, the five Cliffs' facilities have fifteen (15) BOPF furnaces, and there is no existing emission control system that can be added to a BOPF furnace that is known to address dioxin/furan, total hydrocarbons, or hydrogen chloride to meet the limits provided in the 2024 II&S Rule. Addressing HAPs for BOPF furnaces will require significant retrofit upgrades to the current systems, the extent of which will depend on whether there is dry electrostatic precipitator or wet scrubber technology already in place. These system upgrades are expected to be particularly challenging, given they will likely need to incorporate (or in the case of wet scrubbers, completely replace with) novel treatment technology such as a recirculating baghouse system with injected lime and/or carbon, which are not commercially available.

- **BF Casthouses:** Together, the five Cliffs' facilities have seven (7) BF casthouses, and there is no existing add-on emission control that is proven to meet the HAP limitations for hydrogen chloride or total hydrocarbons. Moving forward with the limits in the rulemaking

---

[5] *See* Comments of the American Iron and Steel Institute [including member Cliffs] and United States Steel Corporation on National Emission Standards for Hazardous Air Pollutants: Integrated Iron and Steel Manufacturing Facilities Technology Review; Proposed Rule, 88 Fed. Reg. 49,402 (July 31, 2023), submitted September 29, 2023 ("AISI Comments"), Docket No. EPA-HQ-OAR-2002-0083-1631; Cliffs' Petition for Reconsideration and Request for Administrative Stay ("Cliffs' Reconsideration Petition"), submitted June 3, 2024; Cliffs' Motion for Stay, filed June 28, 2024, in *Cleveland-Cliffs Inc. v. U.S. EPA*, Case No. 24-1170 (D.C. Cir.) ("Cliffs' Motion for Stay"; Cliffs' Reply in Support of Motion for Stay, filed September 19, 2024, in *Cleveland-Cliffs Inc. v. U.S. EPA*, Case No. 24-1170 (D.C. Cir.) ("Cliffs' Reply") and associated exhibits/attachments.

[6] Declaration of David Mysko, P.E. of Hatch Associates Consultants, Inc. (Sept. 17, 2024) (attached as Exhibit L to Cliffs' Reply). *See also* Declaration of Stephen Palmer, Cleveland-Cliffs Enterprise Director Engineering (June 13, 2024) (attached as Exhibit C to Cliff's Motion for Stay).

[7] Declaration of David Mysko, P.E. of Hatch Associates Consultants, Inc. (Sept. 17, 2024) (attached as Exhibit L to Cliffs' Reply); Declaration of Ryan Siats of Barr Engineering (June 18, 2024) (attached as Exhibit E to Cliff's Motion for Stay).

ED_021114_00002885-00011

will require application of novel treatments such as carbon lime and/or bicarbonate injection systems, which are not commercially available.

- **BF Stoves:** Together, the five Cliffs' facilities have seven (7) clusters of BF stoves, and there is no existing add-on emission control that is proven to meet the HAP limitations for hydrogen chloride or total hydrocarbons. Moving forward with the limits in the rulemaking will require application of novel treatments such as carbon lime and/or bicarbonate injection systems that are not commercially available.

- **Sinter Recycling Plants**: One Cliffs' facility, Burns Harbor, has a sinter recycling plant with a wet scrubber. This plant would need to install a new sinter plant windbox emission control system paired with activated carbon injection ("ACI") to meet the new standards. A fatal flaw, however, is that use of ACI is not actually feasible as an add-on control because there is not sufficient residence time for contact with the carbon and absorbing material (in this case, mercury, dioxin/furan, and/or polycyclic aromatic hydrocarbons). The technology of ACI is primarily intended for use with recirculating baghouses and the effects when paired with a wet scrubber are unclear and may include negative consequences such as unintended localized emissions and significant carbon waste generation in the resulting sludge.

As noted above and in more detail with our numerous technical reports and declarations[8], the II&S Rule "will require development and installation of unproven control technologies that have never been installed domestically or internationally for these source categories."[9] Cliffs must evaluate, develop, trial, permit, design, procure, fabricate, and install novel technology and emission control systems. This industry specific technology which may or may not achieve the standards in the end needs to be developed for the first time.[10] EPA's erroneous assumptions about the transfer of control technology demonstrate a poor understanding of this industry sector and warrant time for thorough reconsideration. A Presidential exemption is important to achieve this extended timeline.

2. Technology to Implement UFIP Standards Is Not Feasible

For the UFIP sources, the opacity limitations and work practice standards are so fundamentally flawed that there is no existing technology capable of complying with the Rule. In order to meet the UFIP standards, experts have opined that "[s]ources unable to achieve compliance with the final standards may require the development and implementation of control equipment or control measures that has never been applied in the II&S industry."[11] Cliffs submitted

---

[8] *See* AISI Comments, Docket No. EPA-HQ-OAR-2002-0083-1631; Cliffs' Reconsideration Petition to EPA (June 3, 2024); Cliffs' Motion for Stay, Case No. 24-1170 (D.C. Cir.)(June 28, 2024); Cliffs' Reply in Support of Stay, Case No. 24-1170 (D.C. Cir.)(September 19, 2024), and associated exhibits/attachments.

[9] Declaration of David Mysko, P.E. of Hatch Associates Consultants, Inc. (Sept. 17, 2024) (attached as Exhibit L to Cliffs' Reply).

[10] *See* Declaration of Stephen Palmer, Cleveland-Cliffs Enterprise Director Engineering (June 13, 2024) (attached as Exhibit C to Cliff's Motion for Stay).

[11] *See* Declaration of Mike Remsberg of Trinity Consultants (Sept. 17, 2024) (attached as Exhibit M to Cliffs' Reply).

data demonstrating that even the best performing sources are not able to continuously achieve the new limits. [12] In addition, new limits set by the Rule, even assuming technology existed, pose safety dangers in the facilities in direct conflict with the CAA's General Duty Clause in Section 112(r).

The affected sources and specific UFIP control feasibility issues are summarized as follows:

- **Unplanned Bleeder Valve Openings:** Bleeder valves are emergency release devices that relieve pressure from a BF to prevent explosions or other catastrophic events. EPA took the extraordinary step of attempting to set numeric limits on the unplanned opening of bleeder valves, pitting environmental compliance against worker health and safety, by discouraging valve opening, in direct conflict with the stated intent of Congress (H.R. 101-490, Part 1 (328)). However, technical data demonstrates that three of four MACT Floor (or "best performing") sources for large BFs cannot achieve this limitation and are therefore unachievable without adding control equipment.[13] Specifically, bleeder valves are intended to reduce the risk of catastrophic overpressure conditions in a BF. Not only are the limits unachievable, but experts have explained that the work practice standards "prescribes technologies that may not result in the reduction of valve openings or may be infeasible on certain BF units."[14] Moving forward with the limits in the rulemaking will require the application of control equipment which is not commercially available.

- **Planned Bleeder Valve Openings:** Not only are the standards unrepresentative of the data, but the calculation of the opacity standard for planned bleeder valve openings used a calculation method that did not adequately account for the underlying long-term operational variability. This incorrect calculation directly resulted in three of the five MACT Floor sources for Blast Furnaces being unable to achieve this limitation.[15] Moving forward with the limits in the rulemaking will require the application of control equipment which is not commercially available.

- **Iron Beaching:** Emissions generated by the transfer and pouring of hot molten iron (beaching) are not only de minimis in nature but were already adequately controlled by existing work practices that require flexibility in approach given the spacing and safety limitations based on different facility configurations. EPA's proposed technologies include "infeasible (and unsafe) enclosure of beaching operations and/or installation of CO2 suppression."[16] This is particularly the case where [t]he installation of enclosures would be infeasible at facilities with space limitations," such as four of the eight facilities with such limited space that the "retrofit construction of an enclosure [is] virtually impossible."

---

[12] *See* AISI Comments; Cliffs' Petition for Reconsideration; Cliffs' Motion for Stay; and Cliffs' Reply for detailed technical support regarding the fundamental flaws with the II&S Rule UFIP limits.
[13] *See* Declaration of Mike Remsberg of Trinity Consultants, p. 6-7 (June 18, 2024) (attached as Exhibit D to Cliffs' Motion for Stay.)
[14] *Id.* at 7.
[15] *Id.* at 7.
[16] *Id.*

- **Small and Large Bells**: Bells are part of the charging system on top of the BF that allows for materials to be loaded into the furnace or next bell (as in the case of small bells) without letting BF gas escape). Every furnace, and its corresponding bells are unique in "age, size, design, air flow, raw material usage, and production specification."[17] Additionally, "[e]very bell top campaign is unique, and both small and large bell replacements and repairs (depending on the repair required) are large capital projects that require indefinite lead times for equipment design, project planning (i.e., engineering, safety protocols, and logistical coordination) and corporate approval and funding authorizations for capital expenditures",[18] making the short timeframe for taking action in the II&S Rule technically infeasible.

- **Slag Processing, Handling and Storage**: New opacity limits for slag processing, handling, and storage operations relied on a dataset that did not represent all categories of operations ultimately regulated by the II&S Rule. The resulting limits are unachievable by the best performing sources and fail to adequately account for variability across the different types of processes that EPA attempted to capture with a single opacity limit. Further, the II&S Rule's restrictions on slag operations may require design controls (e.g., enclosures) that create unsafe operating conditions given slag can be highly reactive, especially in contained areas.[19] As discussed in the Declaration of Charles Ochola, President of the National Slag Association, "one of the direct results of using water to control emissions is the creation of pooled water. Standing water associated with emission controls, nature, or any source creates an extremely hazardous condition anywhere molten slag is managed. Pouring molten slag into the smallest puddle of water will create a reaction very similar to an explosion, putting operators and the community at risk for serious if not deadly injury … The use of emission controls that rely upon water are limited by the extreme hazard caused from adding molten slag, iron or steel to standing water."[20]

A Presidential exemption is warranted here, where safe and technically feasible control technology is not available to implement the standard.

3. Technology to Implement the II&S Rule Standards Is Not Cost Effective

Due to the II&S Rule's onerous implementation and compliance schedule for these standards, Cliffs is in an impossible position of designing and engineering novel systems with unproven technology within a short time frame. The cost of compliance is disproportionately high and the amount of work leading up to the compliance date is enormous.

Even EPA's March 12, 2025, Fact Sheet supporting reconsideration of multiple NESHAP rules including the II&S Rule grossly understated costs to comply, citing "[e]stimated costs of $45 million over the next decade (including $7.1 million in capital investment or $5.3 million

[17] *Id.* at p. VI-32.
[18] *Id.* at p. VI-35.
[19] Declaration of Mike Remsberg of Trinity Consultants, p. 8 (June 18, 2024) (attached as Exhibit D to Cliffs' Motion for Stay.)
[20] Declaration of Charles Ochola, President of the National Slag Association (May 31, 2024) (Attachment E to Cliffs' Reconsideration Petition).

annually)."[21] In reality, "[d]ue to the high variability of the process and raw materials, if all facilities required installation of new emission control equipment," industry "estimated initial costs to achieve compliance with the new gap filling HAP limits will be approximately $3.2 billion in capital investment and $749 million annually going forward."[22] For the Cliffs' Burns Harbor Sinter/Recycling Plant alone, the corrected average cost effectiveness for application of control technology "is more than $500,000 per *gram* of dioxin furan controlled, or $237.3 million per pound controlled. This is without considering prior industry comments regarding US EPA's underestimation of control costs, which would only serve to increase the cost per mass controlled."[23]

Similarly, industry estimates for UFIP removal placed annual costs at $290 million per year, with a cost-effectiveness rate of $819 million per ton of HAP removed.[24] For unplanned bleeder valve openings alone, the cost effectiveness rate is $1.3 million per ton of HAP removed (using corrected EPA data) or even potentially $10 million per ton of HAP removed (using industry data).[25] Further, EPA failed to correct erroneous HAP emissions, resulting in overstated HAP emissions and inflated benefits. Reductions in HAPs for bells is so small, at barely 100 pounds for 15 BFs, that there is no estimate that makes this cost-effective. Reductions in HAPs for beaching is likewise not meaningful given how infrequently beaching occurs and industry estimates ranging in reduction of only 5 to 20 pounds per year across all eight II&S facilities.

As noted above, EPA's own risk assessment showed that even without controls, emissions from the industry presented an acceptable level of risk with an ample margin of safety. As a result, any costs expended to meet these standards are unreasonable, and, by definition, not cost-effective.

C. IT IS IN THE NATIONAL SECURITY INTERESTS OF THE UNITED STATES TO PROVIDE AN EXEMPTION FROM THE II&S RULE COMPLIANCE DATES

The II&S Rule will have far-reaching consequences, given that the American iron and steel industry is the backbone of the nation's defense and transportation industries and is critical to national security. The U.S. Department of Commerce recognized that domestic steel production is essential for national security applications which it indicated encompasses transportation systems, the electric power grid, water systems, and energy generation systems in its report summarizing the findings of an investigation conducted by the Department of Commerce pursuant to Section 232 of the Trade Expansion Act of 1962, as amended (19 U.S.C. § 1862 ("Section 232")), into the effect of imports of steel mill products ("steel") on the national security of the United States.[26] In a 2021, Congressional Research Service Report on U.S. Steel Manufacturing:

---

[21] U.S. EPA, *National Emission Standards for Hazardous Air Pollutants (NESHAP), Powering the Great American Comeback Fact Sheet*, https://www.epa.gov/system/files/documents/2025-03/neshap_powering-the-great-american-comeback_fact-sheet_2.pdf

[22] AISI Comments, p. VII-60.

[23] Declaration of Ryan Siats of Barr Engineering (June 18, 2024) (attached as Exhibit E to Cliff's Motion for Stay).

[24] AISI Comments, p. VI-3.

[25] *Id.* at p. VI-29.

[26] *See* U.S. Department of Commerce Bureau of Industry and Security Office of Technology Evaluation, *The Effect of Imports of Steel on the National Security Report, Report by the January 11, 2018*, https://www.commerce.gov/sites/default/files/the_effect_of_imports_of_steel_on_the_national_security_-_with_redactions_-_20180111.pdf

ED_021114_00002885-00015

National Security and Tariffs, it was noted that under the Defense Production Act, 50 U.S.C. §4533, "Congress provides the President with a broad set of authorities …, including Title III, which authorizes the use of economic incentives to secure domestic industrial capabilities essential to meet national defense and homeland security needs. DOD has funded several Title III projects to increase domestic production of steel products," including a $56 million agreement in 2020 to boost steel plate production signed by the predecessor owner of a Cliffs' facility.[27]

The II&S Rule, if implemented, would both increase the cost of producing steel and the products derived therefrom. This would have a negative impact on multiple other industries and activities, harming the national security interests of the United States. Ensuring the strength and global competitiveness of this industry is of vital importance to the nation's economy, security, and manufacturing prowess. Supporting this is the fact the industry provides more than **$520 billion** in economic output, nearly **two million jobs,** more than **$130 billion in wages and benefits** to employees, and **$56 billion in federal, state and local taxes**. Cliffs alone employs approximately 27,000 people, most of whom are members of unions such as the United Steelworkers and the International Association of Machinists and Aerospace workers.

The American iron and steel industry is already among the most regulated and cleanest steel industries in the world. Rulemaking must take into consideration the necessary role that the domestic integrated iron and steel industry plays in our country. Members of Congress have already expressed their concern on this rulemaking. Eight current or former U.S. Senators (Senators Brown, Vance, Braun, Manchin, Casey, Klobuchar, Capito and Young) wrote a letter to EPA warning the Agency that its three proposed rules aimed at the steel industry – impacting taconite iron ore processing, coke manufacturing, and integrated iron and steelmaking – "would dramatically undermine the domestic steel industry and national security while driving production overseas …."[28] Similarly, Congressmen Crawford and Mrvan, Chair and Vice-Chair of the Congressional Steel Caucus, respectively, wrote a letter to then EPA Administrator Regan, expressing their concerns over the proposed rulemakings targeting the steel industry, concluding that the rulemakings, including the II&S Rule, would threaten advancements already made by the industry into environmental initiatives while "pos[ing] a threat to the competitiveness of steel producers and tens of thousands of good-paying union jobs."[29]

The II&S Rule could further "diminish the ability of the American steel industry to meet the demands of our economy" which may lead to those demands being met by "foreign made and illegal subsidized steel entities that do not meet our current environmental, labor, and accountability standards." These fears ring true, as the U.S. Department of Commerce has already found excessive quantities of imports displacing domestic steel – steel that is not produced as clean as in the United States. Such a result is counterintuitive to the purpose of the CAA and threatens the nation's domestic steelmaking supply chain. The Congressmen conclude in their letter by "strongly

[27] Congressional Research Service Report, *U.S. Steel Manufacturing: National Security and Tariffs* (August 12, 2021), https://www.congress.gov/crs-product/IF11847.
[28] Letter from U.S. Senators Brown, Vance, Braun, Manchin, Casey, Klobuchar, Capito, and Young to Michael Regan, EPA Administrator (Dec. 6, 2023), pp. 1-2.
[29] Letter from Congressmen Crawford and Mrvan, Chair and Vice-Chair of the Congressional Steel Caucus, to Michael Regan, EPA Administrator (Dec. 18, 2023).

ED_021114_00002885-00016

encourage[ing]" EPA to communicate with "industry experts and other stakeholders" and ensure that the final rulemakings are "technically feasible, financially reasonable, and continue to protect the livelihoods, health, and safety of workers and steel-producing communities throughout our nation." That is exactly what this Administration is doing by providing outreach in the form of a Presidential Exemption, and we ask that you consider this request on its merits.

The threat of global steel imports raised by the Senators in the letters to EPA is a material threat. Foreign steel imports risk the competitiveness and advancement of the domestic steel industry, to the point of potentially threatening U.S. domestic production capacity and continued investment in taconite iron mining, coke manufacturing, and iron and steelmaking capacity based on the costs outlined above. As emphasized by the U.S. Department of the Treasury's Committee on Foreign Investment in the United States ("CFIUS"), without such domestic steelmaking investment, there could be ripple effects on the supply chains that depend on such steel, particularly supply chains that are part of our national defense infrastructure such as "critical manufacturing, energy, transportation, and communications (all vital to national security)."[30] National defense infrastructure, for example, needs ready access to high purity steel from blast furnaces.[31] Once these complicated iron and steel making operations are shut down and/or idled, it is no simple matter to restart them. In short: "The loss of domestic production is a critical national security concern given the ubiquitous nature of steel throughout multiple critical industries."[32]

For all the reasons stated above, Cliffs urges the issuance of a two-year exemption from the compliance deadlines in the final II&S Rule, pending EPA's review of the rule for possible revision. If you have questions or need additional information, please contact Walter Tamukong at 216-694-4862 or at walter.tamukong@clevelandcliffs.com.

Respectfully submitted,



Traci L. Forrester
Executive Vice President, Environmental & Sustainability
Cleveland-Cliffs Inc.

cc: [redacted] U.S. EPA OAQPS Director, tsirigotis.peter@epa.gov
[redacted], U.S. EPA OAQPS Director of Sector Policies and Programs Division
lassiter.penny@epa.gov

[30] Letter from Andrew Fair, Acting Assistant Secretary for Investment Security, U.S. Department of the Treasury, to Ama Adams, Ropes & Gray LLP, and Mark Plotkin, Covington & Burling LLP, Re: CFIUS Case 24-154 (Dec. 14, 2024) ("CFIUS Letter"), p. 28.
[31] *Id.* at p. 24.
[32] *Id.* at p. 28.

United States Senate

WASHINGTON, DC 20510

December 6, 2023

The Honorable Michael S. Regan
Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue NW
Washington, D.C. 20460

Dear Administrator Regan:

We write to you today regarding the U.S. Environmental Protection Agency's (EPA) three proposed rules related to steel manufacturing and related supply chains. We have serious concerns with these proposed rules because they would dramatically undermine the domestic steel industry and national security while driving production overseas likely resulting in no net reduction in emissions from the steel industry globally. Reducing the emission of harmful air pollutants should be done based upon sound science and with proven technology that is both technically and economically feasible. The irony is that the United States' steel industry is world's cleanest major producer of steel[1]. American steel manufacturers take seriously their commitment to protecting the environment; however, rules that drive production overseas are bad for our economy, bad for national security, and bad for the environment.

These rules:

1) National Emission Standards for Hazardous Air Pollutants: Integrated Iron and Steel Manufacturing Facilities (EPA-HQ-EPA-OAR-2002-0083), 2) National Emission Standards for Hazardous Air Pollutants for Coke Ovens: Pushing, Quenching, and Battery Stacks, and Coke Oven Batteries. (EPA HQ OAR 2002 0085 and EPA HQ OAR 2003 0051), and 3) National Emission Standards for Hazardous Air Pollutants: Taconite Iron Ore Processing Amendments (EPA-HQ-OAR-2017-0664), if finalized as proposed, would require billions of dollars in capital investments and increased annual operating costs for the U.S. steel industry.

We support reducing harmful air pollution. We also support rules that are durable, realistic, and based upon proven technology and reflect a consensus view among stakeholders on how to best improve public health while protecting good paying jobs and supporting industries essential to our national and economic security. These rules fail to meet those standards.

As you move forward with these rulemakings, we urge you to take an inclusive approach – working directly with major stakeholders in developing technically-sound final rules that achieve further emissions reductions while not harming the competitiveness of our American steel companies. Written properly, regulations can help American steel manufacturers lead the world in clean steel production. Poorly written rules undermine domestic manufacturing and promote reliance upon inputs made by foreign manufacturers manufacturers that pollute more than their American counterparts. Regulations that cost

[1] "Steel Climate Impact - An International Benchmarking of Energy and CO_2 Intensities." Found at: https://www.bluegreenalliance.org/wp-content/uploads/2022/04/Steelclimateimpact-benchmarkingreport7April2022.pdf

American jobs, undermine national security, and are likely to result in no net reduction in emissions globally must be rejected.

Sincerely,

Sherrod Brown
United States Senator

J.D. Vance
United States Senator

Mike Braun
United States Senator

Joe Manchin
United States Senator

Robert P. Casey, Jr.
United States Senator

Amy Klobuchar
United States Senator

Shelley Moore Capito
United States Senator

Todd Young
United States Senator

United States Senate

WASHINGTON, DC 20510

June 14, 2024

The Honorable Michael S. Regan
Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue NW
Washington, D.C. 20460

Dear Administrator Regan:

We write to you today regarding three U.S. Environmental Protection Agency (EPA) rules that together threaten the economic competitiveness of the American integrated steel industry. We urge EPA to grant the petitions filed by the domestic integrated steel industry seeking administrative reconsiderations and stays of all three final rules until the EPA can complete a comprehensive review of each rule through the administrative reconsideration process.

Working together, EPA and industry have achieved notable reductions in environmental impacts to air, water, and land over the past 50 years. The steel industry in the U.S. is the world's cleanest major producer of steel and is already subject to more environmental regulation than its global competitors, resulting in a cleaner environment. While we appreciate EPA's efforts to address concerns raised by multiple stakeholders – including steel companies, the United Steelworkers (USW), coke producers, and numerous Members of Congress – throughout the rulemaking process, we remain concerned that the final rules contain flaws that will undermine the domestic steel industry and national security while driving production overseas. We are specifically concerned about the following three rules:

- National Emission Standards for Hazardous Air Pollutants: Taconite Iron Ore Processing (EPA-HQ-OAR-2017-0664)
- National Emission Standards for Hazardous Air Pollutants: Integrated Iron and Steel Manufacturing Facilities (EPA-HQ-OAR-2002-0083)
- National Emission Standards for Hazardous Air Pollutants for Coke Ovens: Pushing, Quenching, and Battery Stacks, and Coke Oven Batteries (EPA–HQ–OAR–2002–0085 and EPA HQ OAR 2003 0051).

A failure to get these regulations right will not only have a negative impact on domestic steel production and American steelworkers, but it will also likely fail to achieve a net reduction in emissions from the steel industry globally. In fact, emissions will likely rise as production moves to countries, like China, with far less stringent rules and regulations. By granting the requested administrative reconsideration and stay of the rules, the EPA and industry can build on their shared track record of success and continue to work together in a constructive manner to achieve durable rules that both protect the environment and our domestic integrated steel industry.

Throughout the rulemaking process, EPA worked to address technical and analytical flaws with these rules raised by multiple stakeholders. The modifications incorporated into the final rules in response to stakeholder feedback were important steps in the right direction, but we remain concerned they did not go far enough in addressing fundamental flaws with the rules. Further modifications are needed to address new information provided to EPA by stakeholders to ensure the rules are achievable by the industry, as required by the Clean Air Act, and that the regulations do not induce unintended consequences, such as loss of domestic steelmaking capacity and jobs. Given all that is at stake in terms of our country's advanced steel manufacturing capabilities and the good-paying, middle class union jobs the steel industry sustains, it is critically important that these rules are technically and economically feasible and do not undermine the competitiveness of the industry.

A stay of these rules will allow EPA to continue to work with industry stakeholders, including domestic companies and the USW, to obtain a complete and thorough understanding of the new information, equipment, and processes and ensure regulations moving forward are sound policy. Absent a stay, the steel industry will be forced to proceed with planning and spending for unproven technologies and work practices while the final provisions of the rules remain uncertain. Given that these regulations will impact nearly every aspect of the integrated iron and steelmaking process, it is imperative that EPA grant both the petitions for reconsideration and requests for stay of the rules.

We urge EPA to grant the industry's petitions for reconsideration and stay requests to ensure that these regulations both safeguard our environment and preserve production capacity and jobs in our strategically important integrated iron and steel sector. Thank you for your work to date with us on these important matters.

Sincerely,

Sherrod Brown
United States Senator

Mike Braun
United States Senator

Robert P. Casey, Jr.
United States Senator

J.D. Vance
United States Senator

Amy Klobuchar
United States Senator

Todd Young
United States Senator

cc: Janet McCabe, Deputy Administrator, U.S. Environmental Protection Agency

Congress of the United States
House of Representatives
Washington, DC 20515

December 18, 2023

The Honorable Michael S. Regan
Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue NW
Washington, D.C. 20460

Dear Administrator Regan:

As Chairman and Vice Chairman of the Congressional Steel Caucus, we write to express our concerns regarding the proposed rules below from the U.S. Environmental Protection Agency (EPA):

- National Emission Standards for Hazardous Air Pollutants: National Emission Standards for Hazardous Air Pollutants: Taconite Iron Ore Processing Amendments (EPA-HQ-OAR-2017-0664)
- Integrated Iron and Steel Manufacturing Facilities (EPA-HQ-EPA-OAR-2002-0083)
- National Emission Standards for Hazardous Air Pollutants for Coke Ovens: Pushing, Quenching, and Battery Stacks, and Coke Oven Batteries (EPA–HQ–OAR–2002–0085 and EPA– HQ–OAR–2003–0051).

The American steel industry and its manufacturing workforce produces the world's cleanest steel, made possible by years of substantial investments into climate initiatives. According to the American Iron and Steel Institute, the steel industry has reduced its energy intensity per ton of production by 35 percent and carbon dioxide emissions intensity by 37 percent in the past three decades. We also would highlight that these efforts will continue to be augmented by research and technology investments being made under current law.

We are grateful for your efforts to assist in the implementation of these laws and want to ensure that the proposed rules do not hinder the ability of the American steel industry to make robust investments into these important environmental initiatives.

Industry leaders have shared with us that these rules, as drafted, pose a threat to the competitiveness of steel producers and tens of thousands of good-paying union jobs. Our understanding is that these rules do not consider current technology capabilities and economic feasibility and may jeopardize the industry's ability to meet other environmental initiatives and health requirements for workers. We also are concerned that any action to diminish the ability of the American steel industry to meet the demands of our economy will be manufactured by

foreign-made and illegally subsidized steel entities that do not meet our current environmental, labor, and accountability standards.

As you move forward, we would strongly encourage you to more openly communicate with steel industry experts and other stakeholders to ensure that proposed requirements are based on proven technology and robust scientific data. It is essential to ensure that proposed rules are technically feasible, financially reasonable, and continue protecting the livelihoods, health, and safety of workers and steel-producing communities throughout our nation.

Sincerely,

Eric A. "Rick" Crawford
Member of Congress
Chair, Congressional Steel Caucus

Frank Mrvan
Member of Congress
Vice-Chair, Congressional Steel Caucus

Message

From: Johnson, Demarion [Johnson.Demarion@epa.gov]
Sent: 1/16/2026 8:17:36 PM
To: Tardif, Abigale (Abbie) [Tardif.Abigale@epa.gov]
CC: L'Estrange, Chloe [LEstrange.Chloe@epa.gov]
Subject: FW: Touchbase Request - Nat'l Emission Standards for HAP: Lime Manufacturing Plants Technology Review
Attachments: 2025.12.2 NLA Letter on HAP Lime Tech Review.pdf

Hey Abbie,

Hope all is well! Senator Schmitt's team reached out with the below inquiry. Would you have time next week to have a call with them?

Best,
Demarion

Demarion L. Johnson
Special Advisor for Senate Relations | U.S. EPA, OCIR
Work: (202) 359-9469

From: Lyday, Bennett (Schmitt) <Bennett_Lyday@schmitt.senate.gov>
Sent: Wednesday, January 14, 2026 6:35 PM
To: L'Estrange, Chloe <LEstrange.Chloe@epa.gov>; Johnson, Demarion <Johnson.Demarion@epa.gov>
Subject: Touchbase Request - Nat'l Emission Standards for HAP: Lime Manufacturing Plants Technology Review

Caution: This email originated from outside EPA, please exercise additional caution when deciding whether to open attachments or click on provided links.

Hi Chloe and Demarion,

I hope you're both doing well! Wanted to see if we could set up a quick call to discuss the implementation of *National Emission Standards for Hazardous Air Pollutants: Lime Manufacturing Plants Technology Review*. Specifically, a potential two-year exemption to allow implementation technology to be developed. I have attached a letter on the topic for background.

Would you have time this week to hop on a quick call to discuss? My direct line is 202-228-6382.

Please advise if this request would be better suited elsewhere.

Best,
Bennett Lyday | Legislative Correspondent
Office of U.S. Senator Eric Schmitt (R-MO)
202-224-5724 | 404 Russell Senate Office Bldg.
Bennett_Lyday@Schmitt.Senate.Gov

ERIC SCHMITT

LIME

NATIONAL LIME ASSOCIATION

December 2, 2025

Mr. Marc Marie
Deputy Chief of Staff for Policy
The White House
1600 Pennsylvania Avenue, N.W.
Washington, D.C. 20500

Dear Mr. Marie:

This letter follows up on the National Lime Association's March 28, 2025, request for a two-year Presidential Exemption to extend the compliance date for the Environmental Protection Agency (EPA) rule titled: *National Emission Standards for Hazardous Air Pollutants: Lime Manufacturing Plants Technology Review*, 89 Fed. Reg. 57,738 (July 16, 2024) until July 16, 2029. We are resubmitting our March 28th request, along with this letter that provides additional information for White House consideration.

The President should issue a two-year Presidential exemption from the EPA lime rule because the technology to implement the standard is not available in the timeframe allowed, and an exemption is clearly in the national security interest of the United States. In addition, failure to grant the two-year exemption will impose significant costs on the lime industry.

EPA's rulemaking record shows that this rule is extremely expensive, unnecessary for protecting human health and the environment, and provides, in EPA's own words, no quantifiable monetary benefits. EPA's own analysis demonstrated that:

(1) Costs between $2-2.4 billion (compared to lime's $2.3 billion annual revenues);
(2) Existing hazardous air pollutant emissions are currently acceptable with an ample margin of safety to protect public health;
(3) These unproven, more stringent standards were not necessary to prevent adverse environmental effects;
(4) There were no developments in practices, processes, or control technologies that would warrant revisions to the standards; and
(5) The agency was unable to show any monetized benefits of the rule.

For these reasons, EPA notified our members earlier this year that the agency is planning to reconsider the lime rule:

ED_021114_00003344-00001

> Although EPA previously determined that the issues raised in your petition do not meet the requirements for mandatory reconsideration under section 307(d)(7)(B) of the [Clean Air Act], the EPA is exercising its discretion to voluntarily reconsider the Final Rule. In doing so, the EPA intends to issue a *Federal Register* notice initiating public review and comment on some or all of the issues raised in your petition. The EPA expects to take final action in the spring of 2026.

See Letter from Abigale Tardif, Principal Deputy Administrator, Office of Air & Radiation to David Friedland (April 11, 2025, copy attached). David Friedland is with Beverage & Diamond and represents the National Lime Association (NLA) as outside counsel.

Unavailability of Technology

NLA explained in our March 28th petition the difficulties with implementing technologies in the lime industry for each individual hazardous air pollutant (HAP), as well as the complications of treating them simultaneously. In addition, the technologies identified by EPA to meet the standards are entirely new to the lime industry and have not been historically used to treat emissions from lime plants. *See NLA Request for Presidential Exemption* (March 28, 2025) at pp. 3-8 (attached). Since that time, we have learned that NLA members face significant challenges in designing, procuring, installing, testing, and beginning operation of such equipment in time to meet the compliance deadline. In some cases, companies will attempt to reclassify their lime plants as area sources because the EPA lime rule applies only to major source lime plants. However, even a reclassification compliance strategy involves significant commitments of time and resources, including engineering, planning, capital expenditures, and time to install and test equipment to reduce HCl emissions below the major source threshold of 10 tons of emissions per year.

The effective compliance date for the EPA lime rule is January 16, 2027. This is because the EPA lime rule contains a provision requiring submission of stack test data and plans for any companies that will use "averaging" of HAP emissions across various kilns for HCl and mercury emissions at least 180 days before the actual compliance date (July 16, 2027). *See* 40 C.F.R. § 63.7114 (e)(2)(requiring development and submission of an implementation plan and stack testing 180 days before the compliance date); 89 Fed. Reg. 57,755 (July 16, 2024). Accordingly, lime plants now have just over one year until the legal requirements of the rule commence.

The lime industry appreciates EPA's decision to reconsider the lime rule on an expedited basis. NLA members have relied in good faith on that decision and have been working with the agency to address the issues with the rule so that they can be meaningfully addressed as part of the reconsideration. Because of this and the planned changes to the rule, lime plants have not spent millions of dollars on equipment and upgrades that will become superfluous following the reconsideration. However, due to several factors, including EPA needing to prioritize regulations of other industries before lime's reconsideration, and the lengthy government shutdown, EPA likely will not be able to complete the lime rule reconsideration before the compliance deadline. Accordingly, at this time, it is too late for many lime manufacturing facilities to meet the January 2027 deadline without a Presidential exemption.

For example, one lime producer reports they may not have sufficient electrical power available at their site to comply with the regulation. They have initiated a preliminary engineering electrical plant-wide load study to account for additional process equipment that may need to be installed

ED_021114_00003344-00002

to ensure MACT compliance. This engineering load study is the precursor to a detailed incoming power load study by the electric utility company to determine if the incoming power is sufficient to handle additional load, further stressing the local electrical grid. The load study is anticipated to take 6 months.

Upon completion, a detailed engineering design will need to be conducted to select the additional electrical infrastructure equipment needed to support the various additional equipment. It is anticipated that the detailed engineering study will require a new substation grade transformer and switchgear, both highly custom equipment, with a current lead time of 60 weeks for the transformer and 75 weeks for the switchgear. Due to the lead times for the electrical equipment and the numerous load studies, the completion date of anticipated plant-wide electrical infrastructure upgrades that would need to be installed to support additional equipment under the current Lime MACT rule would be sometime towards the end of 2027, too late for meeting the lime rule compliance deadline. Extending the compliance deadline is a necessity to ensure ample time to conduct the required electrical load studies and procure the required electrical infrastructure to power additional process equipment at their plant.

Other companies face even more significant challenges. For plants that require regenerative thermal oxidizer (RTO) technology, they must be able to access supplies of natural gas in order to use that technology. One member explains that they do not have gas available at their plant. In order to supply gas to their location, it would require the construction of an eight-mile natural gas pipeline across a national forest. The engineering, permitting, and construction of such a project could not possibly be completed before the 2027 compliance date.

A Presidential exemption is necessary and appropriate for the lime industry because the technology to comply with the lime rule date is currently unavailable to meet the January 2027 compliance date.

National Security

The lime industry is critical to the national security interests of the United States. Lime is a necessary ingredient for many other critical U.S. industries to exist and to thrive. A few examples are provided below.

Steel

Lime is essential to steel production because it acts as both a purifying and fluxing agent in the blast furnace and basic oxygen furnace processes. As a purifying agent, lime removes impurities that would otherwise weaken or contaminate the final product. In short, lime is a critical mineral that underpins both the quality and environmental performance of modern steel production. Lime makes modern steelmaking possible, serving as the foundation of one of the world's most critical manufacturing processes. Without additional lime, U.S. steel production cannot increase, and the EPA lime rule has already discouraged the construction of additional lime kilns that could fuel a resurgence in American steel production.

As the administration has noted in the first and second term, "Domestic steel production is essential for national security applications." Additionally, "Demand for steel in critical industry has increased", and "the present quantities and circumstance

of steel imports are 'weakening our internal economy' and threaten to impair national security as defined by Section 232."[1]

In a speech in May 2025, President Donald Trump said, "I proclaimed a simple, but crucially important principle if you don't have steel, you don't have a country. You don't have a country. You can't make a military. What are we going to do? Say, let's go to China to get our steel for the army tanks and for the boats and ships. A strong steel industry is not just a matter of dignity or prosperity and pride. It is above all a matter of national security and it is." The strength of U.S. steel production fundamentally depends on a vital but often overlooked mineral—lime.

Steel's critical role in national security underscores the importance of the lime industry as an irreplaceable component to national security. The nation's lime industry is critical to our national security by being a necessary building block in the manufacturing of domestic steel. A healthy domestic lime industry can support increased domestic steel production to fight back against steel imports which "impair the national security of the United States."[2]

As demand for steel in critical industries continues to grow, the domestic lime industry becomes an even more essential pillar of America's industrial and defense readiness. A robust domestic lime supply ensures uninterrupted steelmaking capacity, supports infrastructure resilience, and reduces reliance on foreign materials that could compromise national security.

Electric Power Plants

Power plants that burn coal use lime as a crucial ingredient to treat their air emissions to ensure that they meet the Clean Air Act's requirements for reducing SOx and NOx emissions. Disruptions or constraints on lime production could have negative impacts on the nation's power supply, particularly when electricity demand is surging from the growth of the U.S economy and data center development for powering artificial intelligence. Maintaining a reliable electric grid is clearly in the national security interest of the U.S.

Mining

Lime is essential for both coal and hard-rock mining companies to treat their water discharges before they are returned into streams or other waterbodies to increase the pH and ensure that the water quality is appropriate and acceptable under the Clean Water Act. Lime prevents acid mine drainage and is essential for the health of streams

[1] https://www.federalregister.gov/documents/2020/07/06/2020-14359/publication-of-a-report-on-the-effect-of-imports-of-steel-on-the-national-security-an-investigation

[2] https://www.federalregister.gov/documents/2025/02/18/2025-02833/adjusting-imports-of-steel-into-the-united-states

and the cleanup of both active and legacy mining sites. Mining provides the building blocks for the entire U.S. economy, and preventing interruptions to an essential component of this industry is in our national security interest.

Military

There are a multitude of uses of lime in the U.S. military (including the U.S. Army Corps of Engineers). The most common uses are in soil stabilization during critical base or forward command post construction, road construction, and levee repairs. In addition, lime is used to treat high explosive and metals contamination from ordinance training and storage facilities. Ensuring that the military has everything it requires in its supply chain is essential for national security.

Water Treatment

Lime is critical for water treatment and is essential in providing clean and safe drinking water for millions of Americans every day. Lime is used in pH adjustment, water softening, and removal of contaminants. Lime is also essential for wastewater treatment. As we learned during COVID, the U.S. cannot afford to have interruptions in the critical supplies of lime that millions of U.S. citizens count on for clean and safe drinking water supplies. Nothing is more important to national security than ensuring that our nation has safe and secure drinking water.

Without a steady and reliable source of lime production, the supply chain for many industries, governments, and military applications could be compromised. As mentioned in our March 28 Presidential exemption request, lime products are typically not stored or stockpiled for a long period of time, with most of the industry practicing on-demand production and delivery. If lime production were to be disrupted, stocks of lime for all uses mentioned above would be rapidly depleted, in some cases in a matter of days. Accordingly, it is clearly in the national security interest of the United States for the President to grant a two-year exemption for the lime industry.

Costs for the Lime Industry

Lime companies will need to spend between $80-$110 million over the next 12 months to comply with the EPA lime rule if a Presidential exemption is not granted for the lime industry. Such costs include engineering plans for retrofitting plants to address HCl emissions, construction of new equipment, testing of the equipment itself, as well as stack testing to ensure compliance with limits on HAP emissions. These estimates are based on feedback from several NLA member companies. These costs do not include ongoing operating costs, nor do they include staff time to address, monitor, and maintain the equipment.

One of the most significant aspects of these costs is that they may be completely unnecessary if and when EPA reconsiders the lime rule as planned. Certain aspects of the rule may be eliminated altogether, removing the need for operational and equipment changes at lime plants. EPA may determine that the emissions for various HAPs are *de minimis* and do not require emissions standards. In addition, EPA may decide to issue a "health-based standard" for HCl, which may eliminate the need for dry sorbent injection treatment systems since the agency's risk assessment proves that HCl does not endanger human health and the environment at current emission levels and would not require treatment under a health-based standard.

NLA greatly appreciates the President's consideration of granting the lime industry a two-year extension of our compliance date through a Presidential exemption. Such an action is clearly justified under Clean Air Act § 112(i)(4) because it would be reasonable for the President to determine that the technology to implement such standards is not available during the required timeframe, and that it is in the national security interests of the United States to do so. In addition, it should be noted that under Clean Air Act § 307(b), actions by the President, such as this Presidential exemption, are not subject to judicial review. *See* 42 U.S.C. §7607(b) (providing judicial review for actions by the EPA Administrator, but not for Presidential actions).

NLA and our members look forward to working with EPA and the White House to enact common-sense regulations that protect human health and the environment, while ensuring that the production of lime that is critical to supplying the steel, electricity, coal and minerals, and water that this nation needs is provided uninterrupted.

Sincerely,



William Herz
Executive Director
National Lime Association

ED_021114_00003344-00006

ORAL ARGUMENT NOT YET SCHEDULED

IN THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

AIR ALLIANCE HOUSTON, et al., *Petitioners*, v. UNITED STATES ENVIRONMENTAL PROTECTION AGENCY and LEE ZELDIN, Administrator, U.S. Environmental Protection Agency, *Respondents*.	Case No. 25-1143

PETITIONERS' RESPONSE IN OPPOSITION TO RESPONDENTS' MOTION FOR SIX-MONTH ABEYANCE

In April, President Trump gave nearly one-third of coal-fired power plants across the country a free pass to cease their preparations to meet lower mercury and air toxic emissions standards. EPA updated those standards, known as MATS, just over a year ago. In doing so, EPA recognized that the vast majority of coal-fired power plants were capable of and indeed already limiting their emissions of these dangerous pollutants below what was required in its prior, 2012 standards. Nevertheless, with a stroke of his pen, the President in his April 8, 2025 Proclamation exempted an unspecified list of facilities from their compliance

obligations through July 2029 by summarily asserting, without evidence or even a gesture at source-specific analysis, that "technology to implement" that Rule is "not available." Proclamation 10914 of April 8, 2025, 90 Fed. Reg. 16,777 (Apr. 21, 2025). That Proclamation was followed by EPA's publication of a list of the particular facilities to which the Proclamation would apply, which likewise offered no evidence or logic for those facilities' selection.

The President's assertion that the technology is unavailable is false.[1] And EPA's action to apply that declaration to particular facilities is unlawful. That unlawful action is having effects today. As prospective Respondent-Intervenor Talen Montana, LLC, confirms in its motion to intervene, coal plants have already suspended actions to reduce their emissions to comply with the updated standards. *See* Mot. to Intervene, ECF 2129297 at 6 (asserting that Talen Montana, operator of one of the exempted facilities, "has already made operational planning and compliance decisions in reliance on the Presidential Exemption"). Petitioners are entitled to pursue judicial review and seek judicial relief to minimize and prevent harm to Petitioners, their members, and the public from the unlawful exemptions effectuated by EPA.

[1] EPA admitted as much in its recent proposal to repeal the 2024 MATS Rule, writing that the Colstrip Power Plant in Colstrip, Montana, "was *the only* facility unable to meet the lower [filterable particulate matter] standard with *existing controls*." 90 Fed. Reg. 25,535, 25,541 (June 17, 2025) (emphasis added).

The six-month abeyance Respondents request, ECF 2128844 ("Abeyance Mot."), seeks to deprive Petitioners of that opportunity. While Petitioners have indicated to Respondents that they may be willing to consider abeyance of this petition in the event district court litigation concerning the Exemption Proclamation itself proceeds apace, *see Air Alliance Houston v. Trump*, Case No. 1:25-cv-1852-PLF (filed June 12, 2025), Respondents have not yet filed their responsive pleading in that matter, so it remains unknown which forum will take the lead on these questions. Plus, Respondents are seeking abeyance in that matter as well or, in the alternative, further delay of their answer deadline. *Id.*, ECF No. 26. A six-month abeyance of this petition before any indication that Petitioners will be able to vindicate their rights in the district court litigation would be patently premature.

Forcing this case into abeyance now, without a confirmed alternative forum, would thus impose substantial hardship on Petitioners and their members by depriving them of the emissions reductions that would flow from timely judicial review and timely industry compliance with the standards. Petitioners' and the public's interests in promptly achieving the health protections afforded by the updated MATS rule far outweigh the modest burden on Respondents to defend their actions. The *potential* future repeal of parts of that rule—which EPA proposes to accomplish through a separate action under separate statutory

authority does not moot and should not delay review of the unlawful action EPA has already taken. The Court should deny Respondents' abeyance request.

BACKGROUND

Coal plants are one of the largest domestic emitters of hazardous air pollutants like mercury, arsenic, nickel, and other toxic metals. *National Emission Standards for Hazardous Air Pollutants: Coal- and Oil-Fired Electric Utility Steam Generating Units Review of the Residual Risk and Technology Review*, 89 Fed. Reg. 38,508, 38,509 (May 7, 2024) ("2024 Rule"). Short-term exposure to these pollutants can result in profound central nervous system effects; chronic exposure can cause brain and kidney damage, cancer, developmental effects, and a range of other adverse health effects. *Id.* at 38,556.

To address those risks, EPA first promulgated hazardous air pollutant standards for coal- and oil-fired power plants in 2012 under Section 112 of the Clean Air Act, 42 U.S.C. § 7412. After hazardous air pollutant emission standards are established, the Act requires EPA to review developments in control technologies to determine if revisions are necessary. *Id.* § 7412(d)(6).

As a result of its Section 7412(d)(6) review, EPA revised the MATS in 2024. The 2024 Rule set more protective limits on arsenic, nickel, and other metals pollution, represented by a surrogate "filterable particulate matter" standard (setting a new "fPM standard"), and further restricted mercury emissions from a

subset of plants using high-polluting lignite coal (the new "mercury standard"). 89 Fed. Reg. at 38,510. The 2024 Rule also required facilities to use continuous emissions monitoring rather than infrequent "stack testing" to demonstrate compliance with the new fPM standard (the "CEMS" requirement). *Id.* And it tightened standards for controlling pollution during plant startup periods. *Id.* EPA projected that the 2024 Rule would reduce annual emissions of mercury by 900 to 1,000 pounds and annual emissions of arsenic, nickel, and other toxic metals by about four to seven tons per year, starting in 2028. *Id.* at 38,561.

The 2024 Rule required coal plants to comply with the startup standard by January 2, 2025, and with the fPM standard, the mercury standard, and other requirements by July 6, 2027. *Id.* at 38,519, 38,564. The 2027 compliance deadline reflected EPA's assessment of the lead time necessary for the regulated coal plants to procure and install necessary emissions controls, upgrade controls, or optimize or dial up controls already installed, and to take other compliance steps that would allow them to meet the requisite standards. *Id.* at 38,519 ("The Agency believes this timeline is as expeditious as practicable considering the potential need for some sources to upgrade or replace pollution controls.").

Earlier this year, on what EPA touted as the "greatest day of deregulation our nation has seen," EPA announced it intended to "reconsider" the 2024 Rule.[2] At the same time, EPA invited coal plants to apply for a two-year Presidential exemption from compliance obligations. EPA subsequently took receipt of numerous such requests.

On April 8, 2025, President Trump issued a Proclamation titled *Regulatory Relief for Certain Stationary Sources to Promote American Energy*, later published in the Federal Register at 90 Fed. Reg. 16,777 (Apr. 21, 2025) ("Exemption Proclamation").[3] The Exemption Proclamation granted an unspecified list of coal plants exemptions from compliance with the 2024 Rule "for the period beginning July 8, 2027, and concluding July 8, 2029." Proclamation Announcement (referring to, but not publishing, an "Annex I" of exempt sources); *see* 90 Fed. Reg. 16,777. The list of exempt coal plants, known as Annex I, was not finalized

---

[2] EPA, News Release, *Trump EPA to Reconsider Biden-Harris MATS Regulation That Targeted Coal-Fired Power Plants to be Shut Down* (Mar. 12, 2025), https://www.epa.gov/newsreleases/trumpepa-reconsider-biden-harris-mats-regulation-targeted-coal-fired-power-plants-be; EPA, News Release, *EPA Launches Biggest Deregulatory Action in U.S. History* (Mar. 12, 2025), https://www.epa.gov/newsreleases/epa-launches-biggest-deregulatory-action-us-history.

[3] The Exemption Proclamation was published initially on the White House's website: https://www.whitehouse.gov/presidential-actions/2025/04/rregulatory-relief-for-certain-stationary-sources-to-promote-american-energy/ ("Proclamation Announcement").

until six days later, on April 14, 2025, when EPA published the list of facilities to be exempted on its website.[4] EPA's Annex I list was then appended to the Exemption Proclamation for publication in the Federal Register a week later. 90 Fed. Reg. at 16,779-84.

Two months later, on June 11, 2025, EPA signed a notice of proposed rulemaking that proposed to repeal the new fPM standard, the new mercury standard, and the CEMS requirements of the 2024 Rule, and solicited public comment. 90 Fed. Reg. at 25,535. EPA did not propose to repeal the 2024 Rule's startup standard, which is presently in effect. *Id.* at 25,535, 25,539 n.6 (explaining that "EPA is not reconsidering this aspect of the 2024 Final Action").[5]

Petitioners filed this lawsuit on June 12, 2025, challenging EPA's promulgation of the Annex I list of exempt sources.

STANDARD OF REVIEW

Courts have discretion to stay a case to promote efficient use of the court's and litigants' resources, after weighing the benefits and hardships of a stay. *See Landis v. N. Am. Co.*, 299 U.S. 248, 254-55, 259 (1936). But if there is even "a fair possibility" that the stay "will work damage to some one else," the movant must

[4] *Available at* https://www.epa.gov/system/files/documents/2025-04/regulatory-relief-for-certain-stationary-annex-1.pdf.

[5] The President also issued a second Proclamation on July 17, 2025, directly exempting an additional three coal plants. 90 Fed. Reg. 34,583 (July 23, 2025).

"make out a clear case of hardship or inequity in being required to go forward." *Landis*, 299 U.S. at 255-56 (explaining that "the burden of making out the justice and wisdom" of a stay "lay heavily" on the movant). Thus, the movant must either show that (1) the movant's harms meet the heightened "clear case of hardship or inequity" standard, or (2) the opposing party's claims of hardship are non-existent.

A court is not compelled to stay a live controversy simply because it may become moot in the future. *See Hunt v. Imperial Merchant Servs., Inc.*, 560 F.3d 1137, 1142 (9th Cir. 2009). "A case is moot 'when the issues presented are no longer live or the parties lack a legally cognizable interest in the outcome.'" *Samma v. Dep't of Def.*, 136 F.4th 1108, 1113 (D.C. Cir. 2025) (quoting *Already, LLC v. Nike, Inc.*, 568 U.S. 85, 91 (2013)). Mootness arises only if there is nothing for the court to remedy. *Spencer v. Kemna*, 523 U.S. 1, 18 (1998).

ARGUMENT

I. An Abeyance Would Harm Petitioners Whereas Respondents Fail To Show a Clear Case of Hardship.

Petitioners and their members are being exposed to pollution from exempted coal plants now. By challenging EPA's selection of facilities subject to the President's Exemption Proclamation, this suit seeks to ensure those plants are taking steps *now* to comply with the standards that will alleviate those exposures.

The requested six-month abeyance would prejudice Petitioners' ability to get prompt, meaningful judicial review of the list of facilities selected for exemption,

and thus to restore compliance obligations at plants that were unlawfully exempted. By contrast, Respondents identify no hardship from allowing the case to proceed—at least until Petitioners can be assured they have a suitable forum for their claims—other than the litigation costs necessary to defend their own unlawful actions. The balance of these interests strongly favors Petitioners, and Respondents therefore fail to meet their burden to stay this case at this time. *Landis*, 299 U.S. at 255-56.

Petitioners are environmental and public health organizations with members who live, work, and recreate in areas affected by the mercury, arsenic, and other metals pollution emitted by exempted coal plants. Petitioners' members are concerned that exposure to pollution from exempted plants, including from eating contaminated fish, could have harmful impacts on their health. These concerns also reduce members' enjoyment of outdoor activities in affected areas.

The 2024 Rule will achieve significant reductions in emissions of mercury, arsenic, and other metals each year from coal plants. 89 Fed. Reg. at 38,561. Those emissions reductions—and the steps necessary to secure them—have been occurring since the 2024 Rule took effect and continue apace, as plants take steps to prepare for full compliance by the 2027 deadline. Indeed, states that challenged the 2024 Rule asserted in court filings that "to comply with the Rule's three-year deadline . . . power plants need to take action immediately." *North Dakota v. EPA*,

Case No. 24-1119, ECF 2058570 at 1. Industry parties have also asserted that these years before the 2024 Rule compliance deadlines are necessary for sources to prepare for compliance. *See, e.g.*, Nat'l Mining Ass'n, Comments on the proposed MATS Rule, 88 Fed. Reg. 24,854, at 12 (June 23, 2023), *available at* https://www.regulations.gov/comment/EPA-HQ-OAR-2018-0794-5986. Plants already must comply with the more stringent startup standard, which had a January 2025 compliance deadline. 89 Fed. Reg. at 38,519, 38,564.

At the latest, the emission reductions required by the 2024 Rule must be achieved by the 2027 deadline. But not so for exempted coal plants. Under the terms of the Exemption Proclamations, no emission reductions will be required between 2027 and 2029. Despite the Clean Air Act's limitation of such exemptions to a two-year period, coal plants have *already* stopped working to reduce their emissions or better control their pollution during the present compliance period (as, indeed, the Administration intended): prospective Respondent-Intervenor Talen, an operator and co-owner of an exempted coal plant, stated that the 2024 Rule's compliance deadline "would require substantial and immediate expenditures" but that it has "suspended" compliance activities necessary to meet that deadline "[i]n reliance on the Presidential Exemption." Mot. to Intervene at 3. And others have almost certainly followed suit.

A facility's inclusion on the Annex I list thus delays the benefits of the reductions in emissions from exempted plants' compliance with the 2024 Rule, and prolongs members' exposure to pollution at present, higher levels. It also delays the benefits of continuous emissions monitoring systems, denying Petitioners and Petitioners' members information about coal plant emissions.

Those consequences flow from Annex I's selection of exempted facilities, not from EPA's proposed reconsideration of the 2024 Rule—which did not and could not exempt facilities from compliance with the Rule while it remains good law. The present operation of those exemptions is thus denying Petitioners' members and the public the benefits that would accrue in the absence of those exemptions: both the present-day emission reductions from the startup standard and the present and future emission reductions from sources upgrading or installing emissions controls to comply with the 2024 Rule that is presently in force. Indeed, because EPA, state regulators, and exempted coal plants have asserted that certain coal plants must begin preparations *immediately* to be able to meet standards by 2027, delay in resolving this case could mean compliance by 2027 is not possible, even if the Court ultimately finds it is legally required.[6] *See* Mot. to Intervene at 3

[6] Because exemptions may be extended after the two-year period expires, Petitioners' members and the public face the prospect of damage to their health and recreational interests for years to come. 42 U.S.C. § 7412(i)(4) ("An exemption . . . may be extended for 1 or more additional periods, each period not to exceed 2 years.").

(stating that meeting the 2024 Rule's deadline "would require substantial and immediate expenditures"); *see also* 89 Fed. Reg. at 38,519; *North Dakota v. EPA*, ECF 2058570 at 1, 18. Delaying judicial review would thus delay the cleaner air and better health that flows from lower emissions—and to which Petitioners and their members are legally entitled.

For these reasons, Petitioners must be assured of timely judicial review. Under Respondents' proposed six-month delay—which they have requested both in this case and in the parallel district court case—Petitioners face the "fair possibility" of securing relief too late for exempted plants to achieve compliance by 2027. *Landis*, 299 U.S. at 255. That outcome would "work damage" to Petitioners' members, who will be exposed to more mercury and toxic metal pollution from exempted coal plants pollution that Petitioners seek to reduce by having the exemptions declared unlawful. *Id.* For the same reason Respondents issued the exemptions well in advance of the 2024 Rule's deadlines, Petitioners have a strong interest in resolving the question of their lawfulness well in advance of the deadlines: the exemptions affect present decisions about the timing of emission reductions.

As Petitioners have discussed with Respondents, abeyance of this petition *may* be appropriate in the future, if it becomes clear that district court challenges to the associated Exemption Proclamation are proceeding in a timely enough fashion

to secure the necessary relief. But Respondents have failed to carry their burden of showing a "clear case of hardship or inequity" in being required to go forward without an abeyance, at least until that time. *Id.* at 255-56 ("the burden of making" the case for a stay "lay heavily" on the movants). They assert only that abeyance would "promote judicial economy." Abeyance Mot. at 4. Such an interest falls short of meeting the heightened standard of a "clear case of hardship or inequity," *Landis*, 299 U.S. at 255-56; *see Lockyer v. Mirant Corp.*, 398 F.3d 1098, 1112 (9th Cir. 2005), and is outweighed by Petitioners' interests in protecting the health of their members and the public from unlawful pollution.

That is especially true where the action concerns exemptions that the law does not compel (or, indeed, allow, *see* Complaint, *Air Alliance Houston v. Trump*, Case No. 1:25-cv-1852-PLF (filed June 12, 2025) (asserting that the Exemption Proclamation is *ultra vires*)). It would be inequitable for Respondents to evade timely judicial review of the exemptions they chose to issue, merely because they chose also to reconsider aspects of the 2024 Rule. The Clean Air Act, furthermore, expressly limits EPA's ability to stay the effectiveness of a rule during reconsideration "for a period not to exceed three months." 42 U.S.C. § 7607(d)(7)(B). Respondents should not be permitted to use the court to achieve a back-door stay pending reconsideration for exempted facilities.

Moreover, Respondents cannot reasonably claim that their chosen timing obviates any harm from the exemptions; Respondents chose to exempt a large group of facilities and pursue repeal of the 2024 Rule at the same time, and presumably would not have done so unless they believed the exemptions had their own, present impact. *Landis*, 299 U.S. at 255-56.

II. Respondents' claim that agency action may, in the future, moot this case does not justify abeyance.

Petitioners' challenge to the legality of Annex I presents a live controversy that can be meaningfully remedied and is therefore not moot. *See Samma*, 136 F.4th at 1113 ("A case is moot when the issues presented are no longer live or the parties lack a legally cognizable interest in the outcome." (internal quotation omitted)). As explained above, Annex I is final and in effect—as is the 2024 Rule—and guides the activities regulated coal plants are taking (or not taking) right now. As described in Section I above, harm to Petitioners and their members from postponing emissions reductions is ongoing and will only increase as the 2027 deadline grows closer and compliance steps remain unfinished.

That a potential final action by EPA to rescind the 2024 rule "could" moot this case, as Respondents argue, is not sufficient grounds to put the case in abeyance. Where harm is ongoing, timely review is of the essence, and judicial relief would be effective, the Court is not obligated to step aside even where a case might become moot shortly. *See Crawford v. FCC*, 417 F.3d 1289, 1294-95 (D.C.

Cir. 2005) (deciding case where FCC action would effectively moot the claim, but that action had not yet become final); *Lewis v. BT Inv. Managers, Inc.*, 447 U.S. 27, 53 n.15 (1980) (concluding that because challenged state statutes "remain in effect," "the case has not become moot, whatever the ultimate disposition" of pending bills to amend them).[7]

As an initial matter, even if EPA adopts its proposal, it could not entirely moot this case: the 2024 Rule consists of several distinct standards and requirements, and EPA does not propose to repeal or modify *all* of them. For instance, EPA stated that it is "not reconsidering" the more stringent startup standard. 90 Fed. Reg. at 25,535, 25,539 n.6. The Exemption Proclamation, on the other hand, exempts Annex I power plants "from compliance with the Rule," which seemingly includes the 2024 Rule's startup standard. 90 Fed. Reg. 16,777 (Apr. 21, 2025). Thus, the validity of the exemptions effectuated by Annex I would remain a live controversy even if the rule is finalized as proposed.

---

[7] Other circuits have concluded the same. *See, e.g.*, *Hunt v. Imperial Merch. Servs., Inc.*, 560 F.3d 1137, 1142 (9th Cir. 2009) (declining to "dismiss a live controversy as moot merely because it may become moot in the near future"); *Muniz v. Sabol,* 517 F.3d 29, 34 (1st Cir. 2008) (controversy "clearly not moot" even where the requested relief would have occurred within a few weeks regardless of the case's outcome); *League of United Latin Am. Citizens v. Bredesen*, 500 F.3d 523, 530 n.5 (6th Cir. 2007) (deciding case where superseding legislation would inevitably moot controversy, but law did not take effect for another month).

In any event, any mootness assessment is premature under the circumstances: We know neither *what* action EPA will take on its proposal, nor *when* it will take it. EPA has only *proposed* to repeal aspects of the 2024 Rule; it must now consider and respond to public comments on that proposal. *See* 42 U.S.C. § 7607(d)(5), (6)(B). The Clean Air Act and Administrative Procedure Act require that EPA's rulemakings be based on consideration of law, data, factual findings, and reasoned decision-making, and reflect input from the public. 42 U.S.C. § 7607(d); 5 U.S.C. § 553. These requirements "ensure that agency regulations are tested via exposure to diverse public comment," and provide "notice and the opportunity to be heard" as an essential component of "fairness to affected parties." *Int'l Union, UMW v. Mine Safety & Health Admin.*, 407 F.3d 1250, 1259 (D.C. Cir. 2005) (cleaned up) (citing *Small Refiner Lead Phase-Down Task Force v. EPA*, 705 F.2d 506, 547 (D.C. Cir. 1983)).

So, although EPA *could* finalize the action as proposed at the conclusion of the notice and comment process, it runs counter to the core principles of agency responsiveness to the public and regulated community to presume the Agency will. EPA also might issue an action with "major changes" from the proposal—which may not ultimately moot the present controversy. *See* 42 U.S.C. § 7607(d)(6)(A). Indeed, because Annex I serves to exempt the listed coal plants "from compliance with the Rule," 90 Fed. Reg. at 16,777, leaving even a single requirement of the

2024 Rule in place keeps the issues presented in this case "live" and capable of being remedied. *Larsen v. U.S. Navy*, 525 F.3d 1, 3-4 (D.C. Cir. 2008). EPA could also decide to modify its approach and issue a new proposal,[8] or to rescind the proposal altogether. The Court should not stay this case on the mere possibility the 2024 Rule will be repealed as proposed.

We also do not know *when* EPA will take final action on its proposal. Respondents characterize EPA's intention to promulgate a final rule by December 2025 as a "goal," and it is just that. *See* Abeyance Mot. at 4. EPA is not subject to any legal requirement to act by December 2025 or any other date. A nonbinding statement located on a website expressing EPA's intent to act before the end of the year is not sufficiently concrete to warrant abeyance. *See Am. Petrol. Inst. v. EPA*, 683 F.3d 382, 389 (D.C. Cir. 2012) (emphasizing that a settlement required EPA to issue a final rule by a "definite end date"). Indeed, the D.C. Circuit has cautioned that agencies cannot "stave off judicial review of a challenged rule simply by

[8] In fact, EPA requested comment on alternative standards that the Agency should consider in lieu of repealing the 2024 Rule fPM and mercury standards. 90 Fed. Reg. at 25,544-45 (June 17, 2025). Petitioners are among thousands of commenters on EPA's proposed repeal, and commented, among other things, that there *are* cost-effective intermediate standards. *See, e.g.*, Air Alliance Houston et al., Comments of Public Health and Environmental Organizations on Proposed Rule on National Emission Standards for Hazardous Air Pollutants: Coal- and Oil-Fired Electric Utility Steam Generating Unit (June 17, 2025), EPA-HQ-OAR-2018-0794-7609, available at: https://www.regulations.gov/comment/EPA-HQ-OAR-2018-0794-7609.

initiating a new proposed rulemaking that would amend the rule in a significant way." *Id.* at 388.

In any event, if history is any guide, final action is far from imminent. December 2025 is an ambitious goal. In practice, it can take EPA a year or longer to finalize action after the notice of proposed rulemaking.[9] Indeed, the Agency's last three MATS rulemakings each took more than a year between proposed and final action. *See, e.g.*, 89 Fed. Reg. at 38,509 (notice of proposed rulemaking published on April 24, 2023; final rule published on May 7, 2024); 88 Fed. Reg. 13,956 (Mar. 6, 2023) (proposed rule published February 9, 2022); 85 Fed. Reg. 31,286, 31,286-87 (May 22, 2020) (proposed rule published February 7, 2019). Especially in an area of great complexity and public interest, there is reason to doubt that EPA will be able to respond to those comments and finalize a rule in half its typical time.

[9] EPA has asserted as much in signed declarations concerning other rules issued under Section 7412. *See, e.g.*, Decl. of Penny E. Lassiter ¶ 4 & tbl., rows 8-10, *Blue Ridge Envtl. Def. League v. Regan*, No. 1:22-cv-03134, ECF No. 36 (D.D.C. Nov. 4, 2024) (stating that the "earliest possible completion date" for a Clean Air Act Section 7412 rulemaking on hazardous waste combustors was 10 months from proposal to final rule); Decl. of Panagiotis E. Tsirigotis ¶ 16 tbl. 3, row 4, ¶¶ 22-24, *Sierra Club v. Pruitt*, No. 1:16-cv-02461-TJK, ECF No. 13-3 (D.D.C. Oct. 19, 2017) (identifying the "minimum number of days" for a Clean Air Act Section 7412 technology review rulemaking on solid waste incinerators as one year from proposal to final rule).

In contrast, should near-term proceedings in the district court demonstrate that litigation in this Court is necessary to protect Petitioners' interests, the present, unlawful and irreparable emission of dangerous pollutants from the Annex I facilities would warrant expedited consideration of this petition. *See* D.C. Cir. Handbook VIII.B. Considering the likelihood of delay in meeting the December 2025 "goal," this Court could be positioned to grant relief before EPA takes final action. Even if Petitioners were to finalize a repeal rule before the Court concluded expedited consideration of this petition, such a repeal might not go into effect before the Court ruled here because any repeal rule may be stayed pending its own course of judicial review. In those circumstances, definitive rejection of EPA's selection of Annex I facilities would still secure important relief for Petitioners.

Finally, proceeding with this litigation while EPA's rulemaking proceeds does not present the concerns identified in *American Petroleum Institute v. EPA*, 683 F.3d 382 (D.C. Cir. 2012), and the other authorities Respondents cite in support of abeyance. Those cases arose in the context of an agency's reconsideration of the very rules being challenged in the litigation they sought to abate. *See, e.g.*, *id.* at 386-88. Here, by contrast, EPA seeks abeyance of litigation challenging Annex I on the basis that it is reconsidering an independent agency action, the 2024 Rule. But neither Annex I nor the exemptions themselves are being reconsidered and neither will be terminated by whatever action EPA decides

to take on the 2024 Rule. As such, the Court is not being asked to review an action that is itself "tentative" or subject to change or "eliminat[ion]." *Id.* at 387-88. And this is not a matter where, as in *Center for Biological Diversity v. EPA*, 56 F.4th 55, 60-61 (D.C. Cir. 2022), *see* Abeyance Mot. at 4, the parties reached a private settlement and jointly requested abeyance to allow time for the settlement's implementation.

CONCLUSION

For the reasons stated above, abeyance in this case is, at a minimum, premature, and could bring about substantial harm. The Court should deny Respondents' motion for a six-month abeyance.

DATED: August 19, 2025

Respectfully submitted,

/s/ Chloe H. Kolman

Sean H. Donahue
Chloe H. Kolman
Donahue, Goldberg & Herzog
1008 Pennsylvania Ave., SE
Washington, DC 20003
Tel: (202) 277-7085
sean@donahuegoldberg.com
chloe@donahuegoldberg.com

Surbhi Sarang
Richard Yates
Tomás Carbonell
Environmental Defense Fund
2060 Broadway St., Ste. 300
Boulder, Colorado 80302
Tel: (303) 440-4901
ssarang@edf.org

ryates@edf.org
tcarbonell@edf.org

Counsel for Petitioner Environmental Defense Fund

Nicholas Morales
James Pew
Earthjustice
1001 G Street NW, Suite 1000
Washington, DC 20001
Tel: (202) 667-4500
nmorales@earthjustice.org
jpew@earthjustice.org

Counsel for Petitioners Air Alliance Houston, Clean Air Council, Downwinders at Risk, Montana Environmental Information Center, and Sierra Club

Abel Russ
Environmental Integrity Project
888 17th St. NW, Suite 810
Washington, DC 20006
(202) 296-8800
aruss@environmentalintegrity.org

Counsel for Petitioner Environmental Integrity Project

Sarah Buckley (D.C. Cir. Bar No. 56677)
Natural Resources Defense Council
1152 15th Street NW, Suite 300
Washington, DC 20005
(202) 836-9555
sbuckley@nrdc.org

Katherine Desormeau (D.C. Cir. Bar No. 53097)
Natural Resources Defense Council

111 Sutter Street, 21st Floor
San Francisco, California 94104
(415) 875-6100
kdesormeau@nrdc.org

Counsel for Petitioner Natural Resources Defense Council

Brian H. Lynk (D.C. Bar No. 459525)
Environmental Law & Policy Center
740 15th Street, NW, Suite 700
Washington, DC 20005
(240) 461-4241
blynk@elpc.org

Counsel for Petitioners Environmental Law & Policy Center and Dakota Resource Council

Shaun A. Goho
Hayden Hashimoto
Clean Air Task Force
114 State Street, 6th Floor
Boston, MA 02109
617-624-0234
sgoho@catf.us

Counsel for Petitioner Citizens for Pennsylvania's Future

Ryan Maher
Center for Biological Diversity
1411 K Street, NW, Suite 1300
Washington, DC 20005
(781) 325-6303
rmaher@biologicaldiversity.org

Counsel for Petitioner Center for Biological Diversity

CERTIFICATE OF COMPLIANCE

I hereby certify on this 19th day of August, 2025, that the foregoing Response in Opposition complies with the word limits of Federal Rule of Appellate Procedure 27(d)(2)(A) because it contains 4,563 words, excluding parts of the document exempted by Federal Rule of Appellate Procedure 32(f). I further certify that this document complies with the typeface and type-style requirements of Federal Rule of Appellate Procedure 32(a)(5) & (6) because this document has been prepared in 14-point Time New Roman font, a proportionally spaced typeface, using Microsoft Word.

/s/ Chloe H. Kolman
Chloe H. Kolman

CERTIFICATE OF SERVICE

I hereby certify on this 19th day of August, 2025, that the foregoing Response in Opposition has been filed with the Clerk of the Court for the United States Court of Appeals for the District of Columbia Circuit, using the CM/ECF System. The participants in the case are registered CM/ECF users and service will be accomplished by the appellate CM/ECF system.

/s/ Chloe H. Kolman
Chloe H. Kolman

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

AIR ALLIANCE HOUSTON, et al.,

Plaintiffs,

v.

DONALD TRUMP, et al.,

Defendants.

Case No. 1:25-cv-1852-PLF

PLAINTIFFS' MEMORANDUM IN OPPOSITION TO DEFENDANTS' MOTION FOR SIX-MONTH ABEYANCE

In April, President Trump gave nearly one-third of coal-fired power plants across the country a free pass to cease their preparations to meet lower mercury and air toxic emissions standards. EPA updated those standards, known as MATS, just over a year ago. In doing so, EPA recognized that the vast majority of coal-fired power plants were capable of and indeed already limiting their emissions of these dangerous pollutants below what was required in its prior, 2012 standards. Nevertheless, with a stroke of his pen, the President in his April 8, 2025 Proclamation (supplemented in a July 17, 2025 Proclamation) exempted 71 facilities from their compliance obligations through July 2029 by summarily asserting, without evidence or even a gesture at source-specific analysis, that "technology to implement" that Rule is "not available." Proclamation 10914 of April 8, 2025, 90 Fed. Reg. 16,777 (Apr. 21, 2025).

The President's assertion is false,[1] and the President's action is unlawful. That unlawful action is having effects today. As prospective Intervenor-Defendant Talen Montana, LLC,

[1] EPA admitted as much in its recent proposal to repeal the 2024 MATS Rule, writing that the Colstrip Power Plant in Colstrip, Montana, "was *the only* facility unable to meet the lower

ED_021114_00003486-00001

confirms in its motion to intervene, coal plants have already suspended actions to reduce their emissions to comply with updated standards. *See* Talen Memo. in Supp. of Motion to Intervene, Dkt. 29-1 at 4 (asserting that Talen Montana, operator of one of the exempted facilities, "has already made operational planning and compliance decisions in reliance on the Presidential Exemption"). Plaintiffs are entitled to prompt review and judicial relief to minimize and prevent harm to Plaintiffs, their members, and the public from the unlawful exemption proclamations.

The six-month abeyance Defendants request would deprive Plaintiffs of that timely review. A stay would impose substantial hardship on Plaintiffs and their members by depriving them of the emissions reductions that would flow from timely compliance with the standards. Plaintiffs' and the public's interests in promptly achieving the health protections afforded by the updated MATS rule far outweigh the modest burden on Defendants to defend the exemptions. The *potential* future repeal of parts of that rule—which EPA proposes to accomplish through a separate action under separate statutory authority — does not moot and should not delay review of the President's unlawful action. The Court should deny Defendants' abeyance request.

The Court should also deny Defendants' alternative request for a 21-day extension of their responsive pleading deadline. This case has been pending since June 12. Defendants' deadline has already been extended twice, most recently to September 19, 2025. Defendants have not shown good cause for further delay.

BACKGROUND

Coal plants are one of the largest domestic emitters of hazardous air pollutants like mercury, arsenic, nickel, and other toxic metals. *National Emission Standards for Hazardous Air*

[filterable particulate matter] standard with *existing controls*." 90 Fed. Reg. 25,535, 25,541 (June 17, 2025) (emphasis added).

ED_021114_00003486-00002

Pollutants: Coal- and Oil-Fired Electric Utility Steam Generating Units Review of the Residual Risk and Technology Review, 89 Fed. Reg. 38,508, 38,509 (May 7, 2024) ("2024 Rule"). Short-term exposure to these pollutants can result in profound central nervous system effects; chronic exposure can cause brain and kidney damage, cancer, developmental effects, and a range of other adverse health effects. *Id.* at 38,556.

To address those risks, EPA first promulgated hazardous air pollutant standards for coal- and oil-fired power plants in 2012 under Section 112 of the Clean Air Act, 42 U.S.C. § 7412. After hazardous air pollutant emission standards are established, the Act requires EPA to review developments in control technologies to determine if revisions are necessary. *Id.* § 7412(d)(6).

As a result of its Section 7412(d)(6) review, EPA revised the MATS in 2024. The 2024 Rule set more protective limits on arsenic, nickel, and other metals pollution, represented by a surrogate "filterable particulate matter" standard (setting a new "fPM standard"), and further restricted mercury emissions from a subset of plants using high-polluting lignite coal (the new "mercury standard"). 89 Fed. Reg. at 38,510. The 2024 Rule also required facilities to use continuous emissions monitoring rather than infrequent "stack testing" to demonstrate compliance with the new standards (the "CEMS" requirement). *Id.* And it tightened standards for controlling pollution during plant startup periods. *Id.* EPA projected that the 2024 Rule would reduce annual emissions of mercury by 900 to 1,000 pounds and annual emissions of arsenic, nickel, and other toxic metals by about four to seven tons per year, starting in 2028. *Id.* at 38,561; Ex. 3 to Suppl. Compl. at 8, ECF No. 31-5 (describing emissions reductions in 2028).

The 2024 Rule required coal plants to comply with the startup standard by January 2, 2025, and with the fPM standard, the mercury standard, and other requirements by July 6, 2027. *Id.* at 38,519, 38,564. The 2027 compliance deadline reflected EPA's assessment of the lead time

ED_021114_00003486-00003

necessary for the regulated coal plants to procure and install necessary emissions controls, upgrade controls, or optimize or dial up controls already installed, and to take other compliance steps that would allow them to meet the requisite standards. *Id.* at 38,519 ("The Agency believes this timeline is as expeditious as practicable considering the potential need for some sources to upgrade or replace pollution controls.").

Earlier this year, on what EPA touted as the "greatest day of deregulation our nation has seen," EPA announced it intended to "reconsider" the 2024 Rule.[2] At the same time, EPA invited coal plants to apply for a two-year Presidential exemption from compliance obligations. EPA subsequently took receipt of numerous such requests. Ex. 7 to Suppl Compl. ECF No. 31-9.

On April 8, 2025, President Trump issued a Proclamation titled *Regulatory Relief for Certain Stationary Sources to Promote American Energy*, later published in the Federal Register at 90 Fed. Reg. 16,777 (Apr. 21, 2025) ("Exemption Proclamation").[3] The Exemption Proclamation granted an unspecified list of coal plants exemptions from compliance with the 2024 Rule "for the period beginning July 8, 2027, and concluding July 8, 2029." Proclamation Announcement (referring to, but not publishing, "Annex I" of exempt sources); *see* 90 Fed. Reg. 16,777. The list of exempt coal plants, known as Annex I, was later published by EPA on its

---

[2] EPA, News Release, *Trump EPA to Reconsider Biden-Harris MATS Regulation That Targeted Coal-Fired Power Plants to be Shut Down* (Mar. 12, 2025), https://www.epa.gov/newsreleases/trumpepa-reconsider-biden-harris-mats-regulation-targeted-coal-fired-power-plants-be; EPA, News Release, *EPA Launches Biggest Deregulatory Action in U.S. History* (Mar. 12, 2025), https://www.epa.gov/newsreleases/epa-launches-biggest-deregulatory-action-us-history.

[3] The Exemption Proclamation was published initially on the White House's website: https://www.whitehouse.gov/presidential-actions/2025/04/regulatory-relief-for-certain-stationary-sources-to-promote-american-energy/ ("Proclamation Announcement").

website on April 14, 2025,[4] before being appended to the Exemption Proclamation for publication in the Federal Register. 90 Fed. Reg. at 16,779-84.

Two months later, EPA signed a notice of proposed rulemaking that proposed to repeal the new fPM standard, the new mercury standard, and the CEMS requirements of the 2024 Rule, and solicited public comment. 90 Fed. Reg. 25,535 (June 17, 2025). EPA did not propose to repeal the revised startup standard, which is presently in effect. *Id.* at 25,535, 25,539 n.6 (explaining that "EPA is not reconsidering this aspect of the 2024 Final Action").

The President issued a second Proclamation on July 17, 2025, exempting an additional three coal plants. 90 Fed. Reg. 34,583 (July 23, 2025).[5]

Plaintiffs filed this lawsuit on June 12, 2025, challenging the Exemption Proclamation as contrary to 42 U.S.C. § 7412(i)(4) of the Clean Air Act and in excess of legal authority.

STANDARD OF REVIEW

Courts have discretion to stay a case to promote efficient use of the court's and litigants' resources, after weighing the benefits and hardships of a stay. *See Landis v. N. Am. Co.*, 299 U.S. 248, 254-55, 259 (1936); *Allen v. District of Columbia*, No. 20-CV-02453-TSC, 2024 WL 379811 (D.D.C. Feb. 1, 2024). But if there is even "a fair possibility" that the stay "will work damage to some one else," the movant must "make out a clear case of hardship or inequity in being required to go forward." *Landis*, 299 U.S. at 255-56 (explaining that "the burden of

[4] *Available at* https://www.epa.gov/system/files/documents/2025-04/regulatory-relief-for-certain-stationary-annex-1.pdf.

[5] Unlike the April 8, 2025 Exemption Proclamation, the initial publication of the second Proclamation on the White House's website included the list of facilities to which it applied: https://www.whitehouse.gov/presidential-actions/2025/07/regulatory-relief-for-certain-stationary-sources-to-further-promote-american-energy/.

ED_021114_00003486-00005

making out the justice and wisdom" of a stay "lay heavily" on the movant). Thus, the movant must either show that (1) the movant's harms meet the heightened "clear case of hardship or inequity" standard, or (2) the opposing party's claims of hardship are non-existent.

A court need not "dismiss or stay a live controversy simply because it may become moot in the future." *All. for Wild Rockies v. Gassman*, No. CV-21-105-M-DLC-KLD, 2022 WL 3030997, at *3 (D. Mont. Aug. 1, 2022) (denying Forest Service's request to stay litigation while it reconsidered decision implementing project following court's entry of preliminary injunction) (citing *Hunt v. Imperial Merchant Servs., Inc.*, 560 F.3d 1137, 1142 (9th Cir. 2009)). "A case is moot 'when the issues presented are no longer live or the parties lack a legally cognizable interest in the outcome.'" *Samma v. Dep't of Def.*, 136 F.4th 1108, 1113 (D.C. Cir. 2025) (quoting *Already, LLC v. Nike, Inc.*, 568 U.S. 85, 91 (2013)). Mootness arises only if there is nothing for the court to remedy. *Spencer v. Kemna*, 523 U.S. 1, 18 (1998).

ARGUMENT

I. An abeyance would harm Plaintiffs whereas Defendants do not show a clear case of hardship

Plaintiffs and their members are being exposed to pollution from exempted coal plants now. They seek to enjoin the Exemption Proclamations to ensure those plants are taking steps *now* to comply with the standards that will alleviate those exposures. The requested six-month abeyance would prejudice Plaintiffs' ability to get prompt, meaningful judicial review of the Exemption Proclamations, and thus to restore the compliance obligations at plants that were unlawfully exempted. By contrast, Defendants identify no hardship from allowing the case to proceed, other than the litigation costs necessary to defend their own unlawful actions. The

ED_021114_00003486-00006

balance of these interests strongly favors Plaintiffs, and Defendants therefore fail to meet their burden to stay this case. *Landis*, 299 U.S. at 255–56.

Plaintiffs are environmental and public health organizations with members who live, work, and recreate in areas affected by the mercury, arsenic, and other metals pollution emitted by exempted coal plants. Suppl. Compl. ¶¶ 144, 146, 148-153, 155-160; *see* Decl. of Stephanie Coates ¶¶ 15-19, 23 (attached as Ex. 1); Decl. of Michelle L. Marley-Knox ¶¶ 3-4, 8-9, 12 (attached as Ex. 2); Suppl. Decl. of Michelle L. Marley-Knox ¶¶ 3-4, 6-8 (attached as Ex. 3); Decl. of Derf Johnson ¶¶ 6-9 (attached as Ex. 4); Decl. of Catherine Fleischman ¶¶ 2-3, 7 (attached as Ex. 5); Decl. of Barbara Sue ¶¶ 2-3, 6 (attached as Ex. 6). Plaintiffs' members are concerned that exposure to pollution from exempted plants, including from eating contaminated fish, could have harmful impacts on their health. Suppl. Compl. ¶¶ 144-145, 148-153, 155-160; Coates Decl. ¶¶ 15-17, 21, 23; Marley-Knox Decl. ¶¶ 9-12; Marley-Knox Suppl. Decl. ¶¶ 6, 8; Johnson Decl. ¶¶ 8-9, 11, 13-14; Fleischman Decl. ¶ 4; Sue Decl. ¶¶ 4, 9. These concerns also reduce members' enjoyment of outdoor activities in affected areas. Suppl. Compl. ¶¶ 144, 146-153, 155-160; Coates Decl. ¶¶ 17, 23; Marley-Knox Decl. ¶¶ 8-10, 12; Marley-Knox Suppl. Decl. ¶¶ 6, 8; Johnson Decl. ¶¶ 5-9, 11-14; Fleischman Decl. ¶ 6; Sue Decl. ¶¶ 3-4.

The 2024 Rule will achieve significant reductions in emissions of mercury, arsenic, and other metals each year from coal plants. 89 Fed. Reg. at 38,561. Those emissions reductions—and the steps necessary to secure them—have been occurring since the 2024 Rule took effect and continue apace, as plants take steps to prepare for full compliance by the 2027 deadline. Indeed, states that challenged the 2024 Rule asserted in court filings that "to comply with the Rule's three-year deadline . . . power plants need to take action immediately." Amended Mot. for Stay at 1, *North Dakota v. EPA*, No. 24-1119 (D.C. Cir.), Doc. #2058570 (attached as Ex. 7). Industry

ED_021114_00003486-00007

parties have also asserted that these years before the 2024 Rule compliance deadlines are necessary for sources to prepare for compliance. *See, e.g.*, Nat'l Mining Ass'n, Comments on the proposed MATS Rule, 88 Fed. Reg. 24,854, at 12 (June 23, 2023), *available at* https://www.regulations.gov/comment/EPA-HQ-OAR-2018-0794-5986. Plants already must comply with the more stringent startup standard, which had a January 2025 compliance deadline. 89 Fed. Reg. at 38,519, 38,564.

At the latest, the emission reductions required by the 2024 Rule must be achieved by the 2027 deadline. But not so for exempted coal plants. Under the terms of the Exemption Proclamations, no emission reductions will be required between 2027 and 2029. Despite the Clean Air Act's limitation of such exemptions to a two-year period, coal plants have *already* stopped working to reduce their emissions or better control their pollution during the present compliance period (as, indeed, the Administration intended): prospective Defendant-Intervenor Talen, an operator and co-owner of an exempted coal plant, stated that 2024 Rule's compliance deadline "would require substantial and immediate expenditures" but that it has "suspended" compliance activities necessary to meet that deadline "[i]n reliance on the Presidential Exemption." Mem. in Support of Mot. to Intervene, at 1-2, ECF No. 29-1. And others have almost certainly followed suit.

The Exemption Proclamation thus delays the benefits of the reductions in emissions from exempted plants' compliance with the 2024 Rule, and prolongs members' exposure to pollution at present, higher levels. Suppl. Compl. ¶¶ 144, 146-153, 155-160. It also delays the benefits of continuous emissions monitoring systems, denying Plaintiffs and Plaintiffs' members information about coal plant emissions. Supp. Compl. ¶¶ 150-51.

ED_021114_00003486-00008

Those consequences flow from the Exemption Proclamation, not from EPA's proposed reconsideration of the 2024 Rule—which did not and could not exempt facilities from compliance with the Rule while it remains good law. The present operation of the Exemption Proclamations is thus denying Plaintiffs' members and the public the benefits that would accrue in the absence of those Proclamations: both the present-day emission reductions from the startup standard and the present and future emission reductions from sources upgrading or installing emissions controls to comply with the 2024 Rule that is presently in force. Indeed, because EPA, state regulators, and exempted coal plants have asserted that certain coal plants must begin preparations *immediately* to be able to meet standards by 2027, a delay in resolving this case could mean compliance by 2027 is not possible, even if the Court ultimately finds it is legally required.[6] *See* Mem. in Support of Mot. to Intervene, at 1-2, ECF No. 29-1 (stating that meeting the 2024 Rule's deadline "would require substantial and immediate expenditures"); *see also* 89 Fed. Reg. at 38,519; Amended Mot. for Stay at 1, 18, *North Dakota v. EPA*, No. 24-1119 (D.C. Cir.) (Ex. 7). Delaying judicial review would thus delay the cleaner air and better health that flows from lower emissions and to which Plaintiffs and their members are legally entitled.

For these reasons, this case cannot wait on hold for six months. Under such an extended delay, Plaintiffs face the "fair possibility" of securing relief too late for exempted plants to achieve compliance by 2027. *Landis*, 299 U.S. at 255. That outcome would "work damage" to Plaintiffs' members, who will be exposed to more mercury and toxic metal pollution from exempted coal plants—pollution that Plaintiffs seek to reduce by having the exemptions declared

[6] Because exemptions may be extended after the two-year period expires, Plaintiffs' members and the public face the prospect of damage to their health and recreational interests for years to come. 42 U.S.C. § 7412(i)(4) ("An exemption . . . may be extended for 1 or more additional periods, each period not to exceed 2 years.").

unlawful. *Id.* For the same reason Defendants issued the exemptions well in advance of the 2024 Rule's deadlines, Plaintiffs have a strong interest in resolving the question of their lawfulness well in advance: the exemptions affect present decisions about the timing of emission reductions.

Defendants have failed to carry their burden of showing a "clear case of hardship or inequity" in proceeding to litigate this case. *Id.* at 255-56 ("the burden of making" the case for a stay "lay heavily" on the movants). Defendants fail to identify any explicit hardship beyond the need to incur the ordinary costs of defending a lawsuit. *See* Mot., at 4, ECF No. 26. Ordinary litigation costs fall short of meeting the heightened standard of a "clear case of hardship or inequity," *Landis*, 299 U.S. at 255-56; *see Lockyer v. Mirant Corp.*, 398 F.3d 1098, 1112 (9th Cir. 2005), and is outweighed by Plaintiffs' interests in protecting the health of their members and the public from unlawful pollution. That is especially true where the action in question concerns *ultra vires* actions of the Executive Branch—and thus where the government's litigation costs have been brought on by their own choice to assert authority not granted to them by Congress.

It would be inequitable for Defendants to evade timely judicial review of the exemptions they chose to issue merely because they chose also to reconsider aspects of the 2024 Rule. That is especially so given that the Clean Air Act expressly limits EPA's ability to stay the effectiveness of a rule during reconsideration "for a period not to exceed three months." 42 U.S.C. § 7607(d)(7)(B). Defendants should not be permitted to use the court to achieve a back-door stay pending reconsideration for exempted facilities.

Moreover, Defendants cannot reasonably claim that their chosen timing obviates any harm from the Exemption Proclamations; Defendants chose to issue exemptions and pursue repeal of the 2024 Rule at the same time, and presumably would not have done so unless they believed the exemptions had their own, present impact. *Landis*, 299 U.S. at 255-56.

ED_021114_00003486-00010

II. Defendants' claim that agency action may, in the future, moot this case does not justify abeyance

Plaintiffs' challenge to the legality of Defendants' Exemption Proclamations presents a live controversy that can be meaningfully remedied and is therefore not moot. *See Samma*, 136 F.4th at 1113 ("A case is moot when the issues presented are no longer live or the parties lack a legally cognizable interest in the outcome." (internal quotation omitted)). As explained above, the exemptions are final and in effect — as is the 2024 Rule — and guide the activities exempted coal plants are taking (or not taking) right now. As described in Section I above, harm to Plaintiffs and their members from postponing emissions reductions is ongoing and will only increase as the 2027 deadline grows closer and compliance steps remain unfinished.

That a potential final action by EPA to rescind the 2024 rule "could" moot this case, as Defendants argue, is not sufficient grounds to put the case in abeyance. Where harm is ongoing, timely review is of the essence, and judicial relief would be effective, "the Court is not obligated to step aside, nor have courts made a habit of doing so—even where a case might become moot shortly." *Conservation Law Found. v. Pritzker*, 37 F. Supp. 3d 254, 265 (D.D.C. 2014); *see also Crawford v. FCC*, 417 F.3d 1289, 1294-95 (D.C. Cir. 2005) (deciding case where FCC action would effectively moot the claim, but that action had not yet become final).[7]

As an initial matter, even if EPA adopts its proposal, it could not entirely moot this case: the 2024 Rule consists of several distinct standards and requirements, and EPA does not propose

[7] Other circuits have concluded the same. *See, e.g.*, *Hunt v. Imperial Merch. Servs., Inc.*, 560 F.3d 1137, 1142 (9th Cir. 2009) (declining to "dismiss a live controversy as moot merely because it may become moot in the near future"); *Muniz v. Sabol*, 517 F.3d 29, 34 (1st Cir. 2008) (controversy "clearly not moot" even where the requested relief would have occurred within a few weeks regardless of the case's outcome); *League of United Latin Am. Citizens v. Bredesen*, 500 F.3d 523, 530 n.5 (6th Cir. 2007) (deciding case where superseding legislation would inevitably moot controversy, but law did not take effect for another month).

to repeal or modify *all* of them. For instance, EPA stated that it is "not reconsidering" the more stringent startup standard. 90 Fed. Reg. 25,535, 25,539 n.6 (June 17, 2025). The Exemption Proclamation, on the other hand, exempts power plants "from compliance with the Rule," which seemingly includes the 2024 Rule's startup standard. 90 Fed. Reg. 16,777 (Apr. 21, 2025). Plaintiffs' counts one, two, and three of their complaint encompass a challenge to the Exemption Proclamation as it relates to compliance with the startup standard. *See* Suppl. Compl. ¶¶ 79-83, 164, 173, 177-179, 183-184. Thus, aspects of the Exemption Proclamation would remain a live controversy even if the rule is finalized as proposed.

In any event, any mootness assessment is premature under the circumstances: We know neither *what* action EPA will take on its proposal, nor *when* it will take it. EPA has only *proposed* to repeal aspects of the 2024 Rule; it must now consider and respond to public comments on that proposal. *See* 42 U.S.C. § 7607(d)(5), (6)(B). The Clean Air Act and Administrative Procedure Act require that EPA's rulemakings be based on consideration of law, data, factual findings, and reasoned decision-making, and reflect input from the public. 42 U.S.C. § 7607(d); 5 U.S.C. § 553. These requirements "ensure that agency regulations are tested via exposure to diverse public comment," and provide "notice and the opportunity to be heard" as an essential component of "fairness to affected parties." *Int'l Union, UMW v. Mine Safety & Health Admin.*, 407 F.3d 1250, 1259 (D.C. Cir. 2005) (cleaned up) (citing *Small Refiner Lead Phase-Down Task Force v. EPA*, 705 F.2d 506, 547 (D.C. Cir. 1983)).

So, although EPA *could* finalize the action as proposed at the conclusion of the notice and comment process, it runs counter to the core principles of agency responsiveness to public comment to *presume* that it will. EPA also might issue an action with "major changes" from the proposal — which may not ultimately moot the present controversy. *See* 42 U.S.C.

ED_021114_00003486-00012

§ 7607(d)(6)(A). Indeed, because the Exemption Proclamation exempts the listed coal plants "from compliance with the Rule," 90 Fed. Reg. at 16,777, leaving even a single requirement of the 2024 Rule in place keeps the issues presented in this case "live" and capable of being remedied. *Larsen v. U.S. Navy*, 525 F.3d 1, 3-4 (D.C. Cir. 2008). EPA could also decide to modify its approach and issue a new proposal,[8] or to rescind the proposal altogether. The Court should not stay this case on the mere possibility the 2024 Rule will be repealed as proposed.

We also do not know *when* EPA will take final action on its proposal. Defendants characterize EPA's intention to promulgate a final rule by December 2025 as a "goal," and it is just that. *See* Mot. at 4, ECF No. 26. EPA is not subject to any legal requirement to act by December 2025 or any other date. A nonbinding statement located on a website expressing EPA's intent to act before the end of the year is not sufficiently concrete to warrant abeyance. *See Am. Petrol. Inst. v. EPA*, 683 F.3d 382, 389 (D.C. Cir. 2012) (emphasizing that a settlement required EPA to issue a final rule by a "definite end date"). Indeed, the D.C. Circuit has cautioned that agencies cannot "stave off judicial review of a challenged rule simply by initiating a new proposed rulemaking that would amend the rule in a significant way." *Id.* at 388.

In any event, if history is any guide, final action is far from imminent. December 2025 is an ambitious goal. In practice, it can take EPA a year or longer to finalize action after the notice

[8] In fact, EPA requested comment on alternative standards that the Agency should consider in lieu of repealing the 2024 Rule fPM and mercury standards. 90 Fed. Reg. 25,535, 25,544-45 (June 17, 2025). Plaintiffs are among thousands of commenters on EPA's proposed repeal, and commented, among other things, that there *are* cost-effective intermediate standards. *See, e.g.*, Air Alliance Houston et al., Comments of Public Health and Environmental Organizations on Proposed Rule on National Emission Standards for Hazardous Air Pollutants: Coal- and Oil-Fired Electric Utility Steam Generating Unit (June 17, 2025) (forthcoming at regulations.gov), *available at* https://tinyurl.com/y2uhtnhk.

ED_021114_00003486-00013

of proposed rulemaking.[9] Indeed, the Agency's last three MATS rulemakings each took more than a year between proposed and final action. *See, e.g.*, 2024 Rule at 38,509 (notice of proposed rulemaking published on April 24, 2023; final rule published on May 7, 2024); National Emission Standards for Hazardous Air Pollutants: Coal-and Oil-Fired Electric Utility Steam Generating Units Revocation of the 2020 Reconsideration and Affirmation of the Appropriate and Necessary Supplemental Finding, 88 Fed. Reg. 13,956 (Mar. 6, 2023) (proposed rule published February 9, 2022) National Emission Standards for Hazardous Air Pollutants: Coal- and Oil-Fired Electric Utility Steam Generating Units—Reconsideration of Supplemental Finding and Risk and Technology Review, 85 Fed. Reg. 31,286, 31,286-87 (May 22, 2020) (proposed rule published February 7, 2019). Especially in an area of great complexity and public interest, there is reason to doubt that EPA will be able to respond to those comments and finalize a rule in half its typical time.

In contrast, Plaintiffs believe they can proceed expeditiously, with dispositive motions fully briefed this fall. Considering the likelihood of delay in meeting the December 2025 "goal," Plaintiffs are well-positioned to obtain relief before EPA takes final action.

Finally, proceeding with this litigation while EPA's rulemaking proceeds does not present the concerns identified in *American Petroleum Institute v. EPA*, 683 F.3d 382 (D.C. Cir.

[9] EPA has asserted as much in signed declarations concerning other rules issued under Section 7412. *See, e.g.*, Decl. of Penny E. Lassiter ¶ 4 & tbl., rows 8-10 (Nov. 4, 2024) (submitted in *Blue Ridge Env't Defense League v. Regan*, No. 1:22-cv-03134, ECF No. 36 (D.D.C.) (attached as Ex. 8) (stating that the "earliest possible completion date" for a Clean Air Act Section 7412 rulemaking on hazardous waste combustors was 10 months from proposal to final rule); Decl. of Panagiotis E. Tsirigotis ¶ 16 tbl. 3, row 4, ¶¶ 22-24 (Oct. 19, 2017) (submitted in *Sierra Club v. Pruitt*, No. 1:16-cv-02461-TJK, ECF No. 13-3 (D.D.C.) (attached as Ex. 9) (identifying the "minimum number of days" for a Clean Air Act Section 7412 technology review rulemaking on solid waste incinerators as one year from proposal to final rule).

ED_021114_00003486-00014

2012), and the other authorities Defendants cite in support of abeyance. Those cases arose in the context of an agency's reconsideration of the very rules being challenged in the litigation they sought to abate. *See, e.g.*, *id.* at 386-88. Here, by contrast, Defendants seek abeyance of litigation challenging the Exemption Proclamations because EPA is reconsidering an independent agency action, the 2024 Rule. The *exemptions* are not being reconsidered and will not be terminated by whatever action EPA decides to take on the 2024 Rule; the Court is not being asked to review an action that is itself "tentative" or subject to change or "eliminat[ion]." *Id.* at 387-88. And this is not a matter where, as in *Center for Biological Diversity v. EPA*, 56 F.4th 55, 60-61 (D.C. Cir. 2022), *see* Mot. at 4, ECF No. 26, the parties reached a private settlement and jointly requested abeyance to allow time for the settlement's implementation.

Defendants' motion should be denied.

III. The Court should deny Defendants' alternative request to further extend the responsive pleading deadline

The Court should also deny Defendants' alternative request for a 21-day extension of their deadline to respond to Plaintiffs' complaint. The deadline has been extended twice already, and Defendants have not shown good cause for extending it further. This case has been pending since June. Nothing about the abeyance motion, or the Court's ruling on it, affects *how* Defendants respond to the complaint. The Court should deny their extension request.

CONCLUSION

For the reasons stated above, the Court should deny Defendants' motion for a six-month abeyance and for a further extension of Defendants' responsive pleading deadline.

ED_021114_00003486-00015

DATED: August 19, 2025

Respectfully Submitted,

/s/ Sarah Buckley
Sarah Buckley (Va. Bar No. 87350)
(Pro Hac Vice)
Natural Resources Defense Council
1152 15th Street NW, Suite 300
Washington, DC 20005
(202) 836-9555
sbuckley@nrdc.org

Katherine Desormeau (D.D.C. Bar ID CA00024)
Natural Resources Defense Council
111 Sutter Street, 21st Floor
San Francisco, California 94104
(415) 875-6100
kdesormeau@nrdc.org

Counsel for Plaintiff Natural Resources Defense Council

/s/ Nicholas Morales
Nicholas Morales (D.C. Bar No. 1003942)
Earthjustice
1001 G Street NW, Suite 1000
(202) 667-4500
nmorales@earthjustice.org

Counsel for Plaintiffs Air Alliance Houston, Clean Air Council, Downwinders at Risk, Montana Environmental Information Center, and Sierra Club

Surbhi Sarang (CO Bar No. 56667, D.D.C. Bar ID CO0112)
Richard Yates (D.D.C. Bar ID CA00229)
Tomás Carbonell (D.D.C. Bar ID 989797)
Environmental Defense Fund
2060 Broadway Street, Ste. 300
Boulder, Colorado 80302
(303) 440-4901
ssarang@edf.org
ryates@edf.org
tcarbonell@edf.org

/s/ Sean H. Donahue
Sean H. Donahue (DC Bar No. 450940)
Donahue, Goldberg & Herzog
1008 Pennsylvania Avenue SE
Washington, DC 20003
(202) 277-7085
sean@donahuegoldberg.com

Counsel for Plaintiff Environmental Defense Fund

/s/ Abel Russ
Abel Russ (D.D.C. Bar ID 1007020)
Environmental Integrity Project
888 17th Street NW, Suite 810
Washington, DC 20006
(202) 296-8800
aruss@environmentalintegrity.org

Counsel for Plaintiff Environmental Integrity Project

/s/ Brian H. Lynk
Brian H. Lynk (D.C. Bar No. 459525)
Environmental Law & Policy Center
740 15th Street, NW, Suite 700
Washington, DC 20005
(240) 461-4241
blynk@elpc.org

Counsel for Plaintiffs Environmental Law & Policy Center and Dakota Resource Council

/s/ Shaun A. Goho
Shaun A. Goho (D.D.C. Bar ID MA0013)
Clean Air Task Force
114 State Street, 6th Floor
Boston, MA 02109
(617) 624-0234
sgoho@catf.us

Counsel for Plaintiff Citizens for Pennsylvania's Future

/s/ Ryan Maher
Ryan Maher (D.C. Bar No. 1620024)
Center for Biological Diversity
1411 K Street NW, Suite 1300
Washington, DC 20005
(781) 325-6303
rmaher@biologicaldiversity.org

Counsel for Plaintiff Center for Biological Diversity

ED_021114_00003486-00018

EXHIBIT 1

Declaration of Stephanie Coates

DECLARATION OF STEPHANIE COATES

I, Stephanie Coates, declare as follows:

1. I submit this declaration on behalf of Environmental Defense Fund ("EDF") to support its litigation challenging President Trump's Proclamation, *Regulatory Relief for Certain Stationary Sources To Promote American Energy*, 90 Fed. Reg. 16777 (Apr. 21, 2025) ("Exemptions Proclamation"), exempting sources from compliance with the U.S. Environmental Protection Agency's ("EPA") final rule: National Emission Standards for Hazardous Air Pollutants: Coal- and Oil-Fired Electric Utility Steam Generating Units Review of the Residual Risk and Technology Review, 86 Fed. Reg. 38508 (May 7, 2024) ("Final Rule").

2. I am a Climate & Health Project Manager at, and a member of, EDF. I work out of Houston, Texas, where I have lived since 2013. In my role as Climate & Health Project Manager I oversee a project that seeks to characterize concentrations of air toxics in Houston through mobile air monitoring and use these data in conjunction with health data from community health centers to assist community partners in creating disaster response plans. Prior to this role, I was a Community Air Quality Fellow with EDF working directly with grassroots, community-based organizations on their environmental justice priorities with air quality being a concern among all the groups we work with in Houston. EDF also worked with the City of Houston and the community groups to create an automated

air quality report that is generated weekly using data from the community networks and local and state monitors to identify areas with the most National Ambient Air Quality Standards ("NAAQS") exceedances and pinpoint locations with readings above thresholds. The report also includes weather data to identify the likeliest source of the pollution at the time of exceedance. Additionally, EDF engaged with community-based organizations to inform the development of the Climate Vulnerability Index[1] a tool combining 184 different datasets to rank more than 70,000 census tracts to see which communities face the greatest challenges from the impacts of a changing climate. Harris County ranks in the 85th national vulnerability percentile. Census tracts for the community groups we work with in Harris County rank among the top 10% most vulnerable in the nation. Environmental data included in the Climate Vulnerability Index give an indication of a census tract's proximity to transportation sources and exposures to and health risks from other stationary air pollutant sources. As a Fellow, I also supported the community groups in their successful application for an EPA Community Air

[1] *See*, U.S. Climate Vulnerability Index, Overall Climate Vulnerability for Tract 4820121250, https://map.climatevulnerabilityindex.org/map/cvi_overall/tract-48201212500-northeast-houston-houston-tx?mapBoundaries=Tract&mapFilter=9&reportBoundaries=Tract&geoContext=State (showing data for the Houston area).

Quality Monitoring Grant. The main goal of that award will be to conduct mobile monitoring for ethylene oxide, 1,3-butadiene, formaldehyde and acrolein.[2]

3. I understand that the Final Rule addresses toxic pollution from coal-fired power plants by (1) lowering the mercury emission standard for coal plants burning lignite coal; (2) lowering the emission standard for toxic metals such as chromium, nickel, arsenic, lead and others for coal plants; (3) requiring coal plants to use continuous emissions monitoring systems to demonstrate compliance with the standard for non-mercury toxic metals; and (4) updating the definition of "startup" to require coal plants to turn on pollution controls more quickly upon startup. I understand that the Final Rule requires coal plants to comply with the first three requirements by July 8, 2027 and has required coal plants to comply with the new "startup" definition since January 2, 2025.

4. I am also aware that the Exemptions Proclamation exempted 68 coal plants from the Final Rule's standards through July 8, 2029. See EPA, Presidential Proclamation – Regulatory Relief for Certain Stationary Sources to Promote American Energy, at https://www.epa.gov/stationary-sources-air-pollution/presidential-proclamation-regulatory-relief-certain-stationary (providing Annex 1 list of sources exempted by the President).

[2] *See*, EPA, EPA Awards Nearly $500,000 to Texas Organization to improve Air Quality in the Houston Area (Nov. 29, 2023), https://www.epa.gov/newsreleases/epa-awards-nearly-500000-texas-organization-improve-air-quality-houston-area#:~:text=The%20main%20goal%20is,butadiene%2C%20formaldehyde%2C%20and%20acrolein.

5. EDF is deeply engaged in efforts to use monitoring data to inform the public about air pollution, and as explained above, I have been involved in some aspects of this work.[3]

6. EDF has also assisted community groups in Pleasantville, Fifth Ward and Sunnyside to install community-owned air sensor networks measuring particulate matter 2.5 ($PM_{2.5}$), nitrous dioxide (NO_2), and volatile organic compounds. Even though these neighborhoods are overburdened by sources of air pollution such as concrete batch plants/crushers, freeways, metal recyclers, refineries and other industrial activities, the nearest regulatory air monitors are several miles away. By installing their own sensor networks, they are able to identify concerning trends of particulate pollution above NAAQS and with dangerous peaks affecting public health. With EDF's support, community-based organizations in Fifth Ward and Pleasantville were able to successfully advocate for additional state regulatory air monitors to be sited in their neighborhood and increased monitoring and enforcement by County and City officials.

7. EDF has been working with the community of Sunnyside on the southside of Houston since 2020. After a community assessment and asset mapping, residents recognized that the abundance of pollution sources nearby was

[3] *See also* Comments of EDF on Texas Commission on Environmental Quality Proposed 2025 Annual Monitoring Network Plan (May 14, 2025).

directly impacting their health. Zip codes in Sunnyside are considered to have "high asthma burden" due to high utilization of emergency services to treat asthma attacks. EDF encouraged community leaders to join the City of Houston Asthma Coalition to educate residents on asthma management practices. EDF assisted community leaders in Sunnyside to install their air sensor network in 2021 and EDF has provided technical assistance to help residents understand and use the data, which show average $PM_{2.5}$ concentrations in 2023 measuring above NAAQS of 9 $\mu g/m^3$ 62% of the time. EDF is supporting Sunnyside's request that the Texas Commission on Environmental Quality include deployment of a new regulatory monitor in their neighborhood as part of the 2024 Air Monitoring Network Plan. Having information about emissions is essential to understanding public health impacts in these communities. Monitoring data from facilities is essential to ensuring that there is information about the air pollution communities are exposed to.

8. I am aware that sources that are major under Clean Air Act Section 112 are subject to the Clean Air Act's Title V permitting requirements. Title V requires that "a copy of each permit application, compliance plan including the schedule of compliance), emissions or compliance monitoring report, certification, and each permit. . . shall be available to the public." 42 U.S.C. § 7661b(e).

9. Prior to the Final Rule, coal plants that are major could choose to submit only quarterly stack testing results to EPA to demonstrate their compliance with the limits on toxic metals. With the Final Rule's requirement for plants to use continuous emissions monitoring systems, plants will submit hourly compliance data instead of being allowed to submit data from just four test days per year. I understand EPA requirements will further compel coal plants to report their continuous emissions monitoring data to the Emissions Collection and Monitoring Plan System, allowing the public to easily locate, review, and download emissions data using simple, user-directed inquiries. This provides a vital benefit to communities by enabling their access to more comprehensive pollution exposure data that can be used to evaluate individual and community health impacts. This also benefits EDF in its organizational goals to understand and increase awareness of exposure to air toxics and to limit those exposures.

10. Communities are often concerned about emissions from nearby sources of pollution such as coal plants. Having access to hourly source-specific monitoring data that is required to be made available under the Final Rule and Clean Air Act Title V helps reveal the air pollution communities are exposed to and whether additional measures need to be taken in order to reduce pollution from these sources. For example, this data may reveal that a facility is having difficulty with their pollution controls, or that they are not adequately maintaining their

facility as needed to control emissions. Communities can use this data to advocate for better enforcement and compliance by local and state regulatory agencies. Additionally, continuous emissions monitoring will provide residents with more granular information about emissions from nearby coal plants, information they can use to make decisions to better protect their health, for example, whether or not to spend time outdoors, or if it is necessary to use personal protective equipment or air filters in homes and schools.

11. I understand that EPA determined that continuous emissions monitoring could further reduce emissions of non-mercury metals by providing power plant operators with more frequent emissions data, allowing them to quickly identify and address issues with pollution control devices not functioning as expected.[4] EPA determined that this would likely reduce exposures to people living near coal-fired power plants subject to the updated non-mercury toxic metal standard.[5]

[4] EPA, National Emission Standards for Hazardous Air Pollutants: Coal- and Oil-Fired Electric Utility Steam Generating Units Review of the Residual Risk and Technology Review, 89 Fed. Reg. 38508, 38536-37 (May 7, 2024).
[5] *Id.*

12. EDF frequently uses information about sources of air pollution to inform blog posts, reports, fact sheets, and other materials to increase public awareness of threats of air pollution from particular facilities.[6]

13. EDF's ability to carry out its organizational mission to build a vital Earth for everyone is greatly benefited by the Final Rule's new monitoring requirements. The Final Rule allows EDF to expend fewer resources towards obtaining information about sources of air pollution in order to communicate threats about air pollution exposures to the public.

[6] *See, e.g.*, EDF & Environmental Integrity Project, Trump EPA Pollution Pass Map (2025), https://www.edf.org/maps/epa-pollution-pass; EDF, Making the invisible visible: A guide for mapping hyperlocal air pollution to drive clean air action (Oct. 1, 2019), https://www.edf.org/sites/default/files/content/making-the-invisible-visible.pdf; Matt Tresaugue, Houston neighborhood maps decades-old pollution problem, paving way for communities nationwide (Oct. 26, 2018), https://www.edf.org/blog/2018/10/26/houston-neighborhood-maps-decades-old-pollution-problem-paving-way-communities; Jeremy Proville, Understanding how communities are vulnerable to climate change is key to improving equity and justice (Mar. 29, 2023), https://blogs.edf.org/markets/2023/03/29/understanding-how-communities-are-vulnerable-to-climate-change-is-key-to-improving-equity-and-justice/; EDF Business, How Houston's model could change the way cities map air pollution, https://business.edf.org/insights/how-houstons-model-could-change-the-way-cities-map-air-pollution/; EDF, EPA Finds Valero Energy "Significantly Underestimated" Release of Pollution in Houston (Sep. 4, 2017), https://www.edf.org/media/epa-finds-valero-energy-significantly-underestimated-release-pollution-houston; EDF, Finding pollution – and who it impacts most – in Houston (Jun. 3, 2020), https://www.edf.org/airqualitymaps/houston/findings; EDF, Texas Explosion Underscores Need to Hold Polluters Accountable, Protect Community Health (May 6, 2023), https://www.edf.org/media/texas-explosion-underscores-need-hold-polluters-accountable-protect-community-health; Jolie Villegas, We Need to Close a Mercury Pollution Loophole for Lignite Coal Plants (Apr. 12, 2024), https://blogs.edf.org/climate411/2024/04/12/we-need-to-close-a-mercury-pollution-loophole-for-lignite-coal-plants.

14. If coal plants are exempted from the Final Rule until 2029 or longer, EDF will be harmed by the loss of access to this monitoring data for two or more years.

15. As someone who lives and works in Houston, Texas, I have concerns about my exposure to pollution from coal plants, including mercury, which I understand is associated with harms to the nervous system, kidney, and cardiovascular system, and from toxic metals like selenium, chromium, nickel, cobalt, cadmium, beryllium, lead, and manganese which I understand are associated with a variety of health effects including the potential to cause cancer. From my work I know that Houston air quality is plagued by the heavy presence of polluting industry, including coal-fired power plants.

16. On June 4, 2024, I was diagnosed with non-hereditary breast cancer. I am concerned that the persistent presence of air pollution in my community, including the toxic pollution from coal plants that includes known carcinogens, could have increased my risk of developing cancer. I am also concerned that the ongoing toxic pollution from nearby coal plants will exacerbate my health condition and detract from my quality of life.

17. I am concerned about my exposure to air pollution when my family and I spend time outdoors. My family only has one car, which is primarily used by my partner. When I need to run errands or go to appointments during the day, I

usually walk or bike. My family and I regularly walk to the park, coffee shop or to family's house on the weekends. My children walk to school and have recess outdoors most days. As children grow, their developing lungs and brains make them especially vulnerable to air pollution since they breathe more rapidly and inhale more air relative to their size than adults. I receive air quality alerts from the Texas Commission on Environmental Quality and have the Air Quality Index on my smartwatch face, so I am always aware of conditions. If the air quality is unhealthy for sensitive groups such as children, we limit our time outdoors. When there have been air pollution incidents like chemical fires in our region, I use the Clarity openmap and EDF Air Tracker tools to try to understand the threat to my area. I'm grateful that I am aware of such tools so that I can make decisions to protect my and my family's health.

18. We have several coal plants in the surrounding area. The closest coal plant to my home is the W.A. Parish Coal Plant. It is 25 miles from my home. Outside of Houston are also the Martin Lake plant in Tatum; the Oak Grove plant in Petteway; and the San Miguel plant in Christine. I am aware that these plants burn lignite coal, one of the dirtiest types of coal that produces high amounts of mercury emissions. I understand the Final Rule will place a more stringent emissions limit for non-mercury toxic metals for these plants, require them to use continuous emissions monitoring to demonstrate compliance with the limit on non-

mercury toxic metals, and require them to abide by more stringent startup conditions. I understand the Final Rule will require the Martin Lake, Oak Grove, and San Miguel plants to reduce their emissions of mercury.

19. I also understand that all four of these plants are listed on "Annex 1" as plants that the Exemptions Proclamation exempts from the Final Rule's requirements through July 9, 2029. *See* Regulatory Relief for Certain Stationary Sources To Promote American Energy, 90 Fed. Reg. 16777 (Apr. 21, 2025); EPA, Presidential Proclamation Regulatory Relief for Certain Stationary Sources to Promote American Energy, at https://www.epa.gov/stationary-sources-air-pollution/presidential-proclamation-regulatory-relief-certain-stationary (providing Annex 1 list of sources exempted by the President).

20. The Exemptions Proclamation effected these suspensions of the Final Rule's requirements without rulemaking notice and an opportunity for me to comment, or for EDF to comment on my behalf.

21. If I were given an opportunity to comment, or had EDF had the opportunity to comment on my behalf, I could have shared information about my exposures to air pollution and my concerns about my and my family's health as a result of pollution from coal plants and EDF could have shared information about the availability of technology needed for coal plants to comply with the Final Rule.

22. Suspending the Final Rule's CEMS monitoring requirement harms me and EDF by denying me and the organization more detailed and regular information about coal plant toxic emissions that would have otherwise been available under the Final Rule. The exemptions mean we will instead need to rely on infrequent stack test information based on tests conducted merely four times a year.

23. I believe the Final Rule's requirements will lead to improved air quality in the Houston area where I live, work, and raise my children. The Exemptions Proclamation harms me and my family by permitting coal plants to emit more pollution during the period of exemption than they would otherwise emit if required to comply with the Final Rule according to its original compliance schedule.

24. The harms to me and my family would be redressed by a Court Order preventing federal authorities from implementing, enforcing, or recognizing the exemptions. Such a Court Order would ensure that coal plants install the emissions controls necessary to comply with the Final Rule and reduce the pollution harming my family and me.

I declare under the penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed in Houston, TX on May 30, 2025.

Stephanie Coates

EXHIBIT 2

Declaration of Michelle L. Marley-Knox

DECLARATION OF MICHELLE L. MARLEY-KNOX

I, Michelle L. Marley-Knox, declare as follows:

1. My name is Michelle L. Marley-Knox. I am a citizen of the United States, am over 18 years of age, and am competent to give this declaration. All of the information provided is based on my own personal knowledge unless otherwise noted.

2. I am a member of the Environmental Law & Policy Center ("ELPC") and have been involved with ELPC since approximately 2018. ELPC was instrumental in partnering with a coalition of solar businesses that I formed in 2018 and has since provided assistance to me and my business related to energy policy.

3. I currently live in Owaneco, Illinois and have been in my current home since March of 1989. I have lived within thirty miles of the Kincaid power plant for my entire life and often see the pollution it emits from its coal stacks.

4. I own WindSolarUSA, Inc., a renewable energy development company that focuses on designing and installing solar photovoltaics for residential, commercial, and agricultural applications. I formed WindSolarUSA, Inc. in September of 2008 in an effort to offer Illinoisans a level of self-sufficiency and sustainability utilizing clean energy products. We serve Central and Southern Illinois. I have customers living near the Kincaid power plant, including in Taylorville, Glenarm, Rochester, Auburn, Pawnee, Chatham, and Springfield, who have all made a choice to use clean energy for the production of their electricity in an effort to reduce our dependence on fossil fuels.

5. I have completed significant training through the Midwest Renewable Energy Association and am an active member of the Illinois Clean Jobs Coalition, the Illinois Environmental Council, Sierra Club, the Natural Resources Defense Council, and other

organizations through which I take ongoing training to stay abreast of environmental and energy issues that affect our state, nation, and world. I have also served as an instructor of Solar Photovoltaics at Lincoln Land Community College and participate in Workforce Development Program interviews and feedback opportunities in terms of creating clean energy jobs in Illinois.

6. I am involved in community and advocacy work related to environmental and energy issues. I participate every year in the Illinois Environmental Council's Lobby Days in Springfield, Illinois to educate legislators about the importance of clean air, water, and soil. I also work to educate utilities about the importance of using storage to supplement their ability to store and dispatch clean energy in times of peak demand to avoid having to engage peaker plants that are generally aging and tend to be the dirtiest of our generating facilities.

7. I engage with environmental and clean energy issues in both my business and volunteer work because it is important to me that future generations are able to enjoy clean air, clean water, and safe food.

8. I enjoy outdoor recreational activities near the Kincaid power plant such as bicycling on the path from Taylorville to Pana and water activities at Shelbyville Lake. I have always enjoyed fishing, and I grew up fishing with my father in Kincaid Lake. As an adult, I used to enjoy camping at Sangchris Lake State Park and fishing in Sangchris Lake and Taylorville Lake. My friends and I had a lake lot on Taylorville Lake until a few years ago. Each of these lakes is near the Kincaid plant.

9. Over recent years, I have come to understand that the waters in the lakes surrounding the Kincaid plant are contaminated by mercury and other pollutants stemming from the Kincaid plant. Mercury and other hazardous pollutants emitted into the air end up in fish because they settle into lakes or are washed into the water after settling on the ground. I understand

that fish in contaminated lakes can contain mercury, which is dangerous to human health. I have needed to stop fishing and swimming in the water in recent years due to the polluted water.

10. I understand that compliance with the 2024 MATS Rule would improve air and water quality, provide accessible up-to-date emissions information, and help facilitate a transition to clean energy. I understand that the exemption from compliance with the 2024 MATS Rule given to the Kincaid power plant could lead to it operating as a coal-fired power plant for longer than planned and/or being subject to less stringent air toxics standards and monitoring requirements. This would increase air and water contamination.

11. Everyone in my family suffers from a susceptibility to bronchitis at least once per year. We each must carry inhalers to use as needed for wheezing and shortness of breath. An increase in emissions of hazardous air pollutants from coal-fired power plants will adversely affect my health and the health of my family. Further, a lack of up-to-date emissions information would prevent my family and me from effectively evaluating the personal health risks we are exposed to on a day-to-day basis.

12. I looked forward to the positive impacts of the 2024 MATS Rule and the planned closure of the Kincaid power plant so that I could enjoy camping and fishing in the nearby lakes again without concerns for my health. If mercury and air toxics emissions continue to increase, my ability to enjoy fishing and other outdoor recreational activities will be greatly compromised and will degrade my quality of life.

13. Through my work, I know that Illinois has an aggressive Renewable Portfolio Standard ("RPS") that currently has a goal of 40% renewable energy for investor-owned utilities by 2030. That RPS is complimented by the IL Shines Program, which incentivizes all Illinoisans to choose solar energy. Granting an exemption to the 2024 MATS to the Kincaid plant and other

plants in Illinois goes against our state's goals and serves to keep Illinois dependent on sources of energy that have harmful effects to our air and water. This would result in chilling the urgency of people making clean energy choices, which would impact not only our environment and public health, but also the success of my own clean energy business. This exemption, if allowed to stand, will compromise the financial wellbeing of my business.

14. Exempting the Kincaid power plant from the 2024 MATS Rule will significantly jeopardize my personal, health, recreational, and financial interests.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct to the best of my knowledge.

Dated: May 29, 2025

Michelle L. Marley-Knox

Michelle L. Marley-Knox

EXHIBIT 3

Supplemental Declaration of Michelle L. Marley-Knox

SUPPLEMENTAL DECLARATION OF MICHELLE L. MARLEY-KNOX

I, Michelle L. Marley-Knox, declare as follows:

1. My name is Michelle L. Marley-Knox. I am a citizen of the United States, am over 18 years of age, and am competent to give this declaration. All of the information provided is based on my own personal knowledge unless otherwise noted.

2. I signed a declaration on May 29, 2025 as a member of Plaintiff Environmental Law & Policy Center in *Air Alliance Houston v. Trump*, No. 1:25-cv-01852 (D.D.C.), filed on June 12, 2025. All of the information in that declaration remains true and accurate. I give this supplemental declaration to assert new facts which were not relevant at the time of my initial declaration.

3. I recently learned that a July 17, 2025 Presidential Proclamation extended an exemption from compliance with the 2024 MATS Rule to the Dallman Power Plant, Unit 4 ("Dallman 4"), in Springfield, Illinois.

4. I live within approximately forty miles of Dallman 4.

5. I serve as an advisor to Sustainable Springfield, Inc., and am helping to provide comments and information to City Council about creating an energy mix within the city that incorporates more solar and battery storage to help shave peak demand and levelize energy costs for ratepayers.

6. Dallman 4 sits on Lake Springfield. There are many public parks directly across the lake from Dallman 4. I have hosted birthday parties in these parks, attended functions/fundraising events at clubs around the lake, and kayaked the lake. Though I would like to get in the water, swim, and/or fish, I cannot partake in these activities due to concerns about the water quality amplified by the close proximity of Dallman 4.

7. My business, WindSolarUSA, has done many residential installations of solar PV systems in CWLP territory (Springfield's municipal utility). We have also done several installations in Rochester, Illinois, and around Lake Springfield, all of which are close to Dallman Unit 4's coal fired stacks.

8. Given the proximity of Dallman 4 to my home and work sites, I redeclare the health, financial, recreational, and personal interests outlined in my initial declaration as they are similarly threatened by the exemption given to Dallman 4.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct to the best of my knowledge.

Executed on: 8/8/2025

Michelle L. Marley-Knox

Michelle L. Marley-Knox

EXHIBIT 4

Declaration of Derf Johnson

DECLARATION OF DERF JOHNSON

I, Derf Johnson, declare as follows:

1. I am over 18 years of age and competent to give this declaration. I have personal knowledge of the following facts, and if called as a witness could testify competently to them. As to those matters which reflect an opinion, they reflect my personal experience, opinion and judgment on the matter.
2. I am a lifelong resident of Montana, and currently reside in Helena, Montana.
3. I have been a member of the Sierra Club since 2018. I am also a member and an employee of the Montana Environmental Information Center ("MEIC"), at which I currently serve as Deputy Director and am responsible for overseeing and supporting programs seeking to maintain a clean and healthful environment for all Montanans. In those capacities, I have worked to address the environmental problems associated with natural resource extraction, with a specific focus on fossil fuel development and climate change.
4. I am a graduate of the University of Montana School of Law. I chose to stay in Montana after law school and begin my career in environmental and natural resources law. I regularly testify before the Montana legislature, state boards, and commissions, on the environmental impacts associated with energy development in Montana, including testimony on the pollution associated with such development. I feel strongly that Montana is one of the most beautiful and spectacular landscapes on Earth and must be protected.
5. I enjoy a variety of outdoor recreational activities. My hobbies include fishing, swimming, floating on water bodies and riverways, and hunting. I also find great joy in

observing the state's abundant wildlife, including bald eagles, elk, and grizzly bears. I spend a majority of my leisure time outdoors and regularly travel around the state.

6. I have regularly visited the Colstrip area for over a decade for both work and leisure purposes. When I first started working at MEIC, I would travel to the Colstrip area once every few months to meet with our members and assess the ecological and policy issues in the area. Since 2016, I travel to the Colstrip area at least one to two times a year. My most recent visit to Colstrip was in August 2024 where I witnessed and photographed devastating ecological damage from the expansion of the Rosebud mine, the coal mine directly adjacent to the Colstrip plant that exclusively supplies its coal, as well as the power plant. I will continue visiting Colstrip and the surrounding area for both work and pleasure, and I am currently planning a trip to southeastern Montana, including the Colstrip area, in mid-June of 2025.

7. I've always had an appreciation for the beautiful landscape of Eastern Montana with its sandstone cliffs, grasslands, rolling hills, and Ponderosa Pine stands. Southeastern Montana in particular is one of the more beautiful and majestic places that I've had the good fortune of visiting. However, on my trips to Colstrip over the past decade, it is really shocking to have watched the landscape continue to degrade because of the Colstrip power plant and associated mining operations. It is disconcerting to see the billowing smokestacks of toxic chemicals in the midst of an otherwise beautiful town with abundant wildlife. The air pollution and other damage I have witnessed, caused by the Colstrip plant, significantly degrades my experience visiting southeastern Montana. At times, I've seen Colstrip's pollution billowing into the sky on the horizon from thirty or forty miles away.

8. I am aware that coal-fired power plants, including Colstrip, emit mercury, toxic metals, particulate matter, sulfur dioxide, nitrogen oxides, and other pollutants which have been linked to serious health complications. I am also aware that these pollutants can be significantly mitigated with pollution controls which the Colstrip plant operators have for decades refused to install. When I'm visiting the area surrounding Colstrip, I'm concerned that I'm being exposed to the hazardous air pollution emitted by Colstrip and the health harms it may cause. My potential exposure to these hazardous air pollutants in the Colstrip region diminishes my enjoyment of activities and makes me concerned for my personal wellbeing. I also know that certain populations are at higher risk for these complications, and it disgusts me that despite evidence on the public health impacts of pollution, modern industry standard pollution controls are not in place at the Colstrip facility. It's alarming that Colstrip knowingly emits harmful pollutants that are linked to illness and death when there are proven technologies to reduce emissions at most (if not all) coal fired power plants in the same class as the Colstrip plant.
9. I have also visited and hunted in the Tongue River Valley on a private ranch about 40 miles as the crow flies from the Colstrip plant. I have every intention to continue visiting the ranch in the future. However, I am deeply concerned about my health and the health of the wildlife that live in this region. Wildlife breathe air and drink water just like people, and I am worried about what kinds of ailments may result from living downwind of the ongoing pollution from the Colstrip plant. I am also aware of the poisoning risks associated with consuming wildlife with bioaccumulated toxics in their tissues. My worry ultimately diminishes my enjoyment of hunting and outdoor recreation in the area, but especially when I am skeptical of being able to safely consume my game.

10. I am aware that the EPA - through the Mercury and Air Toxics Standards ("MATS")- set standards to reduce toxic pollution from coal-fired power plants, which reduces the impact of this pollution. I also understand that EPA has recently updated those standards in a new Technology Review for coal-fired power plants. As a result of that review EPA has, among other things, set lower standards for particulate matter, as a surrogate for toxic metals, emitted by the Colstrip and other coal-fired power plants.
11. I wholeheartedly believe that clean air is absolutely critical for sustaining life in the region. I also do not enjoy being exposed to these pollutants when I travel to the Colstrip area for work or when I am traveling through the town to other locations. I am concerned about the ongoing pollution from the Colstrip power plant from an environmental and public-health perspective.
12. In its rule, EPA established July 2027 as the compliance deadline for the strengthened standards, allowing Colstrip 3 years to achieve compliance. Based upon the amount of pollution that has already been released from Colstrip's sub-par pollution control technology, I view this timeline as incredibly generous. I am extremely concerned that the President has granted an additional 2-year exemption from compliance to Colstrip.
13. I am confident that I would be harmed if Colstrip was able to avoid the new MATs standards for an additional two years. Emissions of particulate matter (including toxic metals) from Colstrip and other existing coal plants would continue at high levels during this time, therefore prolonging the amount of air pollution to which I, my family, and my friends are exposed. If this level of pollution were to continue at the current harmful levels for an additional two years, I would feel less safe on my work and recreational trips to the area, and my enjoyment in doing so would be reduced.

14. If the Colstrip plant were required to reduce its pollution levels during this time, I would feel much more comfortable visiting the area knowing that I'm less likely to be exposed to toxic pollution and would consider visiting the Colstrip area more often.
15. For these reasons, I support MEIC's lawsuit challenging the MATS exemptions and the attempt to stop them from having effect. I believe that if Colstrip is not exempted from compliance with the strengthened MATS Rule by July 2027, my concerns over air pollution and toxic exposure would be at least partially alleviated.

I declare under penalty of perjury that the foregoing is true and correct. Executed this 22nd day of May 2025, in Helena, Montana.

Dert Johnson

EXHIBIT 5

Declaration of Catherine Fleischman

DECLARATION OF CATHERINE FLEISCHMAN

I, Catherine Fleischman, hereby declare as follows:

1. I am currently a member of the Natural Resources Defense Council ("NRDC") and joined in 2025.

2. I live in Davis, West Virginia. I have lived at my current residence full time since 2024, and I have lived here part time since 1999.

3. I spend a significant amount of time outside. I bought this property 30 years ago and retired here specifically because I spend a lot of time outside. I mountain bike, cross country ski, hike, and camp. I am a master naturalist, an avid birder, and I am on the trail maintenance board of the Heart of the Highlands.

4. I personally do not have asthma, but I have concerns that because of environmental deregulation, I will not know what the quality of my air is. I remember in the 1970s that we worked to address the impact of acid rain and smog, and I know of the impact of these and other environmental harms. We have seen huge improvements in air quality since the 1970s, but without regulations, we will not have any ability to know if our air is damaged or unsafe. I am also concerned about my neighbors who are particularly sensitive to air quality – some are on oxygen or have difficulty breathing, and I am concerned about them.

5. I was in West Virginia when the fires in Canada brought all the smoke and haze to our air and I am concerned about coal companies having all the say

about what is in the air – it's everyone's air, not just the coal companies' air! If there were such a thing as clean coal, I would support it, but the current administration gives me no indication that the coal is "clean," as they put it. I am aware that fossil fuels pollute, and coal is a fossil fuel. Mt. Storm burns fossil fuels. There has to be a strong regulatory system to combat the effects of putting pollutants in the air. Davis, West Virginia, where I live, is a high elevation bog, which means that air quality tends to bottle up here because of the valley and the high elevation of the mountains surrounding it. This is a process called inversion, so I'm particularly worried about air quality in my area that results from pollution.

6. I keep track of the air quality in my area by looking at the NOAA website. There is also a weather station near Dolly Sods that reports air quality data, and we often get data from here. We are in an area where cold air sinks and we often record the lowest temperatures in the lower 48. This tendency keeps pollutants in our area longer. I look at my smartphone or check the news for information on air quality every day. If the air quality is bad, I try to limit my outdoor activities, because if I don't, I notice fatigue and lethargy from poor air quality. I have a dehumidifier that filters air quality in my house and an air conditioner unit in my house that filters air.

7. I am concerned about the Mt. Storm power plant near me because it is a fossil fuel plant. I have at times noticed a smell from Mt. Storm, and I have seen

the stacks there for years. I have seen the coal from the mine down the road heading towards Mt. Storm. I can see what is coming out of the smokestacks, and I can see that it comes out 24 hours a day, 7 days a week. I'm a homeowner with solar panels, so I know that there is technology out there that works better than fossil fuel burning. I know we need to transition from burning fossil fuels, and I know that the technology to transition is available, we just need to make the transition. I think that Mt. Storm should do everything it can to limit its toxic air pollution so that it emits very small amounts of pollution - such small amounts of pollution that the environment can dilute it. We need to train ourselves to not add to the toxic burden in our environment, and we should work towards being "net neutral."

8. I am aware that the U.S. EPA finalized new, stronger standards to reduce toxic soot pollution and mercury pollution from power plants in 2024. Some facilities, including Mt. Storm received an exemption from complying with these standards in 2025. I want power plants to do everything they can to meet toxic air pollution standards sooner rather than later, and in particular because of our environmental crisis. Allowing standards to not be met impacts the very near future just as much as it impacts the present. We have answers to this environmental dilemma that are better answers than deregulation. I fully support

NRDC's lawsuit challenging these exemptions from standards for toxic air pollution from power plants.

I declare that the foregoing is true and correct to the best of my knowledge, information, and belief. Executed on May 21, 2025.

Signature: _____

Name: Catherine Fleischman

EXHIBIT 6

Declaration of Barbara Sue

DECLARATION OF BARBARA SUE

I, Barbara Sue, hereby declare as follows:

1. I am currently a member of the Natural Resources Defense Council ("NRDC") and have been for about one year.

2. I live in Macon, Georgia. I have lived at my current residence since 2003, and I moved back to Georgia in 2001.

3. I limit the amount of time I spend outside because I have such severe allergies. I used to like to walk outside a lot, but now I do much of my exercises indoors. I limit my time outside to yardwork, watering my plants, cleaning out the bird baths, and tending to the plants on the porch.

4. I have very severe ongoing allergies – they are not just limited to spring and summer, they last throughout the year, and they get worse and worse every year. I have sinus problems for which I take a number of medications, and I get frequent sinus infections which cause me to need antibiotics. I also now have fluid in my ears that I think the allergies have contributed to as well. My husband also has allergies, but he does not have them as bad as me. My adult daughter, who lives nearby, also gets severe allergies and migraines, like me. I was prescribed albuterol by my doctor since I was coughing at night and occasionally experiencing chest tightness. I thought my allergies were just attributable to pollen, but I am now concerned that they are exacerbated by air pollution.

5. I sometimes keep track of the air quality on my smartphone or watch, but since I try to limit my time outside, I do not keep track of it regularly. I have an air purifier in my bedroom to help with my allergies.

6. Ever since I moved back to Georgia, my allergies have gotten worse. I am concerned about the impact that climate change is having on our environment, and that those impacts are also contributing to my allergies. For example, because of climate change, the plants are blooming earlier and earlier and releasing their pollen earlier than usual. I live near the Scherer power plant, and I'm concerned that air pollution plays a role in my allergies as well.

7. I believe we should do everything in our power to make sure that the air and water is not uninhabitable for animals and for biodiversity – we need everything on the planet to help clean the planet, and everything is interconnected. We are animals too, and we need to be good stewards of the planet. The current administration at EPA is trying to repeal regulations, and rolling back these regulations will set us back one hundred years.

8. I am very concerned that Georgia Power has gotten a two-year extension for their power plants. I want power plants to do everything that they can to clean up their toxic pollution – we are caretakers of the world, and we need to do better. God did not make us caretakers of the animals and the earth so we could be supreme over them, it's our responsibility to care for them. Now that we know

how to take care of the earth, we can and should right all the wrongs we did to the planet unintentionally. Now that we know better, we should do better, and shame on us for not doing that.

9. I am aware that the U.S. EPA finalized new, stronger standards to reduce toxic soot pollution and mercury pollution from power plants in 2024. Some facilities, including Scherer, received an exemption from complying with these standards in 2025. I want power plants to do everything they can to meet toxic air pollution standards as soon as possible, and I do not think deregulation is the answer. I fully support NRDC's lawsuit challenging these exemptions from standards for toxic air pollution from power plants.

I declare that the foregoing is true and correct to the best of my knowledge, information, and belief. Executed on May 28, 2025.

Signature: 

Name: Barbara Sue

EXHIBIT 7

Amended Motion for Stay

***North Dakota v. EPA*, No. 24-1119 (D.C. Cir.)**

ORAL ARGUMENT NOT YET SCHEDULED
Case No. 24-1119 (and consolidated cases)

United States Court of Appeals
For the District of Columbia Circuit

STATE OF NORTH DAKOTA, STATE OF WEST VIRGINIA, et al.,

Petitioners,

v.

ENVIRONMENTAL PROTECTION AGENCY,

Respondent.

On Petition for Judicial Review of Final Agency Actions of the United States Environmental Protection Agency, 89 Fed.Reg. 38508 (May 7, 2024)

AMENDED MOTION FOR STAY

PATRICK MORRISEY
Attorney General

LINDSAY S. SEE
Solicitor General
MICHAEL R. WILLIAMS
Principal Deputy Solicitor General
Office of the Attorney General of West Virginia
State Capitol Complex
Building 1, Room E-26
Charleston, WV 25301
lindsey.s.see@wvago.gov
michael.r.williams@wvago.gov

Counsel for State of West Virginia

DREW H. WRIGLEY
Attorney General

PHILIP AXT
Solicitor General
600 E Boulevard Ave., Dept. 125
Bismarck, ND 58505
Phone: 701.328.2210
pjaxt@nd.gov

NESSA HOREWITCH COPPINGER
DAVID M. FRIEDLAND
Special Assistant Attorneys General
1900 N Street NW, Suite 100
Washington, DC 20036
ncoppinger@bdlaw.com
dfriedland@bdlaw.com

Counsel for State of North Dakota

Additional Counsel Listed in Signature Block

Date: **June 07, 2024**

CERTIFICATE AS TO PARTIES, RULINGS, AND RELATED CASES

Pursuant to D.C. Circuit Rules 18(a)(4), 27, and 28(a)(1)(A), Petitioners certify:

A. Parties, Intervenors, and *Amici* to this Case (No. 24-1119)

Petitioners: State of North Dakota, State of West Virginia, State of Alaska, State of Arkansas, State of Georgia, State of Idaho, State of Indiana, State of Iowa, State of Kansas, Commonwealth of Kentucky, State of Louisiana, State of Mississippi, State of Missouri, State of Montana, State of Nebraska, State of Oklahoma, State of South Carolina, State of South Dakota, State of Tennessee, State of Texas, State of Utah, Commonwealth of Virginia, and State of Wyoming.

Respondent: The United States Environmental Protection Agency.

Proposed Intervenors: (1) Air Alliance Houston, Alliance of Nurses for Healthy Environments, American Academy of Pediatrics, American Lung Association, American Public Health Association, Chesapeake Climate Action Network, Citizens for Pennsylvania's Future, Clean Air Council, Clean Wisconsin, Downwinders at Risk, Environmental Defense Fund, Environmental Integrity Project, Montana Environmental Information Center, Natural Resources Council of Maine, Natural Resources Defense Council, the Ohio Environmental Council, Physicians for Social Responsibility, and Sierra Club moved to Intervene on June 3, 2024; (2) State of Massachusetts, State of Minnesota, State of Connecticut, State of Illinois, State of Maine, State of Maryland, State of Michigan, State of New Jersey, State of New York, State of Oregon, State of Pennsylvania, State of Rhode Island, State of Vermont, State of Wisconsin, District of Columbia, City of Baltimore, City of Chicago, City of New York moved to intervene on June 6, 2024; (3) San Miguel Electric Cooperative, Inc. moved to intervene on June 7, 2024.

Proposed *Amici*: None at present.

B. Rulings Presented for Review

Final rule entitled *National Emission Standards for Hazardous Air Pollutants: Coal- and Oil-Fired Electric Utility Steam Generating Units Review of the Residual Risk and Technology Review*. 89 Fed.Reg. 38508 (May 7, 2024).

C. Parties, Intervenors, and Amici in Related Cases in this Circuit

Consolidated cases: (1) *NACCO Natural Resources Corp. v. EPA and Michael S. Regan*, No. 24-1154; (2) *National Rural Electric Cooperative Association, Lignite Energy Council, National Mining Association, Minnkota Power Cooperative, Inc., East Kentucky Power Cooperative, Inc., Associated Electric Cooperative Inc., Basin Electric Power Cooperative, and Rainbow Energy Center, LLC v. EPA and Michael S. Regan,* No. 24-1179; and (3) *Oak Grove Management Company LLC and Luminant Generation Company LLC v. EPA and Michael S. Regan*, No. 24-1184.

/s/ Philip Axt
PHILIP AXT
Solicitor General of North Dakota

CERTIFICATE OF COMPLIANCE WITH RULES 18(A)(1) AND (A)(2)

The undersigned certifies that this motion complies with Fed. R. App. P. and D.C. Cir. R. 18(a)(1). On May 14, 2024, Petitioners submitted to EPA a Request for Administrative Stay Pending Judicial Review of the *National Emission Standards for Hazardous Air Pollutants: Coal- and Oil-Fired Electric Utility Steam Generating Units Review of the Residual Risk and Technology Review*, published in the Federal Register at 89 Fed.Reg. 38508 (May 7, 2024). EPA acknowledged receipt of this request on May 21, 2024, but has not otherwise responded.

In accordance with Fed. R. App. P. and D.C. Cir. R. 18(a)(2), counsel for Petitioners notified EPA's counsel by voicemail and email on June 3, 2024, that Petitioners planned to file this motion. EPA opposes this motion.

/s/ Philip Axt
PHILIP AXT
Solicitor General of North Dakota

TABLE OF CONTENTS

TABLE OF CONTENTS v
TABLE OF AUTHORITIES vi
GLOSSARY OF KEY ABBREVIATIONS AND ACRONYMS x
INTRODUCTION 1
BACKGROUND 2
ARGUMENT 5
I. Petitioners Are Likely to Prevail on the Merits 6
A. The Rule Violates Clean Air Act Section 112(d)(6) Because Revising the MATS Standard Is Not "Necessary" 6
B. The Rule is Arbitrary and Capricious for Multiple Reasons 8
II. Petitioners Will Suffer Imminent and Irreparable Harm Absent a Stay 17
A. Petitioner States Will Suffer Irreparable Economic Harm 17
B. The Rule's Compliance Costs and Infeasible Standards Risk Catastrophic Consequences for the Power Grid 18
III. The Balance of Harms and the Public Interest Favor a Stay 22
CONCLUSION 23
CERTIFICATE OF COMPLIANCE 30
CERTIFICATE OF SERVICE 30

TABLE OF AUTHORITIES

Cases

Ass'n of Battery Recyclers v. EPA,
716 F.3d 667 (D.C. Cir. 2013) 8

California v. Azar,
911 F.3d 558 (9th Cir. 2018) 17

Del. Dep't of Nat. Res. & Envtl. Control v. EPA,
785 F.3d 1 (D.C. Cir. 2015) 11, 12

Dep't of Commerce v. New York,
139 S. Ct. 2551 (2019) 14, 16

La. Envtl. Action Network v. EPA,
955 F.3d 1088 (D.C. Cir. 2020) 6

Mexican Gulf Fishing Co. v. U.S. Dep't of Comm.,
60 F.4th 956 (5th Cir. 2023) 10

**Michigan v. EPA*,
576 U.S. 743 (2015) 1, 9, 10, 18, 19

Motor Vehicle Mfrs. Ass'n v. State Farm,
463 U.S. 29 (1983) 8, 12

Nat. Res. Def. Council v. EPA,
529 F.3d 1077 (D.C. Cir. 2008) 7, 8, 9

Portland Cement Ass'n v. EPA,
665 F.3d 177 (D.C. Cir. 2011) 13

Sierra Club v. EPA,
895 F.3d 1 (D.C. Cir. 2018) 2

Sierra Club v. Ga. Power Co.,
180 F.3d 1309 (11th Cir. 1999) 22

**Texas v. EPA*,
829 F.3d 405 (5th Cir. 2016) 12, 19, 21, 22, 23

West Virginia v. EPA,
597 U.S.697, 735 (2022) 14, 15

West Virginia v. EPA,
90 F.4th 323 (4th Cir. 2024) 22

Wyoming v. Dep't of Interior,
493 F. Supp. 3d 1046 (D. Wyo. 2020) 9

Statutory Authorities

Clean Air Act § 112
42 U.S.C. § 7412 2

42 U.S.C. § 7412(c)(9)(B)(i) 8

42 U.S.C. § 7412(d)(6) 3, 6, 7

42 U.S.C. §§7412(f)(2) 3

Rules and Regulations

Executive Order No. 13990, Protecting Public Health and the Environment and Restoring Science to Tackle the Climate Crisis,
86 Fed. Reg. 7037 (Jan. 25, 2021) 3, 4, 14

National Emission Standards for Coke Oven Batteries,
69 Fed. Reg. 48338 (Aug. 9, 2004) 4

National Emission Standards for Organic Hazardous Air Pollutants From the Synthetic Organic Chemical Manufacturing Industry,
71 Fed. Reg. 76603 (Dec. 21, 2006) 4

National Emission Standards for Hazardous Air Pollutants From Coal- and Oil-Fired Electric Utility Steam Generating Units and Standards of Performance for Fossil-Fuel-Fired Electric Utility, Industrial-Commercial-Institutional, and Small Industrial-Commercial-Institutional Steam Generating Units,
77 Fed. Reg. 9304 (Feb. 16, 2012) 3, 12

National Emission Standards for Hazardous Air Pollutants: Coal- and Oil-Fired Electric Utility Steam Generating Units—Reconsideration of Supplemental Finding and Residual Risk and Technology Review,
85 Fed. Reg. 31286 (May 22, 2020) 3

National Emission Standards for Hazardous Air Pollutants: Coal- and Oil-Fired Electric Utility Steam Generating Units Review of the Residual Risk and Technology Review,
88 Fed. Reg. 24854 (Apr. 24, 2023) 4, 5

National Emission Standards for Hazardous Air Pollutants: Coal- and Oil-Fired Electric Utility Steam Generating Units Review of the Residual Risk and Technology Review,
89 Fed. Reg. 38508 (May 7, 2024) 2, 5, 6, 7, 8, 9, 10, 11, 14, 17, 20, 22

D. C. Cir. R. 18(a)(1) ..... iv, 5

D. C. Cir. R. 18(a)(2) iv

Docketed Materials

Coal Conversion Counties Ass'n Comment,
EPA-HQ-OAR-2018-0794-6003 11

Lignite Energy Council Comment,
EPA-HQ-OAR-2018-0794-5957 11

Minnkota Power Coop. Inc. Comment,
EPA-HQ-OAR-2018-0794-5978 12

Nat'l Min. Ass'n Comment,
EPA-HQ-OAR-2009-0234-20531 13

Nat'l Mining Ass'n Comment,
EPA-HQ-OAR-2018-0794-5986 11

Power Generators Air Coalition Comment,
EPA-HQ-OAR-2018-0794-5994 12

Rainbow Energy Center Comment,
EPA-HQ-OAR-2018-0794-5990 12

Westmoreland Mining Holdings Comment,
EPA-HQ-OAR-2018-0794-5935 ..... 10, 11

Additional Authorities/Scientific Studies/Additional Materials

2023 Technology Review for the Coal- and Oil-Fired EGU Source Category ("2023 Tech Review") 4, 5

2024 Update to the 2023 Proposed Technology Review for the Coal- and Oil-Fired EGU Source Category ("2024 Tech Update") 4, 5

Black's Law Dictionary (11th ed. 2019) 6

Cass, R. *Staying Agency Rules: Constitutional Structure and Rule of Law in the Administrative State*, 69 Admin. L. Rev. 225, 254-57 (2017) 2

EPA, *Biden-Harris Administration Finalizes Suite of Standards to Reduce Pollution from Fossil Fuel-Fired Power Plants* (Apr. 25, 2024) 13

FERC-NERC-Regional Entity Staff Report: *The February 2021 Cold Weather Outages in Texas and the South Central United States* (Nov. 16, 2021) 18

Geman, *EPA floats path on electricity CO2 emissions with an asterisk*, Axios (Mar. 11, 2022) 15

Milman, *New US climate rules for pollution cuts 'probably terminal' for coal-fired plants*, Guardian (May 2, 2024) 16

PBS, EPA Administrator Michael Regan discusses Supreme Court ruling on climate change, YouTube (June 30, 2022) 16

Power Sector Strategy: Climate, *Public Health, Environmental Justice, Briefing for Gina McCarthy and Ali Zaidi* (Feb. 4, 2021) 15

Pratson et. al., *Fuel Prices, Emission Standards, and Generation Costs for Coal v Natural Gas Power Plants*, Am. Chem. Soc'y, Env'l Sci. & Tech., 4929 (Mar. 2013) 13

U.S. Energy Info. Admin., *Planned coal-fired power plant retirements continue to increase* (Mar. 20, 2014) 13

White House, *Press Gaggle by Principal Deputy Press Secretary Karine Jean-Pierre & Env't Prot. Agency Adm'r Michael Regan* (Feb. 17, 2022) 16

*Authorities on which Petitioners chiefly rely are marked with asterisks.

GLOSSARY OF KEY ABBREVIATIONS AND ACRONYMS

Abbreviation Or Acronym	Defined
CAA	Clean Air Act
EGU	Electric Utility Steam Generating Units
EPA	Environmental Protection Agency
fPM	Filterable Particulate Matter
HAP	Hazardous Air Pollutant
Hg	Mercury
MATS	Mercury and Air Toxics Standards
RIA	Regulatory Impact Analysis

INTRODUCTION

With this Rule, EPA is ratcheting down the Mercury and Air Toxics Standards (MATS) for coal-fired power plants by 66-70%. The implementation costs will be substantial, power plants may be forced onto early retirement tracks, and power grid reliability will be threatened. Conversely, there is no relevant public health benefit from the mandated reduction in hazardous air pollutant (HAP) emissions. None. EPA recognizes that the 2012 MATS rule already reduced HAP emissions **well below** any threshold that would impact public health.

Petitioners will establish multiple legal infirmities on the merits requiring the Rule be set aside. But that victory will be meaningless absent a stay, because to comply with the Rule's three-year deadline for implementing the mandated changes (or retiring if they cannot), power plants need to take action immediately. EPA knows this. The last time the MATS Rule was litigated, the Supreme Court held EPA acted "unreasonably when it deemed cost irrelevant to the decision to regulate power plants." *Michigan v. EPA*, 576 U.S. 743, 760 (2015). But the victory proved hollow, because without a stay while the merits were heard, power plants were forced to make compliance and retirement decisions, resulting in billions expended and many plant closures in response to an unlawful regulation. The last time the MATS Rule was litigated is a textbook example for when agency rules should be

stayed. *E.g.*, Ronald Cass, *Staying Agency Rules: Constitutional Structure and Rule of Law in the Administrative State*, 69 Admin. L. Rev. 225, 254-57 (2017).

While EPA claims this Rule will have no impact on the power grid or energy prices, Petitioners have included with this motion an array of declarations from power plants and State regulators attesting that is not the case. And EPA has an established record of grossly understating the effect its rules will have on the power grid. The last time the MATS Rule was litigated, EPA assured the country that it would only cause about 5,000 MW to go offline. EPA was wrong. The number ended up being closer to 60,000 MW. Our power grids do not have the same buffer of dispatchable energy that they did a decade ago. If EPA is wrong to the same degree that it was last time, the impact to our power grids will be substantial.

Petitioners ask the Court to preserve the status quo by staying the Final Rule until the merits of this dispute are resolved. An expedited briefing schedule will limit the duration of any such stay.

BACKGROUND

Section 112 of the Clean Air Act (CAA) (codified at 42 U.S.C. § 7412) provides EPA statutory authority to set emission levels for certain HAPs enumerated in Section 112(b)(1). *Sierra Club v. EPA*, 895 F.3d 1, 7 (D.C. Cir. 2018). As EPA acknowledges, "Congress intended for CAA Section 112 to achieve significant reductions in HAP." 89 Fed.Reg. at 38535.

EPA issued the original MATS rule for HAP emissions from coal- and oil-fired electric generating units (EGUs) in 2012. 77 Fed.Reg. 9304 (Feb. 16, 2012). That rule identified different achievable control standards for mercury from EGUs that use lignite coal compared to other types of coal. The distinction was based on science: lignite is more variable than other types of coal and available technologies cannot consistently achieve the same control levels. 77 Fed.Reg. at 9393.

Eight years after a HAP emission level is set, EPA must evaluate if any "residual risks" remain to public health from those HAP emissions and whether there have been any developments in available control technologies. 42 U.S.C. §§7412(f)(2), (d)(6). EPA calls these the Residual Risk and Technology Reviews.

In 2020, EPA conducted those reviews for the MATS Rule. For the Residual Risk Review, EPA "determined that the current [standard] provides an ample margin of safety to protect public health and prevent an adverse environmental effect." 85 Fed.Reg. 31286, 31314 (May 22, 2020). And for the Technology Review, EPA determined there were no developments in emission control technologies, practices, or processes that warranted revising the MATS Rule. *Id.* at 31298.

But six months later there was a change in presidential Administration and Executive Order 13990, entitled "Protecting Public Health and the Environment and Restoring Science to Tackle the Climate Crisis," which directed EPA to consider "suspending, revising, or rescinding" the 2020 Residual Risk and Technology

Reviews for the MATS Rule. 86 Fed.Reg. 7037 (Jan. 25, 2021). That was so despite the fact that EPA's authority for promulgating the MATS Rule under CAA Section 112 has nothing to do with climate change—it is about protecting the public from specified HAPs, not greenhouse gases.

Following Executive Order 13990, EPA reconsidered its 2020 Residual Risk and Technology Reviews for the MATS Rule. For public health, EPA reached the same conclusion. 88 Fed.Reg. 24854, 24895 (Apr. 24, 2023) ("the residual risk assessment showed all modeled exposures to HAP to be below thresholds for public health concern."). That should have been the end of it. In other Section 112(d)(6) rulemakings, EPA has taken the position that if its standards already "provide an ample margin of safety to protect public health and prevent adverse environmental effects, one can reasonably question whether further reviews of technological capability are 'necessary.'" 69 Fed.Reg. 48338, 48351 (Aug. 9, 2004); *see also* 71 Fed.Reg. 76603, 76608 (Dec. 21, 2006). But EPA pressed on.

For its technology re-review, EPA again found "no new practices, processes, or control technologies" for the relevant HAP emissions. 88 Fed.Reg. at 24868. The control technologies used in 2012 are the same as today. *See* 2023 Technology Review for the Coal- and Oil-Fired EGU Source Category ("2023 Tech Review") at 1; 2024 Update to the 2023 Proposed Technology Review for the Coal- and Oil-

Fired EGU Source Category ("2024 Tech Update") at 17, 50.[1] Undeterred, to justify revising the standards, EPA points to alleged cost efficiencies for using those technologies, concluding those alleged efficiencies mean that all coal-fired plants, regardless of configuration or coal type, can now meet a 66% lower surrogate fPM emission standard for non-mercury HAPs. 89 Fed.Reg. at 38530.[2] For mercury, EPA concludes lignite is now capable of meeting the same control standard as other types of coal, dropping the emission standard by 70%. 89 Fed.Reg. at 38586. Coal-fired power plants must meet the new standards in three years or be on a retirement track. 89 Fed.Reg. at 38519.

ARGUMENT

The Court should stay the Rule while the merits are resolved because Petitioners are likely to prevail on the merits of their claims, Petitioners will suffer irreparable harm in the absence of a stay, and the balance of harms and public interest favor a stay. D.C. Cir. R. 18(a)(1).

[1] For non-mercury HAPs, the control technology remains electrostatic precipitators and fabric filters, and for mercury the control technology remains activated carbon injection. 2023 Tech Review at 16–18; 2024 Tech Update at 30–32.

[2] The Final Rule uses filterable particulate matter (fPM) as a surrogate for measuring the non-Hg metal HAP emissions. 89 Fed.Reg. at 38508.

I. Petitioners Are Likely to Prevail on the Merits

A. The Rule Violates Clean Air Act Section 112(d)(6) Because Revising the MATS Standard Is Not "Necessary"

EPA issued this Rule under CAA Section 112(d)(6), which permits revising HAP emission standards only as "necessary (taking into account developments in practices, processes, and control technologies)." 42 U.S.C. § 7412(d)(6). The operative phrase is "revise as necessary," and "EPA must consider practical and technological advances" when determining whether revision is "necessary." *La. Envtl. Action Network v. EPA*, 955 F.3d 1088, 1097-98 (D.C. Cir. 2020).

The Rule's revisions are not "necessary" for several reasons.[3] For one, there is no relevant public health benefit. EPA acknowledges current HAP emission standards provide an ample margin of safety to protect public health and does not identify *any* quantifiable health benefit from the Rule's further reduction in HAPs. 89 Fed.Reg. at 38558-59. The alleged health "benefits" EPA purports to quantify—reducing criteria pollutants and greenhouse gases, *id.* at 38561-62—cannot serve as a basis for exercising Section 112(d)(6) authority.

Absent any relevant public health benefits from the Rule, EPA claims the revisions are "necessary" due to "developments" in controlling HAP emissions. *Id.* at 38518. But even if a "development" in control technologies could make revising

[3] Black's Law Dictionary (11th ed. 2019) (*Necessary*: "needed for some purpose or reason; essential.").

a HAP emission standard that provides no relevant health benefits "necessary" under Section 112(d)(6), EPA identified no new technologies, practices, or processes that would justify revising the MATS Rule. 42 U.S.C. § 7412(d)(6). The primary control technologies used today are the same as they were the last two times EPA undertook a technology review. 89 Fed.Reg. at 38517-18.

Rather than pointing to any new technology, EPA interprets "development" to mean cost-efficient compliance with already-existent technology. *Id.* at 38510. That interpretation of "development" is an atextual attempt to expand EPA's regulatory reach. *Cf. Nat. Res. Def. Council v. EPA*, 529 F.3d 1077, 1084 (D.C. Cir. 2008) (Section 112(d)(6) rulemaking revises "*technology-based* standards in light of *technological* developments" and requires identification of "*technological innovations*") (emphases added).

EGUs are *required* to comply with HAP emission standards after they are issued, and they must comply with a margin that accounts for fuel variability to consistently meet the emission standard 100% of the time. EPA's interpretation of such compliance as a "development" warranting further rulemaking constitutes a significant power grab—ignoring Section 112(d)(6)'s constraint to only revise the standards as "necessary," and empowering EPA to drive any disfavored source out of the market by tightening HAP emission limits until an emission source with a variable fuel supply is unable to comply *at all times*.

B. The Rule is Arbitrary and Capricious for Multiple Reasons

A rule is arbitrary and capricious "if the agency has relied on factors which Congress has not intended it to consider, entirely failed to consider an important aspect of the problem…or is so implausible that it could not be ascribed to a difference in view of the product of agency expertise." *Motor Vehicle Mfrs. Ass'n v. State Farm*, 463 U.S. 29, 43 (1983). This Rule is arbitrary and capricious for many reasons, each of which warrants vacating it.

First, EPA's cost-benefit analysis is indefensible. Section 112(d)(6) rulemaking requires reasonable consideration of cost. *See Ass'n of Battery Recyclers v. EPA*, 716 F.3d 667, 673-74 (D.C. Cir. 2013) (rejecting argument cost is irrelevant to emission standard revisions under Section 112(d)(6)). Yet EPA candidly admits the Rule has a "negative net monetized benefit." 89 Fed.Reg. at 38511. Under the standards already in place, EPA found the lifetime cancer risk of the person most exposed to coal-fired HAP emissions is 0.344-in-a-million—significantly less than the Clean Air Act's one-in-a-million threshold where EPA can stop regulating a source entirely. 42 U.S.C. § 7412(c)(9)(B)(i); *see also Nat. Res. Def. Council*, 529 F.3d at 1082 (one-in-one million standard is the CAA's "aspirational goal").

Even EPA's qualitative generalizations don't evidence any meaningful health benefits from the mandated reduction in HAPs. EPA admits the benefits of Hg reduction associated with the Rule are so small they can't be reliably extrapolated to

the broader population of fish consumers. RIA 4-5. And where risk to subsistence fishers located near lignite-fired plants has been studied, fisherman are already not exposed at a level associated with appreciable risk—and that is before the further reductions associated with this Rule. RIA 4-4. EPA's analysis of non-Hg HAP emissions is much the same, with EPA acknowledging "cancer risk was … within the acceptable range for multipathway exposure to the persistent and bioaccumulative non-Hg HAP metals." RIA 4-7. Likewise, noncancer risks did not exceed current thresholds for adverse health effects. *Id.*

To the extent EPA identified any quantifiable "benefits" of the Rule, they are *all* ancillary to the Rule's reduction in HAP emissions and cannot drive a Section 112 cost-benefit analysis. *E.g.*, 89 Fed.Reg. at 38561 (pointing to alleged particulate matter, ozone, and "climate" benefits). As Chief Justice Roberts noted during oral argument in *Michigan v. EPA*, it is improper for EPA to use Section 112 authority to "get at the criteria pollutants that you otherwise would have to go through a much more difficult process to regulate. In other words, you can't regulate the criteria pollutants through the HAP program…" Transcript of Oral Argument at 59:19–60:5, *Michigan v. EPA*, 576 U.S. 743 (2015). *Cf. Wyoming v. Dep't of Interior*, 493 F. Supp. 3d 1046, 1079 (D. Wyo. 2020) (agency "cannot rationally claim the Rule's objective is waste prevention while justifying its considerable costs almost entirely on climate change benefits").

In exchange for zero relevant public health benefits, the Rule will impose tremendous costs on coal-fired EGUs and electricity consumers. Under EPA's own calculations, the estimated cost-per-ton of HAP removed exponentially exceeds cost-benefit ratios that EPA has rejected for other Section 112 rulemakings. For surrogate fPM emissions, by EPA's own math, the cost effectiveness is $10.5 million per ton of HAP removed. 89 Fed.Reg at 38532-33. That is orders of magnitude higher than cost-benefit ratios EPA has explicitly *rejected* as being excessive. *E.g.*, Westmoreland Mining Holdings Cmt. at 4, EPA-HQ-OAR-2018-0794-5935 (compiling examples). EPA admits as much. 89 Fed.Reg. at 38523 ("EPA acknowledges that the cost-effectiveness values for these standards are higher than cost-effectiveness values that the EPA concluded were not cost-effective…for some prior rules.") 89 Fed.Reg. at 38523. These costs will likely force power plant retirements and threaten grid reliability, *see infra*, but, even if they didn't, they will increase the price of electricity for consumers. Just as it is arbitrary and capricious for EPA to impose significant economic costs "for a few dollars" of benefit, *Michigan*, 576 U.S. at 752, so too where EPA imposes substantial costs with "no meaningful benefit." *Mexican Gulf Fishing Co. v. U.S. Dep't of Comm.*, 60 F.4th 956, 966 (5th Cir. 2023).

Second, even assuming cost-efficient compliance using existing technology can lawfully be considered a "development" in practices, processes or control

technologies warranting further restrictions under Section 112(d)(6), EPA has not provided a reasoned explanation to support its conclusion that coal-fired EGUs are capable of consistently meeting the Rule's new emission standards with available control technologies. Comment after comment put EPA on notice that the Rule's conclusions regarding compliance feasibility were flawed.[4] But to support its contrary conclusion, the Final Rule relies almost entirely on a single comment (the "Andover Report") that largely parrots EPA's conclusions from the proposed rule without sufficient factual basis or explanation and is woefully inadequate to support EPA's conclusions. *E.g.,* 89 Fed.Reg. at 38523, 38528, 38530, 38538.

Third, EPA failed to adequately consider the Rule's foreseeable impact on our nation's already-precarious power grids. Where, as here, EPA promulgates a Rule under Section 112(d) that will foreseeably impact grid reliability, it must thoroughly address the concern. *Del. Dep't of Nat. Res. & Envtl. Control v. EPA*, 785 F.3d 1, 18 (D.C. Cir. 2015) ("'Costs' can mean many different things, including the cost associated with increased risk" of grid unreliability).

EPA's perfunctory conclusion that the significant costs the Rule imposes on coal-fired EGUs will have no effect on the power sector, 89 Fed.Reg. at 38555-56,

[4] *E.g.,* Lignite Energy Council Cmt. at 8-9, EPA-HQ-OAR-2018-0794-5957; Nat'l Mining Ass'n Cmt. at 10-15, EPA-HQ-OAR-2018-0794-5986; Westmoreland Mining Holdings Cmt. at 16-17 (proposed fPM standard is not achievable or feasible); Coal Conversion Counties Ass'n Cmt. at 8, EPA-HQ-OAR-2018-0794-6003 (proposed mercury standard is not achievable or feasible).

does not reflect reasoned analysis entitled to any degree of deference. "EPA has no expertise on grid reliability," *Texas v. EPA*, 829 F.3d 405, 432 (5th Cir. 2016), and comment after comment put EPA on notice that the Rule will foreseeably have significant impacts on power grid reliability.[5] Nonetheless, the Final Rule does not reflect any attempt by EPA to seek input from the Federal Energy Regulatory Commission (FERC), the North American Electric Reliability Corporation (NERC), or any similar entity that could have apprised it of the Rule's likely impact on grid reliability. EPA also failed to address power outages or grid reliability in its Regulatory Impact Analysis. *See* RIA Section 3. EPA's failure to adequately consider one of the Rule's most important impacts was arbitrary and capricious. *State Farm*, 463 U.S. at 43; *see also Del. Dep't of Nat. Res.*, 785 F.3d at 18 (encouraging EPA to solicit input from FERC).

Moreover, as noted *supra*, the last time the MATS Rule was litigated, EPA claimed it would only cause about 5,000 MW to go offline. 77 Fed.Reg. at 9407 ("...expected retirements of coal-fueled units as a result of this final rule (4.7 GW) are fewer than was estimated at proposal and much fewer than some have

[5] *E.g.*, Rainbow Energy Center Cmt. at 4, EPA-HQ-OAR-2018-0794-5990; *see also id.*, Attachment A at 3-4 (MISO Cmt. on Docket ID Nos. EPA-HQ-OLEM-2021-0283, EPA-HQ-OLEM-2021-0282, EPA-HQ-OLEM-2021-0280); Minnkota Power Coop. Inc. Cmt. at 3, EPA-HQ-OAR-2018-0794-5978; Power Generators Air Coalition Cmt. at 12, EPA-HQ-OAR-2018-0794-5994.

predicted"). EPA was wrong. It ended up being closer to 60,000 MW.[6] That dramatic difference represents a profound failure on EPA's part to analyze the rule's impacts on power generation. Consequently, EPA's perfunctory conclusion that this Rule (dropping emission standards by 66-70%) will not cause a single retirement, RIA at 3-16, should be viewed with extreme skepticism given the number of comments and declarations attesting EPA has gotten it profoundly wrong again.

EPA's analysis of the Rule's grid impacts also fails to "acknowledge and account for" the impacts of "contemporaneous and closely related rule[s]." *Portland Cement Ass'n v. EPA*, 665 F.3d 177, 187 (D.C. Cir. 2011). EPA expressly issued this Rule as part of a "suite" of rules targeting coal power plants with retirement-inducing costs. *See* EPA, *Biden-Harris Administration Finalizes Suite of Standards to Reduce Pollution from Fossil Fuel-Fired Power Plants* (Apr. 25, 2024).[7] EPA's

---

[6] *See, e.g.*, U.S. Energy Info. Admin., *Planned coal-fired power plant retirements continue to increase* (Mar. 20, 2014), bit.ly/4dbYwfM (between 2012 and 2020, "about 60 gigawatts of coal-fired capacity is projected to retire … assum[ing] implementation of the MATS standards"); Pratson et. al., *Fuel Prices, Emission Standards, and Generation Costs for Coal v Natural Gas Power Plants*, Am. Chem. Soc'y, Env'l Sci. & Tech., 4929 (Mar. 2013), bit.ly/3w7yLN2 (most coal-fired EGU retirements in the wake of the original MATS Rule were due to "stronger regulations," not unrelated market forces); *see also* Nat'l Min. Ass'n Cmt. at 2 & n.4, EPA-HQ-OAR-2009-0234-20531 (for the nearly 60 gigawatts of coal-fired EGU retirements announced between 2012 and 2016, "virtually all" stated the closures were "either fully or partially attributable to MATS and other EPA regulations").

[7] Available at https://tinyurl.com/y5u92sx3.

failure to meaningfully assess how the confluence of these (and many other) rules targeting coal-fired power plants will affect the power grid further cements its arbitrary and capriciousness.

Fourth, the Rule is arbitrary and capricious because EPA's stated reasons for it are pretextual. When an agency promulgates a rule, it must truthfully "disclose the basis of its action," and courts must set aside rulemaking when "the evidence tells a story that does not match the explanation." *Dep't of Commerce v. New York*, 139 S. Ct. 2551, 2575-76 (2019). Despite claiming it engaged in this rulemaking to protect the public from specified HAP emissions, 89 Fed.Reg. at 38509-10, available evidence not least of which is the Executive Order *on climate change* which EPA admits spurred this rulemaking indicates EPA is using its Section 112(d)(6) authority as part of an effort to force a nationwide transition away from coal for putative climate change reasons. *Contra West Virginia v. EPA*, 597 U.S.697, 735 (2022) (declaring it "not plausible" the CAA empowers EPA to "force a nationwide transition away from the use of coal to generate electricity").

Internal documents produced through FOIA indicate EPA and the White House Climate Office contrived revising the MATS Rule as a means of reducing power plant emissions for climate change reasons. For example, in February 2021, EPA prepared a presentation for the White House Climate Advisor. *See* Power Sector Strategy: Climate, Public Health, Environmental Justice, Briefing for Gina

McCarthy and Ali Zaidi (Feb. 4, 2021). Ex.15 (Chang Decl.) ¶¶3-5. While heavily redacted, the document evidences EPA's intent to use its regulatory authority under various programs, including the MATS Rule, for reducing power plant emissions to implement the Administration's climate agenda. *Id.* ¶¶6-7.

Those internal documents match public comments from the EPA Administrator, who repeatedly stated EPA would issue a "suite of rules" designed to close fossil fuel-fired power plants, with the co-benefit of combating climate change. *E.g.*, Geman, *EPA floats path on electricity CO2 emissions with an asterisk*, Axios (Mar. 11, 2022).[8]

As just one example, Administrator Regan said his agency would "couple" climate regulations with "health-based" regulations to regulate greenhouse gases and get around the *West Virginia v. EPA* decision.

> **PBS**: How much of a setback is [the *West Virginia v. EPA* decision] to your efforts to regulate greenhouse gases?
>
> **Regan**: ...We still will be able to regulate climate pollution. And we're going to use all of the tools in our toolbox. ...
>
> **PBS**: Well, can you give us a couple of examples of the kind of tools that you believe you still can use to regulate this industry?
>
> **Regan**: ...We also have a suite of regulations that are facing the power sector. And so, *as we couple the regulation of climate pollution with the regulation of health-based pollution*, we are providing the power

[8] Available at https://www.axios.com/2022/03/11/epa-electricity-co2-emissions.

> sector with a very clear picture of what regulations they're facing so that they can make the right investment decisions.

PBS, *EPA Administrator Michael Regan discusses Supreme Court ruling on climate change*, YouTube (June 30, 2022) (emphasis added);[9] *see also, e.g.*, White House, *Press Gaggle by Principal Deputy Press Secretary Karine Jean-Pierre & Env't Prot. Agency Adm'r Michael Regan* (Feb. 17, 2022) (stating if the Supreme Court limits EPA's ability to regulate greenhouse gas emissions, EPA will respond with "bread-and-butter regulations," such as "regulating mercury").[10]

EPA's public statements and documents evidence this Rule was not promulgated to protect the public from exposure to the regulated HAPs. The purpose for EPA's recent "suite" of rules targeting coal-fired plants is recognized around the world,[11] and courts are "'not required to exhibit a naiveté from which ordinary citizens are free.'" *Dep't of Commerce*, 139 S. Ct. at 2575 (citation omitted).

---

[9] Available at https://www.youtube.com/watch?v Ic 1UxwsXj8 (accessed May 7, 2024).

[10] Available at https://tinyurl.com/bddpr22j.

[11] *E.g.*, Milman, *New US climate rules for pollution cuts 'probably terminal' for coal-fired plants*, Guardian (May 2, 2024), https://www.theguardian.com/us-news/2024/may/02/us-climate-rules-coal-plants-pollution.

II. Petitioners Will Suffer Imminent and Irreparable Harm Absent a Stay

A. Petitioner States Will Suffer Irreparable Economic Harm

Petitioner States will suffer irreparable economic harm if the Rule is not stayed during the pendency of litigation.

EPA's claim that the Rule will have almost no impact on electricity prices, 89 Fed.Reg. at 38555-56, does not reflect reasoned decision-making. EPA acknowledges that complying with the Rule will impose millions in costs (presuming plants are able to comply at all). 89 Fed.Reg. at 38561. Those costs must be borne somewhere, and Petitioners have provided declaration after declaration attesting that implementing the Rule will inevitably require prices to increase. Ex.2 (Fedorchak Decl.) ¶¶25-33; Ex.3 (Lane Decl.) ¶23; Ex.7 (Huston Decl.) ¶¶16-17; Ex.8 (Bohrer Decl.) ¶¶18-21; Ex.9 (McLennan Decl.) ¶43; Ex.10 (Tschider Decl.) ¶29; Ex.11 (McCollam Decl.) ¶¶33-35; Ex.16 (Purvis Decl.) ¶11. Any increase in retail electric rates will impose unrecoverable costs on Petitioner States and their residents, including the States as consumers of electricity. *E.g.*, *California v. Azar*, 911 F.3d 558, 581 (9th Cir. 2018) (economic injury sustained by states due federal agency action "is irreparable … because the states will not be able to recover monetary damages").

Moreover, absent a stay of the Final Rule during the pendency of litigation, State regulators will need to expend substantial resources overseeing

implementation of the Final Rule and attempting to mitigate its deleterious effects. Ex.2 (Fedorchak Decl.) ¶7; Ex.3 (Lane Decl.) ¶¶29-31.

B. The Rule's Compliance Costs and Infeasible Standards Risk Catastrophic Consequences for the Power Grid

Even more concerning than the imposition of unrecoverable economic costs, the Rule also threatens irreparable harm by undermining power grid reliability, as power outages are frequently paid for with human lives. *E.g.*, FERC-NERC-Regional Entity Staff Report: The February 2021 Cold Weather Outages in Texas and the South Central United States (Nov. 16, 2021) (over 200 fatalities during weather event "with most of the deaths connected to the power outages").

Although the Rule includes a three-year implementation period, absent a stay during the pendency of litigation, complying with that deadline (or commencing retirement plans if they cannot) requires EGUs to make decisions and take requisite actions *now*. Power plants cannot start and stop instantaneously; actions taken now will be irreversible and will affect power grids for years to come. Ex.8 (Bohrer Decl.) ¶¶24-28; Ex.9 (McLennan Decl.) ¶58; Ex.10 (Tschider Decl.) ¶¶25-30; Ex.11 (McCollam Decl.) ¶¶34-43; Ex.12 (Friez Decl.) ¶¶16-17; Ex.16 (Purvis Decl.) ¶¶15-19. As discussed *supra*, that is precisely what happened the last time the MATS Rule was litigated. Even though the Supreme Court ultimately held EPA acted unreasonably in promulgating the last MATS rule, *Michigan*, 576 U.S. at 743,

regulated EGUs had already been required to spend billions in compliance costs (or begin shutdown operations).

Power plants are again saying this Rule will result in substantial costs and may result in plant closures. Ex.8 (Bohrer Decl.) ¶¶21-24; Ex.9 (McLennan Decl.) ¶¶34-39, 70 ("Recent test data suggest that Minnkota will not be able to meet the New Mercury Limitation even at the higher PAC injection rates that EPA assumed to be sufficient to meet the New Mercury Limitation."); Ex.10 (Tschider Decl.) ¶¶21-23; Ex.11 (McCollam Decl.) ¶¶34-43; Ex.16 (Purvis Decl.) ¶¶24-25 (upgrades to comply "will certainly fail, despite best engineering and maintenance practices, due to the lack of any margin to meet the aggressively low new fPM limitation"). That injury will be irreparable. *Texas v. EPA*, 829 F.3d at 434 (potential closures threatened "the very existence of some of Petitioner's businesses and, even assuming, *arguendo*, that the plant operators could recover their costs from…their consumers, this would not be a recovery made in the course of the litigation").

EPA's perfunctory conclusion this Rule will not affect the power grid at all, 89 Fed.Reg. at 38519, should not be trusted. "EPA has no expertise on grid reliability." *Texas v. EPA,* 829 F.3d at 433. That expertise resides in FERC and NERC, yet EPA did not consult either before finalizing the Rule. Nor does EPA's Regulatory Impact Analysis reflect a long-term assessment of grid reliability, despite receiving comment after comment that the Rule would have significant impacts on

the power grid. *See* RIA at 3-23 3-24. And EPA's feasibility determinations are supported almost entirely by a single comment that is woefully inadequate to support EPA's conclusions. *See* Ex.13 (Holmes Decl.) ¶11 (summarizing EPA's reliance on the Andover Report as "bootstrapping at its worst").[12] State and grid regulators attest the foreseeable impacts of this Rule on power grid reliability will be significant. Ex.1 (Vigesaa Decl.) ¶¶11-26; Ex.2 (Fedorchak Decl.) ¶¶7-24; Ex.3 (Lane Decl.) ¶¶18-34; Ex.4 (Rickerson Decl.) ¶¶13-15; Ex.5 (Nowakowski Decl.) ¶¶7-12; Ex.6 (Webb Decl.) ¶¶6-10; Ex.7 (Huston Decl.) ¶12.

In a telling section, EPA dismisses widespread concerns about the Rule's foreseeable impact on power grid reliability by assuming that State or regional regulators will be able to use emergency powers to prop up the power grid if the Final Rule makes EGUs no longer commercially viable. 89 Fed.Reg. at 38526. EPA's reliance on such emergency, stopgap powers to prevent the Rule from breaking the power grids is the epitome of arbitrary and capricious agency action.

According to a study commissioned by the North Dakota Transmission Authority, if the Rule causes any of North Dakota's lignite-fired EGUs to retire, it will risk causing the entire MISO grid to experience black-outs resulting in economic damages ranging from $29 million to over $1 billion. Ex.1 (Vigesaa Decl.) ¶¶22-

[12] Further, an author of one of the few other studies EPA relies upon for its feasibility determination attests EPA is also misusing that study. Ex.14 (Benson Decl.) ¶¶6-8.

25. Given that the Rule will likely have the effect if not the deliberate goal of setting HAP emission standards that coal-fired EGUs in North Dakota and elsewhere will be unable to comply with, undermining long-term grid reliability is a foreseeable impact of the Rule that EPA failed to take seriously.

Furthermore, as noted *supra*, EPA's conclusion the Rule will have no impact on power plant operations should be viewed with skepticism given EPA's history of woefully underestimating the impact that its rules—and the MATS Rule specifically—will have on power plant operations. The last time EPA promulgated the MATS Rule, its claim that it would impact only about 5,000 MW of power ended up being wrong by over a factor of ten. The power grids today do not have the same buffer of dispatchable power that they had a decade ago, and an error on the same magnitude as EPA's last profound error would likely have catastrophic results. Ex.1 (Vigesaa Decl.) ¶11-12; Ex.3 (Lane Decl.) ¶¶12-13; Ex.7 (Huston Decl.) ¶¶8-14.

In similar circumstances, the Fifth Circuit stayed an EPA rule that a state plausibly alleged would result in grid instability due to the likely closure of coal-fired power plants during the pendency of litigation. *Texas v. EPA*, 829 F.3d at 434. In that case, Texas argued that the changes mandated by the challenged rule would cost power plants upwards of "$2 billion, rendering them uneconomical and forcing the plants to close" potentially "remov[ing] 3,000 MW to 8,400 MW of generating

capacity." *Id.* at 416. Consequently, the court held that "the threat of grid instability and potential brownouts alone constitute irreparable injury." *Id.*

III. The Balance of Harms and the Public Interest Favor a Stay

Staying the Rule while Petitioners' challenge is heard on the merits will maintain the status quo, and EPA acknowledges the status quo already protects public health. 89 Fed.Reg. at 38508 (existing standards already provide an "ample margin of safety").

The public interest also favors a stay when that rule would potentially threaten the public's access to affordable electricity. *Texas v. EPA*, 829 F.3d at 435 (granting stay where "public interest in ready access to affordable electricity" outweighed "inconsequential" emissions reductions that rule implementation would have achieved during the pendency of the litigation); *see also, e.g., Sierra Club v. Ga. Power Co.*, 180 F.3d 1309, 1311 (11th Cir. 1999) (denying preliminary injunction where it threatened to reduce power generation, as "[a] steady supply of electricity ... especially ... [for] the elderly, hospitals and day care centers, is critical."); *West Virginia v. EPA*, 90 F.4th 323, 332 (4th Cir. 2024) ("the public [] has an interest in the efficient production of electricity and other industrial activity in the State, even as such production is balanced with environmental needs").

And courts have found "unconvincing" the suggestion that the public will be injured from a stay pending litigation where, as here, complying with the rule "would

not reduce emissions for at least three years." *Texas v. EPA*, 829 F.3d at 434. That is particularly the case where, as here, the existing conditions already far exceed federal safety or environmental goals. *Id.* at 434–35.

CONCLUSION

Petitioners ask the Court to stay implementation of the Final Rule.

Respectfully submitted,

DREW H. WRIGLEY
Attorney General

By: */s/ Philip Axt*
PHILIP AXT
Solicitor General
600 E Boulevard Ave., Dept. 125
Bismarck, ND 58505
Phone: 701.328.2210
pjaxt@nd.gov

NESSA HOREWITCH COPPINGER
DAVID M. FRIEDLAND
Special Assistant Attorneys General
1900 N Street NW, Suite 100
Washington, DC 20036
Phone: 202.789.6053
ncoppinger@bdlaw.com
dfriedland@bdlaw.com

Counsel for State of North Dakota

PATRICK MORRISEY
Attorney General

/s/ Lindsay S. See
LINDSAY S. SEE
Solicitor General
MICHAEL R. WILLIAMS
Principal Deputy Solicitor General
Office of the Attorney General of West Virginia
State Capitol Complex
Building 1, Room E-26
Charleston, WV 25301
(304) 558-2021
lindsay.s.see@wvago.gov
michael.r.williams@wvago.gov

Counsel for State of West Virginia

TREG TAYLOR
Attorney General

/s/ Garrison Todd
GARRISON TODD
Assistant Attorney General
Alaska Department of Law
1031 W. 4th Ave. Ste. 200
Anchorage, AK 99501
(907) 269-5100
Garrison.Todd@alaska.gov

Counsel for State of Alaska

TIM GRIFFIN
Attorney General

/s/ Nicholas J. Bronni
NICHOLAS J. BRONNI
Solicitor General
DYLAN L. JACOBS
Deputy Solicitor General
Office of the Arkansas Attorney General
323 Center Street, Suite 200
Little Rock, AR 72201
(501) 682-2007
nicholas.bronni@arkansasag.gov

Counsel for State of Arkansas

CHRISTOPHER M. CARR
Attorney General

/s/ Stephan J. Petrany
STEPHEN J. PETRANY
Solicitor General
Office of the Attorney General
40 Capitol Square, SW
Atlanta, Georgia 30334
(404) 458-3408
spetrany@law.ga.gov

Counsel for State of Georgia

RAÚL R. LABRADOR
Attorney General

/s/ Joshua N. Turner
JOSHUA N. TURNER
Chief of Constitutional Litigation and Policy
ALAN M. HURST
Solicitor General
Office of Idaho Attorney General
P.O. Box. 83720
Boise, Idaho 83720
(208) 334-2400
Josh.Turner@ag.idaho.gov
Alan.Hurst@aga.idaho.gov

Counsel for State of Idaho

THEODORE E. ROKITA
Attorney General

/s/ James A. Barta
JAMES A. BARTA
Solicitor General
Indiana Attorney General's Office
IGCS – 5th Floor
302 W. Washington St.
Indianapolis, IN 46204
(317) 232-0709
james.barta@atg.in.gov

Counsel for State of Indiana

BRENNA BIRD
Attorney General

/s/ Eric H. Wessan
ERIC H. WESSAN
Solicitor General
1305 E. Walnut Street
Des Moines, Iowa 50319
(515) 823-9117
eric.wessan@ag.iowa.gov

Counsel for State of Iowa

KRIS W. KOBACH
Attorney General

/s/ Anthony J. Powell
ANTHONY J. POWELL
Solicitor General
Office of Kansas Attorney General
120 SW 10thAvenue, 2ndFloor
Topeka, Kansas 66612
(785) 368-8539
Anthony.Powell@ag.ks.gov

Counsel for State of Kansas

RUSSELL COLEMAN
Attorney General

/s/ Matthew F. Kuhn
MATTHEW F. KUHN
Solicitor General
JACOB M. ABRAHAMSON
Assistant Solicitor General
Office of Kentucky Attorney General
700 Capital Avenue, Suite 118
Frankfort, Kentucky 40601
(502) 696-5300
Matt.Kuhn@ky.gov
Jacob.Abrahamson@ky.gov

Counsel for Commonwealth of Kentucky

ELIZABETH B. MURRILL
Attorney General

/s/ J. Benjamin Aguiñaga
J. BENJAMIN AGUIÑAGA
Solicitor General
Louisiana Department of Justice 1885 N. Third Street
Baton Rouge, Louisiana 70802
(225) 506-3746
aguinagab@ag.louisiana.gov

Counsel for State of Louisiana

LYNN FITCH
Attorney General

/s/ Justin L. Matheny
JUSTIN L. MATHENY
Deputy Solicitor General
Office of the Attorney General
P.O. Box 220
Jackson, Mississippi 39205
(601) 359-3825
justin.matheny@ago.ms.gov

Counsel for State of Mississippi

ANDREW T. BAILEY
Attorney General

/s/ Samuel C. Freedlund
SAMUEL C. FREEDLUND
Deputy Solicitor General
Office of the Attorney General
815 Olive St., Suite 200
St. Louis, Missouri 63101
(314) 340-4869
Samuel.Freedlund@ago.mo.gov

Counsel for State of Missouri

AUSTIN KNUDSEN
Attorney General

/s/ Christian B. Corrigan
CHRISTIAN B. CORRIGAN
Solicitor General
PETER M. TORSTENSEN, JR.
Deputy Solicitor General
Montana Department of Justice
215 N. Sanders Helena, MT 59601
(406)444-2707
Christian.Corrigan@mt.gov

Counsel for State of Montana

MICHAEL T. HILGERS
Attorney General

/s/ Grant D. Strohl
GRANT D. STROBL
Assistant Solicitor General
Nebraska Attorney General's Office
2115 State Capitol
Lincoln, NE 68509
(402) 471-2683
grant.strobl@nebraska.gov

Counsel for State of Nebraska

GENTNER DRUMMOND
Attorney General

/s/ Garry M. Gaskins, II
GARRY M. GASKINS, II
Solicitor General
JENNIFER L. LEWIS
Deputy Attorney General
Office of the Attorney General of Oklahoma
313 NE Twenty-First St.
Oklahoma City, OK 73105
(405) 521-3921
garry.gaskins@oag.ok.gov
jennifer.lewis@oag.ok.gov

Counsel for State of Oklahoma

ALAN WILSON
Attorney General

/s/ Thomas T. Hydrick
THOMAS T. HYDRICK
Assistant Deputy Solicitor General
Office of the Attorney General of South Carolina
1000 Assembly Street
Columbia, SC 29201
(803) 734-4127
thomashydrick@scag.gov

Counsel for State of South Carolina

MARTY J. JACKLEY
Attorney General

/s/ Steve Blair
STEVE BLAIR
Deputy Attorney General
Office of the Attorney General of South Dakota
1302 East Highway 14, Suite 1
Pierre, SD 57501-8501
(605) 773-3215
atgservice@state.sd.us
steven.blair@state.sd.us

Counsel for State of South Dakota

JONATHAN SKRMETTI
Attorney General

/s/ Whitney Hermandorfer
WHITNEY HERMANDORFER
Director of Strategic Litigation
MATTHEW RICE
Solicitor General
Office of the Attorney General and Reporter of Tennessee
P.O. Box 20207
Nashville, TN 37202-0207
(615) 741-7403
Whitney.Hermandorfer@ag.tn.gov
Matthew.Rice@ag.tn.gov

Counsel for State of Tennessee

KEN PAXTON
Attorney General

/s/ John R. Hulme
JOHN R. HULME
Assistant Attorney General
BRENT WEBSTER
First Assistant Attorney General
JAMES LLOYD
Deputy Attorney General for Civil Litigation
KELLIE E. BILLINGS-RAY
Chief, Environmental Protection Division
Office of the Texas Attorney General
P.O. Box 12548
Austin, Texas 78711-2548
John.hulme@oag.texas.gov

Counsel for State of Texas

SEAN REYES
Attorney General

/s/ Stanford Purser
STANFORD PURSER
Solicitor General
Office of the Utah Attorney General
160 East 300 South, Fifth floor
Salt Lake City, Utah 84111
(385) 366-4334
Spurser@agutah.gov

Counsel for State of Utah

JASON MIYARES
Attorney General

/s/ Kevin M. Gallagher
KEVIN M. GALLAGHER
Principal Deputy Solicitor General
BRENDAN T. CHESTNUT
Deputy Solicitor General
Virginia Attorney General's Office
202 North 9th Street
Richmond, VA 23219
(804) 786-2071
kgallagher@oag.state.va.us
bchestnut@oag.state.va.us

Counsel for Commonwealth of Virginia

BRIDGET HILL
Attorney General

/s/ D. David DeWald
D. DAVID DEWALD
Deputy Attorney General
Wyoming Attorney General's Office
Water & Natural Resources Division
109 State Capitol
Cheyenne, WY 82002
(307) 777-7895 phone
david.dewald@wyo.gov

Counsel for State of Wyoming

CERTIFICATE OF COMPLIANCE

The foregoing brief complies with the type-volume limitation of Fed. R. App. P. 32(a)(7)(B), (f) and (g) and Circuit Rule 32(e)(1), because it contains 5,193 words, excluding exempted parts, according to the count of Microsoft Word 2010. I further certify that the foregoing brief also complies with Fed. R. App. P. 32(a)(5) and (6) because it has been prepared using Microsoft Word 2010 in 14-point proportionally spaced Times New Roman font.

/s/ Philip Axt
PHILIP AXT
Solicitor General of North Dakota

CERTIFICATE OF SERVICE

I hereby certify that on June 7, 2024, the foregoing Amended Motion for Stay was served electronically on all registered counsel through the Court's CM/ECF system.

/s/ Philip Axt
PHILIP AXT
Solicitor General of North Dakota

EXHIBIT 8

Declaration of Penny E. Lassiter

***Blue Ridge Environmental Defense League v. Regan*,**
No. 22-03134 (D.D.C.)

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

BLUE RIDGE ENVIRONMENTAL DEFENSE LEAGUE, *et al.*,	)	
Plaintiffs,	)	
v.	)	Case No. 1:22-cv-03134
MICHAEL S. REGAN, in his official capacity as Administrator of the U.S. Environmental Protection Agency,	)	Hon. Amit P. Mehta
Defendant.	)	

DECLARATION OF PENNY E. LASSITER

1. I, Penny E. Lassiter, under penalty of perjury, affirm and declare that the following statements are true and correct to the best of my knowledge and belief and are based on my personal knowledge or on information contained in the records of the United States Environmental Protection Agency ("EPA") or supplied to me by EPA employees under my supervision.

2. I am the Director of the Sector Policies and Programs Division ("SPPD") within the Office of Air Quality Planning and Standards ("OAQPS"), Office of Air and Radiation ("OAR") at EPA. I have held this position in a permanent capacity since May 26, 2019. SPPD is the division within OAQPS that has responsibility for developing, reviewing, and revising, as required and appropriate, regulations under section 112 of the Clean Air Act ("CAA"), 42 U.S.C. § 7412, the National

Emission Standards for Hazardous Air Pollutants ("NESHAP") program, including regulations relevant to hazardous waste combustion.

3. As Director of SPPD, I am responsible for overseeing EPA's promulgation of regulations under the NESHAP and other CAA programs. From my longstanding experience, including 26 years of leadership in SPPD and its predecessor division with similar regulatory development responsibilities, I am very familiar with the processes required in developing and promulgating major EPA regulations under the CAA and the time periods allotted for EPA to take regulatory actions thereunder, including issuing rules pursuant to CAA sections 112(f)(2)(A) and 112(d)(6), 42 U.S.C. §§ 7412(f)(2)(A) and 7412(d)(6), respectively. I have also relied upon my staff to provide the factual information concerning the regulatory steps and schedule needed for the particular CAA section 112, 42 U.S.C. § 7412, actions at issue in the case for which I make this declaration.

4. At this time, the earliest possible completion date for a final rule making for the National Emission Standards for Hazardous Air Pollutants from Hazardous Waste Combustors (HWC NESHAP) is August 14, 2026. The dates for the rule making phases described in my July 27, 2023, declaration are updated as follows to reflect events since that time; asterisks indicate where time was removed from the phase in comparison to the July 27, 2023, declaration and why:

Phases from July 27, 2023 Declaration	Completion or Estimated Completion Date
Phase I. Project Kickoff	Completed June 2023
Phase II. Preliminary Information Collection	Completed July 2023
Phase III. Supplemental Information Collection and Outreach to Stakeholders	November 22, 2024 (1 month)
Phase IV. Data Analyses and Modeling File Development	December 30, 2024 (1 month)
Phase V. Residual Risk Analysis and Technology Review	April 29, 2025 (4 months)
Phase VI. Development and Completion of Proposed Rule	October 24, 2025 (6 months) * Two months of exclusive OMB time removed
Phase VII. Proposed Rule Publication and Comment Period	January 22, 2026 (3 months)
Phase VIII. Summarization of Comments, Development of Comment Responses and Analysis of Data	March 23, 2026 (2 months)
Phase IX. Development and Completion of Final Rule	August 14, 2026 (5 months) * Remaining two months of exclusive OMB time removed

5. Analysis of title V permits during Phase II showed that some hazardous waste combustors have emissions limits for hazardous air pollutants (HAPs) that are not currently regulated in the HWC NESHAP, including polychlorinated biphenyls (PCBs). Other HAPs or HAP precursors of potential interest at that time

included fluorinated compounds, brominated compounds, polycyclic aromatic hydrocarbons (PAHs), hydrogen cyanide (HCN), and asbestos.

6. My staff therefore issued the "first survey" to nine entities seeking information that was needed to identify the actual additional HAPs or HAP precursors that should be regulated. To expedite the rulemaking process, we chose to survey nine entities that own or operate hazardous waste combustors. Together, these nine entities are representative of the six distinct HWC NESHAP subcategories. If EPA surveys more than nine entities, it must do so through a formal information collection request issued pursuant to the Paperwork Reduction Act. It can take over a year to issue such a request to recipients because it must be developed though public notice and comment and must be approved by the White House's Office of Management and Budget.

7. The first survey was issued on August 17, 2023, and the initial response deadline was October 31, 2023. Due to multiple requests for an extension, we extended the deadline to November 15, 2023. Copies of all responses with confidential business information removed are publicly available at http://www.regulations.gov (Docket ID EPA-HQ-OAR-2004-0022).

8. Based on the responses to the first survey, in Phase III my staff issued the "second survey" of the information collection request, which was an emissions testing request. EPA requested testing of 23 HWCs owned or operated by 9 entities

and targeted four HAPs and one potential HAP surrogate: PCBs, polycyclic aromatic hydrocarbons (PAHs, a class of organic HAPs), hydrogen fluoride (HF), hydrogen cyanide (HCN), and hydrogen bromide (HBr). While HBr itself is not a HAP, it can potentially serve as a surrogate for the release of brominated HAP emissions. Because responses to the first survey indicated that some hazardous waste combustors do not combust the chemical components required to form some of the HAPs, testing requirements in the second survey were tailored to each survey recipient.

9. The initial deadline for providing emission test results in response to the second survey was August 30, 2024. Some companies asked for and were granted deadline extensions for operational reasons (*i.e.*, their combustors were undergoing maintenance and were not operational during the expected testing window). In August 2024, multiple companies contacted EPA and asked for emissions testing extensions due to delays at a third-party laboratory, Eurofins Environment Testing - Knoxville. That laboratory is one of three that, to our knowledge, can process the required samples nationwide. EPA contacted the laboratory, which confirmed a significant delay in sample processing. Because companies had completed their tests in a timely manner but had not yet received their results for reasons beyond their control, EPA extended the emissions testing deadline to September 29, 2024.

In September 2024, because EPA learned that some laboratory results had still not been returned, EPA extended select deadlines until October 31, 2024.

10. On October 30, 2024, one entity requested an extension to November 22, 2024, because they received their final analytical results from the laboratory on October 23, 2024. This data must still undergo review by the facility and appropriate data entry so that the company can use the data to calculate the emission results to respond to the second survey. EPA believes that this timeline is reasonable and granted this request.

11. As of November 1, 2024, EPA has received 19 of 23 emissions testing responses, or 83%, from 7 of 9 entities. We expect to receive results from one of the two remaining entities by November 22, 2024. We do not expect another extension request from this entity because the entity, which is submitting results for three liquid fuel boilers, is no longer waiting on analytical results.

12. EPA has received no test results from the last remaining entity, Norlite, LLC, which suspended operations of their HWCs in March 2024 before testing could be conducted and has not restarted. As described in paragraphs 7 through 9 of my declaration dated September 15, 2023, EPA must obtain emissions testing data in order to develop emissions limits for currently unregulated HAPs. Since Norlite, LLC operates the only hazardous waste burning lightweight aggregate

kilns in the country (one of the six distinct HWC NESHAP subcategories), we will move forward with the RTR rulemaking process with the currently regulated HAPs for lightweight aggregate kilns and require the emissions testing for this subcategory for the currently unregulated HAPs if and when the facility restarts operations.

13. Because we are missing data from only two of the six distinct HWC NESHAP subcategories (liquid fuel boilers and lightweight aggregate kilns), we are proceeding with the rulemaking process for unregulated HAPs for the other four subcategories in the interim. We are also proceeding with the rulemaking process for regulated HAPs from all six HWC NESHAP subcategories. EPA collected available data for regulated HAPs during Phase II of the rulemaking; the second survey was specific to unregulated HAPs.

14. To the extent possible, EPA already is conducting Phase IV by organizing and analyzing data that we have collected. Most of the information collected in Phase II was in PDF format, which cannot be used directly in calculations. We have been extracting that data into a usable format and expect to complete that process in November 2024, facilitating completion of Phase IV in December 2024.

Executed this 4th day of November 2024.

PENNY LASSITER

Digitally signed by PENNY LASSITER
Date: 2024.11.04 13:14:14 -05'00'

Penny Lassiter

CERTIFICATE OF SERVICE

I, Heather E. Gange, hereby certify that on November 4, 2024, I electronically filed the foregoing with the Clerk of Court using the ECF system, which effected service on counsel for all parties of record.

/s/ Heather E. Gange
Heather E. Gange

EXHIBIT 9

Declaration of Panagiotis E. Tsirigotis

***Sierra Club v. Pruitt*, No. 16-02461 (D.D.C.)**

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

BLUE RIDGE ENVIRONMENTAL DEFENSE LEAGUE, *et al.*, *Plaintiffs*, v. SCOTT PRUITT, Administrator, United States Environmental Protection Agency, *Defendant.*	Civil Action 1:16-CV-00364-CRC
CALIFORNIA COMMUNITIES AGAINST TOXICS, *et al.*, *Plaintiffs*, v. SCOTT PRUITT, Administrator, United States Environmental Protection Agency, *Defendant.*	Civil Action 1:15-CV-00512-TSC

CORRECTED DECLARATION OF PANAGIOTIS E. TSIRIGOTIS

1. I, Panagiotis E. Tsirigotis, under penalty of perjury, affirm and declare that the following statements are true and correct to the best of my knowledge and belief and are based on my own personal knowledge or on

information contained in the records of the United States Environmental Protection Agency (EPA) or supplied to me by EPA employees under my supervision.

2. I am the Director of the Sector Policies and Programs Division (SPPD) within the Office of Air Quality Planning and Standards (OAQPS), Office of Air and Radiation (OAR) at EPA, a position I have held since February 6, 2006. SPPD is the division within OAQPS that has responsibility for, among other things, developing regulations, policy, and guidance associated with section 112 of the Clean Air Act (CAA), 42 U.S.C. § 7412, which is the national emission standards for hazardous air pollutants (NESHAP) program.

A. Responses to Questions Raised by the Court

3. At the hearing held on February 2, 2017, Judge Cooper requested a declaration from EPA providing additional information concerning the resources available to SPPD, including: (1) How many employees are part of SPPD; (2) How many employees in SPPD work on the risk and technology reviews (RTRs); (3) What are the other responsibilities of SPPD; (4) On what discretionary projects does SPPD work; and (5) To what extent can SPPD call on other Agency resources to complete RTR actions? Judge Cooper subsequently issued an order requiring EPA to submit such a declaration and giving Plaintiffs an opportunity to respond. This declaration is EPA's response to that order.

ED_021114_00003486-00110

4. SPPD is the division of EPA responsible for coordinating efforts of the multiple divisions and offices within EPA that support the RTR program, and SPPD also is responsible for conducting information collection, performing many of the required technical analyses, and drafting the regulatory package and much of the supporting documentation for RTRs. An SPPD staff member serves as the project lead for all RTRs. As discussed in my earlier declaration, the project lead relies on the technical expertise of other SPPD staff as well as staff from other EPA divisions and offices, as well as contractors, to complete the technical analyses and prepare the regulatory package. Other EPA offices, such as the Office of Research and Development, Office of Policy, and the Office of General Counsel, participate in workgroups for each RTR project. Workgroup members provide expertise including technical (such as risk assessment and monitoring), legal (both defensibility and enforceability), and economics. Overall, the projects require considerable coordination, communication, and technical expertise. SPPD currently has 87 employees, 79 of whom work on RTRs (which are described in detail in my previous declaration) in some capacity. Forty-two of the 79 employees are either project leads or project assistants who conduct the day-to-day project activities involved with conducting the required reviews and developing regulations, as necessary. These same staff also serve as the project leads and assistants for SPPD's other CAA-mandated regulatory work, which altogether

ED_021114_00003486-00111

(including the RTRs) results in a total of about 250 regulations subject to periodic review requirements. In addition to the project leads and assistants, there are 6 managers who report directly to me and manage staff, including the project leads and assistants, on multiple projects required under the CAA, including RTRs, as described in paragraphs 5 through 11 below. There also is a group of 6 policy/program development specialists including a manager who have multiple responsibilities related to RTRs and other regulatory projects, including: reviewing all regulatory packages; providing up-to-date guidance materials to staff; supporting litigation activities including the development of legal briefs; developing schedules and tracking progress; coordinating with other EPA offices; identifying regulatory priorities; and developing and implementing policies regarding technical issues in order to ensure that SPPD's rules are consistent with statutory requirements and internally consistent. SPPD also includes a group of 10 staff, including a manager, responsible for monitoring/recordkeeping and reporting. This group develops monitoring requirements for RTRs and other rules, reviews emissions test reports that are used in RTRs and other rules, and develops electronic systems for submittal of emissions data and other information by entities subject to RTRs and other rules. I also manage 7 additional staff, in my division front office, who provide support with budgeting, planning, training, and oversight of SPPD's regulatory programs. Three staff are communication specialists who are

responsible for preparing briefings and providing technical editing support for RTRs and other work products produced by SPPD. Four staff are administrative support, who provide administrative support for all of the work in SPPD, including editing of regulatory packages, setting up meetings, setting up travel, timekeeping, and word processing. Overall, I estimate that the equivalent of 38 full-time staff work on RTRs. For the remainder of this declaration, I use the term full-time equivalents or FTEs to indicate the estimates of how many staff are dedicated to particular responsibilities. As described in paragraphs 6 through 11, SPPD's responsibilities include many other types of regulations and reviews, and the statutory requirements simply cannot be met given the size of the organization. I note that a typical regulatory project requires up to 3 FTEs within SPPD, along with contractor support, and each of the project leads and assistants typically are assigned to multiple projects.

5. RTRs are a significant part of our current work. These reviews must be conducted for all source categories that are subject to maximum achievable control technology (MACT) standards and all section 129 solid waste incinerator rules. There are approximately 120 categories subject to this requirement. We have completed the RTRs for almost 60 of the categories, and RTRs for about 50 additional categories are overdue or will be due soon.

6. As described in the following paragraphs, SPPD is also primarily responsible for developing and reviewing federal air regulations that apply to stationary sources of air pollution under CAA sections 111, 112, and 129.

7. CAA section 111(b) requires EPA to promulgate standards for certain pollutants. These standards, which apply to new sources, are known as new source performance standards (NSPS). EPA also is required to review and, if appropriate, revise each NSPS every 8 years. There are about 70 NSPS that are subject to this ongoing requirement. These projects typically require a comprehensive review of the source category which includes determining whether substantive changes or improvements to the standards are needed. An estimated 11 staff in SPPD (full-time equivalents) work on the review and revision of NSPS, but significantly more staff would be needed to conduct all of the statutorily required reviews. SPPD continues to prioritize and conduct these reviews as staff and contractor resources allow.

8. Under CAA section 112, EPA is required to identify and list categories of stationary sources that emit any of the 187 hazardous air pollutants (HAP) listed in CAA section 112(b)(1) (or any HAP subsequently added by EPA) and then to develop national emission standards for hazardous air pollutants (NESHAP), for those source categories by specified statutory deadlines. These actions are largely completed, although several NESHAP are still in litigation and

ED_021114_00003486-00114

several others have been vacated or remanded by the court of appeals. An estimated 15 staff in SPPD (full-time equivalents) are working on NESHAP (not including RTRs). The NESHAP that apply to major stationary sources of HAP emissions, along with a subset of NESHAP that apply to smaller area sources of HAP emissions, are referred to as MACT standards, and EPA is required to perform the RTR review for all MACT standards as mentioned in paragraph 5. The other NESHAP, which apply to most of the categories of "area" or non-major sources, are referred to as generally available control standards (GACT) and these standards are subject only to the CAA section 112(d)(6) technology review and not to the CAA section 112(f)(2) risk review, as described in paragraph 9.

9. There are about 60 source categories that are only subject to the CAA section 112(d)(6) technology review requirement. The original rules for these source categories were mostly promulgated between 2007 and 2009. To date, EPA has prioritized conducting the technology reviews for those source categories that are also subject to the residual risk review requirement.

10. SPPD is responsible for developing standards under CAA section 129 for solid waste incinerators. SPPD has already promulgated most of the statutorily required rules, although several are subject to ongoing litigation. SPPD is also responsible for promulgating federal plans associated with the section 129 standards. An estimated 4 staff in SPPD (full-time equivalents) work on aspects of

ED_021114_00003486-00115

the section 129 standards. As noted above, all section 129 rules are subject to the requirement to conduct risk reviews of the technology based standards. These rules are also subject to a technology review requirement although under section 129 such reviews are required at 5 year intervals. The staff resources devoted to the review of the section 129 rules are included in the resources we have identified for the RTRs generally.

11. Other activities performed by SPPD include: (1) Developing existing source performance standards under CAA section 111(d); (2) Reviewing and revising (if necessary) emissions factors used for estimating emissions of volatile organic compounds, carbon monoxide and oxides of nitrogen every 3 years as required under section 130 of the CAA; (3) Responding to petitions to add and remove HAPs from the list in CAA section 112(b) of the CAA and major sources from the list in CAA section 112(c); and (4) Periodically reviewing volatile organic compound rules and Control Techniques Guidelines developed under CAA section 183(e).

12. In addition to reviewing, revising and developing regulations and performing other statutorily prescribed actions as described above, SPPD provides programmatic support for these actions. While these activities are not specifically mandated by the statute, SPPD believes they are necessary to support issuance and implementation of the actions that are prescribed by the statute. These activities

ED_021114_00003486-00116

include providing technical expertise and other support for litigation on the rules developed by SPPD; responding to Freedom of Information Act requests; responding to Congressional inquiries; providing technical expertise and guidance to resolve issues concerning implementation of rules developed by SPPD; optimizing and updating procedures and systems used to develop rules and improved efficiency, including quality assurance tools for large data files, comment summary systems, guidance development, and electronic data submittal systems, such as systems for stationary sources to submit emissions data; performing stakeholder outreach, including webinars, other presentations, hotlines, and face-to-face meetings to communicate the requirements of new regulations; and supporting activities, undertaken by other parts of EPA, to implement the rules written by SPPD. These types of activities are performed by most of the technical staff in SPPD as part of their general duties concerning rules and actions for which they are responsible or part of a team. Overall, an estimated 19 SPPD staff (full-time equivalents) work on these other projects and activities.

13. In addition to the activities described above that are prescribed by the statute or that are related to actions prescribed by the statute, SPPD does perform discretionary actions. Historically, most of SPPD's work involves developing, implementing and reviewing statutorily required regulations. The discretionary items that SPPD generally undertakes include many of the types of activities that

ED_021114_00003486-00117

are expected of high performing organizations that are focused on serving clients. Some examples include:

- Professional development of SPPD staff;
- Attendance at technical conferences;
- Development of databases and information technology systems for enabling transparency and access to information related to our programs.

These types of activities constitute a small percentage of SPPD's work that is difficult to estimate but is not appreciable.

14. Administration priorities also can result in SPPD being tasked with certain additional activities that are not required by statute, including development of regulations. Over the past five years, SPPD has expended significant resources on one such action, the Clean Power Plan. Because the Clean Power Plan was developed under the authority of CAA section 111, the administration tasked SPPD with managing the rulemaking process for the plan, the development of which relied on resources from many offices across the agency. The rule was finalized in 2015 and the staff who worked on that rule have now been assigned to work on other projects as described in paragraphs 5 thru 11 above.

15. In developing RTR actions, SPPD relies on resources in other parts of the agency, as well as contractor resources, to ensure that we engage individuals

ED_021114_00003486-00118

with the needed expertise to resolve the multitude of issues that may arise. As described above and in my earlier declaration, development of an RTR rulemaking requires the involvement of numerous individuals with different skill sets. The schedule provided in my previous declaration to this court includes leveraging available resources from outside of SPPD to assist with various issues and to serve on the project workgroups, which are described in my earlier declaration. Most critically, the Health and Environmental Impacts Division (HEID) within OAQPS also has significant responsibilities related to the RTR projects. The risk assessments described in my earlier declaration are conducted by HEID's Air Toxics Assessment Group, and economic analyses are conducted by HEID's Air Economics Group. Overall, 9 HEID staff work on RTR projects. Of these, about 6 HEID staff (full-time equivalents) scientists and engineers serve as risk assessment leads, and 3 HEID staff (full-time equivalents) serve as lead economists. In recent years, HEID has conducted day-to-day risk and economic project activities for between 8 and 11 RTR source categories per year. This level of support is near HEID's capacity to provide such support. Other workgroup members include staff from: (1) the Office of General Counsel, who provide legal advice and review; (2) the Office of Research Development, who provide additional technical support, evaluate health benchmark information for various pollutants, and help ensure consistency with other Agency actions; (3) the Office of Policy, who evaluate

ED_021114_00003486-00119

consistency across EPA programs and coordinate review with the Office of Management and Budget; (4) the Office of Enforcement and Compliance Assurance, who help to ensure that rules are written in a manner than can be easily understood and implemented; and (5) regional offices who have direct experience with the industrial facilities being regulated. We also make full use of all available contract resources when conducting RTR projects. Contractors provide support in many ways, including conducting technical analyses, drafting technical memoranda explaining those analyses, summarizing comments, and other non-decisional aspects of rulemaking.

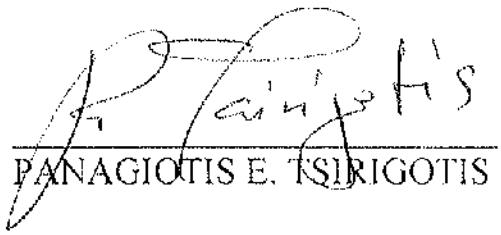
16. SPPD leverages resources from other parts of the Agency as explained above; however, the division generally cannot rely on other staff within the Agency or on contractors to perform the tasks currently performed by SPPD staff. As noted, SPPD is a division within the Office of Air Quality and Planning Standards (OAQPS), which is part of the Office of Air and Radiation (OAR). The Office of Air and Radiation is responsible for implementing the CAA. Each of the offices with OAR is responsible for implementing specific CAA programs and many of those programs are subject to statutory deadlines. Even assuming those offices have resources devoted to activities that could be considered discretionary, the staff do not have expertise that would allow them to step into the shoes of the

experts in SPPD with little to no training. The offices outside OAQPS include staff with expertise in significantly different programs, such as mobile sources and stratospheric ozone protection. Even within OAQPS, the other offices typically have significantly different expertise, such as developing national ambient air quality standards (NAAQS) and working with states on developing plans to meet the NAAQS. The staff responsible for RTR rulemaking are doing a specialized job that requires specialized training and experience. An environmental engineering or environmental science background, along with expertise in the industrial sectors being regulated are necessary in order to effectively lead RTR projects. It also is important to note that contractors cannot perform any "inherently governmental" tasks, such as selecting regulatory options and establishing policy, associated with RTR rulemaking. Finally, the time that is needed to conduct the individual tasks cannot be shortened by the addition of more staff or contractor resources in many instances. For example, the length of the public comment period is prescribed by the statute; the time to perform the risk modeling is dependent on technical constraints; and the time to collect data from industry is dependent on limitations of the individual companies, including the time it takes to perform testing, if required.

ED_021114_00003486-00121

17. In summary, due to SPPD's considerable workload, the available staff, and budgetary constraints, SPPD must prioritize work, and it is usually the case that the available resources are insufficient to allow all of the required work to be completed in a timely fashion.

SO DECLARED:



PANAGIOTIS E. TSIRIGOTIS

Dated: 3/1/17

ED_021114_00003486-00122

ORAL ARGUMENT NOT YET SCHEDULED

IN THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

AIR ALLIANCE HOUSTON, et al., *Petitioners*, v. UNITED STATES ENVIRONMENTAL PROTECTION AGENCY and LEE ZELDIN, Administrator, U.S. Environmental Protection Agency, *Respondents*.	Case No. 25-1143

PETITIONERS' RESPONSE IN OPPOSITION TO RESPONDENTS' MOTION FOR SIX-MONTH ABEYANCE

In April, President Trump gave nearly one-third of coal-fired power plants across the country a free pass to cease their preparations to meet lower mercury and air toxic emissions standards. EPA updated those standards, known as MATS, just over a year ago. In doing so, EPA recognized that the vast majority of coal-fired power plants were capable of and indeed already limiting their emissions of these dangerous pollutants below what was required in its prior, 2012 standards. Nevertheless, with a stroke of his pen, the President in his April 8, 2025 Proclamation exempted an unspecified list of facilities from their compliance

obligations through July 2029 by summarily asserting, without evidence or even a gesture at source-specific analysis, that "technology to implement" that Rule is "not available." Proclamation 10914 of April 8, 2025, 90 Fed. Reg. 16,777 (Apr. 21, 2025). That Proclamation was followed by EPA's publication of a list of the particular facilities to which the Proclamation would apply, which likewise offered no evidence or logic for those facilities' selection.

The President's assertion that the technology is unavailable is false.[1] And EPA's action to apply that declaration to particular facilities is unlawful. That unlawful action is having effects today. As prospective Respondent-Intervenor Talen Montana, LLC, confirms in its motion to intervene, coal plants have already suspended actions to reduce their emissions to comply with the updated standards. *See* Mot. to Intervene, ECF 2129297 at 6 (asserting that Talen Montana, operator of one of the exempted facilities, "has already made operational planning and compliance decisions in reliance on the Presidential Exemption"). Petitioners are entitled to pursue judicial review and seek judicial relief to minimize and prevent harm to Petitioners, their members, and the public from the unlawful exemptions effectuated by EPA.

[1] EPA admitted as much in its recent proposal to repeal the 2024 MATS Rule, writing that the Colstrip Power Plant in Colstrip, Montana, "was *the only* facility unable to meet the lower [filterable particulate matter] standard with *existing controls*." 90 Fed. Reg. 25,535, 25,541 (June 17, 2025) (emphasis added).

The six-month abeyance Respondents request, ECF 2128844 ("Abeyance Mot."), seeks to deprive Petitioners of that opportunity. While Petitioners have indicated to Respondents that they may be willing to consider abeyance of this petition in the event district court litigation concerning the Exemption Proclamation itself proceeds apace, *see Air Alliance Houston v. Trump*, Case No. 1:25-cv-1852-PLF (filed June 12, 2025), Respondents have not yet filed their responsive pleading in that matter, so it remains unknown which forum will take the lead on these questions. Plus, Respondents are seeking abeyance in that matter as well or, in the alternative, further delay of their answer deadline. *Id.*, ECF No. 26. A six-month abeyance of this petition before any indication that Petitioners will be able to vindicate their rights in the district court litigation would be patently premature.

Forcing this case into abeyance now, without a confirmed alternative forum, would thus impose substantial hardship on Petitioners and their members by depriving them of the emissions reductions that would flow from timely judicial review and timely industry compliance with the standards. Petitioners' and the public's interests in promptly achieving the health protections afforded by the updated MATS rule far outweigh the modest burden on Respondents to defend their actions. The *potential* future repeal of parts of that rule—which EPA proposes to accomplish through a separate action under separate statutory

authority does not moot and should not delay review of the unlawful action EPA has already taken. The Court should deny Respondents' abeyance request.

BACKGROUND

Coal plants are one of the largest domestic emitters of hazardous air pollutants like mercury, arsenic, nickel, and other toxic metals. *National Emission Standards for Hazardous Air Pollutants: Coal- and Oil-Fired Electric Utility Steam Generating Units Review of the Residual Risk and Technology Review*, 89 Fed. Reg. 38,508, 38,509 (May 7, 2024) ("2024 Rule"). Short-term exposure to these pollutants can result in profound central nervous system effects; chronic exposure can cause brain and kidney damage, cancer, developmental effects, and a range of other adverse health effects. *Id.* at 38,556.

To address those risks, EPA first promulgated hazardous air pollutant standards for coal- and oil-fired power plants in 2012 under Section 112 of the Clean Air Act, 42 U.S.C. § 7412. After hazardous air pollutant emission standards are established, the Act requires EPA to review developments in control technologies to determine if revisions are necessary. *Id.* § 7412(d)(6).

As a result of its Section 7412(d)(6) review, EPA revised the MATS in 2024. The 2024 Rule set more protective limits on arsenic, nickel, and other metals pollution, represented by a surrogate "filterable particulate matter" standard (setting a new "fPM standard"), and further restricted mercury emissions from a

subset of plants using high-polluting lignite coal (the new "mercury standard"). 89 Fed. Reg. at 38,510. The 2024 Rule also required facilities to use continuous emissions monitoring rather than infrequent "stack testing" to demonstrate compliance with the new fPM standard (the "CEMS" requirement). *Id.* And it tightened standards for controlling pollution during plant startup periods. *Id.* EPA projected that the 2024 Rule would reduce annual emissions of mercury by 900 to 1,000 pounds and annual emissions of arsenic, nickel, and other toxic metals by about four to seven tons per year, starting in 2028. *Id.* at 38,561.

The 2024 Rule required coal plants to comply with the startup standard by January 2, 2025, and with the fPM standard, the mercury standard, and other requirements by July 6, 2027. *Id.* at 38,519, 38,564. The 2027 compliance deadline reflected EPA's assessment of the lead time necessary for the regulated coal plants to procure and install necessary emissions controls, upgrade controls, or optimize or dial up controls already installed, and to take other compliance steps that would allow them to meet the requisite standards. *Id.* at 38,519 ("The Agency believes this timeline is as expeditious as practicable considering the potential need for some sources to upgrade or replace pollution controls.").

Earlier this year, on what EPA touted as the "greatest day of deregulation our nation has seen," EPA announced it intended to "reconsider" the 2024 Rule.[2] At the same time, EPA invited coal plants to apply for a two-year Presidential exemption from compliance obligations. EPA subsequently took receipt of numerous such requests.

On April 8, 2025, President Trump issued a Proclamation titled *Regulatory Relief for Certain Stationary Sources to Promote American Energy*, later published in the Federal Register at 90 Fed. Reg. 16,777 (Apr. 21, 2025) ("Exemption Proclamation").[3] The Exemption Proclamation granted an unspecified list of coal plants exemptions from compliance with the 2024 Rule "for the period beginning July 8, 2027, and concluding July 8, 2029." Proclamation Announcement (referring to, but not publishing, an "Annex I" of exempt sources); *see* 90 Fed. Reg. 16,777. The list of exempt coal plants, known as Annex I, was not finalized

---

[2] EPA, News Release, *Trump EPA to Reconsider Biden-Harris MATS Regulation That Targeted Coal-Fired Power Plants to be Shut Down* (Mar. 12, 2025), https://www.epa.gov/newsreleases/trumpepa-reconsider-biden-harris-mats-regulation-targeted-coal-fired-power-plants-be; EPA, News Release, *EPA Launches Biggest Deregulatory Action in U.S. History* (Mar. 12, 2025), https://www.epa.gov/newsreleases/epa-launches-biggest-deregulatory-action-us-history.

[3] The Exemption Proclamation was published initially on the White House's website: https://www.whitehouse.gov/presidential-actions/2025/04/rregulatory-relief-for-certain-stationary-sources-to-promote-american-energy/ ("Proclamation Announcement").

until six days later, on April 14, 2025, when EPA published the list of facilities to be exempted on its website.[4] EPA's Annex I list was then appended to the Exemption Proclamation for publication in the Federal Register a week later. 90 Fed. Reg. at 16,779-84.

Two months later, on June 11, 2025, EPA signed a notice of proposed rulemaking that proposed to repeal the new fPM standard, the new mercury standard, and the CEMS requirements of the 2024 Rule, and solicited public comment. 90 Fed. Reg. at 25,535. EPA did not propose to repeal the 2024 Rule's startup standard, which is presently in effect. *Id.* at 25,535, 25,539 n.6 (explaining that "EPA is not reconsidering this aspect of the 2024 Final Action").[5]

Petitioners filed this lawsuit on June 12, 2025, challenging EPA's promulgation of the Annex I list of exempt sources.

STANDARD OF REVIEW

Courts have discretion to stay a case to promote efficient use of the court's and litigants' resources, after weighing the benefits and hardships of a stay. *See Landis v. N. Am. Co.*, 299 U.S. 248, 254-55, 259 (1936). But if there is even "a fair possibility" that the stay "will work damage to some one else," the movant must

[4] *Available at* https://www.epa.gov/system/files/documents/2025-04/regulatory-relief-for-certain-stationary-annex-1.pdf.

[5] The President also issued a second Proclamation on July 17, 2025, directly exempting an additional three coal plants. 90 Fed. Reg. 34,583 (July 23, 2025).

"make out a clear case of hardship or inequity in being required to go forward." *Landis*, 299 U.S. at 255-56 (explaining that "the burden of making out the justice and wisdom" of a stay "lay heavily" on the movant). Thus, the movant must either show that (1) the movant's harms meet the heightened "clear case of hardship or inequity" standard, or (2) the opposing party's claims of hardship are non-existent.

A court is not compelled to stay a live controversy simply because it may become moot in the future. *See Hunt v. Imperial Merchant Servs., Inc.*, 560 F.3d 1137, 1142 (9th Cir. 2009). "A case is moot 'when the issues presented are no longer live or the parties lack a legally cognizable interest in the outcome.'" *Samma v. Dep't of Def.*, 136 F.4th 1108, 1113 (D.C. Cir. 2025) (quoting *Already, LLC v. Nike, Inc.*, 568 U.S. 85, 91 (2013)). Mootness arises only if there is nothing for the court to remedy. *Spencer v. Kemna*, 523 U.S. 1, 18 (1998).

ARGUMENT

I. An Abeyance Would Harm Petitioners Whereas Respondents Fail To Show a Clear Case of Hardship.

Petitioners and their members are being exposed to pollution from exempted coal plants now. By challenging EPA's selection of facilities subject to the President's Exemption Proclamation, this suit seeks to ensure those plants are taking steps *now* to comply with the standards that will alleviate those exposures.

The requested six-month abeyance would prejudice Petitioners' ability to get prompt, meaningful judicial review of the list of facilities selected for exemption,

and thus to restore compliance obligations at plants that were unlawfully exempted. By contrast, Respondents identify no hardship from allowing the case to proceed—at least until Petitioners can be assured they have a suitable forum for their claims—other than the litigation costs necessary to defend their own unlawful actions. The balance of these interests strongly favors Petitioners, and Respondents therefore fail to meet their burden to stay this case at this time. *Landis*, 299 U.S. at 255-56.

Petitioners are environmental and public health organizations with members who live, work, and recreate in areas affected by the mercury, arsenic, and other metals pollution emitted by exempted coal plants. Petitioners' members are concerned that exposure to pollution from exempted plants, including from eating contaminated fish, could have harmful impacts on their health. These concerns also reduce members' enjoyment of outdoor activities in affected areas.

The 2024 Rule will achieve significant reductions in emissions of mercury, arsenic, and other metals each year from coal plants. 89 Fed. Reg. at 38,561. Those emissions reductions—and the steps necessary to secure them—have been occurring since the 2024 Rule took effect and continue apace, as plants take steps to prepare for full compliance by the 2027 deadline. Indeed, states that challenged the 2024 Rule asserted in court filings that "to comply with the Rule's three-year deadline . . . power plants need to take action immediately." *North Dakota v. EPA*,

Case No. 24-1119, ECF 2058570 at 1. Industry parties have also asserted that these years before the 2024 Rule compliance deadlines are necessary for sources to prepare for compliance. *See, e.g.*, Nat'l Mining Ass'n, Comments on the proposed MATS Rule, 88 Fed. Reg. 24,854, at 12 (June 23, 2023), *available at* https://www.regulations.gov/comment/EPA-HQ-OAR-2018-0794-5986. Plants already must comply with the more stringent startup standard, which had a January 2025 compliance deadline. 89 Fed. Reg. at 38,519, 38,564.

At the latest, the emission reductions required by the 2024 Rule must be achieved by the 2027 deadline. But not so for exempted coal plants. Under the terms of the Exemption Proclamations, no emission reductions will be required between 2027 and 2029. Despite the Clean Air Act's limitation of such exemptions to a two-year period, coal plants have *already* stopped working to reduce their emissions or better control their pollution during the present compliance period (as, indeed, the Administration intended): prospective Respondent-Intervenor Talen, an operator and co-owner of an exempted coal plant, stated that the 2024 Rule's compliance deadline "would require substantial and immediate expenditures" but that it has "suspended" compliance activities necessary to meet that deadline "[i]n reliance on the Presidential Exemption." Mot. to Intervene at 3. And others have almost certainly followed suit.

A facility's inclusion on the Annex I list thus delays the benefits of the reductions in emissions from exempted plants' compliance with the 2024 Rule, and prolongs members' exposure to pollution at present, higher levels. It also delays the benefits of continuous emissions monitoring systems, denying Petitioners and Petitioners' members information about coal plant emissions.

Those consequences flow from Annex I's selection of exempted facilities, not from EPA's proposed reconsideration of the 2024 Rule—which did not and could not exempt facilities from compliance with the Rule while it remains good law. The present operation of those exemptions is thus denying Petitioners' members and the public the benefits that would accrue in the absence of those exemptions: both the present-day emission reductions from the startup standard and the present and future emission reductions from sources upgrading or installing emissions controls to comply with the 2024 Rule that is presently in force. Indeed, because EPA, state regulators, and exempted coal plants have asserted that certain coal plants must begin preparations *immediately* to be able to meet standards by 2027, delay in resolving this case could mean compliance by 2027 is not possible, even if the Court ultimately finds it is legally required.[6] *See* Mot. to Intervene at 3

[6] Because exemptions may be extended after the two-year period expires, Petitioners' members and the public face the prospect of damage to their health and recreational interests for years to come. 42 U.S.C. § 7412(i)(4) ("An exemption . . . may be extended for 1 or more additional periods, each period not to exceed 2 years.").

(stating that meeting the 2024 Rule's deadline "would require substantial and immediate expenditures"); *see also* 89 Fed. Reg. at 38,519; *North Dakota v. EPA*, ECF 2058570 at 1, 18. Delaying judicial review would thus delay the cleaner air and better health that flows from lower emissions—and to which Petitioners and their members are legally entitled.

For these reasons, Petitioners must be assured of timely judicial review. Under Respondents' proposed six-month delay—which they have requested both in this case and in the parallel district court case—Petitioners face the "fair possibility" of securing relief too late for exempted plants to achieve compliance by 2027. *Landis*, 299 U.S. at 255. That outcome would "work damage" to Petitioners' members, who will be exposed to more mercury and toxic metal pollution from exempted coal plants pollution that Petitioners seek to reduce by having the exemptions declared unlawful. *Id.* For the same reason Respondents issued the exemptions well in advance of the 2024 Rule's deadlines, Petitioners have a strong interest in resolving the question of their lawfulness well in advance of the deadlines: the exemptions affect present decisions about the timing of emission reductions.

As Petitioners have discussed with Respondents, abeyance of this petition *may* be appropriate in the future, if it becomes clear that district court challenges to the associated Exemption Proclamation are proceeding in a timely enough fashion

to secure the necessary relief. But Respondents have failed to carry their burden of showing a "clear case of hardship or inequity" in being required to go forward without an abeyance, at least until that time. *Id.* at 255-56 ("the burden of making" the case for a stay "lay heavily" on the movants). They assert only that abeyance would "promote judicial economy." Abeyance Mot. at 4. Such an interest falls short of meeting the heightened standard of a "clear case of hardship or inequity," *Landis*, 299 U.S. at 255-56; *see Lockyer v. Mirant Corp.*, 398 F.3d 1098, 1112 (9th Cir. 2005), and is outweighed by Petitioners' interests in protecting the health of their members and the public from unlawful pollution.

That is especially true where the action concerns exemptions that the law does not compel (or, indeed, allow, *see* Complaint, *Air Alliance Houston v. Trump*, Case No. 1:25-cv-1852-PLF (filed June 12, 2025) (asserting that the Exemption Proclamation is *ultra vires*)). It would be inequitable for Respondents to evade timely judicial review of the exemptions they chose to issue, merely because they chose also to reconsider aspects of the 2024 Rule. The Clean Air Act, furthermore, expressly limits EPA's ability to stay the effectiveness of a rule during reconsideration "for a period not to exceed three months." 42 U.S.C. § 7607(d)(7)(B). Respondents should not be permitted to use the court to achieve a back-door stay pending reconsideration for exempted facilities.

Moreover, Respondents cannot reasonably claim that their chosen timing obviates any harm from the exemptions; Respondents chose to exempt a large group of facilities and pursue repeal of the 2024 Rule at the same time, and presumably would not have done so unless they believed the exemptions had their own, present impact. *Landis*, 299 U.S. at 255-56.

II. Respondents' claim that agency action may, in the future, moot this case does not justify abeyance.

Petitioners' challenge to the legality of Annex I presents a live controversy that can be meaningfully remedied and is therefore not moot. *See Samma*, 136 F.4th at 1113 ("A case is moot when the issues presented are no longer live or the parties lack a legally cognizable interest in the outcome." (internal quotation omitted)). As explained above, Annex I is final and in effect—as is the 2024 Rule—and guides the activities regulated coal plants are taking (or not taking) right now. As described in Section I above, harm to Petitioners and their members from postponing emissions reductions is ongoing and will only increase as the 2027 deadline grows closer and compliance steps remain unfinished.

That a potential final action by EPA to rescind the 2024 rule "could" moot this case, as Respondents argue, is not sufficient grounds to put the case in abeyance. Where harm is ongoing, timely review is of the essence, and judicial relief would be effective, the Court is not obligated to step aside even where a case might become moot shortly. *See Crawford v. FCC*, 417 F.3d 1289, 1294-95 (D.C.

Cir. 2005) (deciding case where FCC action would effectively moot the claim, but that action had not yet become final); *Lewis v. BT Inv. Managers, Inc.*, 447 U.S. 27, 53 n.15 (1980) (concluding that because challenged state statutes "remain in effect," "the case has not become moot, whatever the ultimate disposition" of pending bills to amend them).[7]

As an initial matter, even if EPA adopts its proposal, it could not entirely moot this case: the 2024 Rule consists of several distinct standards and requirements, and EPA does not propose to repeal or modify *all* of them. For instance, EPA stated that it is "not reconsidering" the more stringent startup standard. 90 Fed. Reg. at 25,535, 25,539 n.6. The Exemption Proclamation, on the other hand, exempts Annex I power plants "from compliance with the Rule," which seemingly includes the 2024 Rule's startup standard. 90 Fed. Reg. 16,777 (Apr. 21, 2025). Thus, the validity of the exemptions effectuated by Annex I would remain a live controversy even if the rule is finalized as proposed.

[7] Other circuits have concluded the same. *See, e.g.*, *Hunt v. Imperial Merch. Servs., Inc.*, 560 F.3d 1137, 1142 (9th Cir. 2009) (declining to "dismiss a live controversy as moot merely because it may become moot in the near future"); *Muniz v. Sabol,* 517 F.3d 29, 34 (1st Cir. 2008) (controversy "clearly not moot" even where the requested relief would have occurred within a few weeks regardless of the case's outcome); *League of United Latin Am. Citizens v. Bredesen*, 500 F.3d 523, 530 n.5 (6th Cir. 2007) (deciding case where superseding legislation would inevitably moot controversy, but law did not take effect for another month).

In any event, any mootness assessment is premature under the circumstances: We know neither *what* action EPA will take on its proposal, nor *when* it will take it. EPA has only *proposed* to repeal aspects of the 2024 Rule; it must now consider and respond to public comments on that proposal. *See* 42 U.S.C. § 7607(d)(5), (6)(B). The Clean Air Act and Administrative Procedure Act require that EPA's rulemakings be based on consideration of law, data, factual findings, and reasoned decision-making, and reflect input from the public. 42 U.S.C. § 7607(d); 5 U.S.C. § 553. These requirements "ensure that agency regulations are tested via exposure to diverse public comment," and provide "notice and the opportunity to be heard" as an essential component of "fairness to affected parties." *Int'l Union, UMW v. Mine Safety & Health Admin.*, 407 F.3d 1250, 1259 (D.C. Cir. 2005) (cleaned up) (citing *Small Refiner Lead Phase-Down Task Force v. EPA*, 705 F.2d 506, 547 (D.C. Cir. 1983)).

So, although EPA *could* finalize the action as proposed at the conclusion of the notice and comment process, it runs counter to the core principles of agency responsiveness to the public and regulated community to presume the Agency will. EPA also might issue an action with "major changes" from the proposal—which may not ultimately moot the present controversy. *See* 42 U.S.C. § 7607(d)(6)(A). Indeed, because Annex I serves to exempt the listed coal plants "from compliance with the Rule," 90 Fed. Reg. at 16,777, leaving even a single requirement of the

2024 Rule in place keeps the issues presented in this case "live" and capable of being remedied. *Larsen v. U.S. Navy*, 525 F.3d 1, 3-4 (D.C. Cir. 2008). EPA could also decide to modify its approach and issue a new proposal,[8] or to rescind the proposal altogether. The Court should not stay this case on the mere possibility the 2024 Rule will be repealed as proposed.

We also do not know *when* EPA will take final action on its proposal. Respondents characterize EPA's intention to promulgate a final rule by December 2025 as a "goal," and it is just that. *See* Abeyance Mot. at 4. EPA is not subject to any legal requirement to act by December 2025 or any other date. A nonbinding statement located on a website expressing EPA's intent to act before the end of the year is not sufficiently concrete to warrant abeyance. *See Am. Petrol. Inst. v. EPA*, 683 F.3d 382, 389 (D.C. Cir. 2012) (emphasizing that a settlement required EPA to issue a final rule by a "definite end date"). Indeed, the D.C. Circuit has cautioned that agencies cannot "stave off judicial review of a challenged rule simply by

[8] In fact, EPA requested comment on alternative standards that the Agency should consider in lieu of repealing the 2024 Rule fPM and mercury standards. 90 Fed. Reg. at 25,544-45 (June 17, 2025). Petitioners are among thousands of commenters on EPA's proposed repeal, and commented, among other things, that there *are* cost-effective intermediate standards. *See, e.g.*, Air Alliance Houston et al., Comments of Public Health and Environmental Organizations on Proposed Rule on National Emission Standards for Hazardous Air Pollutants: Coal- and Oil-Fired Electric Utility Steam Generating Unit (June 17, 2025), EPA-HQ-OAR-2018-0794-7609, available at: https://www.regulations.gov/comment/EPA-HQ-OAR-2018-0794-7609.

initiating a new proposed rulemaking that would amend the rule in a significant way." *Id.* at 388.

In any event, if history is any guide, final action is far from imminent. December 2025 is an ambitious goal. In practice, it can take EPA a year or longer to finalize action after the notice of proposed rulemaking.[9] Indeed, the Agency's last three MATS rulemakings each took more than a year between proposed and final action. *See, e.g.*, 89 Fed. Reg. at 38,509 (notice of proposed rulemaking published on April 24, 2023; final rule published on May 7, 2024); 88 Fed. Reg. 13,956 (Mar. 6, 2023) (proposed rule published February 9, 2022); 85 Fed. Reg. 31,286, 31,286-87 (May 22, 2020) (proposed rule published February 7, 2019). Especially in an area of great complexity and public interest, there is reason to doubt that EPA will be able to respond to those comments and finalize a rule in half its typical time.

[9] EPA has asserted as much in signed declarations concerning other rules issued under Section 7412. *See, e.g.*, Decl. of Penny E. Lassiter ¶ 4 & tbl., rows 8-10, *Blue Ridge Envtl. Def. League v. Regan*, No. 1:22-cv-03134, ECF No. 36 (D.D.C. Nov. 4, 2024) (stating that the "earliest possible completion date" for a Clean Air Act Section 7412 rulemaking on hazardous waste combustors was 10 months from proposal to final rule); Decl. of Panagiotis E. Tsirigotis ¶ 16 tbl. 3, row 4, ¶¶ 22-24, *Sierra Club v. Pruitt*, No. 1:16-cv-02461-TJK, ECF No. 13-3 (D.D.C. Oct. 19, 2017) (identifying the "minimum number of days" for a Clean Air Act Section 7412 technology review rulemaking on solid waste incinerators as one year from proposal to final rule).

In contrast, should near-term proceedings in the district court demonstrate that litigation in this Court is necessary to protect Petitioners' interests, the present, unlawful and irreparable emission of dangerous pollutants from the Annex I facilities would warrant expedited consideration of this petition. *See* D.C. Cir. Handbook VIII.B. Considering the likelihood of delay in meeting the December 2025 "goal," this Court could be positioned to grant relief before EPA takes final action. Even if Petitioners were to finalize a repeal rule before the Court concluded expedited consideration of this petition, such a repeal might not go into effect before the Court ruled here because any repeal rule may be stayed pending its own course of judicial review. In those circumstances, definitive rejection of EPA's selection of Annex I facilities would still secure important relief for Petitioners.

Finally, proceeding with this litigation while EPA's rulemaking proceeds does not present the concerns identified in *American Petroleum Institute v. EPA*, 683 F.3d 382 (D.C. Cir. 2012), and the other authorities Respondents cite in support of abeyance. Those cases arose in the context of an agency's reconsideration of the very rules being challenged in the litigation they sought to abate. *See, e.g.*, *id.* at 386-88. Here, by contrast, EPA seeks abeyance of litigation challenging Annex I on the basis that it is reconsidering an independent agency action, the 2024 Rule. But neither Annex I nor the exemptions themselves are being reconsidered and neither will be terminated by whatever action EPA decides

to take on the 2024 Rule. As such, the Court is not being asked to review an action that is itself "tentative" or subject to change or "eliminat[ion]." *Id.* at 387-88. And this is not a matter where, as in *Center for Biological Diversity v. EPA*, 56 F.4th 55, 60-61 (D.C. Cir. 2022), *see* Abeyance Mot. at 4, the parties reached a private settlement and jointly requested abeyance to allow time for the settlement's implementation.

CONCLUSION

For the reasons stated above, abeyance in this case is, at a minimum, premature, and could bring about substantial harm. The Court should deny Respondents' motion for a six-month abeyance.

DATED: August 19, 2025

Respectfully submitted,

/s/ Chloe H. Kolman

Sean H. Donahue
Chloe H. Kolman
Donahue, Goldberg & Herzog
1008 Pennsylvania Ave., SE
Washington, DC 20003
Tel: (202) 277-7085
sean@donahuegoldberg.com
chloe@donahuegoldberg.com

Surbhi Sarang
Richard Yates
Tomás Carbonell
Environmental Defense Fund
2060 Broadway St., Ste. 300
Boulder, Colorado 80302
Tel: (303) 440-4901
ssarang@edf.org

ryates@edf.org
tcarbonell@edf.org

Counsel for Petitioner Environmental Defense Fund

Nicholas Morales
James Pew
Earthjustice
1001 G Street NW, Suite 1000
Washington, DC 20001
Tel: (202) 667-4500
nmorales@earthjustice.org
jpew@earthjustice.org

Counsel for Petitioners Air Alliance Houston, Clean Air Council, Downwinders at Risk, Montana Environmental Information Center, and Sierra Club

Abel Russ
Environmental Integrity Project
888 17th St. NW, Suite 810
Washington, DC 20006
(202) 296-8800
aruss@environmentalintegrity.org

Counsel for Petitioner Environmental Integrity Project

Sarah Buckley (D.C. Cir. Bar No. 56677)
Natural Resources Defense Council
1152 15th Street NW, Suite 300
Washington, DC 20005
(202) 836-9555
sbuckley@nrdc.org

Katherine Desormeau (D.C. Cir. Bar No. 53097)
Natural Resources Defense Council

111 Sutter Street, 21st Floor
San Francisco, California 94104
(415) 875-6100
kdesormeau@nrdc.org

Counsel for Petitioner Natural Resources Defense Council

Brian H. Lynk (D.C. Bar No. 459525)
Environmental Law & Policy Center
740 15th Street, NW, Suite 700
Washington, DC 20005
(240) 461-4241
blynk@elpc.org

Counsel for Petitioners Environmental Law & Policy Center and Dakota Resource Council

Shaun A. Goho
Hayden Hashimoto
Clean Air Task Force
114 State Street, 6th Floor
Boston, MA 02109
617-624-0234
sgoho@catf.us

Counsel for Petitioner Citizens for Pennsylvania's Future

Ryan Maher
Center for Biological Diversity
1411 K Street, NW, Suite 1300
Washington, DC 20005
(781) 325-6303
rmaher@biologicaldiversity.org

Counsel for Petitioner Center for Biological Diversity

CERTIFICATE OF COMPLIANCE

I hereby certify on this 19th day of August, 2025, that the foregoing Response in Opposition complies with the word limits of Federal Rule of Appellate Procedure 27(d)(2)(A) because it contains 4,563 words, excluding parts of the document exempted by Federal Rule of Appellate Procedure 32(f). I further certify that this document complies with the typeface and type-style requirements of Federal Rule of Appellate Procedure 32(a)(5) & (6) because this document has been prepared in 14-point Time New Roman font, a proportionally spaced typeface, using Microsoft Word.

/s/ Chloe H. Kolman
Chloe H. Kolman

CERTIFICATE OF SERVICE

I hereby certify on this 19th day of August, 2025, that the foregoing Response in Opposition has been filed with the Clerk of the Court for the United States Court of Appeals for the District of Columbia Circuit, using the CM/ECF System. The participants in the case are registered CM/ECF users and service will be accomplished by the appellate CM/ECF system.

/s/ Chloe H. Kolman
Chloe H. Kolman

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

AIR ALLIANCE HOUSTON, et al.,

Plaintiffs,

v.

DONALD TRUMP, et al.,

Defendants.

Case No. 1:25-cv-1852-PLF

PLAINTIFFS' MEMORANDUM IN OPPOSITION TO DEFENDANTS' MOTION FOR SIX-MONTH ABEYANCE

In April, President Trump gave nearly one-third of coal-fired power plants across the country a free pass to cease their preparations to meet lower mercury and air toxic emissions standards. EPA updated those standards, known as MATS, just over a year ago. In doing so, EPA recognized that the vast majority of coal-fired power plants were capable of and indeed already limiting their emissions of these dangerous pollutants below what was required in its prior, 2012 standards. Nevertheless, with a stroke of his pen, the President in his April 8, 2025 Proclamation (supplemented in a July 17, 2025 Proclamation) exempted 71 facilities from their compliance obligations through July 2029 by summarily asserting, without evidence or even a gesture at source-specific analysis, that "technology to implement" that Rule is "not available." Proclamation 10914 of April 8, 2025, 90 Fed. Reg. 16,777 (Apr. 21, 2025).

The President's assertion is false,[1] and the President's action is unlawful. That unlawful action is having effects today. As prospective Intervenor-Defendant Talen Montana, LLC,

[1] EPA admitted as much in its recent proposal to repeal the 2024 MATS Rule, writing that the Colstrip Power Plant in Colstrip, Montana, "was *the only* facility unable to meet the lower

ED_021114_00003489-00001

confirms in its motion to intervene, coal plants have already suspended actions to reduce their emissions to comply with updated standards. *See* Talen Memo. in Supp. of Motion to Intervene, Dkt. 29-1 at 4 (asserting that Talen Montana, operator of one of the exempted facilities, "has already made operational planning and compliance decisions in reliance on the Presidential Exemption"). Plaintiffs are entitled to prompt review and judicial relief to minimize and prevent harm to Plaintiffs, their members, and the public from the unlawful exemption proclamations.

The six-month abeyance Defendants request would deprive Plaintiffs of that timely review. A stay would impose substantial hardship on Plaintiffs and their members by depriving them of the emissions reductions that would flow from timely compliance with the standards. Plaintiffs' and the public's interests in promptly achieving the health protections afforded by the updated MATS rule far outweigh the modest burden on Defendants to defend the exemptions. The *potential* future repeal of parts of that rule—which EPA proposes to accomplish through a separate action under separate statutory authority — does not moot and should not delay review of the President's unlawful action. The Court should deny Defendants' abeyance request.

The Court should also deny Defendants' alternative request for a 21-day extension of their responsive pleading deadline. This case has been pending since June 12. Defendants' deadline has already been extended twice, most recently to September 19, 2025. Defendants have not shown good cause for further delay.

BACKGROUND

Coal plants are one of the largest domestic emitters of hazardous air pollutants like mercury, arsenic, nickel, and other toxic metals. *National Emission Standards for Hazardous Air*

[filterable particulate matter] standard with *existing controls*." 90 Fed. Reg. 25,535, 25,541 (June 17, 2025) (emphasis added).

ED_021114_00003489-00002

Pollutants: Coal- and Oil-Fired Electric Utility Steam Generating Units Review of the Residual Risk and Technology Review, 89 Fed. Reg. 38,508, 38,509 (May 7, 2024) ("2024 Rule"). Short-term exposure to these pollutants can result in profound central nervous system effects; chronic exposure can cause brain and kidney damage, cancer, developmental effects, and a range of other adverse health effects. *Id.* at 38,556.

To address those risks, EPA first promulgated hazardous air pollutant standards for coal- and oil-fired power plants in 2012 under Section 112 of the Clean Air Act, 42 U.S.C. § 7412. After hazardous air pollutant emission standards are established, the Act requires EPA to review developments in control technologies to determine if revisions are necessary. *Id.* § 7412(d)(6).

As a result of its Section 7412(d)(6) review, EPA revised the MATS in 2024. The 2024 Rule set more protective limits on arsenic, nickel, and other metals pollution, represented by a surrogate "filterable particulate matter" standard (setting a new "fPM standard"), and further restricted mercury emissions from a subset of plants using high-polluting lignite coal (the new "mercury standard"). 89 Fed. Reg. at 38,510. The 2024 Rule also required facilities to use continuous emissions monitoring rather than infrequent "stack testing" to demonstrate compliance with the new standards (the "CEMS" requirement). *Id.* And it tightened standards for controlling pollution during plant startup periods. *Id.* EPA projected that the 2024 Rule would reduce annual emissions of mercury by 900 to 1,000 pounds and annual emissions of arsenic, nickel, and other toxic metals by about four to seven tons per year, starting in 2028. *Id.* at 38,561; Ex. 3 to Suppl. Compl. at 8, ECF No. 31-5 (describing emissions reductions in 2028).

The 2024 Rule required coal plants to comply with the startup standard by January 2, 2025, and with the fPM standard, the mercury standard, and other requirements by July 6, 2027. *Id.* at 38,519, 38,564. The 2027 compliance deadline reflected EPA's assessment of the lead time

ED_021114_00003489-00003

necessary for the regulated coal plants to procure and install necessary emissions controls, upgrade controls, or optimize or dial up controls already installed, and to take other compliance steps that would allow them to meet the requisite standards. *Id.* at 38,519 ("The Agency believes this timeline is as expeditious as practicable considering the potential need for some sources to upgrade or replace pollution controls.").

Earlier this year, on what EPA touted as the "greatest day of deregulation our nation has seen," EPA announced it intended to "reconsider" the 2024 Rule.[2] At the same time, EPA invited coal plants to apply for a two-year Presidential exemption from compliance obligations. EPA subsequently took receipt of numerous such requests. Ex. 7 to Suppl Compl. ECF No. 31-9.

On April 8, 2025, President Trump issued a Proclamation titled *Regulatory Relief for Certain Stationary Sources to Promote American Energy*, later published in the Federal Register at 90 Fed. Reg. 16,777 (Apr. 21, 2025) ("Exemption Proclamation").[3] The Exemption Proclamation granted an unspecified list of coal plants exemptions from compliance with the 2024 Rule "for the period beginning July 8, 2027, and concluding July 8, 2029." Proclamation Announcement (referring to, but not publishing, "Annex I" of exempt sources); *see* 90 Fed. Reg. 16,777. The list of exempt coal plants, known as Annex I, was later published by EPA on its

---

[2] EPA, News Release, *Trump EPA to Reconsider Biden-Harris MATS Regulation That Targeted Coal-Fired Power Plants to be Shut Down* (Mar. 12, 2025), https://www.epa.gov/newsreleases/trumpepa-reconsider-biden-harris-mats-regulation-targeted-coal-fired-power-plants-be; EPA, News Release, *EPA Launches Biggest Deregulatory Action in U.S. History* (Mar. 12, 2025), https://www.epa.gov/newsreleases/epa-launches-biggest-deregulatory-action-us-history.

[3] The Exemption Proclamation was published initially on the White House's website: https://www.whitehouse.gov/presidential-actions/2025/04/regulatory-relief-for-certain-stationary-sources-to-promote-american-energy/ ("Proclamation Announcement").

ED_021114_00003489-00004

website on April 14, 2025,[4] before being appended to the Exemption Proclamation for publication in the Federal Register. 90 Fed. Reg. at 16,779-84.

Two months later, EPA signed a notice of proposed rulemaking that proposed to repeal the new fPM standard, the new mercury standard, and the CEMS requirements of the 2024 Rule, and solicited public comment. 90 Fed. Reg. 25,535 (June 17, 2025). EPA did not propose to repeal the revised startup standard, which is presently in effect. *Id.* at 25,535, 25,539 n.6 (explaining that "EPA is not reconsidering this aspect of the 2024 Final Action").

The President issued a second Proclamation on July 17, 2025, exempting an additional three coal plants. 90 Fed. Reg. 34,583 (July 23, 2025).[5]

Plaintiffs filed this lawsuit on June 12, 2025, challenging the Exemption Proclamation as contrary to 42 U.S.C. § 7412(i)(4) of the Clean Air Act and in excess of legal authority.

STANDARD OF REVIEW

Courts have discretion to stay a case to promote efficient use of the court's and litigants' resources, after weighing the benefits and hardships of a stay. *See Landis v. N. Am. Co.*, 299 U.S. 248, 254-55, 259 (1936); *Allen v. District of Columbia*, No. 20-CV-02453-TSC, 2024 WL 379811 (D.D.C. Feb. 1, 2024). But if there is even "a fair possibility" that the stay "will work damage to some one else," the movant must "make out a clear case of hardship or inequity in being required to go forward." *Landis*, 299 U.S. at 255-56 (explaining that "the burden of

[4] *Available at* https://www.epa.gov/system/files/documents/2025-04/regulatory-relief-for-certain-stationary-annex-1.pdf.

[5] Unlike the April 8, 2025 Exemption Proclamation, the initial publication of the second Proclamation on the White House's website included the list of facilities to which it applied: https://www.whitehouse.gov/presidential-actions/2025/07/regulatory-relief-for-certain-stationary-sources-to-further-promote-american-energy/.

ED_021114_00003489-00005

making out the justice and wisdom" of a stay "lay heavily" on the movant). Thus, the movant must either show that (1) the movant's harms meet the heightened "clear case of hardship or inequity" standard, or (2) the opposing party's claims of hardship are non-existent.

A court need not "dismiss or stay a live controversy simply because it may become moot in the future." *All. for Wild Rockies v. Gassman*, No. CV-21-105-M-DLC-KLD, 2022 WL 3030997, at *3 (D. Mont. Aug. 1, 2022) (denying Forest Service's request to stay litigation while it reconsidered decision implementing project following court's entry of preliminary injunction) (citing *Hunt v. Imperial Merchant Servs., Inc.*, 560 F.3d 1137, 1142 (9th Cir. 2009)). "A case is moot 'when the issues presented are no longer live or the parties lack a legally cognizable interest in the outcome.'" *Samma v. Dep't of Def.*, 136 F.4th 1108, 1113 (D.C. Cir. 2025) (quoting *Already, LLC v. Nike, Inc.*, 568 U.S. 85, 91 (2013)). Mootness arises only if there is nothing for the court to remedy. *Spencer v. Kemna*, 523 U.S. 1, 18 (1998).

ARGUMENT

I. An abeyance would harm Plaintiffs whereas Defendants do not show a clear case of hardship

Plaintiffs and their members are being exposed to pollution from exempted coal plants now. They seek to enjoin the Exemption Proclamations to ensure those plants are taking steps *now* to comply with the standards that will alleviate those exposures. The requested six-month abeyance would prejudice Plaintiffs' ability to get prompt, meaningful judicial review of the Exemption Proclamations, and thus to restore the compliance obligations at plants that were unlawfully exempted. By contrast, Defendants identify no hardship from allowing the case to proceed, other than the litigation costs necessary to defend their own unlawful actions. The

ED_021114_00003489-00006

balance of these interests strongly favors Plaintiffs, and Defendants therefore fail to meet their burden to stay this case. *Landis*, 299 U.S. at 255–56.

Plaintiffs are environmental and public health organizations with members who live, work, and recreate in areas affected by the mercury, arsenic, and other metals pollution emitted by exempted coal plants. Suppl. Compl. ¶¶ 144, 146, 148-153, 155-160; *see* Decl. of Stephanie Coates ¶¶ 15-19, 23 (attached as Ex. 1); Decl. of Michelle L. Marley-Knox ¶¶ 3-4, 8-9, 12 (attached as Ex. 2); Suppl. Decl. of Michelle L. Marley-Knox ¶¶ 3-4, 6-8 (attached as Ex. 3); Decl. of Derf Johnson ¶¶ 6-9 (attached as Ex. 4); Decl. of Catherine Fleischman ¶¶ 2-3, 7 (attached as Ex. 5); Decl. of Barbara Sue ¶¶ 2-3, 6 (attached as Ex. 6). Plaintiffs' members are concerned that exposure to pollution from exempted plants, including from eating contaminated fish, could have harmful impacts on their health. Suppl. Compl. ¶¶ 144-145, 148-153, 155-160; Coates Decl. ¶¶ 15-17, 21, 23; Marley-Knox Decl. ¶¶ 9-12; Marley-Knox Suppl. Decl. ¶¶ 6, 8; Johnson Decl. ¶¶ 8-9, 11, 13-14; Fleischman Decl. ¶ 4; Sue Decl. ¶¶ 4, 9. These concerns also reduce members' enjoyment of outdoor activities in affected areas. Suppl. Compl. ¶¶ 144, 146-153, 155-160; Coates Decl. ¶¶ 17, 23; Marley-Knox Decl. ¶¶ 8-10, 12; Marley-Knox Suppl. Decl. ¶¶ 6, 8; Johnson Decl. ¶¶ 5-9, 11-14; Fleischman Decl. ¶ 6; Sue Decl. ¶¶ 3-4.

The 2024 Rule will achieve significant reductions in emissions of mercury, arsenic, and other metals each year from coal plants. 89 Fed. Reg. at 38,561. Those emissions reductions—and the steps necessary to secure them—have been occurring since the 2024 Rule took effect and continue apace, as plants take steps to prepare for full compliance by the 2027 deadline. Indeed, states that challenged the 2024 Rule asserted in court filings that "to comply with the Rule's three-year deadline . . . power plants need to take action immediately." Amended Mot. for Stay at 1, *North Dakota v. EPA*, No. 24-1119 (D.C. Cir.), Doc. #2058570 (attached as Ex. 7). Industry

ED_021114_00003489-00007

parties have also asserted that these years before the 2024 Rule compliance deadlines are necessary for sources to prepare for compliance. *See, e.g.*, Nat'l Mining Ass'n, Comments on the proposed MATS Rule, 88 Fed. Reg. 24,854, at 12 (June 23, 2023), *available at* https://www.regulations.gov/comment/EPA-HQ-OAR-2018-0794-5986. Plants already must comply with the more stringent startup standard, which had a January 2025 compliance deadline. 89 Fed. Reg. at 38,519, 38,564.

At the latest, the emission reductions required by the 2024 Rule must be achieved by the 2027 deadline. But not so for exempted coal plants. Under the terms of the Exemption Proclamations, no emission reductions will be required between 2027 and 2029. Despite the Clean Air Act's limitation of such exemptions to a two-year period, coal plants have *already* stopped working to reduce their emissions or better control their pollution during the present compliance period (as, indeed, the Administration intended): prospective Defendant-Intervenor Talen, an operator and co-owner of an exempted coal plant, stated that 2024 Rule's compliance deadline "would require substantial and immediate expenditures" but that it has "suspended" compliance activities necessary to meet that deadline "[i]n reliance on the Presidential Exemption." Mem. in Support of Mot. to Intervene, at 1-2, ECF No. 29-1. And others have almost certainly followed suit.

The Exemption Proclamation thus delays the benefits of the reductions in emissions from exempted plants' compliance with the 2024 Rule, and prolongs members' exposure to pollution at present, higher levels. Suppl. Compl. ¶¶ 144, 146-153, 155-160. It also delays the benefits of continuous emissions monitoring systems, denying Plaintiffs and Plaintiffs' members information about coal plant emissions. Supp. Compl. ¶¶ 150-51.

ED_021114_00003489-00008

Those consequences flow from the Exemption Proclamation, not from EPA's proposed reconsideration of the 2024 Rule—which did not and could not exempt facilities from compliance with the Rule while it remains good law. The present operation of the Exemption Proclamations is thus denying Plaintiffs' members and the public the benefits that would accrue in the absence of those Proclamations: both the present-day emission reductions from the startup standard and the present and future emission reductions from sources upgrading or installing emissions controls to comply with the 2024 Rule that is presently in force. Indeed, because EPA, state regulators, and exempted coal plants have asserted that certain coal plants must begin preparations *immediately* to be able to meet standards by 2027, a delay in resolving this case could mean compliance by 2027 is not possible, even if the Court ultimately finds it is legally required.[6] *See* Mem. in Support of Mot. to Intervene, at 1-2, ECF No. 29-1 (stating that meeting the 2024 Rule's deadline "would require substantial and immediate expenditures"); *see also* 89 Fed. Reg. at 38,519; Amended Mot. for Stay at 1, 18, *North Dakota v. EPA*, No. 24-1119 (D.C. Cir.) (Ex. 7). Delaying judicial review would thus delay the cleaner air and better health that flows from lower emissions and to which Plaintiffs and their members are legally entitled.

For these reasons, this case cannot wait on hold for six months. Under such an extended delay, Plaintiffs face the "fair possibility" of securing relief too late for exempted plants to achieve compliance by 2027. *Landis*, 299 U.S. at 255. That outcome would "work damage" to Plaintiffs' members, who will be exposed to more mercury and toxic metal pollution from exempted coal plants—pollution that Plaintiffs seek to reduce by having the exemptions declared

[6] Because exemptions may be extended after the two-year period expires, Plaintiffs' members and the public face the prospect of damage to their health and recreational interests for years to come. 42 U.S.C. § 7412(i)(4) ("An exemption . . . may be extended for 1 or more additional periods, each period not to exceed 2 years.").

ED_021114_00003489-00009

unlawful. *Id.* For the same reason Defendants issued the exemptions well in advance of the 2024 Rule's deadlines, Plaintiffs have a strong interest in resolving the question of their lawfulness well in advance: the exemptions affect present decisions about the timing of emission reductions.

Defendants have failed to carry their burden of showing a "clear case of hardship or inequity" in proceeding to litigate this case. *Id.* at 255-56 ("the burden of making" the case for a stay "lay heavily" on the movants). Defendants fail to identify any explicit hardship beyond the need to incur the ordinary costs of defending a lawsuit. *See* Mot., at 4, ECF No. 26. Ordinary litigation costs fall short of meeting the heightened standard of a "clear case of hardship or inequity," *Landis*, 299 U.S. at 255-56; *see Lockyer v. Mirant Corp.*, 398 F.3d 1098, 1112 (9th Cir. 2005), and is outweighed by Plaintiffs' interests in protecting the health of their members and the public from unlawful pollution. That is especially true where the action in question concerns *ultra vires* actions of the Executive Branch—and thus where the government's litigation costs have been brought on by their own choice to assert authority not granted to them by Congress.

It would be inequitable for Defendants to evade timely judicial review of the exemptions they chose to issue merely because they chose also to reconsider aspects of the 2024 Rule. That is especially so given that the Clean Air Act expressly limits EPA's ability to stay the effectiveness of a rule during reconsideration "for a period not to exceed three months." 42 U.S.C. § 7607(d)(7)(B). Defendants should not be permitted to use the court to achieve a back-door stay pending reconsideration for exempted facilities.

Moreover, Defendants cannot reasonably claim that their chosen timing obviates any harm from the Exemption Proclamations; Defendants chose to issue exemptions and pursue repeal of the 2024 Rule at the same time, and presumably would not have done so unless they believed the exemptions had their own, present impact. *Landis*, 299 U.S. at 255-56.

ED_021114_00003489-00010

II. Defendants' claim that agency action may, in the future, moot this case does not justify abeyance

Plaintiffs' challenge to the legality of Defendants' Exemption Proclamations presents a live controversy that can be meaningfully remedied and is therefore not moot. *See Samma*, 136 F.4th at 1113 ("A case is moot when the issues presented are no longer live or the parties lack a legally cognizable interest in the outcome." (internal quotation omitted)). As explained above, the exemptions are final and in effect — as is the 2024 Rule — and guide the activities exempted coal plants are taking (or not taking) right now. As described in Section I above, harm to Plaintiffs and their members from postponing emissions reductions is ongoing and will only increase as the 2027 deadline grows closer and compliance steps remain unfinished.

That a potential final action by EPA to rescind the 2024 rule "could" moot this case, as Defendants argue, is not sufficient grounds to put the case in abeyance. Where harm is ongoing, timely review is of the essence, and judicial relief would be effective, "the Court is not obligated to step aside, nor have courts made a habit of doing so—even where a case might become moot shortly." *Conservation Law Found. v. Pritzker*, 37 F. Supp. 3d 254, 265 (D.D.C. 2014); *see also Crawford v. FCC*, 417 F.3d 1289, 1294-95 (D.C. Cir. 2005) (deciding case where FCC action would effectively moot the claim, but that action had not yet become final).[7]

As an initial matter, even if EPA adopts its proposal, it could not entirely moot this case: the 2024 Rule consists of several distinct standards and requirements, and EPA does not propose

[7] Other circuits have concluded the same. *See, e.g.*, *Hunt v. Imperial Merch. Servs., Inc.*, 560 F.3d 1137, 1142 (9th Cir. 2009) (declining to "dismiss a live controversy as moot merely because it may become moot in the near future"); *Muniz v. Sabol*, 517 F.3d 29, 34 (1st Cir. 2008) (controversy "clearly not moot" even where the requested relief would have occurred within a few weeks regardless of the case's outcome); *League of United Latin Am. Citizens v. Bredesen*, 500 F.3d 523, 530 n.5 (6th Cir. 2007) (deciding case where superseding legislation would inevitably moot controversy, but law did not take effect for another month).

to repeal or modify *all* of them. For instance, EPA stated that it is "not reconsidering" the more stringent startup standard. 90 Fed. Reg. 25,535, 25,539 n.6 (June 17, 2025). The Exemption Proclamation, on the other hand, exempts power plants "from compliance with the Rule," which seemingly includes the 2024 Rule's startup standard. 90 Fed. Reg. 16,777 (Apr. 21, 2025). Plaintiffs' counts one, two, and three of their complaint encompass a challenge to the Exemption Proclamation as it relates to compliance with the startup standard. *See* Suppl. Compl. ¶¶ 79-83, 164, 173, 177-179, 183-184. Thus, aspects of the Exemption Proclamation would remain a live controversy even if the rule is finalized as proposed.

In any event, any mootness assessment is premature under the circumstances: We know neither *what* action EPA will take on its proposal, nor *when* it will take it. EPA has only *proposed* to repeal aspects of the 2024 Rule; it must now consider and respond to public comments on that proposal. *See* 42 U.S.C. § 7607(d)(5), (6)(B). The Clean Air Act and Administrative Procedure Act require that EPA's rulemakings be based on consideration of law, data, factual findings, and reasoned decision-making, and reflect input from the public. 42 U.S.C. § 7607(d); 5 U.S.C. § 553. These requirements "ensure that agency regulations are tested via exposure to diverse public comment," and provide "notice and the opportunity to be heard" as an essential component of "fairness to affected parties." *Int'l Union, UMW v. Mine Safety & Health Admin.*, 407 F.3d 1250, 1259 (D.C. Cir. 2005) (cleaned up) (citing *Small Refiner Lead Phase-Down Task Force v. EPA*, 705 F.2d 506, 547 (D.C. Cir. 1983)).

So, although EPA *could* finalize the action as proposed at the conclusion of the notice and comment process, it runs counter to the core principles of agency responsiveness to public comment to *presume* that it will. EPA also might issue an action with "major changes" from the proposal — which may not ultimately moot the present controversy. *See* 42 U.S.C.

ED_021114_00003489-00012

§ 7607(d)(6)(A). Indeed, because the Exemption Proclamation exempts the listed coal plants "from compliance with the Rule," 90 Fed. Reg. at 16,777, leaving even a single requirement of the 2024 Rule in place keeps the issues presented in this case "live" and capable of being remedied. *Larsen v. U.S. Navy*, 525 F.3d 1, 3-4 (D.C. Cir. 2008). EPA could also decide to modify its approach and issue a new proposal,[8] or to rescind the proposal altogether. The Court should not stay this case on the mere possibility the 2024 Rule will be repealed as proposed.

We also do not know *when* EPA will take final action on its proposal. Defendants characterize EPA's intention to promulgate a final rule by December 2025 as a "goal," and it is just that. *See* Mot. at 4, ECF No. 26. EPA is not subject to any legal requirement to act by December 2025 or any other date. A nonbinding statement located on a website expressing EPA's intent to act before the end of the year is not sufficiently concrete to warrant abeyance. *See Am. Petrol. Inst. v. EPA*, 683 F.3d 382, 389 (D.C. Cir. 2012) (emphasizing that a settlement required EPA to issue a final rule by a "definite end date"). Indeed, the D.C. Circuit has cautioned that agencies cannot "stave off judicial review of a challenged rule simply by initiating a new proposed rulemaking that would amend the rule in a significant way." *Id.* at 388.

In any event, if history is any guide, final action is far from imminent. December 2025 is an ambitious goal. In practice, it can take EPA a year or longer to finalize action after the notice

[8] In fact, EPA requested comment on alternative standards that the Agency should consider in lieu of repealing the 2024 Rule fPM and mercury standards. 90 Fed. Reg. 25,535, 25,544-45 (June 17, 2025). Plaintiffs are among thousands of commenters on EPA's proposed repeal, and commented, among other things, that there *are* cost-effective intermediate standards. *See, e.g.*, Air Alliance Houston et al., Comments of Public Health and Environmental Organizations on Proposed Rule on National Emission Standards for Hazardous Air Pollutants: Coal- and Oil-Fired Electric Utility Steam Generating Unit (June 17, 2025) (forthcoming at regulations.gov), *available at* https://tinyurl.com/y2uhtnhk.

ED_021114_00003489-00013

of proposed rulemaking.[9] Indeed, the Agency's last three MATS rulemakings each took more than a year between proposed and final action. *See, e.g.*, 2024 Rule at 38,509 (notice of proposed rulemaking published on April 24, 2023; final rule published on May 7, 2024); National Emission Standards for Hazardous Air Pollutants: Coal-and Oil-Fired Electric Utility Steam Generating Units Revocation of the 2020 Reconsideration and Affirmation of the Appropriate and Necessary Supplemental Finding, 88 Fed. Reg. 13,956 (Mar. 6, 2023) (proposed rule published February 9, 2022) National Emission Standards for Hazardous Air Pollutants: Coal- and Oil-Fired Electric Utility Steam Generating Units—Reconsideration of Supplemental Finding and Risk and Technology Review, 85 Fed. Reg. 31,286, 31,286-87 (May 22, 2020) (proposed rule published February 7, 2019). Especially in an area of great complexity and public interest, there is reason to doubt that EPA will be able to respond to those comments and finalize a rule in half its typical time.

In contrast, Plaintiffs believe they can proceed expeditiously, with dispositive motions fully briefed this fall. Considering the likelihood of delay in meeting the December 2025 "goal," Plaintiffs are well-positioned to obtain relief before EPA takes final action.

Finally, proceeding with this litigation while EPA's rulemaking proceeds does not present the concerns identified in *American Petroleum Institute v. EPA*, 683 F.3d 382 (D.C. Cir.

[9] EPA has asserted as much in signed declarations concerning other rules issued under Section 7412. *See, e.g.*, Decl. of Penny E. Lassiter ¶ 4 & tbl., rows 8-10 (Nov. 4, 2024) (submitted in *Blue Ridge Env't Defense League v. Regan*, No. 1:22-cv-03134, ECF No. 36 (D.D.C.) (attached as Ex. 8) (stating that the "earliest possible completion date" for a Clean Air Act Section 7412 rulemaking on hazardous waste combustors was 10 months from proposal to final rule); Decl. of Panagiotis E. Tsirigotis ¶ 16 tbl. 3, row 4, ¶¶ 22-24 (Oct. 19, 2017) (submitted in *Sierra Club v. Pruitt*, No. 1:16-cv-02461-TJK, ECF No. 13-3 (D.D.C.) (attached as Ex. 9) (identifying the "minimum number of days" for a Clean Air Act Section 7412 technology review rulemaking on solid waste incinerators as one year from proposal to final rule).

ED_021114_00003489-00014

2012), and the other authorities Defendants cite in support of abeyance. Those cases arose in the context of an agency's reconsideration of the very rules being challenged in the litigation they sought to abate. *See, e.g.*, *id.* at 386-88. Here, by contrast, Defendants seek abeyance of litigation challenging the Exemption Proclamations because EPA is reconsidering an independent agency action, the 2024 Rule. The *exemptions* are not being reconsidered and will not be terminated by whatever action EPA decides to take on the 2024 Rule; the Court is not being asked to review an action that is itself "tentative" or subject to change or "eliminat[ion]." *Id.* at 387-88. And this is not a matter where, as in *Center for Biological Diversity v. EPA*, 56 F.4th 55, 60-61 (D.C. Cir. 2022), *see* Mot. at 4, ECF No. 26, the parties reached a private settlement and jointly requested abeyance to allow time for the settlement's implementation.

Defendants' motion should be denied.

III. The Court should deny Defendants' alternative request to further extend the responsive pleading deadline

The Court should also deny Defendants' alternative request for a 21-day extension of their deadline to respond to Plaintiffs' complaint. The deadline has been extended twice already, and Defendants have not shown good cause for extending it further. This case has been pending since June. Nothing about the abeyance motion, or the Court's ruling on it, affects *how* Defendants respond to the complaint. The Court should deny their extension request.

CONCLUSION

For the reasons stated above, the Court should deny Defendants' motion for a six-month abeyance and for a further extension of Defendants' responsive pleading deadline.

ED_021114_00003489-00015

DATED: August 19, 2025

Respectfully Submitted,

/s/ Sarah Buckley
Sarah Buckley (Va. Bar No. 87350)
(Pro Hac Vice)
Natural Resources Defense Council
1152 15th Street NW, Suite 300
Washington, DC 20005
(202) 836-9555
sbuckley@nrdc.org

Katherine Desormeau (D.D.C. Bar ID CA00024)
Natural Resources Defense Council
111 Sutter Street, 21st Floor
San Francisco, California 94104
(415) 875-6100
kdesormeau@nrdc.org

Counsel for Plaintiff Natural Resources Defense Council

/s/ Nicholas Morales
Nicholas Morales (D.C. Bar No. 1003942)
Earthjustice
1001 G Street NW, Suite 1000
(202) 667-4500
nmorales@earthjustice.org

Counsel for Plaintiffs Air Alliance Houston, Clean Air Council, Downwinders at Risk, Montana Environmental Information Center, and Sierra Club

Surbhi Sarang (CO Bar No. 56667, D.D.C. Bar ID CO0112)
Richard Yates (D.D.C. Bar ID CA00229)
Tomás Carbonell (D.D.C. Bar ID 989797)
Environmental Defense Fund
2060 Broadway Street, Ste. 300
Boulder, Colorado 80302
(303) 440-4901
ssarang@edf.org
ryates@edf.org
tcarbonell@edf.org

/s/ Sean H. Donahue
Sean H. Donahue (DC Bar No. 450940)
Donahue, Goldberg & Herzog
1008 Pennsylvania Avenue SE
Washington, DC 20003
(202) 277-7085
sean@donahuegoldberg.com

Counsel for Plaintiff Environmental Defense Fund

/s/ Abel Russ
Abel Russ (D.D.C. Bar ID 1007020)
Environmental Integrity Project
888 17th Street NW, Suite 810
Washington, DC 20006
(202) 296-8800
aruss@environmentalintegrity.org

Counsel for Plaintiff Environmental Integrity Project

/s/ Brian H. Lynk
Brian H. Lynk (D.C. Bar No. 459525)
Environmental Law & Policy Center
740 15th Street, NW, Suite 700
Washington, DC 20005
(240) 461-4241
blynk@elpc.org

Counsel for Plaintiffs Environmental Law & Policy Center and Dakota Resource Council

/s/ Shaun A. Goho
Shaun A. Goho (D.D.C. Bar ID MA0013)
Clean Air Task Force
114 State Street, 6th Floor
Boston, MA 02109
(617) 624-0234
sgoho@catf.us

Counsel for Plaintiff Citizens for Pennsylvania's Future

/s/ Ryan Maher
Ryan Maher (D.C. Bar No. 1620024)
Center for Biological Diversity
1411 K Street NW, Suite 1300
Washington, DC 20005
(781) 325-6303
rmaher@biologicaldiversity.org

Counsel for Plaintiff Center for Biological Diversity

ED_021114_00003489-00018

EXHIBIT 1

Declaration of Stephanie Coates

DECLARATION OF STEPHANIE COATES

I, Stephanie Coates, declare as follows:

1. I submit this declaration on behalf of Environmental Defense Fund ("EDF") to support its litigation challenging President Trump's Proclamation, *Regulatory Relief for Certain Stationary Sources To Promote American Energy*, 90 Fed. Reg. 16777 (Apr. 21, 2025) ("Exemptions Proclamation"), exempting sources from compliance with the U.S. Environmental Protection Agency's ("EPA") final rule: National Emission Standards for Hazardous Air Pollutants: Coal- and Oil-Fired Electric Utility Steam Generating Units Review of the Residual Risk and Technology Review, 86 Fed. Reg. 38508 (May 7, 2024) ("Final Rule").

2. I am a Climate & Health Project Manager at, and a member of, EDF. I work out of Houston, Texas, where I have lived since 2013. In my role as Climate & Health Project Manager I oversee a project that seeks to characterize concentrations of air toxics in Houston through mobile air monitoring and use these data in conjunction with health data from community health centers to assist community partners in creating disaster response plans. Prior to this role, I was a Community Air Quality Fellow with EDF working directly with grassroots, community-based organizations on their environmental justice priorities with air quality being a concern among all the groups we work with in Houston. EDF also worked with the City of Houston and the community groups to create an automated

air quality report that is generated weekly using data from the community networks and local and state monitors to identify areas with the most National Ambient Air Quality Standards ("NAAQS") exceedances and pinpoint locations with readings above thresholds. The report also includes weather data to identify the likeliest source of the pollution at the time of exceedance. Additionally, EDF engaged with community-based organizations to inform the development of the Climate Vulnerability Index[1] a tool combining 184 different datasets to rank more than 70,000 census tracts to see which communities face the greatest challenges from the impacts of a changing climate. Harris County ranks in the 85th national vulnerability percentile. Census tracts for the community groups we work with in Harris County rank among the top 10% most vulnerable in the nation. Environmental data included in the Climate Vulnerability Index give an indication of a census tract's proximity to transportation sources and exposures to and health risks from other stationary air pollutant sources. As a Fellow, I also supported the community groups in their successful application for an EPA Community Air

[1] *See*, U.S. Climate Vulnerability Index, Overall Climate Vulnerability for Tract 4820121250, https://map.climatevulnerabilityindex.org/map/cvi_overall/tract-48201212500-northeast-houston-houston-tx?mapBoundaries=Tract&mapFilter=9&reportBoundaries=Tract&geoContext=State (showing data for the Houston area).

Quality Monitoring Grant. The main goal of that award will be to conduct mobile monitoring for ethylene oxide, 1,3-butadiene, formaldehyde and acrolein.[2]

3. I understand that the Final Rule addresses toxic pollution from coal-fired power plants by (1) lowering the mercury emission standard for coal plants burning lignite coal; (2) lowering the emission standard for toxic metals such as chromium, nickel, arsenic, lead and others for coal plants; (3) requiring coal plants to use continuous emissions monitoring systems to demonstrate compliance with the standard for non-mercury toxic metals; and (4) updating the definition of "startup" to require coal plants to turn on pollution controls more quickly upon startup. I understand that the Final Rule requires coal plants to comply with the first three requirements by July 8, 2027 and has required coal plants to comply with the new "startup" definition since January 2, 2025.

4. I am also aware that the Exemptions Proclamation exempted 68 coal plants from the Final Rule's standards through July 8, 2029. See EPA, Presidential Proclamation – Regulatory Relief for Certain Stationary Sources to Promote American Energy, at https://www.epa.gov/stationary-sources-air-pollution/presidential-proclamation-regulatory-relief-certain-stationary (providing Annex 1 list of sources exempted by the President).

[2] *See*, EPA, EPA Awards Nearly $500,000 to Texas Organization to improve Air Quality in the Houston Area (Nov. 29, 2023), https://www.epa.gov/newsreleases/epa-awards-nearly-500000-texas-organization-improve-air-quality-houston-area#:~:text=The%20main%20goal%20is,butadiene%2C%20formaldehyde%2C%20and%20acrolein.

5. EDF is deeply engaged in efforts to use monitoring data to inform the public about air pollution, and as explained above, I have been involved in some aspects of this work.[3]

6. EDF has also assisted community groups in Pleasantville, Fifth Ward and Sunnyside to install community-owned air sensor networks measuring particulate matter 2.5 ($PM_{2.5}$), nitrous dioxide (NO_2), and volatile organic compounds. Even though these neighborhoods are overburdened by sources of air pollution such as concrete batch plants/crushers, freeways, metal recyclers, refineries and other industrial activities, the nearest regulatory air monitors are several miles away. By installing their own sensor networks, they are able to identify concerning trends of particulate pollution above NAAQS and with dangerous peaks affecting public health. With EDF's support, community-based organizations in Fifth Ward and Pleasantville were able to successfully advocate for additional state regulatory air monitors to be sited in their neighborhood and increased monitoring and enforcement by County and City officials.

7. EDF has been working with the community of Sunnyside on the southside of Houston since 2020. After a community assessment and asset mapping, residents recognized that the abundance of pollution sources nearby was

[3] *See also* Comments of EDF on Texas Commission on Environmental Quality Proposed 2025 Annual Monitoring Network Plan (May 14, 2025).

directly impacting their health. Zip codes in Sunnyside are considered to have "high asthma burden" due to high utilization of emergency services to treat asthma attacks. EDF encouraged community leaders to join the City of Houston Asthma Coalition to educate residents on asthma management practices. EDF assisted community leaders in Sunnyside to install their air sensor network in 2021 and EDF has provided technical assistance to help residents understand and use the data, which show average $PM_{2.5}$ concentrations in 2023 measuring above NAAQS of 9 $\mu g/m^3$ 62% of the time. EDF is supporting Sunnyside's request that the Texas Commission on Environmental Quality include deployment of a new regulatory monitor in their neighborhood as part of the 2024 Air Monitoring Network Plan. Having information about emissions is essential to understanding public health impacts in these communities. Monitoring data from facilities is essential to ensuring that there is information about the air pollution communities are exposed to.

8. I am aware that sources that are major under Clean Air Act Section 112 are subject to the Clean Air Act's Title V permitting requirements. Title V requires that "a copy of each permit application, compliance plan including the schedule of compliance), emissions or compliance monitoring report, certification, and each permit. . . shall be available to the public." 42 U.S.C. § 7661b(e).

9. Prior to the Final Rule, coal plants that are major could choose to submit only quarterly stack testing results to EPA to demonstrate their compliance with the limits on toxic metals. With the Final Rule's requirement for plants to use continuous emissions monitoring systems, plants will submit hourly compliance data instead of being allowed to submit data from just four test days per year. I understand EPA requirements will further compel coal plants to report their continuous emissions monitoring data to the Emissions Collection and Monitoring Plan System, allowing the public to easily locate, review, and download emissions data using simple, user-directed inquiries. This provides a vital benefit to communities by enabling their access to more comprehensive pollution exposure data that can be used to evaluate individual and community health impacts. This also benefits EDF in its organizational goals to understand and increase awareness of exposure to air toxics and to limit those exposures.

10. Communities are often concerned about emissions from nearby sources of pollution such as coal plants. Having access to hourly source-specific monitoring data that is required to be made available under the Final Rule and Clean Air Act Title V helps reveal the air pollution communities are exposed to and whether additional measures need to be taken in order to reduce pollution from these sources. For example, this data may reveal that a facility is having difficulty with their pollution controls, or that they are not adequately maintaining their

facility as needed to control emissions. Communities can use this data to advocate for better enforcement and compliance by local and state regulatory agencies. Additionally, continuous emissions monitoring will provide residents with more granular information about emissions from nearby coal plants, information they can use to make decisions to better protect their health, for example, whether or not to spend time outdoors, or if it is necessary to use personal protective equipment or air filters in homes and schools.

11. I understand that EPA determined that continuous emissions monitoring could further reduce emissions of non-mercury metals by providing power plant operators with more frequent emissions data, allowing them to quickly identify and address issues with pollution control devices not functioning as expected.[4] EPA determined that this would likely reduce exposures to people living near coal-fired power plants subject to the updated non-mercury toxic metal standard.[5]

[4] EPA, National Emission Standards for Hazardous Air Pollutants: Coal- and Oil-Fired Electric Utility Steam Generating Units Review of the Residual Risk and Technology Review, 89 Fed. Reg. 38508, 38536-37 (May 7, 2024).
[5] *Id.*

12. EDF frequently uses information about sources of air pollution to inform blog posts, reports, fact sheets, and other materials to increase public awareness of threats of air pollution from particular facilities.[6]

13. EDF's ability to carry out its organizational mission to build a vital Earth for everyone is greatly benefited by the Final Rule's new monitoring requirements. The Final Rule allows EDF to expend fewer resources towards obtaining information about sources of air pollution in order to communicate threats about air pollution exposures to the public.

[6] *See, e.g.*, EDF & Environmental Integrity Project, Trump EPA Pollution Pass Map (2025), https://www.edf.org/maps/epa-pollution-pass; EDF, Making the invisible visible: A guide for mapping hyperlocal air pollution to drive clean air action (Oct. 1, 2019), https://www.edf.org/sites/default/files/content/making-the-invisible-visible.pdf; Matt Tresaugue, Houston neighborhood maps decades-old pollution problem, paving way for communities nationwide (Oct. 26, 2018), https://www.edf.org/blog/2018/10/26/houston-neighborhood-maps-decades-old-pollution-problem-paving-way-communities; Jeremy Proville, Understanding how communities are vulnerable to climate change is key to improving equity and justice (Mar. 29, 2023), https://blogs.edf.org/markets/2023/03/29/understanding-how-communities-are-vulnerable-to-climate-change-is-key-to-improving-equity-and-justice/; EDF Business, How Houston's model could change the way cities map air pollution, https://business.edf.org/insights/how-houstons-model-could-change-the-way-cities-map-air-pollution/; EDF, EPA Finds Valero Energy "Significantly Underestimated" Release of Pollution in Houston (Sep. 4, 2017), https://www.edf.org/media/epa-finds-valero-energy-significantly-underestimated-release-pollution-houston; EDF, Finding pollution – and who it impacts most – in Houston (Jun. 3, 2020), https://www.edf.org/airqualitymaps/houston/findings; EDF, Texas Explosion Underscores Need to Hold Polluters Accountable, Protect Community Health (May 6, 2023), https://www.edf.org/media/texas-explosion-underscores-need-hold-polluters-accountable-protect-community-health; Jolie Villegas, We Need to Close a Mercury Pollution Loophole for Lignite Coal Plants (Apr. 12, 2024), https://blogs.edf.org/climate411/2024/04/12/we-need-to-close-a-mercury-pollution-loophole-for-lignite-coal-plants.

14. If coal plants are exempted from the Final Rule until 2029 or longer, EDF will be harmed by the loss of access to this monitoring data for two or more years.

15. As someone who lives and works in Houston, Texas, I have concerns about my exposure to pollution from coal plants, including mercury, which I understand is associated with harms to the nervous system, kidney, and cardiovascular system, and from toxic metals like selenium, chromium, nickel, cobalt, cadmium, beryllium, lead, and manganese which I understand are associated with a variety of health effects including the potential to cause cancer. From my work I know that Houston air quality is plagued by the heavy presence of polluting industry, including coal-fired power plants.

16. On June 4, 2024, I was diagnosed with non-hereditary breast cancer. I am concerned that the persistent presence of air pollution in my community, including the toxic pollution from coal plants that includes known carcinogens, could have increased my risk of developing cancer. I am also concerned that the ongoing toxic pollution from nearby coal plants will exacerbate my health condition and detract from my quality of life.

17. I am concerned about my exposure to air pollution when my family and I spend time outdoors. My family only has one car, which is primarily used by my partner. When I need to run errands or go to appointments during the day, I

usually walk or bike. My family and I regularly walk to the park, coffee shop or to family's house on the weekends. My children walk to school and have recess outdoors most days. As children grow, their developing lungs and brains make them especially vulnerable to air pollution since they breathe more rapidly and inhale more air relative to their size than adults. I receive air quality alerts from the Texas Commission on Environmental Quality and have the Air Quality Index on my smartwatch face, so I am always aware of conditions. If the air quality is unhealthy for sensitive groups such as children, we limit our time outdoors. When there have been air pollution incidents like chemical fires in our region, I use the Clarity openmap and EDF Air Tracker tools to try to understand the threat to my area. I'm grateful that I am aware of such tools so that I can make decisions to protect my and my family's health.

18. We have several coal plants in the surrounding area. The closest coal plant to my home is the W.A. Parish Coal Plant. It is 25 miles from my home. Outside of Houston are also the Martin Lake plant in Tatum; the Oak Grove plant in Petteway; and the San Miguel plant in Christine. I am aware that these plants burn lignite coal, one of the dirtiest types of coal that produces high amounts of mercury emissions. I understand the Final Rule will place a more stringent emissions limit for non-mercury toxic metals for these plants, require them to use continuous emissions monitoring to demonstrate compliance with the limit on non-

mercury toxic metals, and require them to abide by more stringent startup conditions. I understand the Final Rule will require the Martin Lake, Oak Grove, and San Miguel plants to reduce their emissions of mercury.

19. I also understand that all four of these plants are listed on "Annex 1" as plants that the Exemptions Proclamation exempts from the Final Rule's requirements through July 9, 2029. *See* Regulatory Relief for Certain Stationary Sources To Promote American Energy, 90 Fed. Reg. 16777 (Apr. 21, 2025); EPA, Presidential Proclamation Regulatory Relief for Certain Stationary Sources to Promote American Energy, at https://www.epa.gov/stationary-sources-air-pollution/presidential-proclamation-regulatory-relief-certain-stationary (providing Annex 1 list of sources exempted by the President).

20. The Exemptions Proclamation effected these suspensions of the Final Rule's requirements without rulemaking notice and an opportunity for me to comment, or for EDF to comment on my behalf.

21. If I were given an opportunity to comment, or had EDF had the opportunity to comment on my behalf, I could have shared information about my exposures to air pollution and my concerns about my and my family's health as a result of pollution from coal plants and EDF could have shared information about the availability of technology needed for coal plants to comply with the Final Rule.

22. Suspending the Final Rule's CEMS monitoring requirement harms me and EDF by denying me and the organization more detailed and regular information about coal plant toxic emissions that would have otherwise been available under the Final Rule. The exemptions mean we will instead need to rely on infrequent stack test information based on tests conducted merely four times a year.

23. I believe the Final Rule's requirements will lead to improved air quality in the Houston area where I live, work, and raise my children. The Exemptions Proclamation harms me and my family by permitting coal plants to emit more pollution during the period of exemption than they would otherwise emit if required to comply with the Final Rule according to its original compliance schedule.

24. The harms to me and my family would be redressed by a Court Order preventing federal authorities from implementing, enforcing, or recognizing the exemptions. Such a Court Order would ensure that coal plants install the emissions controls necessary to comply with the Final Rule and reduce the pollution harming my family and me.

I declare under the penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed in Houston, TX on May 30, 2025.

Stephanie Coates

EXHIBIT 2

Declaration of Michelle L. Marley-Knox

DECLARATION OF MICHELLE L. MARLEY-KNOX

I, Michelle L. Marley-Knox, declare as follows:

1. My name is Michelle L. Marley-Knox. I am a citizen of the United States, am over 18 years of age, and am competent to give this declaration. All of the information provided is based on my own personal knowledge unless otherwise noted.

2. I am a member of the Environmental Law & Policy Center ("ELPC") and have been involved with ELPC since approximately 2018. ELPC was instrumental in partnering with a coalition of solar businesses that I formed in 2018 and has since provided assistance to me and my business related to energy policy.

3. I currently live in Owaneco, Illinois and have been in my current home since March of 1989. I have lived within thirty miles of the Kincaid power plant for my entire life and often see the pollution it emits from its coal stacks.

4. I own WindSolarUSA, Inc., a renewable energy development company that focuses on designing and installing solar photovoltaics for residential, commercial, and agricultural applications. I formed WindSolarUSA, Inc. in September of 2008 in an effort to offer Illinoisans a level of self-sufficiency and sustainability utilizing clean energy products. We serve Central and Southern Illinois. I have customers living near the Kincaid power plant, including in Taylorville, Glenarm, Rochester, Auburn, Pawnee, Chatham, and Springfield, who have all made a choice to use clean energy for the production of their electricity in an effort to reduce our dependence on fossil fuels.

5. I have completed significant training through the Midwest Renewable Energy Association and am an active member of the Illinois Clean Jobs Coalition, the Illinois Environmental Council, Sierra Club, the Natural Resources Defense Council, and other

organizations through which I take ongoing training to stay abreast of environmental and energy issues that affect our state, nation, and world. I have also served as an instructor of Solar Photovoltaics at Lincoln Land Community College and participate in Workforce Development Program interviews and feedback opportunities in terms of creating clean energy jobs in Illinois.

6. I am involved in community and advocacy work related to environmental and energy issues. I participate every year in the Illinois Environmental Council's Lobby Days in Springfield, Illinois to educate legislators about the importance of clean air, water, and soil. I also work to educate utilities about the importance of using storage to supplement their ability to store and dispatch clean energy in times of peak demand to avoid having to engage peaker plants that are generally aging and tend to be the dirtiest of our generating facilities.

7. I engage with environmental and clean energy issues in both my business and volunteer work because it is important to me that future generations are able to enjoy clean air, clean water, and safe food.

8. I enjoy outdoor recreational activities near the Kincaid power plant such as bicycling on the path from Taylorville to Pana and water activities at Shelbyville Lake. I have always enjoyed fishing, and I grew up fishing with my father in Kincaid Lake. As an adult, I used to enjoy camping at Sangchris Lake State Park and fishing in Sangchris Lake and Taylorville Lake. My friends and I had a lake lot on Taylorville Lake until a few years ago. Each of these lakes is near the Kincaid plant.

9. Over recent years, I have come to understand that the waters in the lakes surrounding the Kincaid plant are contaminated by mercury and other pollutants stemming from the Kincaid plant. Mercury and other hazardous pollutants emitted into the air end up in fish because they settle into lakes or are washed into the water after settling on the ground. I understand

that fish in contaminated lakes can contain mercury, which is dangerous to human health. I have needed to stop fishing and swimming in the water in recent years due to the polluted water.

10. I understand that compliance with the 2024 MATS Rule would improve air and water quality, provide accessible up-to-date emissions information, and help facilitate a transition to clean energy. I understand that the exemption from compliance with the 2024 MATS Rule given to the Kincaid power plant could lead to it operating as a coal-fired power plant for longer than planned and/or being subject to less stringent air toxics standards and monitoring requirements. This would increase air and water contamination.

11. Everyone in my family suffers from a susceptibility to bronchitis at least once per year. We each must carry inhalers to use as needed for wheezing and shortness of breath. An increase in emissions of hazardous air pollutants from coal-fired power plants will adversely affect my health and the health of my family. Further, a lack of up-to-date emissions information would prevent my family and me from effectively evaluating the personal health risks we are exposed to on a day-to-day basis.

12. I looked forward to the positive impacts of the 2024 MATS Rule and the planned closure of the Kincaid power plant so that I could enjoy camping and fishing in the nearby lakes again without concerns for my health. If mercury and air toxics emissions continue to increase, my ability to enjoy fishing and other outdoor recreational activities will be greatly compromised and will degrade my quality of life.

13. Through my work, I know that Illinois has an aggressive Renewable Portfolio Standard ("RPS") that currently has a goal of 40% renewable energy for investor-owned utilities by 2030. That RPS is complimented by the IL Shines Program, which incentivizes all Illinoisans to choose solar energy. Granting an exemption to the 2024 MATS to the Kincaid plant and other

plants in Illinois goes against our state's goals and serves to keep Illinois dependent on sources of energy that have harmful effects to our air and water. This would result in chilling the urgency of people making clean energy choices, which would impact not only our environment and public health, but also the success of my own clean energy business. This exemption, if allowed to stand, will compromise the financial wellbeing of my business.

14. Exempting the Kincaid power plant from the 2024 MATS Rule will significantly jeopardize my personal, health, recreational, and financial interests.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct to the best of my knowledge.

Dated: May 29, 2025

Michelle L. Marley-Knox

Michelle L. Marley-Knox

EXHIBIT 3

Supplemental Declaration of Michelle L. Marley-Knox

SUPPLEMENTAL DECLARATION OF MICHELLE L. MARLEY-KNOX

I, Michelle L. Marley-Knox, declare as follows:

1. My name is Michelle L. Marley-Knox. I am a citizen of the United States, am over 18 years of age, and am competent to give this declaration. All of the information provided is based on my own personal knowledge unless otherwise noted.

2. I signed a declaration on May 29, 2025 as a member of Plaintiff Environmental Law & Policy Center in *Air Alliance Houston v. Trump*, No. 1:25-cv-01852 (D.D.C.), filed on June 12, 2025. All of the information in that declaration remains true and accurate. I give this supplemental declaration to assert new facts which were not relevant at the time of my initial declaration.

3. I recently learned that a July 17, 2025 Presidential Proclamation extended an exemption from compliance with the 2024 MATS Rule to the Dallman Power Plant, Unit 4 ("Dallman 4"), in Springfield, Illinois.

4. I live within approximately forty miles of Dallman 4.

5. I serve as an advisor to Sustainable Springfield, Inc., and am helping to provide comments and information to City Council about creating an energy mix within the city that incorporates more solar and battery storage to help shave peak demand and levelize energy costs for ratepayers.

6. Dallman 4 sits on Lake Springfield. There are many public parks directly across the lake from Dallman 4. I have hosted birthday parties in these parks, attended functions/fundraising events at clubs around the lake, and kayaked the lake. Though I would like to get in the water, swim, and/or fish, I cannot partake in these activities due to concerns about the water quality amplified by the close proximity of Dallman 4.

7. My business, WindSolarUSA, has done many residential installations of solar PV systems in CWLP territory (Springfield's municipal utility). We have also done several installations in Rochester, Illinois, and around Lake Springfield, all of which are close to Dallman Unit 4's coal fired stacks.

8. Given the proximity of Dallman 4 to my home and work sites, I redeclare the health, financial, recreational, and personal interests outlined in my initial declaration as they are similarly threatened by the exemption given to Dallman 4.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct to the best of my knowledge.

Executed on: 8/8/2025

Michelle L. Marley-Knox

Michelle L. Marley-Knox

EXHIBIT 4

Declaration of Derf Johnson

DECLARATION OF DERF JOHNSON

I, Derf Johnson, declare as follows:

1. I am over 18 years of age and competent to give this declaration. I have personal knowledge of the following facts, and if called as a witness could testify competently to them. As to those matters which reflect an opinion, they reflect my personal experience, opinion and judgment on the matter.
2. I am a lifelong resident of Montana, and currently reside in Helena, Montana.
3. I have been a member of the Sierra Club since 2018. I am also a member and an employee of the Montana Environmental Information Center ("MEIC"), at which I currently serve as Deputy Director and am responsible for overseeing and supporting programs seeking to maintain a clean and healthful environment for all Montanans. In those capacities, I have worked to address the environmental problems associated with natural resource extraction, with a specific focus on fossil fuel development and climate change.
4. I am a graduate of the University of Montana School of Law. I chose to stay in Montana after law school and begin my career in environmental and natural resources law. I regularly testify before the Montana legislature, state boards, and commissions, on the environmental impacts associated with energy development in Montana, including testimony on the pollution associated with such development. I feel strongly that Montana is one of the most beautiful and spectacular landscapes on Earth and must be protected.
5. I enjoy a variety of outdoor recreational activities. My hobbies include fishing, swimming, floating on water bodies and riverways, and hunting. I also find great joy in

observing the state's abundant wildlife, including bald eagles, elk, and grizzly bears. I spend a majority of my leisure time outdoors and regularly travel around the state.

6. I have regularly visited the Colstrip area for over a decade for both work and leisure purposes. When I first started working at MEIC, I would travel to the Colstrip area once every few months to meet with our members and assess the ecological and policy issues in the area. Since 2016, I travel to the Colstrip area at least one to two times a year. My most recent visit to Colstrip was in August 2024 where I witnessed and photographed devastating ecological damage from the expansion of the Rosebud mine, the coal mine directly adjacent to the Colstrip plant that exclusively supplies its coal, as well as the power plant. I will continue visiting Colstrip and the surrounding area for both work and pleasure, and I am currently planning a trip to southeastern Montana, including the Colstrip area, in mid-June of 2025.

7. I've always had an appreciation for the beautiful landscape of Eastern Montana with its sandstone cliffs, grasslands, rolling hills, and Ponderosa Pine stands. Southeastern Montana in particular is one of the more beautiful and majestic places that I've had the good fortune of visiting. However, on my trips to Colstrip over the past decade, it is really shocking to have watched the landscape continue to degrade because of the Colstrip power plant and associated mining operations. It is disconcerting to see the billowing smokestacks of toxic chemicals in the midst of an otherwise beautiful town with abundant wildlife. The air pollution and other damage I have witnessed, caused by the Colstrip plant, significantly degrades my experience visiting southeastern Montana. At times, I've seen Colstrip's pollution billowing into the sky on the horizon from thirty or forty miles away.

8. I am aware that coal-fired power plants, including Colstrip, emit mercury, toxic metals, particulate matter, sulfur dioxide, nitrogen oxides, and other pollutants which have been linked to serious health complications. I am also aware that these pollutants can be significantly mitigated with pollution controls which the Colstrip plant operators have for decades refused to install. When I'm visiting the area surrounding Colstrip, I'm concerned that I'm being exposed to the hazardous air pollution emitted by Colstrip and the health harms it may cause. My potential exposure to these hazardous air pollutants in the Colstrip region diminishes my enjoyment of activities and makes me concerned for my personal wellbeing. I also know that certain populations are at higher risk for these complications, and it disgusts me that despite evidence on the public health impacts of pollution, modern industry standard pollution controls are not in place at the Colstrip facility. It's alarming that Colstrip knowingly emits harmful pollutants that are linked to illness and death when there are proven technologies to reduce emissions at most (if not all) coal fired power plants in the same class as the Colstrip plant.
9. I have also visited and hunted in the Tongue River Valley on a private ranch about 40 miles as the crow flies from the Colstrip plant. I have every intention to continue visiting the ranch in the future. However, I am deeply concerned about my health and the health of the wildlife that live in this region. Wildlife breathe air and drink water just like people, and I am worried about what kinds of ailments may result from living downwind of the ongoing pollution from the Colstrip plant. I am also aware of the poisoning risks associated with consuming wildlife with bioaccumulated toxics in their tissues. My worry ultimately diminishes my enjoyment of hunting and outdoor recreation in the area, but especially when I am skeptical of being able to safely consume my game.

10. I am aware that the EPA - through the Mercury and Air Toxics Standards ("MATS")- set standards to reduce toxic pollution from coal-fired power plants, which reduces the impact of this pollution. I also understand that EPA has recently updated those standards in a new Technology Review for coal-fired power plants. As a result of that review EPA has, among other things, set lower standards for particulate matter, as a surrogate for toxic metals, emitted by the Colstrip and other coal-fired power plants.
11. I wholeheartedly believe that clean air is absolutely critical for sustaining life in the region. I also do not enjoy being exposed to these pollutants when I travel to the Colstrip area for work or when I am traveling through the town to other locations. I am concerned about the ongoing pollution from the Colstrip power plant from an environmental and public-health perspective.
12. In its rule, EPA established July 2027 as the compliance deadline for the strengthened standards, allowing Colstrip 3 years to achieve compliance. Based upon the amount of pollution that has already been released from Colstrip's sub-par pollution control technology, I view this timeline as incredibly generous. I am extremely concerned that the President has granted an additional 2-year exemption from compliance to Colstrip.
13. I am confident that I would be harmed if Colstrip was able to avoid the new MATs standards for an additional two years. Emissions of particulate matter (including toxic metals) from Colstrip and other existing coal plants would continue at high levels during this time, therefore prolonging the amount of air pollution to which I, my family, and my friends are exposed. If this level of pollution were to continue at the current harmful levels for an additional two years, I would feel less safe on my work and recreational trips to the area, and my enjoyment in doing so would be reduced.

14. If the Colstrip plant were required to reduce its pollution levels during this time, I would feel much more comfortable visiting the area knowing that I'm less likely to be exposed to toxic pollution and would consider visiting the Colstrip area more often.
15. For these reasons, I support MEIC's lawsuit challenging the MATS exemptions and the attempt to stop them from having effect. I believe that if Colstrip is not exempted from compliance with the strengthened MATS Rule by July 2027, my concerns over air pollution and toxic exposure would be at least partially alleviated.

I declare under penalty of perjury that the foregoing is true and correct. Executed this 22nd day of May 2025, in Helena, Montana.

Dert Johnson

EXHIBIT 5

Declaration of Catherine Fleischman

DECLARATION OF CATHERINE FLEISCHMAN

I, Catherine Fleischman, hereby declare as follows:

1. I am currently a member of the Natural Resources Defense Council ("NRDC") and joined in 2025.

2. I live in Davis, West Virginia. I have lived at my current residence full time since 2024, and I have lived here part time since 1999.

3. I spend a significant amount of time outside. I bought this property 30 years ago and retired here specifically because I spend a lot of time outside. I mountain bike, cross country ski, hike, and camp. I am a master naturalist, an avid birder, and I am on the trail maintenance board of the Heart of the Highlands.

4. I personally do not have asthma, but I have concerns that because of environmental deregulation, I will not know what the quality of my air is. I remember in the 1970s that we worked to address the impact of acid rain and smog, and I know of the impact of these and other environmental harms. We have seen huge improvements in air quality since the 1970s, but without regulations, we will not have any ability to know if our air is damaged or unsafe. I am also concerned about my neighbors who are particularly sensitive to air quality – some are on oxygen or have difficulty breathing, and I am concerned about them.

5. I was in West Virginia when the fires in Canada brought all the smoke and haze to our air and I am concerned about coal companies having all the say

about what is in the air – it's everyone's air, not just the coal companies' air! If there were such a thing as clean coal, I would support it, but the current administration gives me no indication that the coal is "clean," as they put it. I am aware that fossil fuels pollute, and coal is a fossil fuel. Mt. Storm burns fossil fuels. There has to be a strong regulatory system to combat the effects of putting pollutants in the air. Davis, West Virginia, where I live, is a high elevation bog, which means that air quality tends to bottle up here because of the valley and the high elevation of the mountains surrounding it. This is a process called inversion, so I'm particularly worried about air quality in my area that results from pollution.

6. I keep track of the air quality in my area by looking at the NOAA website. There is also a weather station near Dolly Sods that reports air quality data, and we often get data from here. We are in an area where cold air sinks and we often record the lowest temperatures in the lower 48. This tendency keeps pollutants in our area longer. I look at my smartphone or check the news for information on air quality every day. If the air quality is bad, I try to limit my outdoor activities, because if I don't, I notice fatigue and lethargy from poor air quality. I have a dehumidifier that filters air quality in my house and an air conditioner unit in my house that filters air.

7. I am concerned about the Mt. Storm power plant near me because it is a fossil fuel plant. I have at times noticed a smell from Mt. Storm, and I have seen

the stacks there for years. I have seen the coal from the mine down the road heading towards Mt. Storm. I can see what is coming out of the smokestacks, and I can see that it comes out 24 hours a day, 7 days a week. I'm a homeowner with solar panels, so I know that there is technology out there that works better than fossil fuel burning. I know we need to transition from burning fossil fuels, and I know that the technology to transition is available, we just need to make the transition. I think that Mt. Storm should do everything it can to limit its toxic air pollution so that it emits very small amounts of pollution - such small amounts of pollution that the environment can dilute it. We need to train ourselves to not add to the toxic burden in our environment, and we should work towards being "net neutral."

8. I am aware that the U.S. EPA finalized new, stronger standards to reduce toxic soot pollution and mercury pollution from power plants in 2024. Some facilities, including Mt. Storm received an exemption from complying with these standards in 2025. I want power plants to do everything they can to meet toxic air pollution standards sooner rather than later, and in particular because of our environmental crisis. Allowing standards to not be met impacts the very near future just as much as it impacts the present. We have answers to this environmental dilemma that are better answers than deregulation. I fully support

NRDC's lawsuit challenging these exemptions from standards for toxic air pollution from power plants.

I declare that the foregoing is true and correct to the best of my knowledge, information, and belief. Executed on May 21, 2025.

Signature: _____

Name: Catherine Fleischman

EXHIBIT 6

Declaration of Barbara Sue

DECLARATION OF BARBARA SUE

I, Barbara Sue, hereby declare as follows:

1. I am currently a member of the Natural Resources Defense Council ("NRDC") and have been for about one year.

2. I live in Macon, Georgia. I have lived at my current residence since 2003, and I moved back to Georgia in 2001.

3. I limit the amount of time I spend outside because I have such severe allergies. I used to like to walk outside a lot, but now I do much of my exercises indoors. I limit my time outside to yardwork, watering my plants, cleaning out the bird baths, and tending to the plants on the porch.

4. I have very severe ongoing allergies – they are not just limited to spring and summer, they last throughout the year, and they get worse and worse every year. I have sinus problems for which I take a number of medications, and I get frequent sinus infections which cause me to need antibiotics. I also now have fluid in my ears that I think the allergies have contributed to as well. My husband also has allergies, but he does not have them as bad as me. My adult daughter, who lives nearby, also gets severe allergies and migraines, like me. I was prescribed albuterol by my doctor since I was coughing at night and occasionally experiencing chest tightness. I thought my allergies were just attributable to pollen, but I am now concerned that they are exacerbated by air pollution.

5. I sometimes keep track of the air quality on my smartphone or watch, but since I try to limit my time outside, I do not keep track of it regularly. I have an air purifier in my bedroom to help with my allergies.

6. Ever since I moved back to Georgia, my allergies have gotten worse. I am concerned about the impact that climate change is having on our environment, and that those impacts are also contributing to my allergies. For example, because of climate change, the plants are blooming earlier and earlier and releasing their pollen earlier than usual. I live near the Scherer power plant, and I'm concerned that air pollution plays a role in my allergies as well.

7. I believe we should do everything in our power to make sure that the air and water is not uninhabitable for animals and for biodiversity – we need everything on the planet to help clean the planet, and everything is interconnected. We are animals too, and we need to be good stewards of the planet. The current administration at EPA is trying to repeal regulations, and rolling back these regulations will set us back one hundred years.

8. I am very concerned that Georgia Power has gotten a two-year extension for their power plants. I want power plants to do everything that they can to clean up their toxic pollution – we are caretakers of the world, and we need to do better. God did not make us caretakers of the animals and the earth so we could be supreme over them, it's our responsibility to care for them. Now that we know

how to take care of the earth, we can and should right all the wrongs we did to the planet unintentionally. Now that we know better, we should do better, and shame on us for not doing that.

9. I am aware that the U.S. EPA finalized new, stronger standards to reduce toxic soot pollution and mercury pollution from power plants in 2024. Some facilities, including Scherer, received an exemption from complying with these standards in 2025. I want power plants to do everything they can to meet toxic air pollution standards as soon as possible, and I do not think deregulation is the answer. I fully support NRDC's lawsuit challenging these exemptions from standards for toxic air pollution from power plants.

I declare that the foregoing is true and correct to the best of my knowledge, information, and belief. Executed on May 28, 2025.

Signature: 

Name: Barbara Sue

EXHIBIT 7

Amended Motion for Stay

***North Dakota v. EPA*, No. 24-1119 (D.C. Cir.)**

ORAL ARGUMENT NOT YET SCHEDULED
Case No. 24-1119 (and consolidated cases)

United States Court of Appeals
For the District of Columbia Circuit

STATE OF NORTH DAKOTA, STATE OF WEST VIRGINIA, et al.,

Petitioners,

v.

ENVIRONMENTAL PROTECTION AGENCY,

Respondent.

On Petition for Judicial Review of Final Agency Actions of the United States Environmental Protection Agency, 89 Fed.Reg. 38508 (May 7, 2024)

AMENDED MOTION FOR STAY

PATRICK MORRISEY
Attorney General

LINDSAY S. SEE
Solicitor General
MICHAEL R. WILLIAMS
Principal Deputy Solicitor General
Office of the Attorney General of West Virginia
State Capitol Complex
Building 1, Room E-26
Charleston, WV 25301
lindsey.s.see@wvago.gov
michael.r.williams@wvago.gov

Counsel for State of West Virginia

DREW H. WRIGLEY
Attorney General

PHILIP AXT
Solicitor General
600 E Boulevard Ave., Dept. 125
Bismarck, ND 58505
Phone: 701.328.2210
pjaxt@nd.gov

NESSA HOREWITCH COPPINGER
DAVID M. FRIEDLAND
Special Assistant Attorneys General
1900 N Street NW, Suite 100
Washington, DC 20036
ncoppinger@bdlaw.com
dfriedland@bdlaw.com

Counsel for State of North Dakota

Additional Counsel Listed in Signature Block

Date: **June 07, 2024**

CERTIFICATE AS TO PARTIES, RULINGS, AND RELATED CASES

Pursuant to D.C. Circuit Rules 18(a)(4), 27, and 28(a)(1)(A), Petitioners certify:

A. Parties, Intervenors, and *Amici* to this Case (No. 24-1119)

Petitioners: State of North Dakota, State of West Virginia, State of Alaska, State of Arkansas, State of Georgia, State of Idaho, State of Indiana, State of Iowa, State of Kansas, Commonwealth of Kentucky, State of Louisiana, State of Mississippi, State of Missouri, State of Montana, State of Nebraska, State of Oklahoma, State of South Carolina, State of South Dakota, State of Tennessee, State of Texas, State of Utah, Commonwealth of Virginia, and State of Wyoming.

Respondent: The United States Environmental Protection Agency.

Proposed Intervenors: (1) Air Alliance Houston, Alliance of Nurses for Healthy Environments, American Academy of Pediatrics, American Lung Association, American Public Health Association, Chesapeake Climate Action Network, Citizens for Pennsylvania's Future, Clean Air Council, Clean Wisconsin, Downwinders at Risk, Environmental Defense Fund, Environmental Integrity Project, Montana Environmental Information Center, Natural Resources Council of Maine, Natural Resources Defense Council, the Ohio Environmental Council, Physicians for Social Responsibility, and Sierra Club moved to Intervene on June 3, 2024; (2) State of Massachusetts, State of Minnesota, State of Connecticut, State of Illinois, State of Maine, State of Maryland, State of Michigan, State of New Jersey, State of New York, State of Oregon, State of Pennsylvania, State of Rhode Island, State of Vermont, State of Wisconsin, District of Columbia, City of Baltimore, City of Chicago, City of New York moved to intervene on June 6, 2024; (3) San Miguel Electric Cooperative, Inc. moved to intervene on June 7, 2024.

Proposed *Amici*: None at present.

B. Rulings Presented for Review

Final rule entitled *National Emission Standards for Hazardous Air Pollutants: Coal- and Oil-Fired Electric Utility Steam Generating Units Review of the Residual Risk and Technology Review*. 89 Fed.Reg. 38508 (May 7, 2024).

C. Parties, Intervenors, and Amici in Related Cases in this Circuit

Consolidated cases: (1) *NACCO Natural Resources Corp. v. EPA and Michael S. Regan*, No. 24-1154; (2) *National Rural Electric Cooperative Association, Lignite Energy Council, National Mining Association, Minnkota Power Cooperative, Inc., East Kentucky Power Cooperative, Inc., Associated Electric Cooperative Inc., Basin Electric Power Cooperative, and Rainbow Energy Center, LLC v. EPA and Michael S. Regan,* No. 24-1179; and (3) *Oak Grove Management Company LLC and Luminant Generation Company LLC v. EPA and Michael S. Regan*, No. 24-1184.

/s/ Philip Axt
PHILIP AXT
Solicitor General of North Dakota

CERTIFICATE OF COMPLIANCE WITH RULES 18(A)(1) AND (A)(2)

The undersigned certifies that this motion complies with Fed. R. App. P. and D.C. Cir. R. 18(a)(1). On May 14, 2024, Petitioners submitted to EPA a Request for Administrative Stay Pending Judicial Review of the *National Emission Standards for Hazardous Air Pollutants: Coal- and Oil-Fired Electric Utility Steam Generating Units Review of the Residual Risk and Technology Review*, published in the Federal Register at 89 Fed.Reg. 38508 (May 7, 2024). EPA acknowledged receipt of this request on May 21, 2024, but has not otherwise responded.

In accordance with Fed. R. App. P. and D.C. Cir. R. 18(a)(2), counsel for Petitioners notified EPA's counsel by voicemail and email on June 3, 2024, that Petitioners planned to file this motion. EPA opposes this motion.

/s/ Philip Axt
PHILIP AXT
Solicitor General of North Dakota

TABLE OF CONTENTS

TABLE OF CONTENTS v
TABLE OF AUTHORITIES vi
GLOSSARY OF KEY ABBREVIATIONS AND ACRONYMS x
INTRODUCTION 1
BACKGROUND 2
ARGUMENT 5
I. Petitioners Are Likely to Prevail on the Merits 6
A. The Rule Violates Clean Air Act Section 112(d)(6) Because Revising the MATS Standard Is Not "Necessary" 6
B. The Rule is Arbitrary and Capricious for Multiple Reasons 8
II. Petitioners Will Suffer Imminent and Irreparable Harm Absent a Stay 17
A. Petitioner States Will Suffer Irreparable Economic Harm 17
B. The Rule's Compliance Costs and Infeasible Standards Risk Catastrophic Consequences for the Power Grid 18
III. The Balance of Harms and the Public Interest Favor a Stay 22
CONCLUSION 23
CERTIFICATE OF COMPLIANCE 30
CERTIFICATE OF SERVICE 30

TABLE OF AUTHORITIES

Cases

Ass'n of Battery Recyclers v. EPA,
716 F.3d 667 (D.C. Cir. 2013) 8

California v. Azar,
911 F.3d 558 (9th Cir. 2018) 17

Del. Dep't of Nat. Res. & Envtl. Control v. EPA,
785 F.3d 1 (D.C. Cir. 2015) 11, 12

Dep't of Commerce v. New York,
139 S. Ct. 2551 (2019) 14, 16

La. Envtl. Action Network v. EPA,
955 F.3d 1088 (D.C. Cir. 2020) 6

Mexican Gulf Fishing Co. v. U.S. Dep't of Comm.,
60 F.4th 956 (5th Cir. 2023) 10

**Michigan v. EPA*,
576 U.S. 743 (2015) 1, 9, 10, 18, 19

Motor Vehicle Mfrs. Ass'n v. State Farm,
463 U.S. 29 (1983) 8, 12

Nat. Res. Def. Council v. EPA,
529 F.3d 1077 (D.C. Cir. 2008) 7, 8, 9

Portland Cement Ass'n v. EPA,
665 F.3d 177 (D.C. Cir. 2011) 13

Sierra Club v. EPA,
895 F.3d 1 (D.C. Cir. 2018) 2

Sierra Club v. Ga. Power Co.,
180 F.3d 1309 (11th Cir. 1999) 22

**Texas v. EPA*,
829 F.3d 405 (5th Cir. 2016) 12, 19, 21, 22, 23

West Virginia v. EPA,
597 U.S.697, 735 (2022) 14, 15

West Virginia v. EPA,
90 F.4th 323 (4th Cir. 2024) 22

Wyoming v. Dep't of Interior,
493 F. Supp. 3d 1046 (D. Wyo. 2020) 9

Statutory Authorities

Clean Air Act § 112
42 U.S.C. § 7412 2

42 U.S.C. § 7412(c)(9)(B)(i) 8

42 U.S.C. § 7412(d)(6) 3, 6, 7

42 U.S.C. §§7412(f)(2) 3

Rules and Regulations

Executive Order No. 13990, Protecting Public Health and the Environment and Restoring Science to Tackle the Climate Crisis,
86 Fed. Reg. 7037 (Jan. 25, 2021) 3, 4, 14

National Emission Standards for Coke Oven Batteries,
69 Fed. Reg. 48338 (Aug. 9, 2004) 4

National Emission Standards for Organic Hazardous Air Pollutants From the Synthetic Organic Chemical Manufacturing Industry,
71 Fed. Reg. 76603 (Dec. 21, 2006) 4

National Emission Standards for Hazardous Air Pollutants From Coal- and Oil-Fired Electric Utility Steam Generating Units and Standards of Performance for Fossil-Fuel-Fired Electric Utility, Industrial-Commercial-Institutional, and Small Industrial-Commercial-Institutional Steam Generating Units,
77 Fed. Reg. 9304 (Feb. 16, 2012) 3, 12

National Emission Standards for Hazardous Air Pollutants: Coal- and Oil-Fired Electric Utility Steam Generating Units—Reconsideration of Supplemental Finding and Residual Risk and Technology Review,
85 Fed. Reg. 31286 (May 22, 2020) 3

National Emission Standards for Hazardous Air Pollutants: Coal- and Oil-Fired Electric Utility Steam Generating Units Review of the Residual Risk and Technology Review,
88 Fed. Reg. 24854 (Apr. 24, 2023) 4, 5

National Emission Standards for Hazardous Air Pollutants: Coal- and Oil-Fired Electric Utility Steam Generating Units Review of the Residual Risk and Technology Review,
89 Fed. Reg. 38508 (May 7, 2024) 2, 5, 6, 7, 8, 9, 10, 11, 14, 17, 20, 22

D. C. Cir. R. 18(a)(1) ..... iv, 5

D. C. Cir. R. 18(a)(2) iv

Docketed Materials

Coal Conversion Counties Ass'n Comment,
EPA-HQ-OAR-2018-0794-6003 11

Lignite Energy Council Comment,
EPA-HQ-OAR-2018-0794-5957 11

Minnkota Power Coop. Inc. Comment,
EPA-HQ-OAR-2018-0794-5978 12

Nat'l Min. Ass'n Comment,
EPA-HQ-OAR-2009-0234-20531 13

Nat'l Mining Ass'n Comment,
EPA-HQ-OAR-2018-0794-5986 11

Power Generators Air Coalition Comment,
EPA-HQ-OAR-2018-0794-5994 12

Rainbow Energy Center Comment,
EPA-HQ-OAR-2018-0794-5990 12

Westmoreland Mining Holdings Comment,
EPA-HQ-OAR-2018-0794-5935 ..... 10, 11

Additional Authorities/Scientific Studies/Additional Materials

2023 Technology Review for the Coal- and Oil-Fired EGU Source Category ("2023 Tech Review") 4, 5

2024 Update to the 2023 Proposed Technology Review for the Coal- and Oil-Fired EGU Source Category ("2024 Tech Update") 4, 5

Black's Law Dictionary (11th ed. 2019) 6

Cass, R. *Staying Agency Rules: Constitutional Structure and Rule of Law in the Administrative State*, 69 Admin. L. Rev. 225, 254-57 (2017) 2

EPA, *Biden-Harris Administration Finalizes Suite of Standards to Reduce Pollution from Fossil Fuel-Fired Power Plants* (Apr. 25, 2024) 13

FERC-NERC-Regional Entity Staff Report: *The February 2021 Cold Weather Outages in Texas and the South Central United States* (Nov. 16, 2021) 18

Geman, *EPA floats path on electricity CO2 emissions with an asterisk*, Axios (Mar. 11, 2022) 15

Milman, *New US climate rules for pollution cuts 'probably terminal' for coal-fired plants*, Guardian (May 2, 2024) 16

PBS, EPA Administrator Michael Regan discusses Supreme Court ruling on climate change, YouTube (June 30, 2022) 16

Power Sector Strategy: Climate, *Public Health, Environmental Justice, Briefing for Gina McCarthy and Ali Zaidi* (Feb. 4, 2021) 15

Pratson et. al., *Fuel Prices, Emission Standards, and Generation Costs for Coal v Natural Gas Power Plants*, Am. Chem. Soc'y, Env'l Sci. & Tech., 4929 (Mar. 2013) 13

U.S. Energy Info. Admin., *Planned coal-fired power plant retirements continue to increase* (Mar. 20, 2014) 13

White House, *Press Gaggle by Principal Deputy Press Secretary Karine Jean-Pierre & Env't Prot. Agency Adm'r Michael Regan* (Feb. 17, 2022) 16

*Authorities on which Petitioners chiefly rely are marked with asterisks.

GLOSSARY OF KEY ABBREVIATIONS AND ACRONYMS

Abbreviation Or Acronym	Defined
CAA	Clean Air Act
EGU	Electric Utility Steam Generating Units
EPA	Environmental Protection Agency
fPM	Filterable Particulate Matter
HAP	Hazardous Air Pollutant
Hg	Mercury
MATS	Mercury and Air Toxics Standards
RIA	Regulatory Impact Analysis

INTRODUCTION

With this Rule, EPA is ratcheting down the Mercury and Air Toxics Standards (MATS) for coal-fired power plants by 66-70%. The implementation costs will be substantial, power plants may be forced onto early retirement tracks, and power grid reliability will be threatened. Conversely, there is no relevant public health benefit from the mandated reduction in hazardous air pollutant (HAP) emissions. None. EPA recognizes that the 2012 MATS rule already reduced HAP emissions **well below** any threshold that would impact public health.

Petitioners will establish multiple legal infirmities on the merits requiring the Rule be set aside. But that victory will be meaningless absent a stay, because to comply with the Rule's three-year deadline for implementing the mandated changes (or retiring if they cannot), power plants need to take action immediately. EPA knows this. The last time the MATS Rule was litigated, the Supreme Court held EPA acted "unreasonably when it deemed cost irrelevant to the decision to regulate power plants." *Michigan v. EPA*, 576 U.S. 743, 760 (2015). But the victory proved hollow, because without a stay while the merits were heard, power plants were forced to make compliance and retirement decisions, resulting in billions expended and many plant closures in response to an unlawful regulation. The last time the MATS Rule was litigated is a textbook example for when agency rules should be

stayed. *E.g.*, Ronald Cass, *Staying Agency Rules: Constitutional Structure and Rule of Law in the Administrative State*, 69 Admin. L. Rev. 225, 254-57 (2017).

While EPA claims this Rule will have no impact on the power grid or energy prices, Petitioners have included with this motion an array of declarations from power plants and State regulators attesting that is not the case. And EPA has an established record of grossly understating the effect its rules will have on the power grid. The last time the MATS Rule was litigated, EPA assured the country that it would only cause about 5,000 MW to go offline. EPA was wrong. The number ended up being closer to 60,000 MW. Our power grids do not have the same buffer of dispatchable energy that they did a decade ago. If EPA is wrong to the same degree that it was last time, the impact to our power grids will be substantial.

Petitioners ask the Court to preserve the status quo by staying the Final Rule until the merits of this dispute are resolved. An expedited briefing schedule will limit the duration of any such stay.

BACKGROUND

Section 112 of the Clean Air Act (CAA) (codified at 42 U.S.C. § 7412) provides EPA statutory authority to set emission levels for certain HAPs enumerated in Section 112(b)(1). *Sierra Club v. EPA*, 895 F.3d 1, 7 (D.C. Cir. 2018). As EPA acknowledges, "Congress intended for CAA Section 112 to achieve significant reductions in HAP." 89 Fed.Reg. at 38535.

EPA issued the original MATS rule for HAP emissions from coal- and oil-fired electric generating units (EGUs) in 2012. 77 Fed.Reg. 9304 (Feb. 16, 2012). That rule identified different achievable control standards for mercury from EGUs that use lignite coal compared to other types of coal. The distinction was based on science: lignite is more variable than other types of coal and available technologies cannot consistently achieve the same control levels. 77 Fed.Reg. at 9393.

Eight years after a HAP emission level is set, EPA must evaluate if any "residual risks" remain to public health from those HAP emissions and whether there have been any developments in available control technologies. 42 U.S.C. §§7412(f)(2), (d)(6). EPA calls these the Residual Risk and Technology Reviews.

In 2020, EPA conducted those reviews for the MATS Rule. For the Residual Risk Review, EPA "determined that the current [standard] provides an ample margin of safety to protect public health and prevent an adverse environmental effect." 85 Fed.Reg. 31286, 31314 (May 22, 2020). And for the Technology Review, EPA determined there were no developments in emission control technologies, practices, or processes that warranted revising the MATS Rule. *Id.* at 31298.

But six months later there was a change in presidential Administration and Executive Order 13990, entitled "Protecting Public Health and the Environment and Restoring Science to Tackle the Climate Crisis," which directed EPA to consider "suspending, revising, or rescinding" the 2020 Residual Risk and Technology

Reviews for the MATS Rule. 86 Fed.Reg. 7037 (Jan. 25, 2021). That was so despite the fact that EPA's authority for promulgating the MATS Rule under CAA Section 112 has nothing to do with climate change—it is about protecting the public from specified HAPs, not greenhouse gases.

Following Executive Order 13990, EPA reconsidered its 2020 Residual Risk and Technology Reviews for the MATS Rule. For public health, EPA reached the same conclusion. 88 Fed.Reg. 24854, 24895 (Apr. 24, 2023) ("the residual risk assessment showed all modeled exposures to HAP to be below thresholds for public health concern."). That should have been the end of it. In other Section 112(d)(6) rulemakings, EPA has taken the position that if its standards already "provide an ample margin of safety to protect public health and prevent adverse environmental effects, one can reasonably question whether further reviews of technological capability are 'necessary.'" 69 Fed.Reg. 48338, 48351 (Aug. 9, 2004); *see also* 71 Fed.Reg. 76603, 76608 (Dec. 21, 2006). But EPA pressed on.

For its technology re-review, EPA again found "no new practices, processes, or control technologies" for the relevant HAP emissions. 88 Fed.Reg. at 24868. The control technologies used in 2012 are the same as today. *See* 2023 Technology Review for the Coal- and Oil-Fired EGU Source Category ("2023 Tech Review") at 1; 2024 Update to the 2023 Proposed Technology Review for the Coal- and Oil-

Fired EGU Source Category ("2024 Tech Update") at 17, 50.[1] Undeterred, to justify revising the standards, EPA points to alleged cost efficiencies for using those technologies, concluding those alleged efficiencies mean that all coal-fired plants, regardless of configuration or coal type, can now meet a 66% lower surrogate fPM emission standard for non-mercury HAPs. 89 Fed.Reg. at 38530.[2] For mercury, EPA concludes lignite is now capable of meeting the same control standard as other types of coal, dropping the emission standard by 70%. 89 Fed.Reg. at 38586. Coal-fired power plants must meet the new standards in three years or be on a retirement track. 89 Fed.Reg. at 38519.

ARGUMENT

The Court should stay the Rule while the merits are resolved because Petitioners are likely to prevail on the merits of their claims, Petitioners will suffer irreparable harm in the absence of a stay, and the balance of harms and public interest favor a stay. D.C. Cir. R. 18(a)(1).

[1] For non-mercury HAPs, the control technology remains electrostatic precipitators and fabric filters, and for mercury the control technology remains activated carbon injection. 2023 Tech Review at 16–18; 2024 Tech Update at 30–32.

[2] The Final Rule uses filterable particulate matter (fPM) as a surrogate for measuring the non-Hg metal HAP emissions. 89 Fed.Reg. at 38508.

I. Petitioners Are Likely to Prevail on the Merits

A. The Rule Violates Clean Air Act Section 112(d)(6) Because Revising the MATS Standard Is Not "Necessary"

EPA issued this Rule under CAA Section 112(d)(6), which permits revising HAP emission standards only as "necessary (taking into account developments in practices, processes, and control technologies)." 42 U.S.C. § 7412(d)(6). The operative phrase is "revise as necessary," and "EPA must consider practical and technological advances" when determining whether revision is "necessary." *La. Envtl. Action Network v. EPA*, 955 F.3d 1088, 1097-98 (D.C. Cir. 2020).

The Rule's revisions are not "necessary" for several reasons.[3] For one, there is no relevant public health benefit. EPA acknowledges current HAP emission standards provide an ample margin of safety to protect public health and does not identify *any* quantifiable health benefit from the Rule's further reduction in HAPs. 89 Fed.Reg. at 38558-59. The alleged health "benefits" EPA purports to quantify—reducing criteria pollutants and greenhouse gases, *id.* at 38561-62—cannot serve as a basis for exercising Section 112(d)(6) authority.

Absent any relevant public health benefits from the Rule, EPA claims the revisions are "necessary" due to "developments" in controlling HAP emissions. *Id.* at 38518. But even if a "development" in control technologies could make revising

[3] Black's Law Dictionary (11th ed. 2019) (*Necessary*: "needed for some purpose or reason; essential.").

a HAP emission standard that provides no relevant health benefits "necessary" under Section 112(d)(6), EPA identified no new technologies, practices, or processes that would justify revising the MATS Rule. 42 U.S.C. § 7412(d)(6). The primary control technologies used today are the same as they were the last two times EPA undertook a technology review. 89 Fed.Reg. at 38517-18.

Rather than pointing to any new technology, EPA interprets "development" to mean cost-efficient compliance with already-existent technology. *Id.* at 38510. That interpretation of "development" is an atextual attempt to expand EPA's regulatory reach. *Cf. Nat. Res. Def. Council v. EPA*, 529 F.3d 1077, 1084 (D.C. Cir. 2008) (Section 112(d)(6) rulemaking revises "*technology-based* standards in light of *technological* developments" and requires identification of "*technological innovations*") (emphases added).

EGUs are *required* to comply with HAP emission standards after they are issued, and they must comply with a margin that accounts for fuel variability to consistently meet the emission standard 100% of the time. EPA's interpretation of such compliance as a "development" warranting further rulemaking constitutes a significant power grab—ignoring Section 112(d)(6)'s constraint to only revise the standards as "necessary," and empowering EPA to drive any disfavored source out of the market by tightening HAP emission limits until an emission source with a variable fuel supply is unable to comply *at all times*.

B. The Rule is Arbitrary and Capricious for Multiple Reasons

A rule is arbitrary and capricious "if the agency has relied on factors which Congress has not intended it to consider, entirely failed to consider an important aspect of the problem…or is so implausible that it could not be ascribed to a difference in view of the product of agency expertise." *Motor Vehicle Mfrs. Ass'n v. State Farm*, 463 U.S. 29, 43 (1983). This Rule is arbitrary and capricious for many reasons, each of which warrants vacating it.

First, EPA's cost-benefit analysis is indefensible. Section 112(d)(6) rulemaking requires reasonable consideration of cost. *See Ass'n of Battery Recyclers v. EPA*, 716 F.3d 667, 673-74 (D.C. Cir. 2013) (rejecting argument cost is irrelevant to emission standard revisions under Section 112(d)(6)). Yet EPA candidly admits the Rule has a "negative net monetized benefit." 89 Fed.Reg. at 38511. Under the standards already in place, EPA found the lifetime cancer risk of the person most exposed to coal-fired HAP emissions is 0.344-in-a-million—significantly less than the Clean Air Act's one-in-a-million threshold where EPA can stop regulating a source entirely. 42 U.S.C. § 7412(c)(9)(B)(i); *see also Nat. Res. Def. Council*, 529 F.3d at 1082 (one-in-one million standard is the CAA's "aspirational goal").

Even EPA's qualitative generalizations don't evidence any meaningful health benefits from the mandated reduction in HAPs. EPA admits the benefits of Hg reduction associated with the Rule are so small they can't be reliably extrapolated to

the broader population of fish consumers. RIA 4-5. And where risk to subsistence fishers located near lignite-fired plants has been studied, fisherman are already not exposed at a level associated with appreciable risk—and that is before the further reductions associated with this Rule. RIA 4-4. EPA's analysis of non-Hg HAP emissions is much the same, with EPA acknowledging "cancer risk was … within the acceptable range for multipathway exposure to the persistent and bioaccumulative non-Hg HAP metals." RIA 4-7. Likewise, noncancer risks did not exceed current thresholds for adverse health effects. *Id.*

To the extent EPA identified any quantifiable "benefits" of the Rule, they are *all* ancillary to the Rule's reduction in HAP emissions and cannot drive a Section 112 cost-benefit analysis. *E.g.*, 89 Fed.Reg. at 38561 (pointing to alleged particulate matter, ozone, and "climate" benefits). As Chief Justice Roberts noted during oral argument in *Michigan v. EPA*, it is improper for EPA to use Section 112 authority to "get at the criteria pollutants that you otherwise would have to go through a much more difficult process to regulate. In other words, you can't regulate the criteria pollutants through the HAP program…" Transcript of Oral Argument at 59:19–60:5, *Michigan v. EPA*, 576 U.S. 743 (2015). *Cf. Wyoming v. Dep't of Interior*, 493 F. Supp. 3d 1046, 1079 (D. Wyo. 2020) (agency "cannot rationally claim the Rule's objective is waste prevention while justifying its considerable costs almost entirely on climate change benefits").

In exchange for zero relevant public health benefits, the Rule will impose tremendous costs on coal-fired EGUs and electricity consumers. Under EPA's own calculations, the estimated cost-per-ton of HAP removed exponentially exceeds cost-benefit ratios that EPA has rejected for other Section 112 rulemakings. For surrogate fPM emissions, by EPA's own math, the cost effectiveness is $10.5 million per ton of HAP removed. 89 Fed.Reg at 38532-33. That is orders of magnitude higher than cost-benefit ratios EPA has explicitly *rejected* as being excessive. *E.g.*, Westmoreland Mining Holdings Cmt. at 4, EPA-HQ-OAR-2018-0794-5935 (compiling examples). EPA admits as much. 89 Fed.Reg. at 38523 ("EPA acknowledges that the cost-effectiveness values for these standards are higher than cost-effectiveness values that the EPA concluded were not cost-effective…for some prior rules.") 89 Fed.Reg. at 38523. These costs will likely force power plant retirements and threaten grid reliability, *see infra*, but, even if they didn't, they will increase the price of electricity for consumers. Just as it is arbitrary and capricious for EPA to impose significant economic costs "for a few dollars" of benefit, *Michigan*, 576 U.S. at 752, so too where EPA imposes substantial costs with "no meaningful benefit." *Mexican Gulf Fishing Co. v. U.S. Dep't of Comm.*, 60 F.4th 956, 966 (5th Cir. 2023).

Second, even assuming cost-efficient compliance using existing technology can lawfully be considered a "development" in practices, processes or control

technologies warranting further restrictions under Section 112(d)(6), EPA has not provided a reasoned explanation to support its conclusion that coal-fired EGUs are capable of consistently meeting the Rule's new emission standards with available control technologies. Comment after comment put EPA on notice that the Rule's conclusions regarding compliance feasibility were flawed.[4] But to support its contrary conclusion, the Final Rule relies almost entirely on a single comment (the "Andover Report") that largely parrots EPA's conclusions from the proposed rule without sufficient factual basis or explanation and is woefully inadequate to support EPA's conclusions. *E.g.,* 89 Fed.Reg. at 38523, 38528, 38530, 38538.

Third, EPA failed to adequately consider the Rule's foreseeable impact on our nation's already-precarious power grids. Where, as here, EPA promulgates a Rule under Section 112(d) that will foreseeably impact grid reliability, it must thoroughly address the concern. *Del. Dep't of Nat. Res. & Envtl. Control v. EPA*, 785 F.3d 1, 18 (D.C. Cir. 2015) ("'Costs' can mean many different things, including the cost associated with increased risk" of grid unreliability).

EPA's perfunctory conclusion that the significant costs the Rule imposes on coal-fired EGUs will have no effect on the power sector, 89 Fed.Reg. at 38555-56,

[4] *E.g.,* Lignite Energy Council Cmt. at 8-9, EPA-HQ-OAR-2018-0794-5957; Nat'l Mining Ass'n Cmt. at 10-15, EPA-HQ-OAR-2018-0794-5986; Westmoreland Mining Holdings Cmt. at 16-17 (proposed fPM standard is not achievable or feasible); Coal Conversion Counties Ass'n Cmt. at 8, EPA-HQ-OAR-2018-0794-6003 (proposed mercury standard is not achievable or feasible).

does not reflect reasoned analysis entitled to any degree of deference. "EPA has no expertise on grid reliability," *Texas v. EPA*, 829 F.3d 405, 432 (5th Cir. 2016), and comment after comment put EPA on notice that the Rule will foreseeably have significant impacts on power grid reliability.[5] Nonetheless, the Final Rule does not reflect any attempt by EPA to seek input from the Federal Energy Regulatory Commission (FERC), the North American Electric Reliability Corporation (NERC), or any similar entity that could have apprised it of the Rule's likely impact on grid reliability. EPA also failed to address power outages or grid reliability in its Regulatory Impact Analysis. *See* RIA Section 3. EPA's failure to adequately consider one of the Rule's most important impacts was arbitrary and capricious. *State Farm*, 463 U.S. at 43; *see also Del. Dep't of Nat. Res.*, 785 F.3d at 18 (encouraging EPA to solicit input from FERC).

Moreover, as noted *supra*, the last time the MATS Rule was litigated, EPA claimed it would only cause about 5,000 MW to go offline. 77 Fed.Reg. at 9407 ("...expected retirements of coal-fueled units as a result of this final rule (4.7 GW) are fewer than was estimated at proposal and much fewer than some have

[5] *E.g.*, Rainbow Energy Center Cmt. at 4, EPA-HQ-OAR-2018-0794-5990; *see also id.*, Attachment A at 3-4 (MISO Cmt. on Docket ID Nos. EPA-HQ-OLEM-2021-0283, EPA-HQ-OLEM-2021-0282, EPA-HQ-OLEM-2021-0280); Minnkota Power Coop. Inc. Cmt. at 3, EPA-HQ-OAR-2018-0794-5978; Power Generators Air Coalition Cmt. at 12, EPA-HQ-OAR-2018-0794-5994.

predicted"). EPA was wrong. It ended up being closer to 60,000 MW.[6] That dramatic difference represents a profound failure on EPA's part to analyze the rule's impacts on power generation. Consequently, EPA's perfunctory conclusion that this Rule (dropping emission standards by 66-70%) will not cause a single retirement, RIA at 3-16, should be viewed with extreme skepticism given the number of comments and declarations attesting EPA has gotten it profoundly wrong again.

EPA's analysis of the Rule's grid impacts also fails to "acknowledge and account for" the impacts of "contemporaneous and closely related rule[s]." *Portland Cement Ass'n v. EPA*, 665 F.3d 177, 187 (D.C. Cir. 2011). EPA expressly issued this Rule as part of a "suite" of rules targeting coal power plants with retirement-inducing costs. *See* EPA, *Biden-Harris Administration Finalizes Suite of Standards to Reduce Pollution from Fossil Fuel-Fired Power Plants* (Apr. 25, 2024).[7] EPA's

---

[6] *See, e.g.*, U.S. Energy Info. Admin., *Planned coal-fired power plant retirements continue to increase* (Mar. 20, 2014), bit.ly/4dbYwfM (between 2012 and 2020, "about 60 gigawatts of coal-fired capacity is projected to retire … assum[ing] implementation of the MATS standards"); Pratson et. al., *Fuel Prices, Emission Standards, and Generation Costs for Coal v Natural Gas Power Plants*, Am. Chem. Soc'y, Env'l Sci. & Tech., 4929 (Mar. 2013), bit.ly/3w7yLN2 (most coal-fired EGU retirements in the wake of the original MATS Rule were due to "stronger regulations," not unrelated market forces); *see also* Nat'l Min. Ass'n Cmt. at 2 & n.4, EPA-HQ-OAR-2009-0234-20531 (for the nearly 60 gigawatts of coal-fired EGU retirements announced between 2012 and 2016, "virtually all" stated the closures were "either fully or partially attributable to MATS and other EPA regulations").

[7] Available at https://tinyurl.com/y5u92sx3.

failure to meaningfully assess how the confluence of these (and many other) rules targeting coal-fired power plants will affect the power grid further cements its arbitrary and capriciousness.

Fourth, the Rule is arbitrary and capricious because EPA's stated reasons for it are pretextual. When an agency promulgates a rule, it must truthfully "disclose the basis of its action," and courts must set aside rulemaking when "the evidence tells a story that does not match the explanation." *Dep't of Commerce v. New York*, 139 S. Ct. 2551, 2575-76 (2019). Despite claiming it engaged in this rulemaking to protect the public from specified HAP emissions, 89 Fed.Reg. at 38509-10, available evidence not least of which is the Executive Order *on climate change* which EPA admits spurred this rulemaking indicates EPA is using its Section 112(d)(6) authority as part of an effort to force a nationwide transition away from coal for putative climate change reasons. *Contra West Virginia v. EPA*, 597 U.S.697, 735 (2022) (declaring it "not plausible" the CAA empowers EPA to "force a nationwide transition away from the use of coal to generate electricity").

Internal documents produced through FOIA indicate EPA and the White House Climate Office contrived revising the MATS Rule as a means of reducing power plant emissions for climate change reasons. For example, in February 2021, EPA prepared a presentation for the White House Climate Advisor. *See* Power Sector Strategy: Climate, Public Health, Environmental Justice, Briefing for Gina

McCarthy and Ali Zaidi (Feb. 4, 2021). Ex.15 (Chang Decl.) ¶¶3-5. While heavily redacted, the document evidences EPA's intent to use its regulatory authority under various programs, including the MATS Rule, for reducing power plant emissions to implement the Administration's climate agenda. *Id.* ¶¶6-7.

Those internal documents match public comments from the EPA Administrator, who repeatedly stated EPA would issue a "suite of rules" designed to close fossil fuel-fired power plants, with the co-benefit of combating climate change. *E.g.*, Geman, *EPA floats path on electricity CO2 emissions with an asterisk*, Axios (Mar. 11, 2022).[8]

As just one example, Administrator Regan said his agency would "couple" climate regulations with "health-based" regulations to regulate greenhouse gases and get around the *West Virginia v. EPA* decision.

> **PBS**: How much of a setback is [the *West Virginia v. EPA* decision] to your efforts to regulate greenhouse gases?
>
> **Regan**: ...We still will be able to regulate climate pollution. And we're going to use all of the tools in our toolbox. ...
>
> **PBS**: Well, can you give us a couple of examples of the kind of tools that you believe you still can use to regulate this industry?
>
> **Regan**: ...We also have a suite of regulations that are facing the power sector. And so, *as we couple the regulation of climate pollution with the regulation of health-based pollution*, we are providing the power

[8] Available at https://www.axios.com/2022/03/11/epa-electricity-co2-emissions.

> sector with a very clear picture of what regulations they're facing so that they can make the right investment decisions.

PBS, *EPA Administrator Michael Regan discusses Supreme Court ruling on climate change*, YouTube (June 30, 2022) (emphasis added);[9] *see also, e.g.*, White House, *Press Gaggle by Principal Deputy Press Secretary Karine Jean-Pierre & Env't Prot. Agency Adm'r Michael Regan* (Feb. 17, 2022) (stating if the Supreme Court limits EPA's ability to regulate greenhouse gas emissions, EPA will respond with "bread-and-butter regulations," such as "regulating mercury").[10]

EPA's public statements and documents evidence this Rule was not promulgated to protect the public from exposure to the regulated HAPs. The purpose for EPA's recent "suite" of rules targeting coal-fired plants is recognized around the world,[11] and courts are "'not required to exhibit a naiveté from which ordinary citizens are free.'" *Dep't of Commerce*, 139 S. Ct. at 2575 (citation omitted).

---

[9] Available at https://www.youtube.com/watch?v Ic 1UxwsXj8 (accessed May 7, 2024).

[10] Available at https://tinyurl.com/bddpr22j.

[11] *E.g.*, Milman, *New US climate rules for pollution cuts 'probably terminal' for coal-fired plants*, Guardian (May 2, 2024), https://www.theguardian.com/us-news/2024/may/02/us-climate-rules-coal-plants-pollution.

II. Petitioners Will Suffer Imminent and Irreparable Harm Absent a Stay

A. Petitioner States Will Suffer Irreparable Economic Harm

Petitioner States will suffer irreparable economic harm if the Rule is not stayed during the pendency of litigation.

EPA's claim that the Rule will have almost no impact on electricity prices, 89 Fed.Reg. at 38555-56, does not reflect reasoned decision-making. EPA acknowledges that complying with the Rule will impose millions in costs (presuming plants are able to comply at all). 89 Fed.Reg. at 38561. Those costs must be borne somewhere, and Petitioners have provided declaration after declaration attesting that implementing the Rule will inevitably require prices to increase. Ex.2 (Fedorchak Decl.) ¶¶25-33; Ex.3 (Lane Decl.) ¶23; Ex.7 (Huston Decl.) ¶¶16-17; Ex.8 (Bohrer Decl.) ¶¶18-21; Ex.9 (McLennan Decl.) ¶43; Ex.10 (Tschider Decl.) ¶29; Ex.11 (McCollam Decl.) ¶¶33-35; Ex.16 (Purvis Decl.) ¶11. Any increase in retail electric rates will impose unrecoverable costs on Petitioner States and their residents, including the States as consumers of electricity. *E.g.*, *California v. Azar*, 911 F.3d 558, 581 (9th Cir. 2018) (economic injury sustained by states due federal agency action "is irreparable … because the states will not be able to recover monetary damages").

Moreover, absent a stay of the Final Rule during the pendency of litigation, State regulators will need to expend substantial resources overseeing

implementation of the Final Rule and attempting to mitigate its deleterious effects. Ex.2 (Fedorchak Decl.) ¶7; Ex.3 (Lane Decl.) ¶¶29-31.

B. The Rule's Compliance Costs and Infeasible Standards Risk Catastrophic Consequences for the Power Grid

Even more concerning than the imposition of unrecoverable economic costs, the Rule also threatens irreparable harm by undermining power grid reliability, as power outages are frequently paid for with human lives. *E.g.*, FERC-NERC-Regional Entity Staff Report: The February 2021 Cold Weather Outages in Texas and the South Central United States (Nov. 16, 2021) (over 200 fatalities during weather event "with most of the deaths connected to the power outages").

Although the Rule includes a three-year implementation period, absent a stay during the pendency of litigation, complying with that deadline (or commencing retirement plans if they cannot) requires EGUs to make decisions and take requisite actions *now*. Power plants cannot start and stop instantaneously; actions taken now will be irreversible and will affect power grids for years to come. Ex.8 (Bohrer Decl.) ¶¶24-28; Ex.9 (McLennan Decl.) ¶58; Ex.10 (Tschider Decl.) ¶¶25-30; Ex.11 (McCollam Decl.) ¶¶34-43; Ex.12 (Friez Decl.) ¶¶16-17; Ex.16 (Purvis Decl.) ¶¶15-19. As discussed *supra*, that is precisely what happened the last time the MATS Rule was litigated. Even though the Supreme Court ultimately held EPA acted unreasonably in promulgating the last MATS rule, *Michigan*, 576 U.S. at 743,

regulated EGUs had already been required to spend billions in compliance costs (or begin shutdown operations).

Power plants are again saying this Rule will result in substantial costs and may result in plant closures. Ex.8 (Bohrer Decl.) ¶¶21-24; Ex.9 (McLennan Decl.) ¶¶34-39, 70 ("Recent test data suggest that Minnkota will not be able to meet the New Mercury Limitation even at the higher PAC injection rates that EPA assumed to be sufficient to meet the New Mercury Limitation."); Ex.10 (Tschider Decl.) ¶¶21-23; Ex.11 (McCollam Decl.) ¶¶34-43; Ex.16 (Purvis Decl.) ¶¶24-25 (upgrades to comply "will certainly fail, despite best engineering and maintenance practices, due to the lack of any margin to meet the aggressively low new fPM limitation"). That injury will be irreparable. *Texas v. EPA*, 829 F.3d at 434 (potential closures threatened "the very existence of some of Petitioner's businesses and, even assuming, *arguendo*, that the plant operators could recover their costs from…their consumers, this would not be a recovery made in the course of the litigation").

EPA's perfunctory conclusion this Rule will not affect the power grid at all, 89 Fed.Reg. at 38519, should not be trusted. "EPA has no expertise on grid reliability." *Texas v. EPA,* 829 F.3d at 433. That expertise resides in FERC and NERC, yet EPA did not consult either before finalizing the Rule. Nor does EPA's Regulatory Impact Analysis reflect a long-term assessment of grid reliability, despite receiving comment after comment that the Rule would have significant impacts on

the power grid. *See* RIA at 3-23 3-24. And EPA's feasibility determinations are supported almost entirely by a single comment that is woefully inadequate to support EPA's conclusions. *See* Ex.13 (Holmes Decl.) ¶11 (summarizing EPA's reliance on the Andover Report as "bootstrapping at its worst").[12] State and grid regulators attest the foreseeable impacts of this Rule on power grid reliability will be significant. Ex.1 (Vigesaa Decl.) ¶¶11-26; Ex.2 (Fedorchak Decl.) ¶¶7-24; Ex.3 (Lane Decl.) ¶¶18-34; Ex.4 (Rickerson Decl.) ¶¶13-15; Ex.5 (Nowakowski Decl.) ¶¶7-12; Ex.6 (Webb Decl.) ¶¶6-10; Ex.7 (Huston Decl.) ¶12.

In a telling section, EPA dismisses widespread concerns about the Rule's foreseeable impact on power grid reliability by assuming that State or regional regulators will be able to use emergency powers to prop up the power grid if the Final Rule makes EGUs no longer commercially viable. 89 Fed.Reg. at 38526. EPA's reliance on such emergency, stopgap powers to prevent the Rule from breaking the power grids is the epitome of arbitrary and capricious agency action.

According to a study commissioned by the North Dakota Transmission Authority, if the Rule causes any of North Dakota's lignite-fired EGUs to retire, it will risk causing the entire MISO grid to experience black-outs resulting in economic damages ranging from $29 million to over $1 billion. Ex.1 (Vigesaa Decl.) ¶¶22-

[12] Further, an author of one of the few other studies EPA relies upon for its feasibility determination attests EPA is also misusing that study. Ex.14 (Benson Decl.) ¶¶6-8.

25. Given that the Rule will likely have the effect if not the deliberate goal of setting HAP emission standards that coal-fired EGUs in North Dakota and elsewhere will be unable to comply with, undermining long-term grid reliability is a foreseeable impact of the Rule that EPA failed to take seriously.

Furthermore, as noted *supra*, EPA's conclusion the Rule will have no impact on power plant operations should be viewed with skepticism given EPA's history of woefully underestimating the impact that its rules—and the MATS Rule specifically—will have on power plant operations. The last time EPA promulgated the MATS Rule, its claim that it would impact only about 5,000 MW of power ended up being wrong by over a factor of ten. The power grids today do not have the same buffer of dispatchable power that they had a decade ago, and an error on the same magnitude as EPA's last profound error would likely have catastrophic results. Ex.1 (Vigesaa Decl.) ¶11-12; Ex.3 (Lane Decl.) ¶¶12-13; Ex.7 (Huston Decl.) ¶¶8-14.

In similar circumstances, the Fifth Circuit stayed an EPA rule that a state plausibly alleged would result in grid instability due to the likely closure of coal-fired power plants during the pendency of litigation. *Texas v. EPA*, 829 F.3d at 434. In that case, Texas argued that the changes mandated by the challenged rule would cost power plants upwards of "$2 billion, rendering them uneconomical and forcing the plants to close" potentially "remov[ing] 3,000 MW to 8,400 MW of generating

capacity." *Id.* at 416. Consequently, the court held that "the threat of grid instability and potential brownouts alone constitute irreparable injury." *Id.*

III. The Balance of Harms and the Public Interest Favor a Stay

Staying the Rule while Petitioners' challenge is heard on the merits will maintain the status quo, and EPA acknowledges the status quo already protects public health. 89 Fed.Reg. at 38508 (existing standards already provide an "ample margin of safety").

The public interest also favors a stay when that rule would potentially threaten the public's access to affordable electricity. *Texas v. EPA*, 829 F.3d at 435 (granting stay where "public interest in ready access to affordable electricity" outweighed "inconsequential" emissions reductions that rule implementation would have achieved during the pendency of the litigation); *see also, e.g., Sierra Club v. Ga. Power Co.*, 180 F.3d 1309, 1311 (11th Cir. 1999) (denying preliminary injunction where it threatened to reduce power generation, as "[a] steady supply of electricity ... especially ... [for] the elderly, hospitals and day care centers, is critical."); *West Virginia v. EPA*, 90 F.4th 323, 332 (4th Cir. 2024) ("the public [] has an interest in the efficient production of electricity and other industrial activity in the State, even as such production is balanced with environmental needs").

And courts have found "unconvincing" the suggestion that the public will be injured from a stay pending litigation where, as here, complying with the rule "would

not reduce emissions for at least three years." *Texas v. EPA*, 829 F.3d at 434. That is particularly the case where, as here, the existing conditions already far exceed federal safety or environmental goals. *Id.* at 434–35.

CONCLUSION

Petitioners ask the Court to stay implementation of the Final Rule.

Respectfully submitted,

DREW H. WRIGLEY
Attorney General

By: */s/ Philip Axt*
PHILIP AXT
Solicitor General
600 E Boulevard Ave., Dept. 125
Bismarck, ND 58505
Phone: 701.328.2210
pjaxt@nd.gov

NESSA HOREWITCH COPPINGER
DAVID M. FRIEDLAND
Special Assistant Attorneys General
1900 N Street NW, Suite 100
Washington, DC 20036
Phone: 202.789.6053
ncoppinger@bdlaw.com
dfriedland@bdlaw.com

Counsel for State of North Dakota

PATRICK MORRISEY
Attorney General

/s/ Lindsay S. See
LINDSAY S. SEE
Solicitor General
MICHAEL R. WILLIAMS
Principal Deputy Solicitor General
Office of the Attorney General of West Virginia
State Capitol Complex
Building 1, Room E-26
Charleston, WV 25301
(304) 558-2021
lindsay.s.see@wvago.gov
michael.r.williams@wvago.gov

Counsel for State of West Virginia

TREG TAYLOR
Attorney General

/s/ Garrison Todd
GARRISON TODD
Assistant Attorney General
Alaska Department of Law
1031 W. 4th Ave. Ste. 200
Anchorage, AK 99501
(907) 269-5100
Garrison.Todd@alaska.gov

Counsel for State of Alaska

TIM GRIFFIN
Attorney General

/s/ Nicholas J. Bronni
NICHOLAS J. BRONNI
Solicitor General
DYLAN L. JACOBS
Deputy Solicitor General
Office of the Arkansas Attorney General
323 Center Street, Suite 200
Little Rock, AR 72201
(501) 682-2007
nicholas.bronni@arkansasag.gov

Counsel for State of Arkansas

CHRISTOPHER M. CARR
Attorney General

/s/ Stephan J. Petrany
STEPHEN J. PETRANY
Solicitor General
Office of the Attorney General
40 Capitol Square, SW
Atlanta, Georgia 30334
(404) 458-3408
spetrany@law.ga.gov

Counsel for State of Georgia

RAÚL R. LABRADOR
Attorney General

/s/ Joshua N. Turner
JOSHUA N. TURNER
Chief of Constitutional Litigation and Policy
ALAN M. HURST
Solicitor General
Office of Idaho Attorney General
P.O. Box. 83720
Boise, Idaho 83720
(208) 334-2400
Josh.Turner@ag.idaho.gov
Alan.Hurst@aga.idaho.gov

Counsel for State of Idaho

THEODORE E. ROKITA
Attorney General

/s/ James A. Barta
JAMES A. BARTA
Solicitor General
Indiana Attorney General's Office
IGCS – 5th Floor
302 W. Washington St.
Indianapolis, IN 46204
(317) 232-0709
james.barta@atg.in.gov

Counsel for State of Indiana

BRENNA BIRD
Attorney General

/s/ Eric H. Wessan
ERIC H. WESSAN
Solicitor General
1305 E. Walnut Street
Des Moines, Iowa 50319
(515) 823-9117
eric.wessan@ag.iowa.gov

Counsel for State of Iowa

KRIS W. KOBACH
Attorney General

/s/ Anthony J. Powell
ANTHONY J. POWELL
Solicitor General
Office of Kansas Attorney General
120 SW 10thAvenue, 2ndFloor
Topeka, Kansas 66612
(785) 368-8539
Anthony.Powell@ag.ks.gov

Counsel for State of Kansas

RUSSELL COLEMAN
Attorney General

/s/ Matthew F. Kuhn
MATTHEW F. KUHN
Solicitor General
JACOB M. ABRAHAMSON
Assistant Solicitor General
Office of Kentucky Attorney General
700 Capital Avenue, Suite 118
Frankfort, Kentucky 40601
(502) 696-5300
Matt.Kuhn@ky.gov
Jacob.Abrahamson@ky.gov

Counsel for Commonwealth of Kentucky

ELIZABETH B. MURRILL
Attorney General

/s/ J. Benjamin Aguiñaga
J. BENJAMIN AGUIÑAGA
Solicitor General
Louisiana Department of Justice 1885 N. Third Street
Baton Rouge, Louisiana 70802
(225) 506-3746
aguinagab@ag.louisiana.gov

Counsel for State of Louisiana

LYNN FITCH
Attorney General

/s/ Justin L. Matheny
JUSTIN L. MATHENY
Deputy Solicitor General
Office of the Attorney General
P.O. Box 220
Jackson, Mississippi 39205
(601) 359-3825
justin.matheny@ago.ms.gov

Counsel for State of Mississippi

ANDREW T. BAILEY
Attorney General

/s/ Samuel C. Freedlund
SAMUEL C. FREEDLUND
Deputy Solicitor General
Office of the Attorney General
815 Olive St., Suite 200
St. Louis, Missouri 63101
(314) 340-4869
Samuel.Freedlund@ago.mo.gov

Counsel for State of Missouri

AUSTIN KNUDSEN
Attorney General

/s/ Christian B. Corrigan
CHRISTIAN B. CORRIGAN
Solicitor General
PETER M. TORSTENSEN, JR.
Deputy Solicitor General
Montana Department of Justice
215 N. Sanders Helena, MT 59601
(406)444-2707
Christian.Corrigan@mt.gov

Counsel for State of Montana

MICHAEL T. HILGERS
Attorney General

/s/ Grant D. Strohl
GRANT D. STROBL
Assistant Solicitor General
Nebraska Attorney General's Office
2115 State Capitol
Lincoln, NE 68509
(402) 471-2683
grant.strobl@nebraska.gov

Counsel for State of Nebraska

GENTNER DRUMMOND
Attorney General

/s/ Garry M. Gaskins, II
GARRY M. GASKINS, II
Solicitor General
JENNIFER L. LEWIS
Deputy Attorney General
Office of the Attorney General of Oklahoma
313 NE Twenty-First St.
Oklahoma City, OK 73105
(405) 521-3921
garry.gaskins@oag.ok.gov
jennifer.lewis@oag.ok.gov

Counsel for State of Oklahoma

ALAN WILSON
Attorney General

/s/ Thomas T. Hydrick
THOMAS T. HYDRICK
Assistant Deputy Solicitor General
Office of the Attorney General of South Carolina
1000 Assembly Street
Columbia, SC 29201
(803) 734-4127
thomashydrick@scag.gov

Counsel for State of South Carolina

MARTY J. JACKLEY
Attorney General

/s/ Steve Blair
STEVE BLAIR
Deputy Attorney General
Office of the Attorney General of South Dakota
1302 East Highway 14, Suite 1
Pierre, SD 57501-8501
(605) 773-3215
atgservice@state.sd.us
steven.blair@state.sd.us

Counsel for State of South Dakota

JONATHAN SKRMETTI
Attorney General

/s/ Whitney Hermandorfer
WHITNEY HERMANDORFER
Director of Strategic Litigation
MATTHEW RICE
Solicitor General
Office of the Attorney General and Reporter of Tennessee
P.O. Box 20207
Nashville, TN 37202-0207
(615) 741-7403
Whitney.Hermandorfer@ag.tn.gov
Matthew.Rice@ag.tn.gov

Counsel for State of Tennessee

KEN PAXTON
Attorney General

/s/ John R. Hulme
JOHN R. HULME
Assistant Attorney General
BRENT WEBSTER
First Assistant Attorney General
JAMES LLOYD
Deputy Attorney General for Civil Litigation
KELLIE E. BILLINGS-RAY
Chief, Environmental Protection Division
Office of the Texas Attorney General
P.O. Box 12548
Austin, Texas 78711-2548
John.hulme@oag.texas.gov

Counsel for State of Texas

SEAN REYES
Attorney General

/s/ Stanford Purser
STANFORD PURSER
Solicitor General
Office of the Utah Attorney General
160 East 300 South, Fifth floor
Salt Lake City, Utah 84111
(385) 366-4334
Spurser@agutah.gov

Counsel for State of Utah

JASON MIYARES
Attorney General

/s/ Kevin M. Gallagher
KEVIN M. GALLAGHER
Principal Deputy Solicitor General
BRENDAN T. CHESTNUT
Deputy Solicitor General
Virginia Attorney General's Office
202 North 9th Street
Richmond, VA 23219
(804) 786-2071
kgallagher@oag.state.va.us
bchestnut@oag.state.va.us

Counsel for Commonwealth of Virginia

BRIDGET HILL
Attorney General

/s/ D. David DeWald
D. DAVID DEWALD
Deputy Attorney General
Wyoming Attorney General's Office
Water & Natural Resources Division
109 State Capitol
Cheyenne, WY 82002
(307) 777-7895 phone
david.dewald@wyo.gov

Counsel for State of Wyoming

CERTIFICATE OF COMPLIANCE

The foregoing brief complies with the type-volume limitation of Fed. R. App. P. 32(a)(7)(B), (f) and (g) and Circuit Rule 32(e)(1), because it contains 5,193 words, excluding exempted parts, according to the count of Microsoft Word 2010. I further certify that the foregoing brief also complies with Fed. R. App. P. 32(a)(5) and (6) because it has been prepared using Microsoft Word 2010 in 14-point proportionally spaced Times New Roman font.

/s/ Philip Axt
PHILIP AXT
Solicitor General of North Dakota

CERTIFICATE OF SERVICE

I hereby certify that on June 7, 2024, the foregoing Amended Motion for Stay was served electronically on all registered counsel through the Court's CM/ECF system.

/s/ Philip Axt
PHILIP AXT
Solicitor General of North Dakota

EXHIBIT 8

Declaration of Penny E. Lassiter

***Blue Ridge Environmental Defense League v. Regan*,**
No. 22-03134 (D.D.C.)

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

BLUE RIDGE ENVIRONMENTAL DEFENSE LEAGUE, *et al.*,	)	
Plaintiffs,	)	
v.	)	Case No. 1:22-cv-03134
MICHAEL S. REGAN, in his official capacity as Administrator of the U.S. Environmental Protection Agency,	)	Hon. Amit P. Mehta
Defendant.	)	

DECLARATION OF PENNY E. LASSITER

1. I, Penny E. Lassiter, under penalty of perjury, affirm and declare that the following statements are true and correct to the best of my knowledge and belief and are based on my personal knowledge or on information contained in the records of the United States Environmental Protection Agency ("EPA") or supplied to me by EPA employees under my supervision.

2. I am the Director of the Sector Policies and Programs Division ("SPPD") within the Office of Air Quality Planning and Standards ("OAQPS"), Office of Air and Radiation ("OAR") at EPA. I have held this position in a permanent capacity since May 26, 2019. SPPD is the division within OAQPS that has responsibility for developing, reviewing, and revising, as required and appropriate, regulations under section 112 of the Clean Air Act ("CAA"), 42 U.S.C. § 7412, the National

Emission Standards for Hazardous Air Pollutants ("NESHAP") program, including regulations relevant to hazardous waste combustion.

3. As Director of SPPD, I am responsible for overseeing EPA's promulgation of regulations under the NESHAP and other CAA programs. From my longstanding experience, including 26 years of leadership in SPPD and its predecessor division with similar regulatory development responsibilities, I am very familiar with the processes required in developing and promulgating major EPA regulations under the CAA and the time periods allotted for EPA to take regulatory actions thereunder, including issuing rules pursuant to CAA sections 112(f)(2)(A) and 112(d)(6), 42 U.S.C. §§ 7412(f)(2)(A) and 7412(d)(6), respectively. I have also relied upon my staff to provide the factual information concerning the regulatory steps and schedule needed for the particular CAA section 112, 42 U.S.C. § 7412, actions at issue in the case for which I make this declaration.

4. At this time, the earliest possible completion date for a final rule making for the National Emission Standards for Hazardous Air Pollutants from Hazardous Waste Combustors (HWC NESHAP) is August 14, 2026. The dates for the rule making phases described in my July 27, 2023, declaration are updated as follows to reflect events since that time; asterisks indicate where time was removed from the phase in comparison to the July 27, 2023, declaration and why:

Phases from July 27, 2023 Declaration	**Completion or Estimated Completion Date**
Phase I. Project Kickoff	Completed June 2023
Phase II. Preliminary Information Collection	Completed July 2023
Phase III. Supplemental Information Collection and Outreach to Stakeholders	November 22, 2024 (1 month)
Phase IV. Data Analyses and Modeling File Development	December 30, 2024 (1 month)
Phase V. Residual Risk Analysis and Technology Review	April 29, 2025 (4 months)
Phase VI. Development and Completion of Proposed Rule	October 24, 2025 (6 months) * Two months of exclusive OMB time removed
Phase VII. Proposed Rule Publication and Comment Period	January 22, 2026 (3 months)
Phase VIII. Summarization of Comments, Development of Comment Responses and Analysis of Data	March 23, 2026 (2 months)
Phase IX. Development and Completion of Final Rule	August 14, 2026 (5 months) * Remaining two months of exclusive OMB time removed

5. Analysis of title V permits during Phase II showed that some hazardous waste combustors have emissions limits for hazardous air pollutants (HAPs) that are not currently regulated in the HWC NESHAP, including polychlorinated biphenyls (PCBs). Other HAPs or HAP precursors of potential interest at that time

included fluorinated compounds, brominated compounds, polycyclic aromatic hydrocarbons (PAHs), hydrogen cyanide (HCN), and asbestos.

6. My staff therefore issued the "first survey" to nine entities seeking information that was needed to identify the actual additional HAPs or HAP precursors that should be regulated. To expedite the rulemaking process, we chose to survey nine entities that own or operate hazardous waste combustors. Together, these nine entities are representative of the six distinct HWC NESHAP subcategories. If EPA surveys more than nine entities, it must do so through a formal information collection request issued pursuant to the Paperwork Reduction Act. It can take over a year to issue such a request to recipients because it must be developed though public notice and comment and must be approved by the White House's Office of Management and Budget.

7. The first survey was issued on August 17, 2023, and the initial response deadline was October 31, 2023. Due to multiple requests for an extension, we extended the deadline to November 15, 2023. Copies of all responses with confidential business information removed are publicly available at http://www.regulations.gov (Docket ID EPA-HQ-OAR-2004-0022).

8. Based on the responses to the first survey, in Phase III my staff issued the "second survey" of the information collection request, which was an emissions testing request. EPA requested testing of 23 HWCs owned or operated by 9 entities

and targeted four HAPs and one potential HAP surrogate: PCBs, polycyclic aromatic hydrocarbons (PAHs, a class of organic HAPs), hydrogen fluoride (HF), hydrogen cyanide (HCN), and hydrogen bromide (HBr). While HBr itself is not a HAP, it can potentially serve as a surrogate for the release of brominated HAP emissions. Because responses to the first survey indicated that some hazardous waste combustors do not combust the chemical components required to form some of the HAPs, testing requirements in the second survey were tailored to each survey recipient.

9. The initial deadline for providing emission test results in response to the second survey was August 30, 2024. Some companies asked for and were granted deadline extensions for operational reasons (*i.e.*, their combustors were undergoing maintenance and were not operational during the expected testing window). In August 2024, multiple companies contacted EPA and asked for emissions testing extensions due to delays at a third-party laboratory, Eurofins Environment Testing - Knoxville. That laboratory is one of three that, to our knowledge, can process the required samples nationwide. EPA contacted the laboratory, which confirmed a significant delay in sample processing. Because companies had completed their tests in a timely manner but had not yet received their results for reasons beyond their control, EPA extended the emissions testing deadline to September 29, 2024.

In September 2024, because EPA learned that some laboratory results had still not been returned, EPA extended select deadlines until October 31, 2024.

10. On October 30, 2024, one entity requested an extension to November 22, 2024, because they received their final analytical results from the laboratory on October 23, 2024. This data must still undergo review by the facility and appropriate data entry so that the company can use the data to calculate the emission results to respond to the second survey. EPA believes that this timeline is reasonable and granted this request.

11. As of November 1, 2024, EPA has received 19 of 23 emissions testing responses, or 83%, from 7 of 9 entities. We expect to receive results from one of the two remaining entities by November 22, 2024. We do not expect another extension request from this entity because the entity, which is submitting results for three liquid fuel boilers, is no longer waiting on analytical results.

12. EPA has received no test results from the last remaining entity, Norlite, LLC, which suspended operations of their HWCs in March 2024 before testing could be conducted and has not restarted. As described in paragraphs 7 through 9 of my declaration dated September 15, 2023, EPA must obtain emissions testing data in order to develop emissions limits for currently unregulated HAPs. Since Norlite, LLC operates the only hazardous waste burning lightweight aggregate

kilns in the country (one of the six distinct HWC NESHAP subcategories), we will move forward with the RTR rulemaking process with the currently regulated HAPs for lightweight aggregate kilns and require the emissions testing for this subcategory for the currently unregulated HAPs if and when the facility restarts operations.

13. Because we are missing data from only two of the six distinct HWC NESHAP subcategories (liquid fuel boilers and lightweight aggregate kilns), we are proceeding with the rulemaking process for unregulated HAPs for the other four subcategories in the interim. We are also proceeding with the rulemaking process for regulated HAPs from all six HWC NESHAP subcategories. EPA collected available data for regulated HAPs during Phase II of the rulemaking; the second survey was specific to unregulated HAPs.

14. To the extent possible, EPA already is conducting Phase IV by organizing and analyzing data that we have collected. Most of the information collected in Phase II was in PDF format, which cannot be used directly in calculations. We have been extracting that data into a usable format and expect to complete that process in November 2024, facilitating completion of Phase IV in December 2024.

Executed this 4th day of November 2024.

PENNY LASSITER

Digitally signed by PENNY LASSITER
Date: 2024.11.04 13:14:14 -05'00'

Penny Lassiter

CERTIFICATE OF SERVICE

I, Heather E. Gange, hereby certify that on November 4, 2024, I electronically filed the foregoing with the Clerk of Court using the ECF system, which effected service on counsel for all parties of record.

/s/ Heather E. Gange
Heather E. Gange

EXHIBIT 9

Declaration of Panagiotis E. Tsirigotis

***Sierra Club v. Pruitt*, No. 16-02461 (D.D.C.)**

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

BLUE RIDGE ENVIRONMENTAL DEFENSE LEAGUE, *et al.*, *Plaintiffs*, v. SCOTT PRUITT, Administrator, United States Environmental Protection Agency, *Defendant.*	Civil Action 1:16-CV-00364-CRC
CALIFORNIA COMMUNITIES AGAINST TOXICS, *et al.*, *Plaintiffs*, v. SCOTT PRUITT, Administrator, United States Environmental Protection Agency, *Defendant.*	Civil Action 1:15-CV-00512-TSC

CORRECTED DECLARATION OF PANAGIOTIS E. TSIRIGOTIS

1. I, Panagiotis E. Tsirigotis, under penalty of perjury, affirm and declare that the following statements are true and correct to the best of my knowledge and belief and are based on my own personal knowledge or on

information contained in the records of the United States Environmental Protection Agency (EPA) or supplied to me by EPA employees under my supervision.

2. I am the Director of the Sector Policies and Programs Division (SPPD) within the Office of Air Quality Planning and Standards (OAQPS), Office of Air and Radiation (OAR) at EPA, a position I have held since February 6, 2006. SPPD is the division within OAQPS that has responsibility for, among other things, developing regulations, policy, and guidance associated with section 112 of the Clean Air Act (CAA), 42 U.S.C. § 7412, which is the national emission standards for hazardous air pollutants (NESHAP) program.

A. Responses to Questions Raised by the Court

3. At the hearing held on February 2, 2017, Judge Cooper requested a declaration from EPA providing additional information concerning the resources available to SPPD, including: (1) How many employees are part of SPPD; (2) How many employees in SPPD work on the risk and technology reviews (RTRs); (3) What are the other responsibilities of SPPD; (4) On what discretionary projects does SPPD work; and (5) To what extent can SPPD call on other Agency resources to complete RTR actions? Judge Cooper subsequently issued an order requiring EPA to submit such a declaration and giving Plaintiffs an opportunity to respond. This declaration is EPA's response to that order.

ED_021114_00003489-00110

4. SPPD is the division of EPA responsible for coordinating efforts of the multiple divisions and offices within EPA that support the RTR program, and SPPD also is responsible for conducting information collection, performing many of the required technical analyses, and drafting the regulatory package and much of the supporting documentation for RTRs. An SPPD staff member serves as the project lead for all RTRs. As discussed in my earlier declaration, the project lead relies on the technical expertise of other SPPD staff as well as staff from other EPA divisions and offices, as well as contractors, to complete the technical analyses and prepare the regulatory package. Other EPA offices, such as the Office of Research and Development, Office of Policy, and the Office of General Counsel, participate in workgroups for each RTR project. Workgroup members provide expertise including technical (such as risk assessment and monitoring), legal (both defensibility and enforceability), and economics. Overall, the projects require considerable coordination, communication, and technical expertise. SPPD currently has 87 employees, 79 of whom work on RTRs (which are described in detail in my previous declaration) in some capacity. Forty-two of the 79 employees are either project leads or project assistants who conduct the day-to-day project activities involved with conducting the required reviews and developing regulations, as necessary. These same staff also serve as the project leads and assistants for SPPD's other CAA-mandated regulatory work, which altogether

(including the RTRs) results in a total of about 250 regulations subject to periodic review requirements. In addition to the project leads and assistants, there are 6 managers who report directly to me and manage staff, including the project leads and assistants, on multiple projects required under the CAA, including RTRs, as described in paragraphs 5 through 11 below. There also is a group of 6 policy/program development specialists including a manager who have multiple responsibilities related to RTRs and other regulatory projects, including: reviewing all regulatory packages; providing up-to-date guidance materials to staff; supporting litigation activities including the development of legal briefs; developing schedules and tracking progress; coordinating with other EPA offices; identifying regulatory priorities; and developing and implementing policies regarding technical issues in order to ensure that SPPD's rules are consistent with statutory requirements and internally consistent. SPPD also includes a group of 10 staff, including a manager, responsible for monitoring/recordkeeping and reporting. This group develops monitoring requirements for RTRs and other rules, reviews emissions test reports that are used in RTRs and other rules, and develops electronic systems for submittal of emissions data and other information by entities subject to RTRs and other rules. I also manage 7 additional staff, in my division front office, who provide support with budgeting, planning, training, and oversight of SPPD's regulatory programs. Three staff are communication specialists who are

responsible for preparing briefings and providing technical editing support for RTRs and other work products produced by SPPD. Four staff are administrative support, who provide administrative support for all of the work in SPPD, including editing of regulatory packages, setting up meetings, setting up travel, timekeeping, and word processing. Overall, I estimate that the equivalent of 38 full-time staff work on RTRs. For the remainder of this declaration, I use the term full-time equivalents or FTEs to indicate the estimates of how many staff are dedicated to particular responsibilities. As described in paragraphs 6 through 11, SPPD's responsibilities include many other types of regulations and reviews, and the statutory requirements simply cannot be met given the size of the organization. I note that a typical regulatory project requires up to 3 FTEs within SPPD, along with contractor support, and each of the project leads and assistants typically are assigned to multiple projects.

5. RTRs are a significant part of our current work. These reviews must be conducted for all source categories that are subject to maximum achievable control technology (MACT) standards and all section 129 solid waste incinerator rules. There are approximately 120 categories subject to this requirement. We have completed the RTRs for almost 60 of the categories, and RTRs for about 50 additional categories are overdue or will be due soon.

6. As described in the following paragraphs, SPPD is also primarily responsible for developing and reviewing federal air regulations that apply to stationary sources of air pollution under CAA sections 111, 112, and 129.

7. CAA section 111(b) requires EPA to promulgate standards for certain pollutants. These standards, which apply to new sources, are known as new source performance standards (NSPS). EPA also is required to review and, if appropriate, revise each NSPS every 8 years. There are about 70 NSPS that are subject to this ongoing requirement. These projects typically require a comprehensive review of the source category which includes determining whether substantive changes or improvements to the standards are needed. An estimated 11 staff in SPPD (full-time equivalents) work on the review and revision of NSPS, but significantly more staff would be needed to conduct all of the statutorily required reviews. SPPD continues to prioritize and conduct these reviews as staff and contractor resources allow.

8. Under CAA section 112, EPA is required to identify and list categories of stationary sources that emit any of the 187 hazardous air pollutants (HAP) listed in CAA section 112(b)(1) (or any HAP subsequently added by EPA) and then to develop national emission standards for hazardous air pollutants (NESHAP), for those source categories by specified statutory deadlines. These actions are largely completed, although several NESHAP are still in litigation and

several others have been vacated or remanded by the court of appeals. An estimated 15 staff in SPPD (full-time equivalents) are working on NESHAP (not including RTRs). The NESHAP that apply to major stationary sources of HAP emissions, along with a subset of NESHAP that apply to smaller area sources of HAP emissions, are referred to as MACT standards, and EPA is required to perform the RTR review for all MACT standards as mentioned in paragraph 5. The other NESHAP, which apply to most of the categories of "area" or non-major sources, are referred to as generally available control standards (GACT) and these standards are subject only to the CAA section 112(d)(6) technology review and not to the CAA section 112(f)(2) risk review, as described in paragraph 9.

9. There are about 60 source categories that are only subject to the CAA section 112(d)(6) technology review requirement. The original rules for these source categories were mostly promulgated between 2007 and 2009. To date, EPA has prioritized conducting the technology reviews for those source categories that are also subject to the residual risk review requirement.

10. SPPD is responsible for developing standards under CAA section 129 for solid waste incinerators. SPPD has already promulgated most of the statutorily required rules, although several are subject to ongoing litigation. SPPD is also responsible for promulgating federal plans associated with the section 129 standards. An estimated 4 staff in SPPD (full-time equivalents) work on aspects of

ED_021114_00003489-00115

the section 129 standards. As noted above, all section 129 rules are subject to the requirement to conduct risk reviews of the technology based standards. These rules are also subject to a technology review requirement although under section 129 such reviews are required at 5 year intervals. The staff resources devoted to the review of the section 129 rules are included in the resources we have identified for the RTRs generally.

11. Other activities performed by SPPD include: (1) Developing existing source performance standards under CAA section 111(d); (2) Reviewing and revising (if necessary) emissions factors used for estimating emissions of volatile organic compounds, carbon monoxide and oxides of nitrogen every 3 years as required under section 130 of the CAA; (3) Responding to petitions to add and remove HAPs from the list in CAA section 112(b) of the CAA and major sources from the list in CAA section 112(c); and (4) Periodically reviewing volatile organic compound rules and Control Techniques Guidelines developed under CAA section 183(e).

12. In addition to reviewing, revising and developing regulations and performing other statutorily prescribed actions as described above, SPPD provides programmatic support for these actions. While these activities are not specifically mandated by the statute, SPPD believes they are necessary to support issuance and implementation of the actions that are prescribed by the statute. These activities

include providing technical expertise and other support for litigation on the rules developed by SPPD; responding to Freedom of Information Act requests; responding to Congressional inquiries; providing technical expertise and guidance to resolve issues concerning implementation of rules developed by SPPD; optimizing and updating procedures and systems used to develop rules and improved efficiency, including quality assurance tools for large data files, comment summary systems, guidance development, and electronic data submittal systems, such as systems for stationary sources to submit emissions data; performing stakeholder outreach, including webinars, other presentations, hotlines, and face-to-face meetings to communicate the requirements of new regulations; and supporting activities, undertaken by other parts of EPA, to implement the rules written by SPPD. These types of activities are performed by most of the technical staff in SPPD as part of their general duties concerning rules and actions for which they are responsible or part of a team. Overall, an estimated 19 SPPD staff (full-time equivalents) work on these other projects and activities.

13. In addition to the activities described above that are prescribed by the statute or that are related to actions prescribed by the statute, SPPD does perform discretionary actions. Historically, most of SPPD's work involves developing, implementing and reviewing statutorily required regulations. The discretionary items that SPPD generally undertakes include many of the types of activities that

ED_021114_00003489-00117

are expected of high performing organizations that are focused on serving clients. Some examples include:

- Professional development of SPPD staff;
- Attendance at technical conferences;
- Development of databases and information technology systems for enabling transparency and access to information related to our programs.

These types of activities constitute a small percentage of SPPD's work that is difficult to estimate but is not appreciable.

14. Administration priorities also can result in SPPD being tasked with certain additional activities that are not required by statute, including development of regulations. Over the past five years, SPPD has expended significant resources on one such action, the Clean Power Plan. Because the Clean Power Plan was developed under the authority of CAA section 111, the administration tasked SPPD with managing the rulemaking process for the plan, the development of which relied on resources from many offices across the agency. The rule was finalized in 2015 and the staff who worked on that rule have now been assigned to work on other projects as described in paragraphs 5 thru 11 above.

15. In developing RTR actions, SPPD relies on resources in other parts of the agency, as well as contractor resources, to ensure that we engage individuals

ED_021114_00003489-00118

with the needed expertise to resolve the multitude of issues that may arise. As described above and in my earlier declaration, development of an RTR rulemaking requires the involvement of numerous individuals with different skill sets. The schedule provided in my previous declaration to this court includes leveraging available resources from outside of SPPD to assist with various issues and to serve on the project workgroups, which are described in my earlier declaration. Most critically, the Health and Environmental Impacts Division (HEID) within OAQPS also has significant responsibilities related to the RTR projects. The risk assessments described in my earlier declaration are conducted by HEID's Air Toxics Assessment Group, and economic analyses are conducted by HEID's Air Economics Group. Overall, 9 HEID staff work on RTR projects. Of these, about 6 HEID staff (full-time equivalents) scientists and engineers serve as risk assessment leads, and 3 HEID staff (full-time equivalents) serve as lead economists. In recent years, HEID has conducted day-to-day risk and economic project activities for between 8 and 11 RTR source categories per year. This level of support is near HEID's capacity to provide such support. Other workgroup members include staff from: (1) the Office of General Counsel, who provide legal advice and review; (2) the Office of Research Development, who provide additional technical support, evaluate health benchmark information for various pollutants, and help ensure consistency with other Agency actions; (3) the Office of Policy, who evaluate

ED_021114_00003489-00119

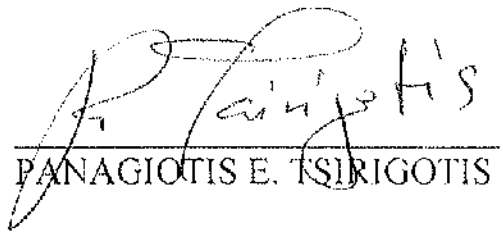
consistency across EPA programs and coordinate review with the Office of Management and Budget; (4) the Office of Enforcement and Compliance Assurance, who help to ensure that rules are written in a manner than can be easily understood and implemented; and (5) regional offices who have direct experience with the industrial facilities being regulated. We also make full use of all available contract resources when conducting RTR projects. Contractors provide support in many ways, including conducting technical analyses, drafting technical memoranda explaining those analyses, summarizing comments, and other non-decisional aspects of rulemaking.

16. SPPD leverages resources from other parts of the Agency as explained above; however, the division generally cannot rely on other staff within the Agency or on contractors to perform the tasks currently performed by SPPD staff. As noted, SPPD is a division within the Office of Air Quality and Planning Standards (OAQPS), which is part of the Office of Air and Radiation (OAR). The Office of Air and Radiation is responsible for implementing the CAA. Each of the offices with OAR is responsible for implementing specific CAA programs and many of those programs are subject to statutory deadlines. Even assuming those offices have resources devoted to activities that could be considered discretionary, the staff do not have expertise that would allow them to step into the shoes of the

experts in SPPD with little to no training. The offices outside OAQPS include staff with expertise in significantly different programs, such as mobile sources and stratospheric ozone protection. Even within OAQPS, the other offices typically have significantly different expertise, such as developing national ambient air quality standards (NAAQS) and working with states on developing plans to meet the NAAQS. The staff responsible for RTR rulemaking are doing a specialized job that requires specialized training and experience. An environmental engineering or environmental science background, along with expertise in the industrial sectors being regulated are necessary in order to effectively lead RTR projects. It also is important to note that contractors cannot perform any "inherently governmental" tasks, such as selecting regulatory options and establishing policy, associated with RTR rulemaking. Finally, the time that is needed to conduct the individual tasks cannot be shortened by the addition of more staff or contractor resources in many instances. For example, the length of the public comment period is prescribed by the statute; the time to perform the risk modeling is dependent on technical constraints; and the time to collect data from industry is dependent on limitations of the individual companies, including the time it takes to perform testing, if required.

17. In summary, due to SPPD's considerable workload, the available staff, and budgetary constraints, SPPD must prioritize work, and it is usually the case that the available resources are insufficient to allow all of the required work to be completed in a timely fashion.

SO DECLARED:



PANAGIOTIS E. TSIRIGOTIS

Dated: 3/1/17

ED_021114_00003489-00122

Message

From: Salenda, M. (Marco) [marco.salenda@nouryon.com]
Sent: 9/10/2025 8:47:30 PM
To: AirAction [AirAction@epa.gov]
Subject: Re: Presidential Exemption: HON Rule: Nouryon Functional Chemicals LLC

Caution: This email originated from outside EPA, please exercise additional caution when deciding whether to open attachments or click on provided links.

Hello,

I'm reaching out to get an understanding on why Nouryon Functional Chemicals LLC (located in 13440 US-43 North, Axis, AL 36505), was not granted the exemption that we requested. Please provide a contact information within USEPA whom I can discuss this matter.

https://www.whitehouse.gov/presidential-actions/2025/07/regulatory-relief-for-certain-stationary-sources-to-promote-american-chemical-manufacturing-security/#:~:text=This%20Exemption%20applies%20to%20all,and%203%20of%20this%20proclamation.

REGULATORY RELIEF FOR CERTAIN STATIONARY SOURCES TO PROMOTE AMERICAN CHEMICAL MANUFACTURING SECURITY - The White House

1. The United States relies on a strong chemical manufacturing sector to support industries like energy national defense, agriculture, and health care. These facilities produce essential inputs ...

Thank you.

Marco A. Salenda

Regional Environmental Manager - North America

Integrated Supply Chain

T: +1 (423) 493-9363

M: +1 (423) 509-5124

E: marco.salenda@nouryon.com

909 Mueller Avenue

Chattanooga, TN 37406

USA

Nouryon

www.nouryon.com

The information contained in this message, including any attachments, may be privileged and confidential and is intended only for the use of the individual and/or entity identified in the address of this message. If you are not an intended recipient, please notify the sender and delete and destroy this message, including any back-up copies. Please refer to www.nouryon.com legal-entities for further legal information regarding the sending entity if from the EU, Norway, Turkey, Ukraine or Switzerland.

From: AirAction <AirAction@epa.gov>
Sent: Tuesday, April 1, 2025 11:58 AM
To: Mitchell, M.M. (Michael) <michael.mitchell@nouryon.com>
Cc: Salenda, M. (Marco) <marco.salenda@nouryon.com>; Johnston, S.R.J. (Renee) <samantha.johnston@nouryon.com>
Subject: RE: Presidential Exemption: HON Rule: Nouryon Functional Chemicals LLC

Some people who received this message don't often get email from airaction@epa.gov. Learn why this is important

>>>>>>>>>>>>This message is from an external sender<<<<<<<<<<<<

>>>>>>>>>>>>>> Be cautious of links and attachments <<<<<<<<<<<<<

Thank you for emailing the AirAction mailbox to request a Presidential Exemption under section 112(i)(4) of the Clean Air Act and for engaging with EPA in advancing President Trump's Executive Orders and Powering the Great American Comeback. We have received your email and will be in contact soon. If you have Confidential Business Information (CBI) that you'd like to submit, please submit it in electronic version to the CBI@epa.gov inbox or in hardcopy to:

USEPA, OAQPS
CORE CBI Office
4930 Old Page Road
Durham, NC 27703

From: Mitchell, M.M. (Michael) <michael.mitchell@nouryon.com>
Sent: Monday, March 31, 2025 5:38 PM
To: AirAction <AirAction@epa.gov>
Cc: Salenda, M. (Marco) <marco.salenda@nouryon.com>; Johnston, S.R.J. (Renee) <samantha.johnston@nouryon.com>
Subject: Presidential Exemption: HON Rule: Nouryon Functional Chemicals LLC

Caution: This email originated from outside EPA, please exercise additional caution when deciding whether to open attachments or click on provided links.

Subject: Presidential Exemption: HON Rule: Nouryon Functional Chemicals LLC
13440 US-43 North, Axis, AL 36505

To Whom It May Concern:

Nouryon Functional Chemicals LLC (Nouryon) requests an extension of the compliance period as follows:

- Emission Standard/Limitations:
  - 40 CFR 63.670(i) – This part of the rule requires that the owner or operator of a flare shall install, operate, calibrate, and maintain a monitoring system capable of continuously measuring, calculating, and recording the volumetric flow rate in the flare header or headers that feed the flare as well as any flare supplemental gas used.
  - 40 CFR 63.670(j) – This part of the rule requires the owner or operator monitor the net heating value
- Facility: Nouryon Functional Chemicals LLC
- Equipment: Flare
- Length of compliance period extension requested: two years (July 15, 2027 to July 15, 2029)
- Justification:
  - Due to the harsh nature of the vent gas going to the flare, Nouryon requests an extension of the compliance period to identify monitoring equipment that can withstand the harsh nature of the vent gases being handled, in a reliable manner that would not cause an increase in emissions due to the increased shutdowns for repair/replacement/modification.

- Granting the extension is in the national security interest of the United States as production of carbon disulfide at the facility may be negatively impacted. Nouryon is a major producer of carbon disulfide, which is a vital raw material in the production of other chemicals used in various industries.

If you require any additional information, please contact me at 406.902.9019 or via email at Michael.mitchell@nouryon.com.

Sincerely,

Michael Mitchell
Site Director
T. 251-679-4221 x250
E. michael.mitchell@nouryon.com

Nouryon
13440 Hwy 43 N
36505, Axis
United States

This email has been scanned by Nouryon for Viruses and Spam.
For more information please contact your local IT Service Desk.

Message

From: Wendy Riggs [wriggs@deroyal.com]
Sent: 7/14/2025 6:46:28 PM
To: AirAction [AirAction@epa.gov]
Subject: RE: [Caution: External]RE: Presidential Exemption: NESHAP: EtO Emissions Standards for Sterilization Facilities Residual Risk and Technology Review (89 FR 24090; April 5, 2024) (Sterilizer Rule): DeRoyal Industries, Inc., 1135 and 1211 Highway 33 South, N

Caution: This email originated from outside EPA, please exercise additional caution when deciding whether to open attachments or click on provided links.

Good afternoon. I am following up regarding the status of our application. Is there a timeline for a response regarding our request for presidential exemption?

Thank you,

Wendy Riggs, CSP
Director of Risk Management
x22320 | 865.362.2320 | 865.362.3751(f) | wriggs@deroyal.com

DeRoyal
DeRoyal Industries, Inc., 200 DeBusk Lane, Powell, TN 37849

From: AirAction <AirAction@epa.gov>
Sent: Monday, March 31, 2025 3:35 PM
To: Wendy Riggs <wriggs@deroyal.com>
Subject: [Caution: External]RE: Presidential Exemption: NESHAP: EtO Emissions Standards for Sterilization Facilities Residual Risk and Technology Review (89 FR 24090; April 5, 2024) (Sterilizer Rule): DeRoyal Industries, Inc., 1135 and 1211 Highway 33 South, Ne...

Thank you for emailing the AirAction mailbox to request a Presidential Exemption under section 112(i)(4) of the Clean Air Act and for engaging with EPA in advancing President Trump's Executive Orders and Powering the Great American Comeback. We have received your email and will be in contact soon. If you have Confidential Business Information (CBI) that you'd like to submit, please submit it in electronic version to the CBI@epa.gov inbox or in hardcopy to:

USEPA, OAQPS

CORE CBI Office
4930 Old Page Road
Durham, NC 27703

From: Wendy Riggs <wriggs@deroyal.com>
Sent: Monday, March 31, 2025 3:05 PM
To: AirAction <AirAction@epa.gov>
Subject: Presidential Exemption: NESHAP: EtO Emissions Standards for Sterilization Facilities Residual Risk and Technology Review (89 FR 24090; April 5, 2024) (Sterilizer Rule): DeRoyal Industries, Inc., 1135 and 1211 Highway 33 South, New Tazewell TN 37825

Caution: This email originated from outside EPA, please exercise additional caution when deciding whether to open attachments or click on provided links.

See attached request for presidential exemption signed by DeRoyal's CEO and President for the following two facilities:

1135 Highway 33 South, New Tazewell, TN 37825
1211 Highway 33 South, New Tazewell, TN 37825

If you require further information, please contact me.

Thank you,

Wendy Riggs, CSP
Director of Risk Management
x22320 | 865.362.2320 | 865.362.3751(f) | wriggs@deroyal.com

DeRoyal
DeRoyal Industries, Inc., 200 DeBusk Lane, Powell, TN 37849

Message

From: Ray O'Hara [rohara@busseinc.com]
Sent: 7/21/2025 2:59:20 PM
To: AirAction [AirAction@epa.gov]; OAQPS_CBI [OAQPS_CBI@epa.gov]
CC: Jane Cardinale [redacted] Muhamad Ansari [mansari@busseinc.com]; Ronald Kramer [rkramer@busseinc.com]; Ray O'Hara [rohara@busseinc.com]
Subject: RE: Presidential Exemption: Ethylene Oxide Emissions Standards for Sterilization Facilities: National Emission Standards for Hazardous Air Pollutants (NESHAP) : Long Island Sterilization

Importance:High

Caution: This email originated from outside EPA, please exercise additional caution when deciding whether to open attachments or click on provided links.

To whom it may concern,

I wonder if you would please help my company out with a problem.

Our name, Long Island Sterilization, located in Hauppauge, NY was not listed on the recent announcement from the White House announcement regarding a two year extension on the NESHAP rules.

As you can see below, we had submitted our request at the appropriate time.

Thank you very much, if you have any questions that you need answers for please contact me directly?

Sincerely,

Ray

Ray O'Hara
Vice President

Busse Hospital Disposables
75 Arkay Drive
Hauppauge, NY 11788

800-645-6526 ext. 242
www.busseinc.com

A Certified Woman Owned and Operated Small Business

The information contained in this email message, including any attachments, is intended solely for use by the individual or entity named above and may be confidential. If the reader of this message is not the intended recipient, you are hereby notified that you must not read, use, disclose, distribute or copy any part of this communication. If you have received this communication in error, please immediately notify me by email and destroy the original message, including any attachments. Thank you.

From: AirAction <AirAction@epa.gov>
Sent: Friday, March 28, 2025 12:30 PM
To: Ray O'Hara <rohara@busseinc.com>
Cc: Jane Cardinale [Ex. 6 Personal Privacy (PP)] Muhamad Ansari <mansari@busseinc.com>; Ronald Kramer <rkramer@busseinc.com>
Subject: RE: Presidential Exemption: Ethylene Oxide Emissions Standards for Sterilization Facilities: National Emission Standards for Hazardous Air Pollutants (NESHAP) : Long Island Sterilization

CAUTION: This email originated from outside the organization.
Do not click links or open attachments unless you recognize the sender and know the content is safe.

Thank you for emailing the AirAction mailbox to request a Presidential Exemption under section 112(i)(4) of the Clean Air Act and for engaging with EPA in advancing President Trump's Executive Orders and Powering the Great American Comeback. We have received your email and will be in contact soon. If you have Confidential Business Information (CBI) that you'd like to submit, please submit it in electronic version to the CBI@epa.gov inbox or in hardcopy to:

USEPA, OAQPS
CORE CBI Office
4930 Old Page Road
Durham, NC 27703

From: Ray O'Hara <rohara@busseinc.com>
Sent: Friday, March 28, 2025 12:26 PM
To: AirAction <AirAction@epa.gov>
Cc: Ray O'Hara <rohara@busseinc.com>; Jane Cardinale [Ex. 6 Personal Privacy (PP)]; Muhamad Ansari <mansari@busseinc.com>; Ronald Kramer <rkramer@busseinc.com>
Subject: Presidential Exemption: Ethylene Oxide Emissions Standards for Sterilization Facilities: National Emission Standards for Hazardous Air Pollutants (NESHAP) : Long Island Sterilization
Importance: High

Caution: This email originated from outside EPA, please exercise additional caution when deciding whether to open attachments or click on provided links.

To whom it may concern,

We are requesting a Presidential Exemption for Ethylene Oxide Emissions Standards for Sterilization Facilities: **National Emission Standards for Hazardous Air Pollutants (NESHAP)**.

This would be for our ETO sterilizing facility: Long Island Sterilization.

Long Island Sterilization has common ownership with our medical device manufacturing company, Robert Busse & Co. dba Busse Hospital Disposables.

Busse Hospital Disposables (Busse) is a small woman owned company located in the Hauppauge Industrial Park located in Hauppauge, NY. our facilities are located two blocks from each other.

Busse Hospital Disposables is in direct control of Long Island Sterilization (LIS) , we have been sterilizing medical devices for over 26 years.

We are currently operating under a permit from the New York DEC. We have applied for an extension for our permit to take us into next year.

We are currently in full compliance with NYS DEC regulations but will need to start upgrading our sterilization facility to be incompliance with the NESHAP rules.

Busse Hospital Disposables & LIS injection mold, assemble, package and sterilize over 18 million medical products / yr.

Busse has been in operation as a manufacturer for over 45 years and in business for over 60 years.

We currently have 260 full time employees.

Our products are used throughout the entire healthcare spectrum from Hospitals to Ambulatory Centers, Doctors offices and nursing homes

We currently have a Federal Supply Schedule contract with VA Health system.

Most of the sales of our products are done through our distributors such as Cardinal Health, Medline Industries, Henry Schein, McKesson Medical, Owens & Minor and over 100 local and regional distributors.

We also export our medical devices overseas.

Along with a full line of single use, procedural kits & trays, surgical drapes and OR suction products under the Busse brand, we also manufacture private branded products for many well-known companies in the US.

We also manufacture OEM parts to other medical device manufacturers for use in their sterile procedural kits, trays & surgical packs.

We are requesting a period of at least two years to become compliant with the new NESHAP regulations. We are asking this because:

1) We feel the necessary upgrades to our existing equipment along with new construction in our facility will be quite costly for our company.

2) There will also be a required purchase of additional monitoring equipment. This will be a very large capital expense for us and most be done in stages for cash flow as well as staying in successful day to day operation as a business. The technology exists but is not inexpensive.

One of the bullet points you ask us to include was explanation as to why this extension "is in the national security interest of the United States".

I believe the best we can say is simply that we manufacture and sell at an average over 18 million sterile medical devices annually. 98% are sold to be used in the United Sates.

Lastly, many of our products are used during lifesaving surgeries as well as being used in the normal Emergency Room's and physician's offices throughout the United States.

I hope that we have answered your questions to your satisfaction and hope you can help us by including us in this program.

If you need any additional information or would like to visit our two facilities just let me know.

Sincerely,

Ray

Ray O'Hara
Vice President

Busse Hospital Disposables
75 Arkay Drive
Hauppauge, NY 11788
800-645-6526 ext. 242
www.busseinc.com

WBENC *A Certified Woman Owned and Operated Small Business*

The information contained in this email message, including any attachments, is intended solely for use by the individual or entity named above and may be confidential. If the reader of this message is not the intended recipient, you are hereby notified that you must not read, use, disclose, distribute or copy any part of this communication. If you have received this communication in error, please immediately notify me by email and destroy the original message, including any attachments. Thank you.

Message

From: Amanda Slate [ASlate@elitespice.com]
Sent: 8/25/2025 8:18:30 PM
To: AirAction [AirAction@epa.gov]
CC: George Meyer [GMeyer@elitespice.com]
Subject: RE: Presidential Exemption: NESHAP: EtO Emissions Standards for Sterilization Facilities: Elite Spice Inc.

Caution: This email originated from outside EPA, please exercise additional caution when deciding whether to open attachments or click on provided links.

Hello,

I'm following up to check on the status of the application for the Presidential Exemption: NESHAP – EtO Emissions Standards for Sterilization Facilities.

I've been made aware that some other companies specializing in medical equipment sterilization with EtO have been granted an extension. Could you let me know if our application is still under review, or if it has been denied?

Any information you can provide would be greatly appreciated.

Thank you,
Amanda

From: AirAction <AirAction@epa.gov>
Sent: Tuesday, April 1, 2025 11:05 AM
To: Amanda Slate <aslate@elitespice.com>
Subject: RE: Presidential Exemption: NESHAP: EtO Emissions Standards for Sterilization Facilities: Elite Spice Inc.

Thank you for emailing the AirAction mailbox to request a Presidential Exemption under section 112(i)(4) of the Clean Air Act and for engaging with EPA in advancing President Trump's Executive Orders and Powering the Great American Comeback. We have received your email and will be in contact soon. If you have Confidential Business Information (CBI) that you'd like to submit, please submit it in electronic version to the CBI@epa.gov inbox or in hardcopy to:

USEPA, OAQPS
CORE CBI Office
4930 Old Page Road
Durham, NC 27703

From: Amanda Slate <aslate@elitespice.com>
Sent: Monday, March 31, 2025 5:03 PM
To: AirAction <AirAction@epa.gov>
Subject: Presidential Exemption: NESHAP: EtO Emissions Standards for Sterilization Facilities: Elite Spice Inc.

Caution: This email originated from outside EPA, please exercise additional caution when deciding whether to open attachments or click on provided links.

Hello,

To whom it may concern.

Please see attached request for a Presidential Exemption.

Feel free to reach out with any questions.

Thank you,

Amanda Slate
Food Safety Process Control | Sterilization Manager
7151 Montevideo Rd. | Jessup, MD 20794
410.796.1900 Ext. 11256
aslate@elitespice.com | www.elitespice.com



Message

From: Lori Carson [Lori.Carson@zeonchemicals.com]
Sent: 4/9/2025 6:10:51 PM
To: AirAction [AirAction@epa.gov]
Subject: Presidential Exemption: HON rule: Zeon Chemicals Kentucky Plant and Zeon Chemicals Mississippi Plant

Caution: This email originated from outside EPA, please exercise additional caution when deciding whether to open attachments or click on provided links.

I respectfully request a 2-year Presidential Exemption from the HON Rule for Zeon Chemicals LP's Louisville, Kentucky plant and Hattiesburg, Mississippi Plant.

Emissions standards or limitations subject to the request
The HON rule (see below) requires facilities subject to the Polymer & Resins I NESHAP to conduct extensive fence line monitoring of facilities for certain air pollutants. The cost of fence line monitoring has been estimated at more than $50,000 per year for our Kentucky Plant which emits less than one ton of the covered chemical per year. The cost of fence line monitoring has been estimated at more than $600,000 per year for our Mississippi Plant which emits 2 pounds or less of the covered chemical per year.

"New Source Performance Standards for the Synthetic Organic Chemical Manufacturing Industry and National Emission Standards for Hazardous Air Pollutants for the Synthetic Organic Chemical Manufacturing Industry and Group I & II Polymers and Resins" (89 FR 42932; May 16, 2024) (HON rule)

Facility(ies) and/or affected source(s)

Zeon Chemicals Kentucky Plant in Louisville, KY
Zeon Chemicals Mississippi Plant in Hattiesburg, MS.

Length of compliance period being requested.

2 years.

Provide a justification to support the request

The requested extension is in the national security interests of the United States. Zeon Chemicals LP produces a domestic supply of elastomers. Our elastomers are used to make parts that are used in vehicles including farming equipment and military vehicles. Our Kentucky Plant makes a base rubber that is used to make components for petroleum extraction and refining equipment. The HON Rule's provisions threaten our ability to remain competitive in our industry. This could impact supply chain resilience and defense/military preparedness. Having domestic supply of parts made from this critical raw material avoids any supply chain interruptions to US industries and military forces due to geopolitical tensions, trade disruptions, natural disasters or other crises. It also ensures that national defense and essential US industrial sectors remain operational. Our elastomer is a critical material for seals, belts and other components of military equipment. Having a domestic supply guarantees the readiness of the armed forces in times of conflict. Similarly, components of petroleum extraction and refining processes made from elastomers allow the industry to maintain operational continuity which is vital for fueling military operations and civilian infrastructure.

ZEON

Lori Carson, PE, CSP | Director of Safety, Health & Environment
4100 Bells Lane | Louisville, KY 40211 | USA
Mobile: +1 502 791 3507 | lori.carson@zeonchemicals.com
zeonchemicals.com

ZEON

Lori Carson Director of Safety, Health & Environment
4100 Bells Lane / B101 Louisville KY, 40211 United States
zeonchemicals.com LinkedIn

ISO 9001/14001/45001 ¦ *Rubber News "Best Places to Work 2024"*

Disclaimer
"This transmission including any attachments is confidential and may be legally privileged. If you are not the intended recipient, or their agent, you are hereby notified that reading, disclosing, copying, distributing or using any information contained in this transmission is strictly prohibited. If you have received this transmission in error, please immediately notify the sender or forward the e-mail to abuse@zeonchemicals.com and destroy the transmission. To opt-out of marketing emails, please contact us at marketing-optout@zeonchemicals.com or +1.502.775.2000. To view our privacy policy, please visit www.zeonchemicals.com/privacy. Thank you for your assistance."

Message

From: Vogel, Robert [robert.vogel@ineos.com]
Sent: 4/11/2025 7:59:54 PM
To: AirAction [AirAction@epa.gov]
Subject: RE: Presidential Exemption: HON Rule (89 FR 42932; May 16, 2024): INEOS Americas LLC – Bayport EO Plant (INEOS)

Caution: This email originated from outside EPA, please exercise additional caution when deciding whether to open attachments or click on provided links.

To Whom It May Concern:

The purpose of this email is to followup on the initial email sent on March 31, 2025 requesting a Presidential Exemption from the HON Rule for the INEOS Americas LLC – Bayport EO Plant.

What is the timeline for responding to the INEOS Presidential Exemption request?

INOES is available to answer any questions or provide additional information as needed to facilitate your review of the request.

Finally, is there a single point of contact that INEOS can contact in the event that INEOS has questions?

Thank you in advance for your review and consideration of this matter.

Please don't hesitate to contact me with questions.

Thank you,
Robert Vogel

INEOS
Oxide

Robert Vogel
Environmental Engineer

Bayport EO Plant
5761 Underwood Road
Pasadena, TX 77507

M: +1 225 892 8296

O: +1 281 474 0482
E: robert.vogel@ineos.com

From: AirAction <AirAction@epa.gov>
Sent: Tuesday, April 1, 2025 9:05 AM
To: Vogel, Robert <robert.vogel@ineos.com>
Subject: RE: Presidential Exemption: HON Rule (89 FR 42932; May 16, 2024): INEOS Americas LLC – Bayport EO Plant (INEOS)

This Message Is From an External Sender
If in doubt, throw it out.

Report Suspicious

Thank you for emailing the AirAction mailbox to request a Presidential Exemption under section 112(i)(4) of the Clean Air Act and for engaging with EPA in advancing President Trump's Executive Orders and Powering the Great American Comeback. We have received your email and will be in contact soon. If you have Confidential Business Information (CBI) that you'd like to submit, please submit it in electronic version to the CBI@epa.gov inbox or in hardcopy to:

USEPA, OAQPS
CORE CBI Office
4930 Old Page Road
Durham, NC 27703

From: Vogel, Robert <robert.vogel@ineos.com>
Sent: Monday, March 31, 2025 6:22 PM
To: AirAction <AirAction@epa.gov>
Subject: Presidential Exemption: HON Rule (89 FR 42932; May 16, 2024): INEOS Americas LLC – Bayport EO Plant (INEOS)

Caution: This email originated from outside EPA, please exercise additional caution when deciding whether to open attachments or click on provided links.

To Whom It May Concern:

Please find attached the required information to request a Presidential Exemption under section 112(i)(4) of the Clean Air Act for compliance with the HON Rule (89 FR 42932; May 16, 2024) for the emission standards and limitations referenced in this correspondence for the INEOS Americas LLC – Bayport EO Plant (INEOS).

Emissions standards or limitations subject to the request:

The emissions standards or limitations subject to the Presidential Exemption request by INEOS are contained in the National Emission Standards for Hazardous Air Pollutants (NESHAP) for three subparts in 40 CFR 63 (subparts F, G, and H) that apply to the Synthetic Organic Chemical Manufacturing Industry (SOCMI) and for one subpart in 40 CFR 63 (subpart I) that applies to equipment leaks from certain non-SOCMI processes located at chemical plants. These four NESHAP are more commonly referred together as the Hazardous Organic NESHAP (HON) (89 FR 42932; May 16, 2024) (HON rule).

The specific emission standards or limitations subject to this request are as follows:

- Process Vents in both ethylene oxide and non-ethylene oxide HAP service;
- Wastewater Streams in ethylene oxide service;
- Fenceline Monitoring for ethylene oxide and vinyl chloride;
- Process relief devices (PRD) in both ethylene oxide and non-ethylene oxide HAP service; and
- Leak Detection and Repair (LDAR) requirements in ethylene oxide service.

Facility(ies) and/or affected source(s):

The facility for which the Presidential Exemption request is being made is the INEOS Americas LLC – Bayport EO Plant located at 5761 Underwood Road in Pasadena, Texas 77507.

Length of compliance period being requested:

The length of the compliance period extension request is as follows:

- The length of the extension being requested is for two years from the July 15, 2026 compliance date to July 15, 2028 for the ethylene oxide standards or limitations specified in the preceding section.
- The length of the extension being requested is for two years from the July 15, 2027 compliance date to July 15, 2029 for the non-ethylene oxide standards or limitations specified in the preceding section.

Justification to support the request:

The justification supporting this request for the extension is that the technological and technical issues for each emission standard or limitation is as follows:

Process Vents to Regenerative Thermal Oxidizer (RTO) – There are technological and technical concerns with the site RTO. The site RTO has been overdesigned to allow additional streams to be added in compliance with the HON. However, each stream requires a process hazard review (temperature, pressure, vapor saturation) to determine if the RTO is an appropriate solution. Even with this individual stream evaluation showing a favorable result, further hazard assessments are required to ensure interactions (reaction, process stability, system pressure) between streams converging to the current RTO can be done safely. This detailed process hazard review is a required step to ensure the site not only meets the requirements of the legislation but also the process safety hazards associated with the handling of potentially highly reactive chemicals from these various streams. Project construction will take an additional 18 months to complete once engineering has been completed.

Fenceline Monitoring – A root cause analysis must be completed and corrective actions implemented when the annual average delta concentration value for ethylene oxide is greater than 0.2 µg/m3 on an annual average basis. There are technology concerns with being able to detect

concentrations of EO at the currently proposed threshold limits. This will make it very difficult to determine the source of the ethylene oxide emissions much less mitigate the emissions. The action levels are so low that the technology may not exist for mitigating the ethylene oxide emissions based on the EPA's IRIS value. The EPA's IRIS value, which was determined based on an uncommon, visual fit two-piece spline model where risk rises quickly at lower exposures and then more slowly at higher exposures resulting in extremely low action levels for ethylene oxide and is currently under review. The technology may not exist to reduce ethylene oxide emissions below 0.2 µg/m3 at the fenceline on an annual average basis. Additionally, the canister method of sample collection for analysis of samples for ethylene oxide on a GC/MS introduces multiple pathways to affect the sample quality to adversely impact the results.

Wastewater Controls – There are technological and technical issues with managing the new wastewater streams designated to be in EO service. The site is in the process of upgrading and replacing an older wastewater line with that will affect the completion of the remaining work associated with this project. The technological evaluations are ongoing to determine the scope of this project. There may be technological limitations depending on what equipment is needed.

PRD Monitoring – No technology has been found to record and document the beginning and ending durations of the PRD relieving to atmosphere other than recording PRD isolations and changeouts which is not compliant with the requirements of the rule. There are over 100 PRDs with different model types that will require retrofitting with to identify the pressure release, recording the time and duration of each pressure release, and notifying operators immediately that a pressure release is occurring.

LDAR – There will likely be many types of equipment such as valves, pump seals, or instrument connections that will require upgrading as a result of the new LDAR standards. These emission compliant equipment may not be available by the regulatory deadlines. There are technological issues with replacing equipment in EO service such as changing valves to bellows seal valves. There is concern that an EO leak caught by the bellows enclosure would trap a stagnant volume of EO in the bellows enclosure. Stagnant EO can polymerizes and expands which could break the seal on the containment or self-heat to auto decomposition temperature resulting in an emergency response type event at the site. Finally, there are valves and other pieces of equipment that currently fall between the 500 ppm limit and the future 100 ppm limit that will become "leaks" on Day 1 unless resolved before the regulation comes into effect. This will require significant resources and potentially outages to address which will disrupt the supply of EO to the market.

The compliance deadlines begin on July 15, 2026 for sources in ethylene oxide service which is not enough time to complete the technical and technological evaluations as well as completing the design and installation of the necessary capital projects. An additional two years is required to fully perform the evaluations to identify all technologies not available to implement the standard. There are expected to be technology issues identified due to compatibility issues between ethylene oxide and the metallurgy as well as the gasketing, packing, and other material that come into contact with ethylene oxide. Companies must make irrevocable business decisions related to compliance with these rules in the coming months without being able to complete the required technical and technological evaluations.

Why an extension is in the national security interests of the United States:

Ethylene oxide and its derivatives are a critical building block chemical that is used in several domestic economic applications that are critical to the national security interests of the United States. The final HON Rule threatens the continued operational production and economic capacity of ethylene oxide and its associated derivatives at the INEOS ethylene oxide manufacturing facility due

to not being able to comply with certain emission standards and limitations published in 89 FR 42932 dated May 16, 2024 by the published compliance dates. The INEOS ethylene oxide manufacturing facility is a large supplier of ethylene oxide to the market that will be forced to shut down until the projects being installed to address the emissions standards or limitations are completed. This scenario will affect most if not all ethylene oxide and ethylene oxide derivative manufactures limiting the supply of ethylene oxide on the market which can adversely impact the national security interests of the United States.

Ethylene oxide plays a major role in the production of a wide variety of solvents, amines, and surfactants used in semiconductor chip manufacturing processes like wafer cutting, chemical mechanical planarization, photoresist, and photoresist residue cleaner. The semiconductor industry is one of many crucial technologies and industries that have been identified as crucial to the national security interests of the United States for which ethylene oxide and its derivatives are used. Other uses of ethylene oxide and its derivatives that are crucial to the national security interests of the United States include uses in automotive (brake fluid, antifreeze, etc.) cloud computing, medical devices, telecommunications, energy production, agriculture, and used as an additive for military jet fuel.

Please contact me if there are any questions or concerns regarding this matter. Thank you for your consideration of this matter.

Thank you,
Robert Vogel

INEOS
Oxide

Robert Vogel
Environmental Engineer

Bayport EO Plant
5761 Underwood Road
Pasadena, TX 77507

M: +1 225 892 8296
O: +1 281 474 0482
E: robert.vogel@ineos.com

****

This email is confidential, may be legally privileged, and is solely for the use of the intended recipient. Access, disclosure, copying, distribution, or reliance on any of it by anyone else is prohibited and may be a criminal offence. If you have received this e-mail by mistake, please notify the sender immediately by e-mail and delete this e-mail from your system. The sender has taken reasonable precautions to ensure no viruses are present in

this e-mail however the company cannot accept responsibility for any loss or damage arising from the use of this e-mail or attachments. Please note that this e-mail has been created in the knowledge that Internet e-mail is not a 100% secure communications medium. We advise that you understand and consider this lack of security when e-mailing us. INEOS is a trade mark, the property of INEOS Capital Limited.

****
****

This email is confidential, may be legally privileged, and is solely for the use of the intended recipient. Access, disclosure, copying, distribution, or reliance on any of it by anyone else is prohibited and may be a criminal offence. If you have received this e-mail by mistake, please notify the sender immediately by e-mail and delete this e-mail from your system. The sender has taken reasonable precautions to ensure no viruses are present in this e-mail however the company cannot accept responsibility for any loss or damage arising from the use of this e-mail or attachments. Please note that this e-mail has been created in the knowledge that Internet e-mail is not a 100% secure communications medium. We advise that you understand and consider this lack of security when e-mailing us. INEOS is a trade mark, the property of INEOS Capital Limited.

****

Message

From: Caitlin Schiebel [cschiebel@ohioec.org]
Sent: 4/15/2025 5:32:13 PM
To: AirAction [AirAction@epa.gov]
Subject: Fw: Cardinal MATS Exemption Request
Attachments: MATS Rule Presidential Exemption.docx.pdf

Caution: This email originated from outside EPA, please exercise additional caution when deciding whether to open attachments or click on provided links.

Per conversation with Abbie — correct file is now attached.

Caitlin

From: Caitlin Schiebel
Sent: Tuesday, April 15, 2025 1:29 PM
To: tardif.abigale@epa.gov
Subject: Cardinal MATS Exemption Request

Caitlin Schiebel
Director of Environmental Compliance
Buckeye Power, Inc.
6677 Busch Blvd.
Columbus, Ohio 43229

eschiebel@ohioec.org
O: 614-430-7835
C: 614-203-9081

Message

From: Becker, PJ [PJ.Becker@cwlp.com]
Sent: 4/16/2025 6:51:05 PM
To: AirAction [AirAction@epa.gov]
Subject: Presidential Exemption - CWLP
Attachments: CWLP Presidential Exemption Submittal.pdf

Caution: This email originated from outside EPA, please exercise additional caution when deciding whether to open attachments or click on provided links.

Dear Administrator Zeldin:

Please find attached Presidential Exemption Submittal, National Emissions Standards for Hazardous Air Pollutants: Coal- and Oil-Fired Electric Utility Steam Generating Units Review of the Residual Risk and Technology Review (89 FR 38508; May 7, 2024) (MATS Rule), for City Water, Light and Power Dallman Unit 4.

Additionally, a hard copy is in the mail and we thank you for your consideration.

P.J. Becker
Environmental Health & Safety Manager
City Water, Light and Power | City of Springfield
3100 Stevenson Drive | Springfield, Illinois 62712
217-757-8610 Ext. 1110 (O) | 217-303-9573 (C) | 217-757-8615 (F) | pj.becker@cwlp.com

THE ABOVE MESSAGE, INCLUDING ANY ATTACHMENTS, IS INTENDED ONLY FOR THE USE OF THE ADDRESSEE AND MAY CONTAIN INFORMATION THAT IS PRIVILEGED, CONFIDENTIAL AND PROHIBITED FROM DISCLOSURE UNDER APPLICABLE LAW. YOU ARE HEREBY NOTIFIED THAT ANY DISSEMINATION, DISTRIBUTION, OR COPYING OF THIS COMMUNICATION IS STRICTLY PROHIBITED. IF YOU RECEIVE THIS E MAIL IN ERROR, RETURN TO THE E MAIL ADDRESS LISTED ABOVE.

Message

From: AirAction [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=FA78B989233840789 95E04A73D258D83-AIRACTION]
Sent: 4/10/2025 5:04:37 PM
To: Daniel Hedrick [Daniel.Hedrick@cityutilities.net]
Subject: RE: Presidential Exemption: National Emission Standards for Hazardous Air Pollutants: Coal- and Oil-Fired Electric Steam Generating Units Review of the Residual Risk and Technology Review (MATS Rule): John Twitty Energy Center (ORISPL: 6195)

From: Daniel Hedrick <Daniel.Hedrick@cityutilities.net>
Sent: Thursday, April 10, 2025 10:21 AM
To: AirAction <AirAction@epa.gov>
Subject: RE: Presidential Exemption: National Emission Standards for Hazardous Air Pollutants: Coal- and Oil-Fired Electric Steam Generating Units Review of the Residual Risk and Technology Review (MATS Rule): John Twitty Energy Center (ORISPL: 6195)

> **Caution:** This email originated from outside EPA, please exercise additional caution when deciding whether to open attachments or click on provided links.

Dear EPA Administrator:

City Utilities of Springfield, Missouri wants to confirm receipt of our Presidential Exemption request submitted March 28, 2025. Additionally, we understand the April 8, 2025, Presidential Proclamation, provided an exemption to the National Emission Standards for Hazardous Air Pollutants: Coal- and Oil-Fired Electric Steam Generating Units Review of the Residual Risk and Technology Review (Mercury & Air Toxics Standard) Rule for our John Twitty Energy Center affected coal-fired unit through July 8, 2029.

We respectfully request that EPA still issue an individual exemption for our facility through July 8, 2029. We want to thank the President and the Administrator for boldly moving forward in this regard and providing needed regulatory relief for the Springfield/Greene Co. community.

Thank you.

Daniel Hedrick
Director-Environmental Affairs
O: 417.831.8916

From: AirAction <AirAction@epa.gov>
Sent: Friday, March 28, 2025 9:30 AM
To: Daniel Hedrick <Daniel.Hedrick@cityutilities.net>
Subject: RE: Presidential Exemption: National Emission Standards for Hazardous Air Pollutants: Coal- and Oil-Fired Electric Steam Generating Units Review of the Residual Risk and Technology Review (MATS Rule): John Twitty Energy Center (ORISPL: 6195)

Thank you for emailing the AirAction mailbox to request a Presidential Exemption under section 112(i)(4) of the Clean Air Act and for engaging with EPA in advancing President Trump's Executive Orders and Powering the Great American Comeback. We have received your email and will be in contact soon. If you have Confidential Business Information (CBI) that you'd like to submit, please submit it in electronic version to the CBI@epa.gov inbox or in hardcopy to:

USEPA, OAQPS

CORE CBI Office
4930 Old Page Road
Durham, NC 27703

From: Daniel Hedrick <Daniel.Hedrick@cityutilities.net>
Sent: Friday, March 28, 2025 9:39 AM
To: AirAction <AirAction@epa.gov>
Subject: Presidential Exemption: National Emission Standards for Hazardous Air Pollutants: Coal- and Oil-Fired Electric Steam Generating Units Review of the Residual Risk and Technology Review (MATS Rule): John Twitty Energy Center (ORISPL: 6195)

Caution: This email originated from outside EPA, please exercise additional caution when deciding whether to open attachments or click on provided links.

Dear EPA Administrator:

City Utilities of Springfield, Missouri respectfully submits its request to receive a Presidential Exemption from the recent May 20024 Mercury and Air Toxic Standard (MATS) requirements for an initial 2 years, as the Administration/President reconsiders the rulemaking. We appreciate this opportunity granted by the President in light of the hefty financial burden this rule, among others, imposes on our Springfield/Greene County community-owners.

Emissions Standards or Limitations Subject to Request:

1) City Utilities (CUS) challenges the necessity of removing the low-emitting EGUs (LEE) performance test option. Our units have used this option since 2016. Request: Maintain the ability of LEE units to continue to conduct particulate matter (PM)/hydrochloric acid (HCl) testing every 3 years. [40 CFR Part 63, Subpart UUUUU, 63.10000 (c)(1)(iv)(B)]
2) City Utilities challenges the use of particulate matter (PM) as direct compliance with a hazardous air pollutant (HAPs) non-Hg metals standard. This has been used to justify the use of a continuous PM monitor over parametric or periodic PM testing for NESHAP compliance demonstration. Request: Allow PM monitoring as a surrogate for non-Hg metal HAPs emissions, but do not codify a PM monitor as the sole method for demonstrating compliance. The John Twitty Energy Center, and other power stations, have proven compliance with the NESHAP over the past 10 years and modified monitoring is not required or justify. If this request is rejected, it would allow EPA to justify PM emissions reduction costs/benefits for future HAPs standard rulemaking. The courts have rejected this cost/benefit accounting method and without PM reduction the rule is not cost-effective/justifiable and the appropriate and necessarily finding invalid. [40 CFR Part 63, Subpart UUUUU, 63.10000 (c)(1)(iv)(B); 63.10005 (c)]
3) City Utilities challenges the availability of an accurate PM monitor which can effectively monitor at the required emission rate standard using the approved EPA methodology for certification. Request: Remove any continuous PM monitor requirements. CUS believes that continuous PM monitors at the levels established in the May 2024 rule are not adequately demonstrated. EPA's own determination suggests that PM continuous emission monitoring systems cannot accurately measure PM filterable emissions below 0.015 lb/MMBtu. [40 CFR Part 63, Subpart UUUUU, 63.10010 (i)(1)-(4)]

Facility/Affected Sources:

City Utilities of Springfield, Missouri - John Twitty Energy Center (ORISPL: 6195) – Units 1 and 2

- Unit 1: 205 MW coal-fired dry-bottom, pulverized boiler, commenced operation in 1976 – burns low-sulfur Powder River Basin (PRB) coal from Wyoming, equipped with Best Available (BA) controls – Selective Catalytic Reduction (SCR) for NOx, pulse-jet baghouse for PM emissions, and activated carbon injection for mercury control.
- Unit 2: 310 MW coal-fired dry-bottom, pulverized boiler, commenced operation in 2011 – burns low-sulfur PRB coal, equipped with Best Available Control Technology (BACT) – SCR (NOx), pulse-jet baghouse (PM) and fluidized bed dry scrubber (SO2), including mercury controls.

Length of Compliance Period:
Full two (2) years beginning July 6, 2027 to July 6, 2029

Justification:

- City Utilities collected PM filterable and HCl emission data over a 3 to 6-year period (on a quarterly basis) to establish its LEE status. This means that during normal coal-fired operations, the EGUs operate at levels less than half the standard (0.030 lb/MMBtu). This is the case for nearly 95-98% of all units in the country. LEE status has been maintained over the 10-year period during each 3-year test cycle. City Utilities affected units have maintain compliance with the LEE status (which was an incentive to reduce emissions below the limit created by the original rule) in 2019, 2021-2022, 2024-2025, respectively for each unit.
- City Utilities believes a continuous PM monitor for a NESHAP, which establishes HAP emission limits, is not an appropriate tool and should not be required. Surrogate PM monitoring has been approved by EPA historically, but it is not the sole method for direct compliance demonstrations. Periodic PM testing, in conjunction with opacity monitors and baghouse differential pressure readings, is sufficient to demonstrate compliance and identify deviations from previous testing conditions, as well as pinpoint control device problems or issues.
- City Utilities is working with a HAPs monitor developer (i.e., Ohio Lumex) to collect/analyze an alternate method and is seeking EPA approvals that will take time to develop. CUS believes a NESHAP compliance monitoring requirement should directly measure HAPs emissions. Further, the extension will allow time for manufacturer/developer and EPA to seek methodology procedural approvals, as well as determine appropriate detection levels for HAPs constituent parameters and conduct comparisons to EPA Method 29 in support of those approvals.
- An extension is in the interest of national security reasons due to the combined effect of recent finalized fossil-fuel-focused regulations (i.e., May 2024) that could force or incentivize early retirement of baseload (reliable and affordable) generation where renewables cannot bridge the generation gap needs in various Regional Transmission Organizations (RTOs) and Independent System Operators (ISOs) across the country. This could lead to energy scarcity, including rolling blackouts or grid congestion. It could also lead to excessive energy prices stifling America's ability to be competitive in manufacturing critical technology and defense-related goods.

Thank you for your consideration of this request.

Daniel Hedrick
Director-Environmental Affairs
Designated Representative/Responsible Official
O: 417.831.8916
Email: daniel.hedrick@cityutilities.net

PO Box 551 | Springfield, MO 65801-0551
cityutilities.net

Message

From: AirAction [AirAction@epa.gov]
Sent: 4/15/2025 3:36:54 PM
Subject: Fw: Presidential Exemption: MATS: Cardinal
Attachments: Cardinal Consent Decree Certification RY2024.pdf

From: Caitlin Schiebel <cschiebel@ohioec.org>
Sent: Tuesday, April 1, 2025 2:56 PM
To: AirAction <AirAction@epa.gov>
Subject: Presidential Exemption: MATS: Cardinal

Caution: This email originated from outside EPA, please exercise additional caution when deciding whether to open attachments or click on provided links.

Caitlin Schiebel
Director of Environmental Compliance
Buckeye Power, Inc.
6677 Busch Blvd.
Columbus, Ohio 43229

cschiebel@ohioec.org
O: 614-430-7835
C: 614-203-9081

Docusign Envelope ID: ADE29E79-E7F1-4460-81DC-06680577E2AD

CARDINAL
OPERATING COMPANY

306 County Road
7E Brilliant, OH
43913
740.598.4164

March 31, 2025

Ms. Kathy Milenkovski
American Electric Power
1 Riverside Plaza
Columbus, OH 43215

Subject: Cardinal Power Plant Annual Consent Decree Report

Dear Ms. Milenkovski:

Cardinal Operating Company has submitted the following information for the 2024 Annual Report required by the 2007 NSR Consent Decree:

- Stack tests
- Allowance surrender confirmation
- Particulate monitor data
- EV reimbursement summary

Certification:
This information was prepared either by me or under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my evaluation, or the direction and my inquiry of the person(s) who manage the system, or the person(s) directly responsible for gathering the information, I hereby certify under penalty of law that, to the best of my knowledge and belief, this information is true, accurate, and complete. I understand that there are significant penalties for submitting false, inaccurate, or incomplete information to the United States.

If you have questions regarding this submittal, please contact Caitlin Schiebel at 614-430-7835 or cschiebel@ohioec.org.

Sincerely,

Tom Alban

Thomas M. Alban
VP Generation

Message

From: [redacted]@epa.gov]
Sent: 4/9/2025 2:56:07 PM
To: Vaseliou, Molly [Vaseliou.Molly@epa.gov]; [redacted]@epa.gov]; [redacted]@epa.gov]; Mandy, Cora [Mandy.Cora@epa.gov]
CC: Gall, Daniel [Gall.Daniel@epa.gov]; Weiner, Ben [Weiner.Ben@epa.gov]; [redacted]@epa.gov]; [redacted]@epa.gov]
Subject: RE: FLAGGING: E&E News - Annex to presidential proclamation re stationary sources
Attachments: FOIA for 112 Exemptions.xlsx

We have been FOIA'd on the CAA Section 112(i)(4) requests.

Here's the list as of last week – (no new press have FOIA'd since this list was made)

From: Vaseliou, Molly <Vaseliou.Molly@epa.gov>
Sent: Wednesday, April 9, 2025 10:29 AM
To: [redacted]@epa.gov>; [redacted]@epa.gov>; Mandy, Cora <Mandy.Cora@epa.gov>
Cc: Gall, Daniel <Gall.Daniel@epa.gov>; Weiner, Ben <Weiner.Ben@epa.gov>; [redacted]@epa.gov>; [redacted]@epa.gov>; [redacted]@epa.gov>
Subject: RE: FLAGGING: E&E News - Annex to presidential proclamation re stationary sources

I just reread this. If he's asking for applications, doesn't that need to be a FOIA?

From: [redacted]@epa.gov>
Sent: Wednesday, April 9, 2025 10:29 AM
To: Vaseliou, Molly <Vaseliou.Molly@epa.gov>; [redacted]@epa.gov>; Mandy, Cora <Mandy.Cora@epa.gov>
Cc: Gall, Daniel <Gall.Daniel@epa.gov>; Weiner, Ben <Weiner.Ben@epa.gov>; [redacted]@epa.gov>; [redacted]@epa.gov>; [redacted]@epa.gov>
Subject: RE: FLAGGING: E&E News - Annex to presidential proclamation re stationary sources

Hi, all,

Sean re-upped his request for "a list of all applicants for presidential compliance exemptions for all nine NESHAP rules listed in this guidance: https://www.epa.gov/stationary-sources-air-pollution/clean-air-act-section-112-presidential-exemption-information." Ex. 5 Deliberative Process (DP)

Ex. 5 Deliberative Process (DP)

Ex. 5 Deliberative Process (DP)

Respectfully,

[redacted]
Office of Media Relations and Risk Communications

Office of Public Affairs
[redacted]
[redacted]@epa.gov

From: Vaseliou, Molly <Vaseliou.Molly@epa.gov>
Sent: Wednesday, April 9, 2025 9:26 AM
To: [redacted]@epa.gov>; Mandy, Cora <Mandy.Cora@epa.gov>
Cc: Gall, Daniel <Gall.Daniel@epa.gov>; Weiner, Ben <Weiner.Ben@epa.gov>; [redacted]@epa.gov>; [redacted]epa.gov>; [redacted]@epa.gov>; [redacted]@epa.gov>
Subject: RE: FLAGGING: E&E News - Annex to presidential proclamation re stationary sources

Edited down:

Ex. 5 Deliberative Process (DP)

From: [redacted]@epa.gov>
Sent: Wednesday, April 9, 2025 9:23 AM
To: Vaseliou, Molly <Vaseliou.Molly@epa.gov>; Mandy, Cora <Mandy.Cora@epa.gov>
Cc: Gall, Daniel <Gall.Daniel@epa.gov>; Weiner, Ben <Weiner.Ben@epa.gov>; [redacted]@epa.gov>; [redacted]@epa.gov>; [redacted]@epa.gov>; [redacted]@epa.gov>
Subject: FLAGGING: E&E News - Annex to presidential proclamation re stationary sources

Flagging for the team, with a ridiculous deadline. I know his previous email on the same topic came in at 9pm last night. Isn't some of this for WH?

Adding [redacted] and [redacted].

I was pretty sure he already got this statement:

Ex. 5 Deliberative Process (DP)

[redacted]

From: Sean Reilly <sreilly@eenews.net>
Sent: Wednesday, April 9, 2025 9:14 AM
To: EPA Press Office <Press@epa.gov>
Subject: Annex to presidential proclamation re stationary sources

> **Caution:** This email originated from outside EPA, please exercise additional caution when deciding whether to open attachments or click on provided links.

Hi folks:

In connection with a follow-up story for today on this proclamation (https://www.whitehouse.gov/presidential-actions/2025/04/rregulatory-relief-for-certain-stationary-sources-to-promote-american-energy/), I am again requesting a copy of Annex 1 listing the power plants that have received this CAA compliance extension.

Also, given that EPA said that exemption applications would be decided on the merits, can someone briefly explain how applications were vetted, given that President Trump appears to have approved them en masse? Were any applications rejected and, if so, for which plants?

Finally, does EPA plan to announce comparable exemptions for any companies covered by the other eight NESHAP rules listed in this guidance: https://www.epa.gov/stationary-sources-air-pollution/clean-air-act-section-112-presidential-exemption-information? If so, when and for which rules?

My deadline is 11:45 this morning. On the record responses, please.

Best regards,
Sean



Clean Air Act Section 112 Presidential Exemption Information

You may submit a request for a Presidential Exemption to this email address: airaction@epa.gov by March 31, 2025. Please: Use "Presidential Exemption: [Name of Regulation]: [Facility(ies) Name]" as the subject of the request.Clearly identify the: Emissions standards or limitations subject to the request,

www.epa.gov

Rregulatory Relief for Certain Stationary Sources to Promote American Energy - The White House

1. Coal-fired electricity generation is essential to ensuring that our Nation's grid is reliable and that

electricity is affordable for the American people, and to promoting our Nation s ...

www.whitehouse.gov

My deadline is 11:45 this morning; on the record responses, please.

Best regards,
Sean Reilly

Rregulatory Relief for Certain Stationary Sources to Promote American Energy - The White House

1. Coal-fired electricity generation is essential to ensuring that our Nation's grid is reliable and that electricity is affordable for the American people, and to promoting our Nation's ...

www.whitehouse.gov

Sean Reilly

Reporter

E&E News/POLITICO

Ph: 202-316-4596

Twitter: @SeanatGreenwire

Message

From: [redacted]@epa.gov]
Sent: 9/10/2025 7:08:59 PM
To: Hirsch, Brigit [Hirsch.Brigit@epa.gov]; Holran, Carolyn [Holran.Carolyn@epa.gov]; Vaseliou, Molly [Vaseliou.Molly@epa.gov]; Mandy, Cora [Mandy.Cora@epa.gov]; Bastasch, Mike [Bastasch.Mike@epa.gov]
CC: [redacted]@epa.gov]; [redacted]@epa.gov]
Subject: RE: APPROVAL: Presidential exemption request - Argus

Thanks!

From: Hirsch, Brigit <Hirsch.Brigit@epa.gov>
Sent: Wednesday, September 10, 2025 3:09 PM
To: [redacted]@epa.gov>; Holran, Carolyn <Holran.Carolyn@epa.gov>; Vaseliou, Molly <Vaseliou.Molly@epa.gov>; Mandy, Cora <Mandy.Cora@epa.gov>; Bastasch, Mike <Bastasch.Mike@epa.gov>
Cc: [redacted]@epa.gov>; [redacted]@epa.gov>
Subject: RE: APPROVAL: Presidential exemption request - Argus

That's good to go! Thanks [redacted].

From: [redacted]@epa.gov>
Sent: Wednesday, September 10, 2025 3:04 PM
To: Hirsch, Brigit <Hirsch.Brigit@epa.gov>; Holran, Carolyn <Holran.Carolyn@epa.gov>; Vaseliou, Molly <Vaseliou.Molly@epa.gov>; Mandy, Cora <Mandy.Cora@epa.gov>; Bastasch, Mike <Bastasch.Mike@epa.gov>
Cc: [redacted].@epa.gov>; [redacted]@epa.gov>
Subject: APPROVAL: Presidential exemption request - Argus

Previously approved response last sent on July 23. Okay to use here?

Inquiry –
On March 28, a company called Thunderhead Energy Solutions submitted a request to EPA for a "presidential exemption" from the Clean Air Act for its proposed 500MW behind-the-meter natural gas facility in Dekalb County, Illinois. As the justification for the request, it cited permitting delays. A copy of that request (which I obtained via FOIA) is copied below.

I will also ask the same question to the White House, but just to cover my bases here, did EPA approve or deny this request? Or is this decision entirely up to the White House?

Response –

Ex. 5 Deliberative Process (DP)

From: Chris Knight <chris.knight@argusmedia.com>
Sent: Wednesday, September 10, 2025 2:40 PM
To: EPA Press Office <press@epa.gov>
Subject: Presidential exemption request

Caution: This email originated from outside EPA, please exercise additional caution when deciding whether to open attachments or click on provided links.

EPA press,
On March 28, a company called Thunderhead Energy Solutions submitted a request to EPA for a "presidential exemption" from the Clean Air Act for its proposed 500MW behind-the-meter natural gas facility in Dekalb County, Illinois. As the justification for the request, it cited permitting delays. A copy of that request (which I obtained via FOIA) is copied below.

I will also ask the same question to the White House, but just to cover my bases here, did EPA approve or deny this request? Or is this decision entirely up to the White House?

Thanks
Chris

Chris Knight
Reporter
chris.knight@argusmedia.com
202-349-2770

argus

Argus Media, 1629 K Street NW, Suite 1150 | Washington DC 20006

From: Brennan, Raymond <raymond.brennan@transcanada.com>
Sent: Friday, March 08, 2019 3:29 PM
To: AirAct, Grp <AirAct@epa.gov>
Subject: Presidential Exemption, Clean Air Act, NSR and NNSR Requirements, Transcontinental Wasatch Co. LLC Data Center Power Project

Caution: This email originated from outside EPA, please exercise additional caution when deciding whether to open attachments or click on provided links.

To: Whom It May Concern,

TransCanada Energy Solutions LLC requests a two-year Presidential exemption from certain Clean Air Act requirements for our 500MW behind-the-meter natural gas power facility supporting critical data center infrastructure in Dekalb County, IL.

- Emissions standards subject to exemption include: New Source Review (NSR) permitting requirements, Non-attainment New Source Review (NNSR) requirements, Title V Operating Permit timeline requirements, and New Source Performance Standards (NSPS) for Stationary Combustion Turbines (40 CFR Part 60, Subpart KKKK).
- Facility: TransCanada Data Center Power Project utilizing Solar Turbines (Caterpillar) Titan 130 "natural" gas fuel fired units with Energy Core SCR (selective catalytic reduction) technology (Best Available Control Technology, "BACT") for emissions reduction.
- Duration: Two (2) year exemption to allow expedited construction and operation.
- Justification: Current permitting timelines create critical delays and unacceptable roadblocks for essential critical infrastructure. Despite employing advanced emissions control technologies, the standard permitting process would prevent timely deployment of urgently needed computing capacity and ultimately limit the available electric generation capacity via NOx, CO, VOC, particulate matter, sulfuric acid and sulfur dioxide emissions limitations. There is no commercial technology to completely eliminate NOx, CO, VOC, particulate matter, sulfuric acid or sulfur dioxide emissions from gas fired RICEs.
- National security relevance: Our facility will support enterprise cloud, Cyber Security and Intelligence services essential to U.S. national security interests, including classified government workloads and critical AI development. Current grid constraints in DeKalb County, IL prevent large-scale, grid-connected deployment, while our behind-the-meter natural gas solution can deliver 500MW in 12-24 months, significantly accelerating national security-related computing capacity.

This bridge natural gas solution represents the only viable path to rapidly deploy the power capacity required for next-generation computing infrastructure critical for maintaining U.S. technological leadership. We

ED_018398_00005682-00001

respectfully request this time-limited exemption to expedite deployment while maintaining substantial emissions controls through our SCR implementation.

The information contained in this email and its attachments is confidential and may be the subject of professional or other privilege. It may not be disclosed to anyone else without consent from the Argus Media group. If you are not the intended recipient please notify the sender and destroy this email and its attachments immediately; please do not use, disclose, distribute, copy, print or rely on the contents of this email or its attachments. While the Argus Media group takes care to protect its systems from electronic virus attack or other harmful event, the Argus Media group gives no warranty that this email or its attachments are free of any virus or other harmful matter and accepts no responsibility for any loss or damage resulting from the recipient receiving, opening or using it or its attachments. Email is not a secure method of communication and email messages may be intercepted. Messages sent to and from the Argus Media group may be monitored, reviewed and/or processed in accordance with the Argus Media group's policies, including for the purpose of ensuring compliance with legal and regulatory obligations. Translations of this email disclaimer are available in Japanese, Mandarin, German, Portuguese and Russian at www.argusmedia.com/disclaimer.
Argus Media Limited, Lacon House, 84 Theobald's Road, London WC1X 8NL Registered in England and Wales, Company Registration No: 1642534 VAT Registration No: GB 282 9210 96

Message

From: Vaseliou, Molly [Vaseliou.Molly@epa.gov]
Sent: 9/10/2025 7:12:25 PM
To: Hirsch, Brigit [Hirsch.Brigit@epa.gov]; Holran, Carolyn [Holran.Carolyn@epa.gov]; Mandy, Cora [Mandy.Cora@epa.gov]; Bastasch, Mike [Bastasch.Mike@epa.gov]
Subject: RE: APPROVAL: Presidential exemption request - Argus

Good to use and flag for Taylor with the statement.

From: Hirsch, Brigit <Hirsch.Brigit@epa.gov>
Sent: Wednesday, September 10, 2025 3:09 PM
To: Holran, Carolyn <Holran.Carolyn@epa.gov>; Vaseliou, Molly <Vaseliou.Molly@epa.gov>; Mandy, Cora <Mandy.Cora@epa.gov>; Bastasch, Mike <Bastasch.Mike@epa.gov>
Subject: RE: APPROVAL: Presidential exemption request - Argus

Do we need to flag this incoming for WH?

From: [redacted]@epa.gov>
Sent: Wednesday, September 10, 2025 3:04 PM
To: Hirsch, Brigit <Hirsch.Brigit@epa.gov>; Holran, Carolyn <Holran.Carolyn@epa.gov>; Vaseliou, Molly <Vaseliou.Molly@epa.gov>; Mandy, Cora <Mandy.Cora@epa.gov>; Bastasch, Mike <Bastasch.Mike@epa.gov>
Cc: [redacted]@epa.gov>; [redacted]@epa.gov>
Subject: APPROVAL: Presidential exemption request - Argus

Previously approved response last sent on July 23. Okay to use here?

Inquiry –
On March 28, a company called Thunderhead Energy Solutions submitted a request to EPA for a "presidential exemption" from the Clean Air Act for its proposed 500MW behind-the-meter natural gas facility in Dekalb County, Illinois. As the justification for the request, it cited permitting delays. A copy of that request (which I obtained via FOIA) is copied below.

I will also ask the same question to the White House, but just to cover my bases here, did EPA approve or deny this request? Or is this decision entirely up to the White House?

Response –

Ex. 5 Deliberative Process (DP)

From: Chris Knight <chris.knight@argusmedia.com>
Sent: Wednesday, September 10, 2025 2:40 PM
To: EPA Press Office <press@epa.gov>
Subject: Presidential exemption request

Caution: This email originated from outside EPA, please exercise additional caution when deciding whether to open attachments or click on provided links.

EPA press,
On March 28, a company called Thunderhead Energy Solutions submitted a request to EPA for a "presidential exemption" from the Clean Air Act for its proposed 500MW behind-the-meter natural gas facility in Dekalb County, Illinois. As the justification for the request, it cited permitting delays. A copy of that request (which I obtained via FOIA) is copied below.

I will also ask the same question to the White House, but just to cover my bases here, did EPA approve or deny this request? Or is this decision entirely up to the White House?

Thanks
Chris

Chris Knight
Reporter
chris.knight@argusmedia.com
202-841-2776

argus

Argus Media, 1101 K Street NW, Suite 1150 | Washington DC 20005

From: [redacted]
Sent: [redacted]
To: [redacted]
Subject: Presidential exemption for Clean Air Act NSR and NSPS Requirements - Hunterbrook Duvall Co IL Data Center Power Project

Caution: This email originated from outside EPA. Please exercise additional caution when deciding whether to open attached items or click on provided links.

To: Whom It May Concern:

Hunterbrook Energy Solutions LLC requests a two-year Presidential exemption from certain Clean Air Act requirements for an 810MW behind-the-meter natural gas power facility supporting critical data center infrastructure in Duvall County, IL.

- Emissions standards subject to exemption request: New Source Review (NSR) permitting requirements: Non-attainment New Source Review (NNSR) requirements, Title V Operating Permit emission requirements, and New Source Performance Standards (NSPS) for Stationary Combustion Turbines (40 CFR Part 60, Subparts KKKK)
- Facility: Hunterbrook Data Center Power Project utilizing Solar Turbines (Caterpillar) Titan 130 industrial gas turbines with Clean Energy's SCR technology (Best Available Control Technology, "BACT") for emissions reduction
- Duration: Two-year exemption for known expedited construction and operation
- Justification: Current permitting mechanisms create critical delays and unacceptable roadblocks for essential digital infrastructure. Despite employing advanced emissions control technologies, the standard permitting process would prevent timely deployment of urgently needed computing capacity and ultimately limit the operable electric generation capacity via NOx, CO, VOC, particulate matter, sulfuric acid, and sulfur dioxide emissions limitations. Utilizing commercial technology to control facility's estimate NOx, CO, VOC, particulate matter, sulfuric acid, or sulfur dioxide emissions from gas-fired facilities.
- National security relevance: The facility will support enterprise cloud and AI computing infrastructure essential to U.S. national security interests, including classified government workloads and critical AI development. Current grid constraints in Duvall County, IL prevent timely, reliable power deployment, while our behind-the-meter natural gas solution can deliver 810MW in 6-24 months, significantly accelerating national security-related computing capacity.

This leverages natural gas solutions represents the only viable path to rapidly deploy the power capacity required for next-generation computing infrastructure critical for maintaining U.S. technological leadership. We

ED_021114A_00006682-00001

respectfully request this time-limited exemption to expedite deployment while maintaining substantial emissions controls through our SCR implementation.

The information contained in this email and its attachments is confidential and may be the subject of professional or other privilege. It may not be disclosed to anyone else without consent from the Argus Media group. If you are not the intended recipient please notify the sender and destroy this email and its attachments immediately; please do not use, disclose, distribute, copy, print or rely on the contents of this email or its attachments. While the Argus Media group takes care to protect its systems from electronic virus attack or other harmful event, the Argus Media group gives no warranty that this email or its attachments are free of any virus or other harmful matter and accepts no responsibility for any loss or damage resulting from the recipient receiving, opening or using it or its attachments. Email is not a secure method of communication and email messages may be intercepted. Messages sent to and from the Argus Media group may be monitored, reviewed and/or processed in accordance with the Argus Media group's policies, including for the purpose of ensuring compliance with legal and regulatory obligations. Translations of this email disclaimer are available in Japanese, Mandarin, German, Portuguese and Russian at www.argusmedia.com/disclaimer.
Argus Media Limited, Lacon House, 84 Theobald's Road, London WC1X 8NL Registered in England and Wales, Company Registration No: 1642534 VAT Registration No: GB 282 9210 96

Message

From: Rogers, Taylor R. EOP/WHO
Ex. 6
Sent: 9/10/2025 7:20:00 PM
To: Hirsch, Brigit [Hirsch.Brigit@epa.gov]
CC: Bastasch, Mike [Bastasch.Mike@epa.gov]; Vaseliou, Molly [Vaseliou.Molly@epa.gov]; Holran, Carolyn [Holran.Carolyn@epa.gov]; Mandy, Cora [Mandy.Cora@epa.gov]
Subject: RE: Presidential exemption media request - Argus

Flag: Follow up

Caution: This email originated from outside EPA, please exercise additional caution when deciding whether to open attachments or click on provided links.

Thank you!

From: Hirsch, Brigit <Hirsch.Brigit@epa.gov>
Sent: Wednesday, September 10, 2025 3:17 PM
To: Rogers, Taylor R. EOP/WHO <Ex. 6
Cc: Bastasch, Mike <Bastasch.Mike@epa.gov>; Vaseliou, Molly <Vaseliou.Molly@epa.gov>; Holran, Carolyn <Holran.Carolyn@epa.gov>; Mandy, Cora <Mandy.Cora@epa.gov>
Subject: Presidential exemption media request - Argus

Hi Taylor,

We received the below inquiry from Argus Media this afternoon. Our response is copied below. The reporter will likely reach out to you shortly.

Please let me know if you have any questions.

Best,
Brigit

Response –

Clean Air Act section 112(i)(4) authorizes the President to exempt any stationary source from a relevant standard if he "determines that the technology to implement such standard is not available and that it is in the national security interests of the United States to do so." The EPA played no role in the determinations set out in the statute and specifically vested in the President. Any requests sent to the EPA's electronic mailbox were forwarded to the White House, and any further questions about process and decisions should be directed to the White House.

From: Chris Knight <chris.knight@argusmedia.com>
Sent: Wednesday, September 10, 2025 2:40 PM
To: EPA Press Office <press@epa.gov>
Subject: Presidential exemption request

Caution: This email originated from outside EPA, please exercise additional caution when deciding whether to open attachments or click on provided links.

EPA press,
On March 28, a company called Thunderhead Energy Solutions submitted a request to EPA for a "presidential exemption" from the Clean Air Act for its proposed 500MW behind-the-meter natural gas facility in Dekalb County, Illinois. As the justification for the request, it cited permitting delays. A copy of that request (which I obtained via FOIA) is copied below.

I will also ask the same question to the White House, but just to cover my bases here, did EPA approve or deny this request? Or is this decision entirely up to the White House?

Thanks
Chris

Chris Knight
Reporter
chris.knight@argusmedia.com
202-349-2870

argus

Argus Media, 1667 K Street NW, Suite 1150 | Washington DC 20006

From: Brennan, Raymond <raymond.brennan@[redacted].com>
Sent: Friday, March 08, 2019 3:29 PM
To: AirAct, Grid <AirAct.Grid@epa.gov>
Subject: Presidential Exemption - Clean Air Act NSR and NNSR Requirements - Transcontinental Realty Co. I - Data Center Power Project

Caution: This email originated from outside EPA, please exercise additional caution when deciding whether to open attachments or click on provided links.

To: Whom It May Concern,

Transcontinental Realty Solutions LLC requests a two-year Presidential exemption from certain Clean Air Act requirements for our 500MW behind-the-meter natural gas power facility supporting critical data center infrastructure in DeKalb County, IL.

- Emissions standards subject to exemption or request: New Source Review (NSR) permitting requirements, Non-attainment New Source Review (NNSR) requirements, Title V Operating Permit timeline requirements, and New Source Performance Standards (NSPS) for Stationary Combustion Turbines (40 CFR Part 60, Subpart KKKK)
- Facility: Transcontinental Data Center Power Project utilizing Solar Turbines (Caterpillar) Titan 130 industrial gas turbines with Energy Core SCR (Selective Catalytic Reduction) technology (Best Available Control Technology, "BACT") for emissions reduction
- Duration: Two-year exemption to allow expedited construction and operation
- Justification: Current permitting timelines create critical delays and unacceptable roadblocks for essential critical infrastructure. Despite employing advanced emissions control technologies, the standard permitting process would prevent timely deployment of urgently needed computing capacity and ultimately limit the available electric generation capacity via NOx, CO, VOC, particulate matter, sulfuric acid, and sulfur dioxide emissions limitations. It can be a commercial challenge to completely eliminate NOx, CO, VOC, particulate matter, sulfuric acid, or sulfur dioxide emissions from gas-fired EGUs.
- National security relevance: Our facility will support enterprise cloud, Government agency services essential to U.S. national security interests, including classified government workloads and critical AI development. Current grid constraints in DeKalb County, IL prevent large-scale power deployment, while our behind-the-meter natural gas solution can deliver 500MW in 18-24 months, significantly accelerating national security-related computing capacity.

This bridge natural gas solution represents the only viable path to rapidly deploy the power capacity required for next-generation computing infrastructure critical for maintaining U.S. technological leadership. We

ED_018398_00005682-00001

respectfully request this time-limited exemption to expedite deployment while maintaining substantial emissions controls through our SCR implementation.

The information contained in this email and its attachments is confidential and may be the subject of professional or other privilege. It may not be disclosed to anyone else without consent from the Argus Media group. If you are not the intended recipient please notify the sender and destroy this email and its attachments immediately; please do not use, disclose, distribute, copy, print or rely on the contents of this email or its attachments. While the Argus Media group takes care to protect its systems from electronic virus attack or other harmful event, the Argus Media group gives no warranty that this email or its attachments are free of any virus or other harmful matter and accepts no responsibility for any loss or damage resulting from the recipient receiving, opening or using it or its attachments. Email is not a secure method of communication and email messages may be intercepted. Messages sent to and from the Argus Media group may be monitored, reviewed and/or processed in accordance with the Argus Media group's policies, including for the purpose of ensuring compliance with legal and regulatory obligations. Translations of this email disclaimer are available in Japanese, Mandarin, German, Portuguese and Russian at www.argusmedia.com/disclaimer.
Argus Media Limited, Lacon House, 84 Theobald's Road, London WC1X 8NL Registered in England and Wales, Company Registration No: 1642534 VAT Registration No: GB 282 9210 96

Message

From: Traylor, Patrick [ptraylor@velaw.com]
Sent: 3/25/2025 2:23:01 PM
To: Tardif, Abigale (Abbie) [Tardif.Abigale@epa.gov]
Subject: RE: Copper Smelting NESHAP

Caution: This email originated from outside EPA, please exercise additional caution when deciding whether to open attachments or click on provided links.

Many thanks.

Patrick Traylor

Vinson&Elkins
E ptraylor@velaw.com
W +1.202.639.6734
M +1.202.669.3896
2200 Pennsylvania Avenue NW
Suite 500 West
Washington, DC 20037
Vcard | Bio | velaw.com

From: Tardif, Abigale (Abbie) <Tardif.Abigale@epa.gov>
Sent: Tuesday, March 25, 2025 8:35 AM
To: Traylor, Patrick <ptraylor@velaw.com>
Subject: RE: Copper Smelting NESHAP

[EXTERNAL]

Patrick-

I believe that is the right approach.

Best,
Abbie

Abigale Tardif
Principal Deputy Assistant Administrator
Office of Air and Radiation
U.S. Environmental Protection Agency
Office: (202) 564-7017

From: Traylor, Patrick <ptraylor@velaw.com>
Sent: Monday, March 24, 2025 6:09 PM
To: Tardif, Abigale (Abbie) <Tardif.Abigale@epa.gov>
Subject: Re: Copper Smelting NESHAP

Caution: This email originated from outside EPA, please exercise additional caution when deciding whether to open attachments or click on provided links.

Abbie:

Thanks so much. We're inclined to submit a short request (two pages) with everything that would be needed to be included in a Determination. We'd also plan to attach a more detailed justification for the administrative record. Does that strike you as an approach that the EPA would welcome and find helpful?

Patrick

Patrick Traylor

Vinson&Elkins
E ptraylor@velaw.com
W +1.202.639.6734
M +1.202.669.3896
2200 Pennsylvania Avenue NW
Suite 500 West
Washington, DC 20037
Vcard | Bio velaw.com

From: Tardif, Abigale (Abbie) <Tardif.Abigale@epa.gov>
Sent: Monday, March 24, 2025 4:15:03 PM
To: Traylor, Patrick <ptraylor@velaw.com>
Subject: RE: Copper Smelting NESHAP

[EXTERNAL]

Patrick-

Just wanted to follow up with the live website with more information.

https://www.epa.gov/stationary-sources-air-pollution/clean-air-act-section-112-presidential-exemptions-information

Best,
Abbie

Abigale Tardif
Principal Deputy Assistant Administrator
Office of Air and Radiation
U.S. Environmental Protection Agency
Office: (202) 564-7017

From: Tardif, Abigale (Abbie)
Sent: Monday, March 24, 2025 10:07 AM
To: Traylor, Patrick <ptraylor@velaw.com>
Subject: RE: Copper Smelting NESHAP

Patrick –

I will have further information for you later today but there is an email address going live later today to submit information regarding the Presidential exemption.

Best,
Abbie

Abigale Tardif
Principal Deputy Assistant Administrator
Office of Air and Radiation
U.S. Environmental Protection Agency
Office: (202) 564-7017

From: Traylor, Patrick <ptraylor@velaw.com>
Sent: Wednesday, March 19, 2025 3:51 PM
To: Tardif, Abigale (Abbie) <Tardif.Abigale@epa.gov>
Subject: Copper Smelting NESHAP

Caution: This email originated from outside EPA, please exercise additional caution when deciding whether to open attachments or click on provided links.

Abbie:

Our mutual friend Ryan Jackson said that you're helping manage the various NESHAP reconsiderations, including the copper smelting NESHAP (Subpart QQQ). Ryan and I worked together in Trump 45 when I was the OECA DAA.

On behalf of our client Freeport McMoRan, I'm writing to set up a brief call with you to discuss the process by which Freeport could best support the EPA's efforts to reconsider the rule and obtain a Presidential exemption under Section 112(i).

We're aware that information supporting a Presidential exemption is due March 31, so we'd like to chat with you as far in advance of that date as is convenient for you.

I'd be joined on the call by Todd Weaver from Freeport.

Warm regards,
Patrick

Patrick Traylor

Vinson&Elkins
E ptraylor@velaw.com
W +1.202.639.6734
M +1.202.669.3896
2200 Pennsylvania Avenue NW
Suite 500 West
Washington, DC 20037
Vcard | Bio velaw.com

CONFIDENTIALITY NOTICE: The information in this email may be confidential and/or privileged. This email is intended to be reviewed by only the individual or organization named above. If you are not the intended recipient or an authorized representative of the intended recipient, you are hereby notified that any review, dissemination or copying of this email and its attachments, if any, or the information contained herein is prohibited. If you have received this email in error, please immediately notify the sender by return email and delete this email from your system.

Thank You.

Message

From: Tardif, Abigale (Abbie) [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=614765729C3C41C388C1BA499F25F2ED-EBF081BF-E1]
Sent: 3/24/2025 8:15:03 PM
To: Traylor, Patrick [ptraylor@velaw.com]
Subject: RE: Copper Smelting NESHAP

Patrick-

Just wanted to follow up with the live website with more information.

https://www.epa.gov/stationary-sources-air-pollution/clean-air-act-section-112-presidential-exemption-information

Best,
Abbie

Abigale Tardif
Principal Deputy Assistant Administrator
Office of Air and Radiation
U.S. Environmental Protection Agency
Office: (202) 564-7017

From: Tardif, Abigale (Abbie)
Sent: Monday, March 24, 2025 10:07 AM
To: Traylor, Patrick <ptraylor@velaw.com>
Subject: RE: Copper Smelting NESHAP

Patrick

I will have further information for you later today but there is an email address going live later today to submit information regarding the Presidential exemption.

Best,
Abbie

Abigale Tardif
Principal Deputy Assistant Administrator
Office of Air and Radiation
U.S. Environmental Protection Agency
Office: (202) 564-7017

From: Traylor, Patrick <ptraylor@velaw.com>
Sent: Wednesday, March 19, 2025 3:51 PM
To: Tardif, Abigale (Abbie) <Tardif.Abigale@epa.gov>
Subject: Copper Smelting NESHAP

Caution: This email originated from outside EPA, please exercise additional caution when deciding whether to open attachments or click on provided links.

Abbie:

Our mutual friend Ryan Jackson said that you're helping manage the various NESHAP reconsiderations, including the copper smelting NESHAP (Subpart QQQ). Ryan and I worked together in Trump 45 when I was the OECA DAA.

On behalf of our client Freeport McMoRan, I'm writing to set up a brief call with you to discuss the process by which Freeport could best support the EPA's efforts to reconsider the rule and obtain a Presidential exemption under Section 112(i).

We're aware that information supporting a Presidential exemption is due March 31, so we'd like to chat with you as far in advance of that date as is convenient for you.

I'd be joined on the call by Todd Weaver from Freeport.

Warm regards,
Patrick

Patrick Traylor

Vinson&Elkins
E ptraylor@velaw.com
W +1.202.639.6734
M +1.202.669.3896
2200 Pennsylvania Avenue NW
Suite 500 West
Washington, DC 20037
Vcard | Bio velaw.com

CONFIDENTIALITY NOTICE: The information in this email may be confidential and/or privileged. This email is intended to be reviewed by only the individual or organization named above. If you are not the intended recipient or an authorized representative of the intended recipient, you are hereby notified that any review, dissemination or copying of this email and its attachments, if any, or the information contained herein is prohibited. If you have received this email in error, please immediately notify the sender by return email and delete this email from your system.

Thank You.

Message

From: Tardif, Abigale (Abbie) [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=614765729C3C41C388C1BA499F25F2ED-EBF081BF-E1]
Sent: 3/25/2025 12:35:20 PM
To: Traylor, Patrick [ptraylor@velaw.com]
Subject: RE: Copper Smelting NESHAP

Patrick-

I believe that is the right approach.

Best,
Abbie

Abigale Tardif
Principal Deputy Assistant Administrator
Office of Air and Radiation
U.S. Environmental Protection Agency
Office: (202) 564-7017

From: Traylor, Patrick <ptraylor@velaw.com>
Sent: Monday, March 24, 2025 6:09 PM
To: Tardif, Abigale (Abbie) <Tardif.Abigale@epa.gov>
Subject: Re: Copper Smelting NESHAP

Caution: This email originated from outside EPA, please exercise additional caution when deciding whether to open attachments or click on provided links.

Abbie:

Thanks so much. We're inclined to submit a short request (two pages) with everything that would be needed to be included in a Determination. We'd also plan to attach a more detailed justification for the administrative record. Does that strike you as an approach that the EPA would welcome and find helpful?

Patrick

Patrick Traylor

Vinson&Elkins
E ptraylor@velaw.com
W +1.202.639.6734
M +1.202.669.3896
2200 Pennsylvania Avenue NW
Suite 500 West
Washington, DC 20037
Vcard | Bio velaw.com

From: Tardif, Abigale (Abbie) <Tardif.Abigale@epa.gov>
Sent: Monday, March 24, 2025 4:15:03 PM

To: Traylor, Patrick <ptraylor@velaw.com>
Subject: RE: Copper Smelting NESHAP

[EXTERNAL]

Patrick-

Just wanted to follow up with the live website with more information.

https://www.epa.gov/stationary-sources-air-pollution/clean-air-act-section-112-presidential-exemption-information

Best,
Abbie

[redacted]
Abigale Tardif
Principal Deputy Assistant Administrator
Office of Air and Radiation
U.S. Environmental Protection Agency
Office: (202) 564-7017

From: Tardif, Abigale (Abbie)
Sent: Monday, March 24, 2025 10:07 AM
To: Traylor, Patrick <ptraylor@velaw.com>
Subject: RE: Copper Smelting NESHAP

Patrick

I will have further information for you later today but there is an email address going live later today to submit information regarding the Presidential exemption.

Best,
Abbie

[redacted]
Abigale Tardif
Principal Deputy Assistant Administrator
Office of Air and Radiation
U.S. Environmental Protection Agency
Office: (202) 564-7017

From: Traylor, Patrick <ptraylor@velaw.com>
Sent: Wednesday, March 19, 2025 3:51 PM
To: Tardif, Abigale (Abbie) <Tardif.Abigale@epa.gov>
Subject: Copper Smelting NESHAP

[redacted] **Caution:** This email originated from outside EPA, please exercise additional caution when deciding whether to open attachments or click on provided links.

Abbie:

Our mutual friend Ryan Jackson said that you're helping manage the various NESHAP reconsiderations, including the copper smelting NESHAP (Subpart QQQ). Ryan and I worked together in Trump 45 when I was the OECA DAA.

On behalf of our client Freeport McMoRan, I'm writing to set up a brief call with you to discuss the process by which Freeport could best support the EPA's efforts to reconsider the rule and obtain a Presidential exemption under Section 112(i).

We're aware that information supporting a Presidential exemption is due March 31, so we'd like to chat with you as far in advance of that date as is convenient for you.

I'd be joined on the call by Todd Weaver from Freeport.

Warm regards,
Patrick

Patrick Traylor

Vinson&Elkins

E ptraylor@velaw.com
W +1.202.639.6734
M +1.202.669.3896
2200 Pennsylvania Avenue NW
Suite 500 West
Washington, DC 20037
Vcard | Bio velaw.com

CONFIDENTIALITY NOTICE: The information in this email may be confidential and/or privileged. This email is intended to be reviewed by only the individual or organization named above. If you are not the intended recipient or an authorized representative of the intended recipient, you are hereby notified that any review, dissemination or copying of this email and its attachments, if any, or the information contained herein is prohibited. If you have received this email in error, please immediately notify the sender by return email and delete this email from your system.

Thank You.

FREEPORT-McMoRan

Miami Operations
5701 New St., PO Box 4444, Claypool, AZ 85532-4444

March 31, 2025

Via Email (airaction@epa.gov)

The Honorable Lee Zeldin
Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460

Re: Presidential Exemption: "National Emission Standards for Hazardous Air Pollutants: Primary Copper Smelting Residual Risk and Technology Review and Primary Copper Smelting Area Source Technology Review," 89 Fed. Reg. 41648 (May 13, 2024): Miami Smelter in Gila County, Arizona

Dear Administrator Zeldin:

Freeport-McMoRan Miami Inc. ("FMMI") writes to request a two-year Presidential Exemption under Section 112(i)(4) of the Clean Air Act for compliance deadlines applicable to FMMI's primary copper smelter located near Miami in Gila County, Arizona ("Miami Smelter"). This request applies to all the deadlines promulgated under the National Emission Standards for Hazardous Air Pollutants: Primary Copper Smelting Residual Risk and Technology Review and Primary Copper Smelting Area Source Technology Review, 89 Fed. Reg. 41648 (May 13, 2024) ("Copper Rule"). For the reasons set out in more detail below, the technology to implement the Copper Rule is not available, and it is in the national security interests of the United States for the President to grant a two-year exemption.

I. The technology to implement the Copper Rule is so radically cost-ineffective that it is "not available" in a commonsense understanding of the term

Congress has committed the determination as to whether a technology is "available" to the President's discretion.[1] This discretion includes the consideration of costs when determining if a control technology is available.[2] Based on a sophisticated engineering and cost estimation process, FMMI

[1] The Supreme Court has recognized that where "the President acts pursuant to an express or implied authorization of Congress, his authority is at its maximum, for it includes all that he possesses in his own right plus all that Congress can delegate." *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579, 635 (1952) (Jackson, J., concurring).

[2] *Cf. Michigan v. EPA*, 576 U.S. 743, 755–57 (2015) (finding that the EPA unreasonably deemed cost irrelevant when it decided to regulate hazardous air pollutants from power plants).

estimates that the pollution controls required to comply with the main requirements of the Copper Rule will cost in the range of $237 million to $309 million or higher and will reduce only between 0.2 and 2.2 tons per year of metal hazardous air pollution ("HAP"). Using the annualized capital and operating cost approach under the EPA's Air Pollution Cost Control Manual, these controls will cost between $21 million and $164 million per ton of metal HAP removed. That figure is between 16 and 123 times higher than the EPA's long-established cost-effectiveness limit of $1.3 million per ton metal HAP.[3] Such radical cost-ineffectiveness renders the required technology "unavailable" under any commonsense understanding of the term. This radical cost ineffectiveness is compounded by the absolute cost of compliance, which will run into the hundreds of millions of dollars.[4] An inability to maintain or increase throughput at the Miami Smelter – a potential outcome given the Copper Rule's radical cost-ineffectiveness – would have significant impacts on the domestic copper supply chain to the detriment of national security interests of the United States.

II. A two-year compliance extension is in the national security interests of the United States because of the importance of domestically sourced copper

The Miami Smelter is one of only two primary copper smelters left in operation in the United States and is a key asset that supports Freeport-McMoRan Inc.'s production of some 70 percent of the nation's domestic copper. The President has recognized that copper is "a critical material essential to the national security, economic strength, and industrial resilience of the United States."[5] Copper plays a key role in national defense, energy production, building construction, transportation equipment, industrial machinery and equipment, advanced electronics, and emerging technologies like artificial intelligence. Independent analysts are reasonably concerned that as soon as 2035, global copper production may fall short of global demand by some 12 billion pounds annually.[6] At present, the nation's smelting and refining capacity is critically low, has long been in decline, and lags significantly behind that of global competitors. As a result, the United States

---

[3] *See* 88 Fed. Reg. 55858, 55879 (Aug. 16, 2023) (coke oven proposed NESHAP revisions). These engineering-based cost estimates are much higher than the EPA anticipated during rule development.

[4] FMMI has expressed its longstanding objections to the Copper Rule – including its outlandish compliance costs – through its public comments, its petition for reconsideration, and its petition for judicial review of the final rule.

[5] Exec. Order No. 14,220, *Addressing the Threat to National Security from Imports of Copper*, 90 Fed. Reg. 11001 (Feb. 25, 2025); *see also* Exec. Order No. 14,241, *Immediate Measures to Increase American Mineral Production*, 90 Fed. Reg. 13673 (Mar. 20, 2025).

[6] S&P Global, *The Future of Copper: Will the Looming Supply Gap Short-Circuit the Energy Transition?* 46 (2022), https://perma.cc/FGD2-6KHH [hereinafter *Future of Copper*].

must import almost half of its copper demand each year.[7] This strategic vulnerability to, and increasing dependence on, foreign sources of smelting — particularly from a concentrated number of foreign supplier nations, including China — presents a national security risk.[8] Accordingly, a two-year compliance extension is in the national security interests of the United States.

We have attached to this letter additional support for this request. Please do not hesitate to contact Todd Weaver at tweaver1@fmi.com or (602) 366-7818 should you have any questions or need additional information.

Sincerely,

William E. Cobb
Vice President and Chief Sustainability Officer
Freeport-McMoRan Inc.

Enclosure (1)

cc: Aaron Szabo, Senior Advisor to the Administrator, Office of the Administrator
Abigale Tardif, Principal Deputy Assistant Administrator, Office of Air and Radiation

[7] U.S. Geological Survey, *Mineral Commodity Summary: Copper* 64 (2025), https://perma.cc/E3M4-BMBT.

[8] *See Future of Copper*, *supra* n.6 at 76 (noting "[t]he strategic rivalry between the United States and China—over a projected period in which China will remain the dominant global supplier of refined copper.").

Additional Materials in Support of Request for Presidential Exemption

On March 12, 2025, the U.S. Environmental Protection Agency ("EPA" or the "Agency") announced that it will reconsider several National Emission Standards for Hazardous Air Pollutants ("NESHAP") rulemakings.[1] One NESHAP rulemaking identified by that announcement is the one applicable to primary copper smelting, entitled "National Emission Standards for Hazardous Air Pollutants: Primary Copper Smelting Residual Risk and Technology Review and Primary Copper Smelting Area Source Technology Review," published at 89 Fed. Reg. 41648 (May 13, 2024) ("Copper Rule").[2] The EPA also announced that "[t]he Trump Administration is considering a 2-year compliance exemption under Section 112(i)(4) of the Clean Air Act (the "Act") for affected facilities while EPA goes through the rulemaking process."

In response to the EPA's announcement, Freeport-McMoRan Miami Inc. ("FMMI") has submitted a request for an exemption pursuant to Section 112(i)(4) of the Act, for its primary copper smelter located in Gila County, Arizona, near the town of Miami ("Miami Smelter"). FMMI requests that the Section 112(i)(4) compliance exemption exempt the Miami Smelter from the new standards and limitations prescribed by the Copper Rule for the full initial two-year period authorized under the statute. As explained below, FMMI believes that the statutory criteria for a Section 112(i)(4) compliance exemption are met.

I. Background

A. FMMI and the Miami Smelter

FMMI owns and operates the Miami Smelter, a primary copper smelter[3] that was constructed and put into operation in 1915. By FMMI's estimate, the Miami Smelter was one of nineteen primary copper smelters operating in the United States in the 1970s, spread out across multiple states. Over time, however, most of those smelters have shuttered. As of today, only three primary copper smelters remain, with only two (one of which is the Miami Smelter) currently operating. And of those, the Miami Smelter is the only active facility regulated under the Copper Rule.[4]

Over the years, FMMI has made significant capital investments in the Miami Smelter, including the installation of an electric furnace, gas handling/cleaning systems and a double contact sulfuric

---

[1] EPA Press Office, *Trump EPA Announces Reconsideration of Air Rules Regulating American Energy, Manufacturing, Chemical Sectors (NESHAPs)* (Mar. 12, 2025), https://perma.cc/89EN-VELB. FMMI incorporates all authorities cited herein by reference.

[2] *Id.* (identifying the "NESHAP[] for . . . copper smelting"); EPA, *National Hazardous Standards for Hazardous Air Pollutants (NESHAP): Powering the Great American Comeback Fact Sheet*, https://perma.cc/3CCW-3MQF (last visited Mar. 18, 2025) (specifically identifying the Copper Rule).

[3] Primary copper smelting entails extracting copper directly from copper-bearing mined ore. It is distinct from secondary copper smelting, which recycles copper from scrap and other "waste" sources.

[4] *See* 40 C.F.R. Part 63, Subpart QQQ.

acid plant in 1972, the installation of a more energy-efficient IsaSmelt® vessel in 1992, and upgrades to the facility's particulate matter ("PM") and sulfur dioxide ("SO_2") emission control systems from 2013 to 2017. The Miami Smelter, moreover, is certified according to multiple International Organization for Standardization ("ISO") standards, including ISO 14001 (Environmental Certification) and ISO 45001 (Health & Safety Certification), as well as according to Copper Mark, a comprehensive industry assurance framework designed to demonstrate responsible production practices.

FMMI's operations generate substantial benefits locally (nearly $100 million for Gila County) and for the State of Arizona (almost $300 million) in the form of tax revenues and spending by employees. In 2022, FMMI employed 830 people and created nearly 3,000 additional jobs in Arizona, through the effects of wages, taxes, and services purchased.

FMMI is a subsidiary of Freeport-McMoRan Inc. ("FCX"), one of the world's largest publicly traded copper producers (NYSE: FCX). FCX, headquartered in Phoenix, Arizona, is also the largest copper mining company in the United States, operating seven open-pit copper mines in Arizona (including the large-scale Morenci minerals district in Arizona) and New Mexico, as well as copper processing facilities in Arizona and Texas. All told, FCX's domestic operations annually produce approximately 1.4 billion pounds of copper, accounting for a third of its global production.

FCX recognizes that mining and metal processing impacts the natural environment, and FCX's goal is to conduct mining and processing operations in a manner that minimizes adverse impacts on the environment and supports the protection of ecosystems through responsible environmental stewardship. To that end, FCX understands that environmental protection and stewardship are key to ensuring the long-term viability of its business, including maintaining the necessary support from host communities and governments. FCX's policy objectives include minimizing environmental impacts including those from hazardous air pollutants ("HAP") regulated under the NESHAP program using risk management strategies based on valid data and sound science. Over the years, FMMI has worked collaboratively with the EPA and its technical team to develop effective and workable NESHAP standards applicable to the Miami Smelter.

B. The copper production process

The copper value chain includes more than simply the mining of copper-bearing ore, which itself contains minimal copper by concentration. Copper-bearing ore must be processed to remove its impurities, ultimately resulting in a key intermediary product of copper production copper "anode." Copper anode is traditionally produced by milling sulfide copper ore to create a copper concentrate that is then converted into copper anode through smelting. That is the production process used by the Miami Smelter. The smelting process also produces sulfuric acid, which is then reintegrated upstream into the value chain to be used in mining operations. The Miami Smelter transports its copper anode to an electrorefining facility in El Paso, Texas to produce copper "cathode," which is a very pure form of copper (typically of at least 99.95 percent purity). Copper cathode is the principal form of copper traded on global markets, and it is the product that is further processed for downstream industrial, commercial, and consumer purposes.

FCX's U.S. operations accounted for approximately 70 percent of the total production of U.S. refined copper in 2024. All the anodes manufactured at the Miami Smelter are refined at the El Paso, Texas facility. The vertical integration of FCX's operations allows it to retain the overwhelming majority of its copper production domestically and minimize the amount of copper concentrates that must be exported for smelting and, if necessary, refining.

C. The Copper Rule and subsequent developments

After concluding its periodic residual risk and technology review ("RTR") for the NESHAP for major source Primary Copper Smelters, and its technology review for the Primary Copper Smelting area source NESHAP, the EPA issued a notice of proposed rulemaking,[5] followed later by a supplemental notice of proposed rulemaking.[6] During the rulemaking process, FMMI provided robust comments and technical analyses in response to those notices, as well as responses to follow-on information requests from the Agency. FMMI's comments highlighted, among other things, problems with the EPA's residual risk analysis, the feasibility and cost effectiveness of certain numerical emission limits, and the workability of certain proposed work practice standards. The EPA issued the Copper Rule on May 13, 2024.[7]

Following promulgation of the Copper Rule, FMMI determined—as a result of early-stage engineering studies undertaken as part of FMMI's efforts to implement the final rule—that certain aspects of the Rule would make compliance extremely difficult to achieve, and potentially even cost prohibitive from the standpoint of maintaining economically viable smelter operations.

FMMI submitted to the EPA a petition for reconsideration of the Copper Rule on July 12, 2024. To date, and to FMMI's present knowledge, the EPA has not formally acted upon FMMI's petition for reconsideration, aside from the EPA's March 12 press release announcing the Agency's intent to reconsider the Copper Rule, among other NESHAP rules. On the same day it submitted the petition for reconsideration, FMMI also filed a petition for review of the Copper Rule in the U.S. Court of Appeals for the District of Columbia Circuit. FMMI's petition for review was consolidated with that filed by the San Carlos Apache Tribe and Sierra Club. *See San Carlos Apache Tribe, et al. v. EPA, et al.*, No. 24-1241 (D.C. Cir.) (consolidated with No. 24-1245). On October 24, 2024, the parties filed a joint motion to hold the matter in abeyance pending the EPA's resolution of the petitions for reconsideration. The motion was granted on November 4, 2024. In a joint status report filed with the court on February 3, 2025, the EPA represented that it is continuing to consider the petitions for reconsideration before it.

[5] 87 Fed. Reg. 1616 (Jan. 11, 2022).

[6] 88 Fed. Reg. 47415 (July 24, 2023).

[7] 89 Fed. Reg. 41648 (May 13, 2024).

II. FMMI's request for a Presidential Exemption meets the statutory requirements under Section 112(i)(4)

Section 112(i)(4) of the Act provides that "[t]he President may exempt any stationary source from compliance with *any standard or limitation under this section* for a period of not more than 2 years if the President determines that *the technology to implement such standard is not available* and that *it is in the national security interests of the United States to do so*."[8]

As initial matters, the Miami Smelter is a stationary source subject to the Copper Rule's standards and limitations. The Copper Rule was promulgated by the EPA pursuant to Section 112(d) and 112(f) of the Act.[9] The language "any standard or limitation under this section" in Section 112(i)(4) means that the President may exempt a stationary source from any type of standard or limitation promulgated pursuant to Section 112, regardless of the particular subdivision relied upon by the EPA.[10] It is thus of no consequence, for purposes of the Presidential Exemption, that the EPA relied upon both Section 112(d) and 112(f) to promulgate the Copper Rule.

Section 112(i)(4) calls for two predicate determinations. First, the President must determine that "the technology to implement [the exempted standard or limitation] is not available." Second, the President must determine that "it is in the national security interests of the United States" to exempt the stationary source from compliance. Below, FMMI explains why both predicate determinations are met with respect to the Copper Rule.

A. The technology to implement the Copper Rule is so radically cost-ineffective that it is "not available" in a commonsense understanding of the term

The President must "determine[]" that "the technology to implement" the exempted standard or limitation "is not available."[11] As detailed below, Congress did not specify under what circumstances the President should find a technology "not available" and instead committed this determination to the President's discretion. Here, the radical cost ineffectiveness of the requisite control technology strongly supports finding it "not available."

Based on a sophisticated engineering and cost estimation process, FMMI estimates that the pollution controls required to comply with the main requirements of the Copper Rule will cost in the range of $237 million to $309 million or higher and will reduce only between 0.2 and 2.2 tons per year of metal HAP. Using the annualized capital and operating cost approach under the EPA's Air Pollution Cost Control Manual, these controls will cost between $21 million and $164 million per

---

[8] 42 U.S.C. § 7412(i)(4) (emphases added).

[9] 89 Fed. Reg. at 41651, 41653.

[10] *Cf. Babb v. Wilkie*, 140 S. Ct. 1168, 1173 n.2 (2020) ("We have repeatedly explained that the word 'any' has an expansive meaning." (internal quotation marks and citation omitted)); *accord New York v. EPA*, 443 F.3d 880, 885 86 (D.C. Cir. 2006) (giving the word "any," as used in the Clean Air Act, an "expansive meaning" (citations omitted)).

[11] 42 U.S.C. § 7412(i)(4).

ton of metal HAP removed. That figure is between 16 and 123 times higher than the EPA's long-established cost-effectiveness limit of $1.3 million per ton metal HAP.[12]

1. Congress committed the determination of whether a technology is "available" under Section 112(i)(4) to the President's discretion

The Act does not specify when a technology should be determined "available" for purposes of Section 112(i)(4).[13] Instead, Congress has committed such determination to the President's discretion. This is clear from the text of Section 112(i)(4), which authorizes an exemption "if the President determines" the requisite criteria are met, without provision for judicial second-guessing of that determination.[14]

The Supreme Court has recognized that where "the President acts pursuant to an express or implied authorization of Congress, his authority is at its maximum, for it includes all that he possesses in his own right plus all that Congress can delegate."[15] Such is the case here, where Congress explicitly authorized the President to determine whether a technology is "available," at his discretion and only with the added requirement that "[t]he President shall report to Congress with respect to each exemption (or extension thereof)."[16]

2. The radical cost ineffectiveness of the requisite controls warrants a finding of technological unavailability

Here, the radical cost ineffectiveness of the requisite controls supports a finding of technological unavailability. As leading scholars of administrative and regulatory law have long observed, common sense dictates that a technology is not "available" if it is radically cost-ineffective:

[12] *See* 88 Fed. Reg. 55858, 55879 (Aug. 16, 2023) (coke oven proposed NESHAP revisions). These engineering-based cost estimates are much higher than the EPA anticipated during rule development.

[13] Nor to FMMI's knowledge has any court meaningfully interpreted the scope of "available" under Section 112(i)(4).

[14] It is clear from the statute, moreover, that to the extent Congress contemplated a check on the President's authority, the relevant check was its own (i.e., Congress's) ongoing oversight, not judicial review. *See* 42 U.S.C. § 7412(i)(4) (providing that the President "shall report to Congress" on each exemption).

[15] *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579, 635 (1952) (Jackson, J., concurring); *see Haig v. Agee*, 453 U.S. 280, 294 (1981) (concluding that on the matter of passport controls, "Congress endorsed not only the underlying premise of Executive authority in the areas of foreign policy and national security, but also its specific application to the subject" through authorizing legislation); *see also Franklin v. Massachusetts*, 505 U.S. 788, 801 (1992) ("Although the President's actions may still be reviewed for constitutionality, we hold that they are not reviewable for abuse of discretion under the APA.") (internal quotation marks and citation omitted); *Am. Int'l Grp., Inc. v. Islamic Republic of Iran*, 657 F.2d 430, 440–41 (D.C. Cir. 1981) (applying Justice Jackson's tripartite *Youngstown* framework and determining that the President was "acting pursuant to an unequivocal statutory grant of authority"; "we perceive no erosion of the constitutional principle of the separation of powers in upholding the actions").

[16] 42 U.S.C. § 7412(i)(4).

ED_018388_00000153-00008
ED_021114A_00007586-00017

> "Available technology" is an elastic concept. In many instances . . . technology is available in an engineering sense to eliminate pollution entirely. If we were willing to spend hundreds of billions of dollars, we could have drinking water flowing from industrial waste discharge pipes (although disposing of the pollutants removed from waste streams could present serious problems). *Accordingly, most decisions about "available" technology must implicitly or explicitly take costs into account.*[17]

The same commonsense understanding has also guided courts reviewing the EPA's authority to find that consideration of regulatory costs is an essential prerequisite for reasoned decision making and to find that controls imposing "possibly disabling costs upon the regulated industry" should not be deemed "available."[18] The radically cost-ineffective controls imposed by the Copper Rule may be "possibly disabling" to maintaining economically viable operations at the Miami Smelter, which creates the risk that curtailed domestic production will make the United States strategically vulnerable.

As discussed below, consideration of (i) the cost of the requisite controls on a dollars per ton of emissions reduced basis and (ii) EPA policy acknowledging that extraordinarily expensive controls are not "available" under the Act's New Source Review program further support a finding that the requisite controls are not available.

Using the annualized capital and operating cost approach under the EPA's Air Pollution Cost Control Manual, these controls will cost between $21 million and $164 million per ton of metal HAP removed. That figure is between 16 and 123 times higher than the EPA's long-established cost-effectiveness limit of $1.3 million per ton metal HAP. Such radical cost-ineffectiveness renders the control technology "not available."

EPA guidance interpreting the term "best available control technology" under the Act further supports a finding that the extraordinarily expensive requisite controls are "not available." Even when the Act tasks the EPA with determining the "best" control technology "available," the Act requires

---

[17] Bruce A. Ackerman & Richard B. Stewart, *Reforming Environmental Law*, 37 Stan. L. Rev. 1333, 1359 n.60 (1985) (emphasis added).

[18] *Am. Petroleum Inst. v. EPA*, 787 F.2d 965, 972 (5th Cir. 1986) (evaluating "best available technology economically achievable" (BAT) limitations under the Clean Water Act in offshore drilling-related permits and explaining, "EPA would disserve its mandate were it to tilt at windmills by imposing BAT limitations which removed de minimis amounts of polluting agents from our nation's waters, while imposing possibly disabling costs upon the regulated industry" (citations omitted)); *id.* ("We agree with the Ninth Circuit's comment that, 'at some point[] extremely costly more refined treatment will have a de minimis effect on the receiving waters.'" (quoting *Ass'n of Pac. Fisheries v. EPA*, 615 F.2d 794, 818 (9th Cir. 1980))); *see also Michigan v. EPA*, 576 U.S. 743, 755–57 (2015) (finding that EPA unreasonably deemed cost irrelevant when it decided to regulate HAPs from power plants under the Act); *Riverkeeper, Inc. v. EPA*, 358 F.3d 174, 181–83 (2d Cir. 2004) (evaluating BAT limitations and recognizing that "EPA is permitted to consider a *technology's cost* in determining whether it is practicable, economically achievable, *or available*") (emphasis added) (internal quotation marks and citation omitted).

consideration of "economic impacts and other costs."[19] And EPA guidance recognizes that unreasonably expensive controls are *not* "best available control technology."

Accordingly, consistent with the EPA's own recognition of the commonsense principle that radically cost ineffective controls are not "available," the President would be justified in using his discretion to find that the controls here are not available.

B. A two-year compliance extension is in the national security interests of the United States because of the importance of domestically sourced copper

The President must also "determine[]" that a compliance exemption "is in the national security interests of the United States."[20] There is ample evidence that it is in the United States' national security interests to exempt FMMI's Miami Smelter from compliance with the Copper Rule. In short, the Miami Smelter is one of only two primary copper smelters currently operating in the United States, and the facility generates a significant portion of the nation's domestically produced copper. If, as a result of the unavailability of technology to meet the Copper Rule, FMMI cannot maintain economically viable smelter operations at the facility, the curtailment of that domestic production risks making the United States strategically vulnerable to, and increasingly dependent upon, foreign suppliers of copper (particularly China). That outcome would be problematic because global copper demand is forecasted to significantly increase—and likely outstrip global supply in the coming decades.

1. The scope of "national security interests of the United States" under Section 112(i)(4) of the Act is broad

The Clean Air Act does not define the scope of "national security interests of the United States" for purposes of Section 112(i)(4), and to FMMI's knowledge, no court has meaningfully interpreted its scope. Broadly speaking, "national security" is a capacious term without a single controlling definition.[21] However, the principle, especially following the close of the Cold War, has been understood to go beyond military defense and protection from interstate conflict, and instead to encompass a wider range of threats to the safety, welfare, and values of the nation, such as resource or energy scarcity, disruption of economic activities, and trade restrictions or barriers.[22]

---

[19] 42 U.S.C. § 7479(3) ("The term 'best available control technology' means an emission limitation . . . which the permitting authority . . . taking into account . . . economic impacts and other costs, determines is achievable . . . .").

[20] *Id.* § 7412(i)(4).

[21] *See* James E. Baker, *In the Common Defense: National Security Law for Perilous Times* 18 (2007) ("[N]o single definition of national security is recognized in law or as policy predicate.").

[22] *See* David A. Baldwin, *The Concept of Security*, 23 Rev. Int'l Stud. 5, 23 (1997), https://perma.cc/QPM8-BD65; *see also* Baker, *supra* n.21, at 19 (taking a narrower view of "national security" but nevertheless acknowledging that the concept centers on "preservation of a value system," especially from more "immediate" and "human threats"); Inv. Div., Directorate for Fin. and Enter. Affairs, Org. for Econ. Coop. and Dev., *Security-Related Terms in International Investment Law and in National Security Strategies* 11 (2009), https://perma.cc/DN99-J5T7 (study of states' national security policies finding that

ED_018388_00000153-00010
ED_021114A_00007586-00019

In fact, recent presidential administrations, regardless of party affiliation, have identified certain transnational and domestic economic and natural resource matters as potential national security interests or threats: energy market disruptions; promotion of domestic research, development, and manufacturing in emerging technologies; and restricted access to international markets.[23]

The Supreme Court, for its part, has afforded the political branches substantial deference with respect to national security matters, including with respect to the factual findings and policy decisions of the Executive Branch.[24] As noted above, courts have also recognized that where "the President acts pursuant to an express or implied authorization of Congress, his authority is at its maximum, for it includes all that he possesses in his own right plus all that Congress can delegate."[25] Such is the case here, where Congress explicitly authorized the President to make national security determinations, at his discretion and only with the added requirement that "[t]he President shall report to Congress with respect to each exemption (or extension thereof)."[26]

2. *President Trump, Congress, and the previous administration have all recognized the critical importance of copper to the national security of the United States*

President Trump has recognized that "the United States has ample copper reserves, yet our smelting and refining capacity lags significantly behind global competitors," finding that foreign "dominance" of copper smelting and refining "poses a direct threat to United States national security

---

"national security . . . refers to protecting nations and citizens," and that states "aspire to a broad and integrated management of risks, often including all threats to public safety that require coordinated, nationwide responses," including threats like "energy security," "global pandemics," and "man-made emergencies").

[23] *See* The White House, *National Security Strategy of the United States of America* 17–23 (2017), https://perma.cc/D9MV-FQSJ; The White House, *National Security Strategy* 2, 15, 16–17 (2015), https://perma.cc/2NMM-QYH5; The White House, *A National Security Strategy of Engagement and Enlargement* 7, 8 (1995), https://perma.cc/4QCK-4QMN (explaining that the United States' "security requirements . . . start with our physical defense and economic well-being" while also identifying that "[a]n emerging class of transnational environmental and natural resource issues is increasing affecting international stability").

[24] *See Holder v. Humanitarian Law Project*, 561 U.S. 1, 34 (2010) ("But when it comes to collecting evidence and drawing factual inferences in" the areas of national security and foreign relations, "the lack of competence on the part of the court is marked, and respect for the Government's conclusions is appropriate." (internal quotation marks and citation omitted)); *id.* at 34–35 (recognizing that "[i]n th[e] context" of national security and foreign relations, "conclusions must often be based on informed judgment rather than concrete evidence, and that reality affects what we may reasonably insist on from the Government"); *Winter v. Nat. Def. Res. Council*, 555 U.S. 7 (2008) (deference to the President after explicit finding: "The President determined that continuation of the exercises as limited by the Navy was 'essential to national security.'"); *see also Dep't of Navy v. Egan*, 484 U.S. 518, 530 (1988) ("[C]ourts traditionally have been reluctant to intrude upon the authority of the Executive in military and national security affairs.").

[25] *See supra* n.15.

[26] 42 U.S.C. § 7412(i)(4).

ED_018388_00000153-00011
ED_021114A_00007586-00020

and economic stability."[27] President Trump has also described the criticality of copper by recently recognizing the mineral's importance "to the national security, economic strength, and industrial resilience of the United States," as well as the "significant vulnerabilities in the copper supply chain, with increasing reliance on foreign sources for mined, smelted, and refined copper."[28] Indeed, the United States' "increasing dependence on foreign sources of copper, particularly from a concentrated number of supplier nations, along with the risk of foreign market manipulation," introduces trade concerns that threaten national security.[29] Likewise, FMMI notes that the Administration has reiterated that domestic mineral production, including of copper, is a strategic national interest, especially as a means to "reduce . . . reliance on foreign nations" and generate "a secure, predictable, and affordable supply of minerals."[30]

This Administration's actions fit within a broader federal policy to ensure reliable, secure, and resilient domestic supply chains for key minerals and materials. As part of the Energy Act of 2020, Congress set forth its findings that:

- "the availability of materials[31] is essential for national security, economic well-being, and industrial production";
- "the availability of materials is affected by the stability of foreign sources of essential industrial materials, instability of materials markets, international competition and demand for materials, the need for energy and materials conservation, and the enhancement of environmental quality"; and
- "extraction, production, processing, use, recycling, and disposal of materials are closely linked with national concerns for energy and the environment."[32]

Congress also set forth its policy "to promote an adequate and stable supply of materials necessary to maintain national security, economic well-being and industrial production" in order to "assure the availability of materials critical to commerce, the economy, and national security" and to

[27] Exec. Order No. 14,220, *Addressing the Threat to National Security from Imports of Copper*, 90 Fed. Reg. 11001 (Feb. 25, 2025).

[28] *Id.*

[29] *Id.*

[30] Exec. Order No. 14,241, *Immediate Measures to Increase American Mineral Production*, 90 Fed. Reg. 13673 (Mar. 20, 2025).

[31] Defined as "substances, including minerals, of current or potential use that will be needed to supply the industrial, military, and essential civilian needs of the United States in the production of goods or services, including those which are primarily imported or for which there is a prospect of shortages or uncertain supply, or which present opportunities in terms of new physical properties, use, recycling, disposal or substitution, with the exclusion of food and of energy fuels used as such." 30 U.S.C. § 1601(b)(2).

[32] *Id.* § 1601(a)(1)–(3).

"avoid supply shortages, mitigate price volatility, and prepare for demand growth and other market shifts."[33]

The Energy Act of 2020 identified a need to secure continued access to critical materials, defined as "any non-fuel mineral, element, substance, or material that the Secretary of Energy determines . . . has high risk of a supply chain disruption[] and serves an essential function in 1 or more energy technologies, including technologies that produce, transmit, store, and conserve energy."[34] Relevant here, the Department of Energy, in its 2023 *Critical Materials Assessment*, projects that copper will be a "near-critical" material in the medium term (2025 to 2035).[35] DOE, moreover, identified copper as a "critical material for energy" in its Final Critical Materials List.[36]

3. Non-governmental experts have concluded that the United States will need more copper in the coming decades, likely outstripping supply

There is broad public acknowledgment that copper is and will continue to be an essential mineral, and that current levels of copper production are likely insufficient to meet global demand in the face of those growing demand pressures from the energy transition. S&P Global, in its *Future of Copper* study, outlined its demand projections for copper as the United States and other nations pivot towards electrification and clean energy policies. The report predicts a doubling of global copper demand by 2035—from about 25 million metric tons ("MMt") annually to about 50 MMt annually driven in large part by the increased adoption of electric vehicles (and the development of charging infrastructure) and the construction, deployment, and integration of renewable energy projects.[37] S&P Global also forecasts that global demand increases will remain resilient at approximately 50 MMt annually, well into 2050.[38]

S&P Global's forecasts generally accord with those of other entities. McKinsey & Company estimates that annual global copper demand will reach 36.6 MMt by 2031.[39] Wood Mackenzie, a leading energy consultant, forecasts that the annual demand for copper will grow to 56 MMt by 2050, an increase of about 75 percent.[40] The Department of Energy likewise observes that "[t]he

[33] *Id.* § 1602(a)(1), (3).

[34] *Id.* § 1606(a)(2)(A).

[35] U.S. Dep't of Energy, *Critical Materials Assessment* 106 (2023), https://perma.cc/3JVX-67PR [hereinafter DOE *Critical Materials Assessment*].

[36] Notice of Final Determination on 2023 DOE Critical Materials List, 88 Fed. Reg. 51792, 51792 (Aug. 4, 2023).

[37] S&P Global, *The Future of Copper: Will the Looming Supply Gap Short-Circuit the Energy Transition?* 9, 11 (2022), https://perma.cc/FGD2-6KHH [hereinafter *Future of Copper*].

[38] *Id.* at 11.

[39] Scott Crooks et al., *Bridging the Copper Supply Gap*, McKinsey & Co. (Feb. 17, 2023), https://perma.cc/DHV2-PUB9 [hereinafter *Bridging the Copper Supply Gap*].

[40] Nick Pickens et al., Wood Mackenzie, *Securing Copper Supply: No China, No Energy Transition* 2 (2024), https://perma.cc/9QKD-SDV2 [hereinafter *Securing Copper Supply*].

demand for [copper] is increasing significantly."[41] There is thus little indication that global copper demand will do anything but increase in the coming decades.

Copper has unique properties—namely, its ability to efficiently conduct electricity and withstand high temperatures, as well as its ductility and recyclability — that make it an essential commodity. Copper is critical to the production of electric vehicles, batteries, renewable energy projects, conventional energy projects like hydroelectric, thermal, and nuclear power, and electrification infrastructure (e.g., transmission, distribution, charging).[42] Electric vehicles, in particular, require roughly 2.5 times as much copper as an internal combustion engine vehicle.[43] Copper is used in every major component of an electric vehicle, such as motors and inverters, such that an electric vehicle can use up to a mile of copper wire.[44] Similarly, solar and offshore wind will need, respectively, two and five times more copper per megawatt of installed capacity as compared to power generated using natural gas or coal.[45]

Importantly, the demand pressures arising from the global energy transition are in addition to non-energy transition needs. According to the United States Geologic Survey ("USGS"), in 2024, a little over 40 percent of copper and copper alloy products in the United States was used for building construction, while another 18 percent was used for transportation equipment, and another 7 percent for industrial machinery and equipment.[46] And S&P Global projects that demand from non-energy transition end markets — such as building construction, appliances, electrical equipment, and brass hardware and cell phones, as well as expanding applications in communications, data processing, and storage—is also expected to continue to grow, rising at a compounded annual rate of 2.4 percent between 2020 and 2050.[47]

Of course, demand does not exist in a vacuum. On the supply side, there are growing concerns that global copper production will not be sufficient to meet growing demands. In the present term,

---

[41] *See* DOE *Critical Materials Assessment*, *supra* n.35, at 148.

[42] *See Future of Copper*, *supra* n.37, at 10, 27 – 35; Int'l Energy Agency, *The Role of Critical Minerals in Clean Energy Transitions* 5 – 8 (2021), https://perma.cc/TM48-BV8W; Jon Lynch, *Copper's Role in Growing Electric Vehicle Production*, CME Group (April 20, 2021), https://perma.cc/N72L-FJJH.

[43] *Future of Copper*, *supra* n.37, at 28.

[44] *See Powering Up the Electric Vehicle*, Wood Mackenzie (Aug. 13, 2019), https://perma.cc/E73G-G8HX; *see also* DOE *Critical Materials Assessment*, *supra* n.35, at 15 (explaining how and why copper is a prevalent material in electric vehicles).

[45] *Future of Copper*, *supra* n.37, at 33; *see also* DOE *Critical Materials Assessment*, *supra* n.35, at 36, 42 – 45 (discussion of prevalence of copper in wind energy components and electric grid technologies and components).

[46] U.S. Geological Survey, *Mineral Commodity Summary: Copper* 64 (2025), https://perma.cc/E3M4-BMBT [hereinafter *Mineral Commodity Summary*]; *Copper Statistics and Information*, U.S. Geological Survey, https://perma.cc/H2UF-HL8Y (last visited Mar. 27, 2025).

[47] *Future of Copper*, *supra* n.37, at 11.

growth in global copper production has been described as "sluggish."[48] Longer term, S&P Global projects that under its most ambitious outlook for supply (i.e., one that contemplates expansions in mining capacity, improved mining and production efficiencies, and increased recycling), there is still an expected shortfall of 1.6 MMt in 2035.[49] Its much less optimistic outlook, moreover, expects a shortfall close to 10 MMt in 2035.[50] S&P Global's findings align with those of others.[51] With respect to copper cathodes, recycling and the addition of secondary copper smelting capacity is unlikely to close expected shortfalls — recycling provides only about 32 percent of current and likely future cathode supply.[52]

Ensuring and expanding efficient production of copper is critical for national security and the U.S. economy. Primary copper smelting capacity in the United States is critically low and has long been in decline. As noted previously, the Miami Smelter is one of only two primary copper smelters left in operation in the United States and is a key asset that supports Freeport-McMoRan Inc.'s production of some 70 percent of the nation's domestic copper. ***An inability to maintain or increase throughput at the Miami Smelter—a potential outcome given the Copper Rule's radical cost ineffectiveness, see supra Section II.A—would have significant impacts on the domestic copper supply chain to the detriment of the national security interests of the United States.***

Domestically, the United States produces some fifty percent of the refined copper it consumes each year.[53] The remaining amount is imported, largely from Chile, Canada, and Peru. Notably, however, the U.S. copper supply chain typically results in significant quantities of copper-bearing ores and copper concentrates from domestic mining operations being exported for processing at foreign smelters, typically located in China. Refined copper is then imported back into the United States.[54] This reflects the reality that while copper mining is often geographically concentrated in a manner that favors the United States, the subsequent stages in the copper production process (i.e., smelting, refining, fabrication, and manufacture of finished goods) are presently, and increasingly, concentrated outside the United States, particularly in China.[55] A Wood Mackenzie report on the topic confirms that "China has continued to dominate investment in the [copper] supply

[48] *See* Int'l Energy Forum, *How Copper Shortages Threaten the Energy Transition* (Jan. 10, 2024), https://perma.cc/8ZHV-C9AA; *see also* Yusuf Khan, *Copper Shortages Threatens Green Transition*, Wall St. J. (Apr. 18, 2023), https://tinyurl.com/2sm3zh8n (reporting from industry professionals that the global copper market "is pretty tight" and that "there's no slack in the system, no buffer").

[49] *Future of Copper*, *supra* n.37, at 46.

[50] *Id.*

[51] *See Bridging the Copper Supply Gap*, *supra* n.39; *see also* Dr. Kwasi Ampofo, *Copper Prices May Jump 20% by 2027 as Supply Deficit Rises*, BloombergNEF (Oct. 12, 2023), https://perma.cc/NTY6-7F4P.

[52] Int'l Copper Study Grp., *The World Copper Factbook 2024*, at 53 (2024), *available at* https://tinyurl.com/ysz47jau.

[53] *Mineral Commodity Summary*, *supra* n.46, at 64.

[54] *Id.*

[55] *See Securing Copper Supply*, *supra* n.40, at 3.

chain," and that "China has accounted for 75 percent of all global smelter capacity growth."[56] The United States, for its part, "has tilted towards the secondary market and scrap."[57] This import-export relationship also reduces the availability of domestic sulfuric acid, which as noted previously, is a byproduct of primary copper smelting and is often re-inserted upstream for mining activities.

In sum, the global copper market is likely approaching an inflection point, where global demand outstrips global supply. The Miami Smelter represents a critical component of the United States' ability to produce copper domestically. The Copper Rule, however, presents a material threat to the continued operation of and the ability to expand production at the Miami Smelter, given its radical cost ineffectiveness. *See supra* Section II.A.

[56] *Id.* at 5.

[57] *Id.* at 8.

Message

From: Hirsch, Brigit [Hirsch.Brigit@epa.gov]
Sent: 11/20/2025 5:38:03 PM
To: Holran, Carolyn [Holran.Carolyn@epa.gov]; Mandy, Cora [Mandy.Cora@epa.gov]
Subject: Fw: New York Times deadline inquiry: Copper smelter
Attachments: FOIA Records - 2025-EPA-04812 Freeport application_.pdf

Get Outlook for iOS

From: Maxine Joselow <maxine.joselow@nytimes.com>
Sent: Thursday, November 20, 2025 12:26:54 PM
To: EPA Press Office <press@epa.gov>; Hirsch, Brigit <Hirsch.Brigit@epa.gov>
Subject: New York Times deadline inquiry: Copper smelter

> **Caution:** This email originated from outside EPA, please exercise additional caution when deciding whether to open attachments or click on provided links.

Hi Brigit and EPA press team,

I hope you're all doing well. I'm working on an article about Freeport-McMoRan's copper smelter in Miami, Arizona, which President Trump exempted from compliance with EPA's copper rule last month.

The article will mention that Abigale Tardif, the principal deputy assistant administrator in EPA's Office of Air and Radiation, emailed with a lobbyist for Freeport-McMoRan about how the company could best position itself to obtain the presidential exemption under the Clean Air Act, according to emails obtained by the Environmental Defense Fund via the Freedom of Information Act.

I have attached those emails for your reference, and I was hoping you could answer the following questions. My deadline is currently set for **5pm ET tomorrow**, although it might be extended.

- Can you confirm whether Abigale Tardif had a call with the lobbyist for Freeport-McMoRan, Patrick Traylor, in March?
- How would EPA respond to criticism from environmentalists that these emails show a remarkable degree of coordination between the agency and one of the companies it regulates?

Please let me know and thank you for considering this request. I will also reach out to the White House regarding the presidential exemption.

Best,
Maxine

--
Maxine Joselow
Climate Reporter
The New York Times
Cell: 202-948-1924
Signal: MaxineJ.55

Docusign Envelope ID: E9ADD7F2-A19C-4404-A5BD-657D12ADCD16

TRI-STATE

May 22, 2025

Honorable Lee Zeldin
Office of the Administrator (1101A)
United States Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460
airaction@epa.gov

RE: Request for Presidential Exemption: *National Emission Standards for Hazardous Air Pollutants: Coal- and Oil-Fired Electric Utility Steam Generating Units Review of the Residual Risk and Technology Review* (89 Fed. Reg. 38,508 (May 7, 2024)); Craig Generating Station, Moffat County, Colorado

Dear Administrator Zeldin:

Tri-State Generation and Transmission Association ("Tri-State") respectfully submits this request for a Presidential Exemption for **two years** under Section 112(i)(4) of the Clean Air Act for **Craig Generating Station Units 2 and 3**, in Moffat County, Colorado. Specifically, Tri-State requests this exemption from the mandate under the **2024 Mercury and Air Toxics Standards ("MATS") Risk and Technology Review ("RTR") rule** for monitoring and demonstrating compliance with the revised filterable particulate matter ("fPM") standard using particulate matter continuous emissions monitoring systems ("PM CEMS") equipment.[1]

The Craig Generating Station is a coal-fired power plant in Moffatt County, Colorado, which is an attainment/unclassifiable area for all Criteria air pollutants. This request concerns two of the three coal-fired Electric Generating Units ("EGUs") at the plant, Unit 2 (410 MW) and Unit 3 (448 MW)[2]. The Craig EGUs have contemporary emission controls. To reduce particulate matter emissions by greater than 99%, each of the two units has a baghouse. To reduce sulfur dioxide emissions, Unit 2 is equipped with a limestone scrubber and Unit 3 is equipped with a lime spray-dryer. To reduce nitrogen oxide emissions, both units utilize low-NOx burners and overfire air; Unit 2 also includes selective catalytic reduction equipment and Unit 3 also utilizes Selective Non-Catalytic Reduction equipment. The plant

[1] *National Emission Standards for Hazardous Air Pollutants: Coal- and Oil-Fired Electric Utility Steam Generating Units Review of the Residual Risk and Technology Review*, 89 Fed. Reg. 38,508 (May 7, 2024) ("2024 MATS RTR Rule"). MATS is codified at 40 C.F.R. Part 63, Subpart UUUUU. The RTR rule was challenged in court, *North Dakota v. EPA*, No. 24-1119 (D.C. Cir.), and is being reconsidered by EPA. *See* Mercury and Air Toxics Standards (MATS): Powering the Great American Comeback Fact Sheet. MATS is the regulation setting forth national hazardous air pollutant standards ("NESHAPs") for coal- and oil-fired electric utility steam generating units ("EGUs") under Section 112 of the Clean Air Act. The 2024 MATS RTR Rule revised the fPM standard, which is a surrogate for non-mercury metal Hazardous Air Pollutants ("HAPs"), reducing it to one-third of the current standard (from 0.030 lb/MMBtu to 0.010 lb/MMBtu), and also required the use of PM CEMS as the sole means of demonstrating compliance.

[2] Craig Station Unit 1 has a retirement date of December 31, 2025.

Docusign Envelope ID: E9ADD7F2-A19C-4404-A5BD-657D12ADCD16

meets or surpasses all applicable emission limitations under the Clean Air Act, including the currently applicable (and the revised) fPM standard and other hazardous air pollutant NESHAPs under MATS.

As explained in more detail below, Craig Station will not be able to reliably and consistently comply with the revised requirement for PM CEMS monitoring for fPM because even though PM CEMS exist, they are not capable of showing compliance with the new lower limits. Tri-State requests a two-year Presidential Exemption, as provided in Section 112(i)(4) of the Clean Air Act.

The PM CEMS Technology Required Under the 2024 MATS RTR Rule Is Not Available.

Under the currently effective MATS regulations, Craig Station demonstrates compliance with the fPM standard using quarterly stack tests. These tests show, according to EPA's own 2024 rulemaking, that the baghouses at the plant are highly effective, resulting in a fPM emissions rate about an order of magnitude less than the current standard. Using PM CEMS for demonstrating compliance at Craig Station for the last decade (since MATS became effective) would have been a waste of money, given how much lower Craig Station emissions are than the standard. But the mandate of the 2024 MATS RTR Rule for all EGUs to use PM CEMS exclusively to demonstrate compliance presents a wholly different, and intractable, problem.

Specifically, many industry commenters filed comments in the 2024 rulemaking explaining that it is not technically feasible to use PM CEMS to demonstrate compliance with the extremely low fPM emission levels that would be required by the 2024 MATS RTR rule.[3] As Ralph L. Roberson, an engineer with more than 50 years of experience with the regulation and monitoring of emissions from EGUs and other facilities, explains in a technical memorandum, PM CEMS do not directly measure the amount of fPM particles in the flue gas but instead make indirect measurements to other criteria that require correlation to fPM to measure compliance. The very low standard adopted in the 2024 MATS RTR Rule would require that correlation be established over such a limited data range and at such low levels that it would be "virtually impossible" to establish a valid correlation of the PM CEMS.[4] In short, PM CEMS are practically unusable for the purpose EPA required in the 2024 MATS RTR Rule. In 2024, EPA rejected these comments in the final rule and forged ahead with a very low revised fPM standard and the requirement to use PM CEMS technology to demonstrate compliance. Craig Station Units 2 and 3 can meet the lower emission limit but cannot ensure compliance with the use of PM CEMS.

Notwithstanding EPA's decision in the final 2024 MATS RTR Rule, Tri-State's experience, Tri-State's internal experts, and experts for the industry at large all agree: PM CEMS are not an available technology to demonstrate compliance with a fPM standard at the level of 0.010 lb/MMBtu. For this

[3] *See* Comments of the Power Generators Air Coalition (PGen), Docket ID No. EPA-HQ-OAR-2018-0794-5994, at 22-26 (June 23, 2023) (Section entitled "Proper Correlation of PM CEMS at the Proposed fPM Surrogate Emission Standard of 0.010 lb/MMBTU Is Next to Impossible.")

[4] Ralph L. Roberson, Memorandum, *Technical Comments on EPA's Proposed Rule: Mercury and Air Toxics Standards Risks and Technology Review*, at 2-3 (2023), Attachment C to PGen Comments. This technical memorandum is submitted as an attachment to this request.

Docusign Envelope ID: E9ADD7F2-A19C-4404-A5BD-657D12ADCD16



TRI-STATE

reason, "the technology to implement the revised fPM standard in the 2024 MATS RTR Rule is not available." *See* 42 U.S.C. § 7412(i)(4).

A Presidential Exemption for Craig Generating Station is in the National Security Interests of the United States.

The President of the United States has issued several Executive Orders making unmistakably clear that preserving the nation's electric generating capacity is in the national security interest of the United States. Most notably, Executive Order 14156, "Declaring a National Energy Emergency," recognizes that "[a]n affordable and reliable domestic supply of energy is a fundamental requirement for the national and economic security of any nation." The Executive Order defines "generation" to include "the use of energy to produce electricity," and the term "energy" to include "coal." Executive Order 14156 thus specifically identifies the preservation of the nation's electric generating capacity, including coal-fired generation, as vital for the national security of the United States.

Executive Order 14154, "Unleashing American Energy," says "[i]t is … in the national interest to unleash America's affordable and reliable energy and natural resources." In directing all federal agencies to review their actions, the Executive Order requires "particular attention to … coal," among other energy resources.

In Executive Order 14213, "Establishing the National Energy Dominance Council," the President establishes a council, the principal charge of which is to expand, not limit, the nation's production of energy.

Finally, Executive Order 14179, "Removing Barriers to American Leadership in Artificial Intelligence," explains that "[i]t is the policy of the United States to sustain and enhance America's global [Artificial Intelligence ("AI")] dominance in order to promote human flourishing, economic competitiveness, and **national security**." Although this order does not explicitly call out energy resources, it is closely related. AI systems require significant electric power — indeed, the rapid development of AI is largely driving ever increasing demand for electric power all over the United States not seen in decades.

Craig Station Units 2 and 3 are critical to fulfilling Tri-State's obligation to provide its membership reliable, affordable and secure electric power. Tri-State plans to retire Craig Unit 2 by September 30, 2028, and Craig Unit 3 by January 1, 2028. Tri-State also plans to construct a new dispatchable resource as part of a system adhering to industry-leading Level II reliability metrics. However, this will be accomplished only after the MATS compliance deadline for PM CEMS, which, even if installed, will not demonstrate compliance with the MATS requirements, as described above. Therefore, it is not in the national security interest of the United States to require Tri-State to add PM CEMS to Craig Station Units 2 and 3 for the limited time they will operate after July 7, 2027. Requiring the addition of PM CEMS to units that will be retired interferes with Tri-State's measured plans to ensure reliability metrics are met in a manner that best advances the national security interest.

Docusign Envelope ID: E9ADD7F2-A19C-4404-A5BD-657D12ADCD16

TRI-STATE

* * *

For the reasons set forth above, Tri-State respectfully requests that the President issue a Presidential Exemption for **two years** under Section 112(i)(4) of the Clean Air Act for the requirement to use **PM CEMS** for demonstrating compliance under the 2024 MATS RTR Rule for **Craig Generating Station** Units 2 and 3, in Moffat County, Colorado. "[T]he technology to implement such [a] standard is not available and … it is in the national security interests of the United States to do so." 42 U.S.C. § 7412(i)(4).

Sincerely,

DocuSigned by:
Jerome Sturhahn
AF3DE2F5ABE74*B...

Jerome H. Sturhahn
Senior Vice President, General Counsel
Tri-State Generation and Transmission Association, Inc.

Attachment: June 16, 2023, Ralph L. Roberson Memorandum to NRECA Rae Cronmiller

Docusign Envelope ID: E9ADD7F2-A19C-4404-A5BD-657D12ADCD16

RLR Consulting, LLC
5401 Aztec Dr
Raleigh, North Carolina 27612
Phone (919) 696-7008
Fax (919) 788-0878

MEMORANDUM

TO: Rae Cronmiller, NRECA

FROM: Ralph L. Roberson, P.E.

DATE: June 16, 2023

SUBJECT: Technical Comments on EPA's Proposed Rule: Mercury and Air Toxics Standards Risks and Technology Review – PM CEMS

INTRODUCTION

Recently, the Environmental Protection Agency (EPA) proposed revisions to the Agency's Mercury and Air Toxics Standards (MATS) rule.[1] These revisions are the proposed response of EPA to its previously announced review of its 2020 Risks and Technology and Review (RTR).[2] Among other things, EPA proposes to eliminate the quarterly stack testing option for demonstrating compliance with the filterable particulate matter (fPM) emission standard. If EPA finalizes the rule as proposed, the only compliance option for fPM will be with a PM continuous emission monitoring system (CEMS). Compliance with the proposed emission standard of 0.010 lb/10^6 Btu will be based on 30-day rolling averages computed from hourly PM CEMS data.

The National Rural Electric Cooperative Association (NRECA) asked RLR Consulting LLC (RLR) to review EPA's proposed rule and to assist in preparing technical comments. NRECA asked RLR to focus its effort on the EPA requirement to mandate the use of PM CEMS to demonstrate compliance with the revised fPM emission standard.

REGULATORY DISCUSSION

Section 112(f) of the Clean Air Act (CAA) states, among other things, "if standards promulgated pursuant to subsection (d) and applicable to a category or subcategory of sources emitting a pollutant (or pollutants) classified as a known, probable or possible human carcinogen do not reduce lifetime excess cancer risks to the individual most exposed to emissions from a source in the category or subcategory to less than one in one million, the Administrator shall promulgate standards under this subsection for such category." Then, Section 112(d)(6) requires EPA to "review and revise as necessary

[1] 88 Fed. Reg. 24,854 (April 24, 2023).
[2] 87 Fed. Reg. 7,624 (February 9, 2022).

Docusign Envelope ID: E9ADD7F2-A19C-4404-A5BD-657D12ADCD16

(taking into account developments in practices, processes, and control technologies), emission standards promulgated under this section no less often than every 8 years." Taken together, these two provisions of the CAA constitute what is termed EPA's Risk and Technology Reviews (RTR). Clearly, Section 112(f) is concerned with health risks and has nothing to do with compliance methods or procedures. Section 112(d)(6) concerns itself with revising numerical standards based on "developments in practices, processes, and control technologies." Thus, there appears to be no legal basis for EPA's proposed elimination of the quarterly stack testing option for demonstrating compliance with the fPM emission standard.

TECHNICAL DISCUSSIONS

The fundamental problem with PM CEMS is, and always has been, an issue of technology. That is, commercially available PM CEMS do not provide a direct measure of PM emissions. By direct measure, we mean that the instrument measures the mass of PM and the volume of flue gas from which that mass of PM was sampled. Rather, commercially available PM CEMS measure some property (i.e., light scatter or beta attenuation[3]) that must be correlated to actual stack PM measurements.

Correlation Testing and Data Range

The procedure and requirements for correlation testing are specified in EPA Performance Specification 11 (PS-11).[4] PS-11 requires a minimum of 15 test runs using the appropriate EPA reference method (e.g., MATS Method 5) spaced over three distinct PM concentrations (i.e., low, mid and high).[5] For the resulting correlation to be useful, these three distinct PM concentrations should span the range of expected concentrations with a target level (i.e., 50 percent of the limit) in the middle of the range.

A PM CEMS correlation curve plots the PM CEMS output on the x-axis and the reference method PM concentration on the y-axis. Reference method PM concentrations (y-axis) are typically expressed in the units of milligrams per actual cubic meter (mg/acm), and "actual" refers to the condition at which the PM CEMS detector operates. EPA is proposing to lower the filterable PM emission limit from 0.030 to 0.010 lb/10^6 Btu.[6] Conversion of 0.010 lb/10^6 Btu to mg/acm requires knowledge of the detector temperature and stack diluent (e.g., CO_2) concentration. If we use a typical CO_2 concentration of 12.5 percent (wet) and a detector temperature of 320 ° F, then 0.010 lb/10^6 Btu converts to 7.5 mg/acm. Following EPA's assumption that the unit will

[3] The EPA statement at 88 Fed. Reg. at 24,872, that a beta gauge "detector measures the amount of radiation emitted by the sample" is categorically incorrect and illustrative of several uninformed statements (e.g., cost estimates) about PM CEMS in the preamble to the proposed rule.
[4] 40 C.F.R. 60, Appendix B.
[5] PS-11 defines "low" to be zero to 50 percent of the maximum PM concentration; "mid" to be 25 to 75 percent of the maximum PM concentration; and "high" to be 50 to 100 percent of the maximum PM concentration. RLR's many years of experience with PM CEMS correlation testing is to equate "maximum PM concentration" with the PM emission limit.
[6] 88 Fed. Reg. at 24,857.

Docusign Envelope ID: E9ADD7F2-A19C-4404-A5BD-657D12ADCD16

operate at the "target compliance level," which is 50 percent of the emission limit, (0.005 lb/10^6 Btu) we then have a unit operating at 3.75 mg/acm with an equivalent emission limit of 7.5 mg/acm. Not only will it be virtually impossible to conduct correlation testing at three PM concentrations (low, mid and high), it is far from clear that any type of valid PM CEM correlation can be established over such a limited data range. Using 7.5 mg/acm as the emission limit: low becomes 0 to 3.75 mg/acm; mid is 1.88 to 5.63; and high is 3.75 to 7.5 mg/acm. Anyone who believes he or she can regulate and control PM emissions from a coal-fired EGU that precisely has never set foot in such a facility. If EPA finalizes the MATS fPM limit to 0.010 lb/10^6 Btu, there is a much stronger technical argument to eliminate PM CEMS as a compliance option altogether and rely on quarterly stack testing with longer run times for all EGUs.

EPA states that 3-hr stack testing runs are the solution to minimizing both costs and uncertainty associated with the proposed lower fPM emission limit. While 3-hr testing runs may be acceptable for a standard compliance test that consists of three independent test runs, it is quite unreasonable for either PS-11 initial correlation tests and/or response correlation audits (RCAs). As noted above, PS-11 correlation testing requires a minimum of 15 runs and allows the owner/operator to discard up to five runs to improve correlations. Thus, it is not unusual to conduct 20 test runs for the PS-11 initial correlation test. [7]

A 20-run test program with 3-hr test runs will require on the order of 2 weeks. This is an excessive amount of time to take a unit off dispatch and hold constant load conditions for the sake of testing. How ironic it would be to displace renewable generation with a coal-fired EGU for 2 weeks simply to complete EPA-required testing. The increase in stack testing cost will be significant. [8] Granted, longer test runs improve Method 5 accuracy at low PM concentrations. However, longer test runs will neither expand the range of the data nor the quality of the resulting PM CEMS correlations. The range of the data will be limited even with longer test runs, and the robustness on any resulting correlation will be questionable.

Portland Cement Argument

EPA acknowledges that in the 2012 Portland Cement rulemaking, the Agency was aware of the difficulty in using PM CEMS to demonstrate compliance with a fPM emission limit in the range of 5 to 8 mg/dscm.[9] In the MATS RTR proposal, EPA attempts to dismiss comparisons to the Portland Cement rule by asserting that the particle characteristics between the two source categories are different. We agree that the particle

[7] The RCA requires a minimum of 12 individual runs, and also allows owners/operators to discard up to five runs. Thus, 17 individual runs are often performed for an RCA.
[8] RLR Consulting obtained a budgetary cost estimate of $80,000 for conducting PS-11 correlation test with the proposed sample volume requirement of 4 dscm. The budgetary estimate is $30,000 for conducting PS-11 correlation test under the current MATS requirements.
[9] The Portland Cement fPM emission limit is expressed in the units of pounds of particulate per ton of clinker produced. Thus, the conversion to PM concentration (mg/dscm) is not exact but depends on plant-specific parameters.

Docusign Envelope ID: E9ADD7F2-A19C-4404-A5BD-657D12ADCD16

characteristics may indeed be different; however, 5 to 8 mg/dscm is a low PM concentration regardless of the size, shape, or constituency of the particles.

EPA addressed its concerns in the Portland Cement rule by (1) increasing the emission limit to a range of 7 to 14 mg/dscm, and (2) no longer requiring PM CEMS to demonstrate compliance with the emission limit. If the real problem were, as EPA now claims, (i.e., 1-hr test runs "led to inherent measurement uncertainty"), we initially wondered why EPA did not simply increase the run times as the Agency is proposing to do in the MATS rule? Further research reveals that EPA did examine the effect of longer run times in 2012 Portland Cement rule. However, EPA recognized then that longer run times would not solve the problem created by a very limited data range for the correlation testing associated with a very low emission limit.[10] The Agency correctly concluded that reference method measurement uncertainty coupled with a limited data range would make establishing a meaningful PM CEMS correlation curve next to impossible.

As noted earlier, PS-11 specifies the correlation requirements that are applicable to PM CEMS. To satisfy PS-11, the PM CEMS correlation must meet the following statistical criteria:

- The correlation coefficient shall be > 0.85.
- The confidence interval (95%) half range at the median PM CEMS response value must be within 10% of the PM emission limit value. [11]
- The tolerance interval half range at the median PM CEMS response value must have 95% confidence that 75% of all possible values are within 25% of the PM emission limit value.

These PS-11 statistical considerations coupled with the low proposed emission limit clearly played a role in EPA's final decision to forego PM CEMS in the Portland Cement rulemaking. In the final Cement rule, EPA states[12]

> A particular challenge in applying PM CEMS to source emissions monitoring is in measuring the very low PM concentrations associated with a low applicable emissions limit for PM precisely enough to meet the PS 11 correlation requirements. In addition to measurement uncertainty inherent in PM CEMS data, the measurement uncertainty associated with the reference test method (e.g., Method 5) is a significant contributor to successful development of a PM CEMS correlation regardless of the type of PM CEMS used.

[10] 77 Fed. Reg. 42,368, 42374 (July 18, 2023).
[11] PS-11 states that the points at which the confidence interval and tolerance interval half ranges are evaluated are a function of the form of the regression equation. For linear and logarithmic correlations, the half intervals are evaluated at the mean PM CEMS response.
[12] 77 Fed. Reg. at 42,374.

Docusign Envelope ID: E9ADD7F2-A19C-4404-A5BD-657D12ADCD16

As noted above, PS 11 specifies acceptable criteria for a correlation directly related to the applicable emissions limit. If we use 7.5 mg/acm for EPA's proposed fPM limit of 0.010 lb/10^6 Btu,[13] the 95% confidence interval would have to be less than or equal to 0.75 mg/acm. Likewise, the tolerance interval would have to be less than or equal to 1.88 mg/acm. We are not aware of any data or technical support that any commercially available PM CEMS is capable of meeting these very tight confidence and tolerance intervals, and EPA cites none. Adding to the challenge of achieving these strict confidence and tolerance intervals is the fact that these intervals will be at or near the method detection limit of the EPA Method 5, even with extended run times. While PS-11 ascribes all of the measurement errors to the PM CEMS, variability in reference method measurements at these low PM concentrations will likely result in numerous PS-11 failures.

PM CEMS and New EGUs

EPA appears to dismiss concerns with PM CEMS measurements at the low PM concentrations that would be required by the proposed emission standard (0.010 lb/10^6 Btu) by stating: (1) PM CEMS are mandated for new EGUs and (2) the revised fPM emission standards for existing EGUs and the fPM for new EGUs are approximately the same (0.010 lb/10^6 Btu v. 0.090 lb/MWh).[14] We have two issues with EPA's use of new EGUs to support PM CEMS at low concentrations.

Assuming PM CEMS are required for new EGUs, EPA's claim is without merit because PM CEMS are not and have never been demonstrated on new EGUs. The reality is there are no new EGUs in operation, and there is never likely to be one. Apparently, EPA agrees because in the Agency's recently signed proposed rule for controlling greenhouse gas emissions from the power sector, EPA explains not revising the NSPS for newly constructed fossil-fuel-fired steam generating units with the following sentence: "[t]his is because the EPA does not anticipate that any such units will construct or reconstruct and is unaware of plans by any companies to construct or reconstruct a new coal-fired EGU."[15] Supporting the proposed use of PM CEMS at low fPM concentrations by stating the requirement is consistent with a theoretical requirement for new EGUs that have not been built and will never be built is no support at all.

Discussion of PM CEMS Costs

EPA's statement, "not all EGU owners or operators chose the most cost-effective means of demonstrating compliance with the fPM emission limits"[16] is as insulting as it is incorrect. In 2015, we were asked by an EGU owner to estimate the cost over a 10-year

[13] Base on a stack CO_2 concentration of 12.5% (wet basis) and a PM CEMS detector temperature of 320 ° F.
[14] For the MATS rule, a new EGU is defined as one that commenced construction after May 3, 2011.
[15] 88 Fed. Reg. 33,245 (May 23, 2023).
[16] 88 Fed. Reg. 24,872 (April 24, 2023).

Docusign Envelope ID: E9ADD7F2-A19C-4404-A5BD-657D12ADCD16

period of demonstrating compliance with the MATS fPM emission limit based on (1) quarterly stack testing and (2) PM CEMS. For stack testing, we estimated a total cost of $260,000 (i.e., 10 yr. x 4 quarters x $6,500). The 10-year cost for PM CEMS was $479,500. The PM CEMS estimate included $90,000 capital (representative of an extractive light scatter instrument), $35,000 for initial PS-11 correlation test, $90,000 for three response correlation audits (RCA), $45,500 for seven relative response audits (RRA), and about $20,000 per year for routine maintenance and spare parts. Note that our PM CEMS estimate did not include the cost of three PM spiking events, which would significantly increase the cost of the PM CEMS option. Also, neither cost estimate assumed 3-hr test runs. Longer test runs will increase the cost of quarterly stack tests; however, we believe the cost increase would be greater for PM CEMS because so many more test runs are involved.

We also disagree with EPA statements regarding stack testing costs. EPA states, "annual cost for M5 testing with 3 hour run duration is estimated to be $85,127 ($82,000 for testing, and $3,127 for 24 hours of site technical support); quarterly testing using M5I with runs of similar duration is estimated to be $107,127."[17] RLR obtained a cost estimate of $38,000 from a stack testing company to conduct four quarterly stack tests and collect a minimum sample volume of 4 dscm for each run. EPA digs a deeper hole with its absurd M5I annual estimate of $107,127. As a threshold matter, M5I is not allowed under the MATS rule because M5I specifies a probe and filter temperature of 250 ° F whereas the MATS rule requires a probe and filter temperature of 320 ° F. Assuming EPA were to correct this technical oversite, EPA could never explain how M5I testing would or should cost $22,000 more per year than M5 testing. In other words, EPA grossly inflates its stack testing cost estimates in attempting to make PM CEMS appear more palatable.

Qualitative Aerosol Generator

EPA is correct in stating that for several years the Electric Power Research Institute (EPRI) funded research associated with the development of the Qualitative Aerosol Generator (QAG). The QAG could generate particles of uniform size distribution at precisely known concentrations. The QAG contained components (i.e., mass flow meter) whose calibrations were traceable to the National Institute of Standards and Technology (NIST). However, it was never clear whether the PM aerosol concentration could be shown to be "NIST traceable."

More importantly, EPRI ceased funding QAG research circa 2018. Among the reasons for stopping the research were (1) the field tests had become increasingly complex and expensive and (2) utility-funders lost interest primarily because of EPA's lack of response despite several attempts by EPRI to get EPA involved in a project that sought to make PM CEMS correlations more efficient. We find it incredulous that EPA would dredge up an EPRI project that the Agency never showed any support for and attempt to use that defunct project to support this rulemaking proposal.

[17] Ibid at 24873.

Docusign Envelope ID: E9ADD7F2-A19C-4404-A5BD-657D12ADCD16

EPA Random Error Memo

EPA states that the impact of sampling times and random errors on measurable emission limits is described in a memorandum in the docket.[18] The Memorandum statement, "2 mg/dscm for a one-hour test run (which is equivalent to a mass per heat input value of 0.0082 lb/mmBtu)," is simply incorrect. A fPM concentration of 2 mg/dscm is approximately 0.0021 lb/10^6 Btu assuming nominal CO_2 concentration of 10.5 % (dry).

The following Memorandum statement "one can calculate the range of the contribution of random error to the total PM CEMS tolerance to be between thirty-six and seventy-three percent" may or may not be incorrect. The Memorandum provides neither a reference nor a method for how random error is defined or calculated. Likewise, there are no text or equations to support the results shown in Table 1. Frankly, the Agency should be embarrassed to include in a rulemaking docket a 2-page Memorandum that is so poorly explained or substantiated.

CONCLUSIONS

First, RLR is not certain the RTR process affords EPA the latitude to make changes to compliance determination procedures. However, as discussed above, the technical justification for mandating PM CEMS, especially if EPA were to lower significantly the fPM standard (as it currently has proposed) is deeply flawed and fraught with several incorrect or inaccurate statements, both concerning the ability to obtain meaningful correlations over a limited data range and the cost of PM CEMS. Thus, for the reasons explained in this memorandum, EPA would be well advised to maintain the quarterly stack testing option for fPM in its MATS rule. Moreover, if EPA were to lower the fPM limit to 0.01 lb/10^6 Btu, EPA should follow the precedent the Agency set in the Portland Cement rule and withdraw PM CEMS as a compliance testing option. Periodic, quality stack tests will be a much better indicator of compliance than continuous data of questionable quality.

If you have any questions regarding our technical comments or require additional information, please do not hesitate to contact me (919) 696-7008 or rlph.robertson@gmail.com.

[18] "PM CEMS Random Error Contribution by Emission Limit," Docket ID No. EPA-HQ-OAR-2018-0794-0794 (hereinafter "Memorandum").

CITY WATER, LIGHT AND POWER
CITY OF SPRINGFIELD, ILLINOIS
MISTY BUSCHER, MAYOR
DOUG BROWN, CHIEF UTILITY ENGINEER

April 16, 2025

Mr. Lee Zeldin, Administrator
US Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, DC 20460
Mail Code 1101A
airaction@epa.gov

Re: Presidential Exemption, National Emissions Standards for Hazardous Air Pollutants: Coal- and Oil-Fired Electric Utility Steam Generating Units Review of the Residual Risk and Technology Review (89 FR 38508; May 7, 2024) (MATS Rule), for City Water, Light and Power – Dallman Unit 4

Dear Administrator Zeldin:

City Water, Light and Power (CWLP) is a municipally owned utility serving the City of Springfield, Illinois. Dallman Unit 4, commissioned in 2009, is CWLP's newest coal-fired generating unit and is equipped with state-of-the-art air pollution control technologies. The unit plays a vital role in Springfield's electricity supply and regional grid reliability through its participation in the Midwest Independent System Operator (MISO).

On May 7, 2024, the U.S. Environmental Protection Agency (EPA) published the final rule entitled "National Emission Standards for Hazardous Air Pollutants: Coal- and Oil-Fired Electric Utility Steam Generating Units—Review of the Residual Risk and Technology Review" (89 FR 38508). This rule formally eliminated the Filterable Particulate Matter Low Emitting Electric Generating Unit (FPM LEE) designation formerly achieved by demonstrating emissions rates at or below 50% of the 0.030 lb/mmBtu standard over a three-year period. This in effect mandated continuous Filterable Particulate Matter emissions monitoring (FPM CEMS) for compliance.

On April 8, 2025, President Donald J. Trump issued a proclamation under Section 112(i)(4) of the Clean Air Act entitled "Regulatory Relief for Certain Stationary Sources to Promote American Energy." This action authorized a two-year exemption for selected coal-fired units, citing national security, economic hardship, and technological limitations as justification. Dallman Unit 4 is not among those units exempted in Annex I Stationary Sources List as

ED_021114A_00009236-00001

published on April 15, 2025. CWLP respectfully submits this request for an individual exemption under the same statutory authority or for inclusion on the Annex I list.

EPA Administrator Lee Zeldin has also announced plans to reconsider the Biden-era MATS revisions, citing excessive economic impacts and pending legal challenges from 23 states. These developments further support CWLP's pursuit of near-term regulatory flexibility while national energy and environmental policy is reassessed.

The May 2024 final MATS rule eliminated the FPM LEE designation and mandated continuous emissions monitoring (FPM CEMS). Dallman Unit 4 previously qualified as an FPM LEE, consistently achieving PM levels well below regulatory thresholds. Recent vendor outreach has shown the difficulty in obtaining retrofit or new systems to monitor PM for units such as Dallman Unit 4. Also, broadly speaking and in alignment with the American Public Power Association (APPA), CWLP affirms that no new control technologies have emerged to justify the revised compliance framework of the final rule.

Dallman Unit 4 has consistently demonstrated filterable particulate matter emissions well below both the original and revised MATS thresholds. Under the prior standard, the emissions limit for FPM was 0.030 lb/mmBtu. The May 2024 final rule significantly tightened this limit to 0.010 lb/MMBtu—a two-thirds reduction.

Across multiple stack tests conducted between 2020 and 2024, Dallman Unit 4 has recorded emissions as low as 0.00025 lb/mmBtu and has consistently remained below 0.0009 lb/mmBtu. These levels are not only well under the previous limit but are also substantially below the revised standard, underscoring the unit's exceptional performance and continued eligibility—on a technical basis—for a low-emitting designation.

Dallman Unit 4 plays a critical role in maintaining regional electric reliability in central Illinois and throughout MISO. The unit is relied upon to support voltage stability, fulfill reserve margin commitments, and provide flexible baseload generation.

Electric load forecasts for the region project significant increases over the coming decade, largely driven by electrification trends, industrial development, and the expansion of energy-intensive data centers. These demands will place added pressure on grid operators to maintain resource adequacy and resilience.

President Trump's Executive Order 14154, "Unleashing American Energy," and the accompanying Presidential Proclamation on Regulatory Relief underscore the administration's view that continued operation of existing coal generation assets is a national security imperative. The regulatory burdens imposed by the regulations such as the revised MATS rule risk accelerating unit retirements at a time when resource adequacy is already strained, as system

operators such as PJM and MISO have affirmed. Curtailing Dallman Unit 4 would undermine both local reliability and broader grid resilience objectives.

A two-year exemption under CAA §112(i)(4) will help ensure that Dallman Unit 4 remains online to meet near-term energy security needs while EPA reconsiders the 2024 final rule and grid reliability challenges are addressed.

In light of the unavailability of proven technologies, the economic hardship imposed by the revised rule, and Dallman Unit 4's critical role in maintaining energy security and reliability, CWLP respectfully requests that EPA grant a two-year exemption from the compliance requirements of the 2024 MATS revision for this unit. This request is submitted under Section 112(i)(4) of the Clean Air Act and in accordance with EPA's March 2025 solicitation for Presidential Exemption applications.

This request aligns with the April 2025 Presidential Proclamation granting a blanket exemption to similarly situated coal-fired generating units and is consistent with CWLP's historical performance, technological configuration, and public interest mission. Dallman Unit 4 is not included in the list of nationally exempted units, CWLP seeks an individual exemption based on parity and the distinct regulatory and operational burdens faced by public power entities or for the inclusion of the unit in the Annex I Stationary Sources List. CWLP intends to maintain all other MATS-related controls and monitoring obligations during the exemption period.

CWLP is committed to public health, transparency, and environmental stewardship. We welcome continued dialogue with EPA staff and stand ready to work collaboratively on long-term emissions compliance strategies and energy security goals.

Respectfully submitted,

P.J. Becker
Environmental, Health & Safety Manager
City Water, Light and Power
Springfield, Illinois

Message

From: OGC_CTS_Communication [OGC_CTS_Communication@epa.gov]
Sent: 1/12/2026 6:51:25 PM
To: Tisa, Nathaniel [Tisa.Nathaniel@epa.gov]; OGC CTS Front Office [OGC_CTS_Front_Office@epa.gov]
CC: [redacted]@epa.gov]; [redacted]@epa.gov]; [redacted]@epa.gov]; [redacted]@epa.gov]; [redacted]@epa.gov]; [redacted]@epa.gov]
Subject: OGC CTS Task, Case Name / Subject: T.E.J.A.S. v Trump, No. 1:25cv3745 (D.D.C.), challenging the HON presidential exemption. is assigned to Tisa, Nathaniel
Attachments: 2025.10.22 Complaint.pdf; ENV_DEFENSE-#1600270-v4-tejas HON Rule Memo ISO MTD+OGC FO.docx; For Review by 1_15_ MTD prez exemption case_ TEJAS v Trump_ No_ 1_25cv3745 (DDC).msg

Importance: Low

A CTS action item created by: [redacted] has been assigned to Tisa, Nathaniel. The due date for final approval of this CTS item is 2026-01-15. Please click the link below to view this CTS item and to document your action. The relevant files are attached to this email for your review and are also available at the link below."

Originating Office Reviewer: [redacted]

First Approver: Tisa, Nathaniel

Second Approver:

Action Requested: Approval (Required before further action)

Document Type: Brief/Filing

Case Name/Subject: T.E.J.A.S. v Trump, No. 1:25cv3745 (D.D.C.), challenging the HON presidential exemption.

Originator Comments: Draft motion to dismiss the HON presidential exemption case brought by environmental groups. Also sending a shared document via email.

Click Here to Access CTS Item

Message

From: [redacted] [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=5FC06EF09D8C4D60BCBD661000F7F0AD[redacted]
Sent: 1/12/2026 6:49:55 PM
To: Tisa, Nathaniel [Tisa.Nathaniel@epa.gov]
CC: [redacted]@epa.gov]; [redacted]epa.gov]; [redacted]@epa.gov]
Subject: For Review by 1/15: MTD prez exemption case, TEJAS v Trump, No. 1:25cv3745 (DDC)
Attachments: 2025.10.22 Complaint.pdf

Hello Nate,

Ex. 5 AC/AWP/DP

Thanks so much,

[redacted]

[redacted]
Attorney-Advisor, EPA OGC
[redacted]

Message

From: [redacted]@epa.gov]
Sent: 1/12/2026 6:49:55 PM
To: Tisa, Nathaniel [Tisa.Nathaniel@epa.gov]
CC: [redacted]@epa.gov]; [redacted]@epa.gov]; [redacted]epa.gov]
Subject: For Review by 1/15: MTD prez exemption case, TEJAS v Trump, No. 1:25cv3745 (DDC)
Attachments: 2025.10.22 Complaint.pdf

Hello Nate,

Ex. 5 AC/AWP/DP

Thanks so much,

[redacted]

[redacted]
Attorney-Advisor, EPA OGC
[redacted]

Message

From: Brooks, Ashley [abrooks@fuchsna.com]
Sent: 3/24/2026 4:02:31 PM
To: AirAction [airaction@epa.gov]; Ex. 6 Personal Privacy (PP)
CC: Birchfield, Shara [sbirchfield@fuchsna.com]; Cooper, Dan [DCooper@fuchsna.com]
Subject: Re: Presidential Exemption: NESHAP Ethylene Oxide Sterilizer Rule 89 FR 24090 : Fuchs North America

Caution: This email originated from outside EPA, please exercise additional caution when deciding whether to open attachments or click on provided links.

Good afternoon,

I'm reaching out to follow up on our exemption/extension request for the upcoming ETO NESHAP requirements going into effect on April 5th.

Thank you for your consideration,
Ashley

Ashley Brooks

P: 443.544.1221 M: 443.813.4659
3800 Hampstead Mexico Rd, Hampstead, MD 21074
We bring the joy of food to life. |

FUCHS

From: Brooks, Ashley
Sent: Monday, March 31, 2025 2:16 PM
To: airaction@epa.gov <airaction@epa.gov>
Subject: Presidential Exemption: NESHAP Ethylene Oxide Sterilizer Rule 89 FR 24090 : Fuchs North America

Good Afternoon,

Please see attached request for Presidential Exemption for "National Emission Standards for Hazardous Air Pollutants: Ethylene Oxide Emissions Standards for Sterilization Facilities Residual Risk and Technology Review" (89 FR 24090; April 5, 2024) (Sterilizer Rule): Fuchs North America

Thank you,

Ashley Brooks

P: 443.544.1221 M: 443.813.4659
3800 Hampstead Mexico Rd, Hampstead, MD 21074
We bring the joy of food to life. |

FUCHS

Message

From: Klara Lugo-Pilling [klara.lugo-pilling@lionelastomers.com]
Sent: 3/10/2026 8:14:04 PM
To: AirAction [airaction@epa.gov]
CC: Matt Tokheim [matt.tokheim@lionelastomers.com]; Bobby Rikhoff [bobby.rikhoff@lionelastomers.com]; tceqr10air@tceq.texas.gov; Vincent Salvador [Vincent.Salvador@lionelastomers.com]
Subject: Lion Elastomers, Port Neches TX - Presidential Exemption Request (NESHAP HON)
Attachments: HON Delay Request 2026-3-10.pdf

You don't often get email from klara.lugo-pilling@lionelastomers.com. Learn why this is important

Caution: This email originated from outside EPA, please exercise additional caution when deciding whether to open attachments or click on provided links.

Hello,

Lion Elastomers is located at 1615 Main St. Port Neches, Texas, 77651. In accordance with Section 112(i)(4) of the CAA, Lion respectfully requests a two-year Presidential Exemption from the New Source Performance Standards for the Synthetic Organic Chemical Manufacturing Industry and National Emission Standards for Hazardous Air Pollutants for the Synthetic Organic Chemical Manufacturing Industry and Group I & II Polymers and Resins Industry, 89 FR 42932 (HON NESHAP Rule).

Please see attached for more details regarding this presidential request.

Thank you,

Klara Lugo-Pilling
Environmental Coordinator

Klara.Lugo-Pilling@LionElastomers.com

CREATING SOLUTIONS THROUGH UNPARALLELED
POLYMER EXPERTISE

LION
ELASTOMERS

Lion Elastomers
1615 Main St.
Port Neches, TX 77651-3039

Lion Elastomers LLC

1615 Main Street
Port Neches, TX 77651
Tel: 409-722-8321, Fax: 409-721-1606

March 10, 2026

Via Electronic Mail –

The Honorable Lee Zeldin
Administrator
U.S. Environmental Protection Agency
Mail Code: 1101A
1200 Pennsylvania Avenue, N.W.
Washington, DC 20460

Re: Presidential Exemption: National Emission Standards for Hazardous Air Pollutants: New Source Performance Standards for the Synthetic Organic Chemical Manufacturing Industry and National Emission Standards for Hazardous Air Pollutants for the Synthetic Organic Chemical Manufacturing Industry and Group I & II Polymers and Resins Industry, 89 FR 42932 (HON Rule).: LION Elastomers 1615 Main St. Port Neches, Texas, 77651.

Dear Administrator, Zeldin:

Lion Elastomers is located at 1615 Main St. Port Neches, Texas, 77651. In accordance with Section 112(i)(4) of the CAA, Lion respectfully requests a two-year Presidential Exemption from the New Source Performance Standards for the Synthetic Organic Chemical Manufacturing Industry and National Emission Standards for Hazardous Air Pollutants for the Synthetic Organic Chemical Manufacturing Industry and Group I & II Polymers and Resins Industry, 89 FR 42932 (HON NESHAP Rule).

The Emissions Standards or Limitations Subject to the Request:

National Emission Standards for Hazardous Air Pollutants: New Source Performance Standards for the Synthetic Organic Chemical Manufacturing Industry and National Emission Standards for Hazardous Air Pollutants for the Synthetic Organic Chemical Manufacturing Industry and Group I & II Polymers and Resins Industry, 89 FR 42932 (HON Rule) (May 16. 2024). The limitations that are the main subject of this exemption request include the installation of system set up of nearly 14 new fenceline monitors, the installation of a calorimeter or gas chromatography onto the flare vent, and subject adjustments in the LDAR system.

Exemption Period Request:

LION Elastomers is requesting a two-year Presidential Exemption and extension of the applicable compliance deadlines of the New Source Performance Standards for the Synthetic Organic Chemical Manufacturing Industry and National Emission Standards for Hazardous Air Pollutants for the Synthetic

Organic Chemical Manufacturing Industry and Group I & II Polymers and Resins Industry, 89 FR 42932 (HON Rule) (May. 16, 2024).

Background

1. History of site and economic contribution

The Lion Elastomers Port Neches plant was constructed by "Reconstruction Finance Corporation" an agency of the Federal Government in 1942 as part of the WW2 war effort. Following the attack on Pearl Harbor the Malaysian rubber supply was cut off from the US.

The plant was constructed in 9 months. It plant was initially owned by the US Government and operated by BF Goodrich and Firestone. The plant has since been owned by Uniroyal, Texaco, BF Goodrich, Ameripol Synpol, ISP Synthetic Elastomers, Ashland and Lion Elastomers. The site is a major domestic supplier of synthetic rubber to the tire industry and to numerous other critical uses including agriculture, medical, food preparation, etc.

In recent years, the United States has seen manufacturing and economic challenges with the production of Synthetic rubber. This has put a strain on the domestic industry… a strain that Lion Elastomers is still recovering from. As a result of these challenges, the company capacity utilization has dropped nearly 20% in recent few years, a worsening chance of degradation in facilities and thus a strain for domestic supply goods and national security ensuing.

2. Site certification and compliance

The site is a major domestic supplier of synthetic rubber to the tire industry and to numerous other critical uses including agriculture, medical, food preparation, etc. The plant is ISO14001 Certified and belongs to a local Community Advisory Pannel.

In 1996 the Port Neches area was added to the TCEQ Air Pollutant Watch List. An area monitor was set up to monitor butadiene concentrations. In 2009 due to emissions reductions by the rubber plant and neighboring plants, the Port Neches are awas removed from the APLW.

Presidential Exemption Request

1. Impact on Lion Elastomers
    a. The May16th, 2024, HON NESHAP Rule presents many technological, engineering and business challenges for LION Elastomers. The first three options for Lion Elastomers compliance with the HON NESHAP Rule — product disruptions, capacity reductions, and production are problematic for the domestic and national security reasons discussed below.

        i. Difficulty Meeting Deadline Coupled with Uncertainty

LION ELASTOMERS

Technologies that the HON Rule relies on are impractically available and are monetarily burdensome. Cost for implementation will necessarily cause domestic producers to consider moving production overseas. Due to the increased cost of HON compliance, producers of end use rubber products will also consider overseas supply, impairing the United States ability to respond effectively in a time of crisis.

ii The HON Rule imposes a substantial burden on Lion Elastomers with very little environmental benefit.

Lion has been in full compliance with the HON Polymers and Resins MACT U regulations since the regulation was enacted in 2001. Lion has also operated a continuous gas chromatograph fence line monitor in place for approximately 30 years, monitoring emissions of hazardous air pollutants. An additional local emissions monitoring station in Port Neches (operated by Southeast Texas Regional Planning Commission) has seen a significant reduction in HAP emissions over the years.

b Lion Elastomer's Process Controls Are Already Highly Effective. The two-year extension to the fenceline monitoring requirement is appropriate for Lion in part due to the low levels of 1,3-butadine emitted annually.

2. Challenges Presented by the HON NESHAP Rule

a As of July 15th, 2026, the presidential declaration concerning the Regulatory relief for certain stationary sourced to promote American chemical Manufacturing security recognizes and acknowledges that HON imposes substantial burdens on chemical manufacturers and the HON compliance relying on technology that is not practically available.

i Additionally, the actions needed to start the new HON compliance are strongly dependent on shutdown and large capital investments. Which will affect the domestic production of necessary materials that Lion Elastomers contributes to.

3. National Security Implications of Compliance with the HON NESHAP Rule

a) Lion Elastomers Port Neches plant is a reliable domestic producer of synthetic rubber which is an essential component in numerous products supporting domestic and military equipment. Synthetic rubber is a critical component of automobiles, tires, farm equipment, aircraft, military tanks, food preparation, medical equipment, personal protective equipment, sports equipment and numerous other purposes.

b) The Port Neches facility was planned, constructed, and operated as a government component following the attack of Pearl Harbor in 1942. The United States of America needed the ability to make rubber domestically as 90% of rubber was cut off from foreign suppliers. Not only did

Styrene-Butadiene Rubber (SBR) assist in the war effort, it also was a large contributor to the community economically, supplying jobs during construction, during the war, and continuing therefore after.

c) Once again, the Unites states largely depends on rubber from foreign rubber plants. With the potential need of shutting down or reducing production to obtain compliance with the NESHAP HON rule…this would likely have a negative effect on 'safeguarding the supply chains that underpin our economy and to [reduce] the Nation's dependance on foreign control over materials critical to national resilience." (Trump, 2025).

Conclusion

Attempting to comply with the new Rule would result in potential manufacturing shutdowns, product shortages, and capacity reductions. This would negatively impact national security by affecting U.S. military and millions of American civilians of which all are dependent on rubber in their everyday lives. We have learned from the past that America needs domestic rubber. Let's ensure that we learn from previous examples of national preparedness and do not reduce domestic production at a time that "adversaries expand influence over key inputs" (Trump, 2025).

As explained herein, Lion submits a timely request for a two-year extension to the compliance deadlines applicable specifically to:

1. Fenceline monitoring work practice standards for the SOCMI and P&R I source categories, requiring owners and operators to monitor for six specific HAP (i.e. benzene, 1,3-butadiene, ethylene dichloride, vinyl chloride, ethylene oxide and chloroprene) if their affected source uses, produces, stores or emits any of them, and to conduct root cause analysis and corrective action upon exceeding the annual average concentration action level set forth for each HAP. (40 CFR 63.184 and 40 CFR 63.502)

   a) Lion will be required to perform fenceline monitoring for one pollutant, which will further complicate the site's monitoring plan to address different chemicals from differing facilities due to proximity of nearby sources. Lion may be required to make physical changes to the fence line to be able to site and service the monitoring stations.

2. Monitoring and operational requirements for flares to ensure HON and P&R I flares meet MACT standards at all times when controlling HAP emissions. (40 CFR 63.108 and 40 CFR 63.508)
   a. The extension to the additional flare monitoring requirements is appropriate for Lion to allow the time necessary to identify and contract third-party experts to help implement and manage various aspects of the rule. These contractors must possess specialized expertise which greatly narrows the pool of available contractor candidates. Equipment availability for items such as calorimeters and control system upgrade components is also a potential bottleneck to the implementation due to the large number of impacted sources in the state of Texas and Louisiana.

LION ELASTOMERS

Thank you for your consideration.

Sincerely,

Bobby Rikhoff
Director of Manufacturing
1615 Main St.
Port Neches, Texas 77651

cc: TCEQ Region 10
Air Section Manager
Texas Commission on Environmental Quality

Message

From: Benton, Christopher [CRBENTON@eprod.com]
Sent: 3/20/2026 4:22:39 PM
To: AirAction [airaction@epa.gov]
CC: Fields, Jon [JEFIELDS@eprod.com]; Mendez, Brenda [BJMendez@eprod.com]
Subject: Request for Two-Year Presidential Exemption - HON Rule
Attachments: 20260320 - MB Complex Request 2 Yr Presidential Exemption - 26Field835.pdf

You don't often get email from crbenton@eprod.com. Learn why this is important

Caution: This email originated from outside EPA, please exercise additional caution when deciding whether to open attachments or click on provided links.

Please find attached the Enterprise Products Operating LLC (Enterprise) request for a two-year exemption from the compliance obligations of the New Source Performance Standards for the Synthetic Organic Chemical Manufacturing Industry and National Emission Standards for Hazardous Air Pollutants (NESHAP) for the Synthetic Organic Chemical Manufacturing Industry (SOCMI) Industry (collectively referred to as the HON Rule) for the Mont Belvieu Complex located in Mont Belvieu, Chambers County, Texas.

A hard copy has also been submitted via certified mail.

Thank you.

Chris Benton | Senior Manager, Field Environmental
Enterprise Products | 10910 Eagle Drive Mont Belvieu, Texas 77523
(832) 501 4078 Office | (832) 398 1849 cell | crbenton@eprod.com

This message (including any attachments) is confidential and intended for a specific individual and purpose. If you are not the intended recipient, please notify the sender immediately and delete this message.

Enterprise Products

ENTERPRISE PRODUCTS PARTNERS L.P.
ENTERPRISE PRODUCTS HOLDINGS LLC
(General Partner)

ENTERPRISE PRODUCTS OPERATING LLC

March 20, 2026

Via electronic mail to airaction@epa.gov &
9589 0710 5270 2169 1375 94
Return Receipt Requested

U.S. Environmental Protection Agency
1200 Pennsylvania Ave. NW
Washington, DC 20460

RE: Request for Two-Year Presidential Exemption: New Source Performance Standards for the Synthetic Organic Chemical Manufacturing Industry and National Emission Standards for Hazardous Air Pollutants (NESHAP) for the Synthetic Organic Chemical Manufacturing Industry (SOCMI) Industry
Enterprise Products Operating LLC
Mont Belvieu Complex

To Whom It May Concern,

Enterprise Products Operating LLC (Enterprise) hereby requests a two-year exemption from the compliance obligations of the New Source Performance Standards for the Synthetic Organic Chemical Manufacturing Industry and National Emission Standards for Hazardous Air Pollutants (NESHAP) for the Synthetic Organic Chemical Manufacturing Industry (SOCMI) Industry (collectively referred to as the HON Rule)[1] for the Mont Belvieu Complex located in Mont Belvieu, Chambers County, Texas. Enterprise Products manufactures multiple products, which are vital building blocks to our economy. For the reasons highlighted in this letter, we believe it is necessary and appropriate for the President to grant an exemption under Clean Air Act (CAA) Section 112(i)(4) like that provided in the July 17, 2025 Presidential Proclamation for Regulatory Relief for Certain Stationary Sources to Promote American Chemical Manufacturing Security[2].

As previously considered by the Administration, we urge for the swift issuance of an exemption based on an understanding that both: 1) "availability" for the purposes of this consideration refers not only to the existence of technology capable of achieving compliance with the rule, but encompasses practical challenges with the timeframes necessary to plan, procure, and install required technologies and such activity cannot occur within the current compliance timeframe; and 2) national security encompasses not only military defense applications and infrastructure, but also economic security, a perspective that has been acknowledged by the President in Executive Orders and key security agencies like the Department of Defense.

We believe that the Administration has already been provided with sufficient information to support an exemption covering all regulated facilities, including but not limited to the Mont Belvieu Complex. This information includes prior comments and the underlying petition for reconsideration on the HON rule, and the information provided in the March 31, 2025 letter to the EPA submitted jointly by

[1] National Emissions Standards for Hazardous Air Pollutants (NESHAP), Powering the Great American Comeback https://www.epa.gov/system/files/documents/2025-03/neshap_powering-the-great-american-comeback_fact-sheet_2.pdf 89 Fed. Reg. 42932 (May 16, 2024).
[2] https://www.whitehouse.gov/presidential-actions/2025/07/regulatory-relief-for-certain-stationary-sources-to-promote-american-chemical-manufacturing-security/

P.O. BOX 4324
HOUSTON, TEXAS 77210-4324
713.381.6500

1100 LOUISIANA STREET
HOUSTON, TEXAS 77002-5227
www.enterpriseproducts.com

the American Chemistry Council (ACC) and the American Fuel & Petrochemicals Manufacturers (AFPM).

This letter provides additional detail and support on the critical nature of the request for relief and to address EPA's request for information. The Mont Belvieu Complex is subject to numerous provisions of the HON residual Risk and Technology Review (RTR) rule changes including, but not limited to the following:

- Flares - new operational and monitoring requirements;
- Fenceline Monitoring for Benzene and 1,3 Butadiene;
- Heat exchange systems requirements Modified El Paso Method with 6.2 ppmv leak action level;
- Chlorinated process vents – new dioxins and furans emission standard of 0.054 ng/dscm;
- Removal of Startup, Shutdown, and Malfunction (SSM) Provisions and updates to bypass provisions;
- Maintenance vents and tank degassing – new work practice standards; and
- Pressure Relief Devices (PRD) standards – new monitoring with an immediate release notification, requiring three redundant safeguards, root cause analysis/corrective actions for releases, and release prohibitions for repeat events.

To meet these requirements, Enterprise may be required to install new, or modify existing, closed vent systems, control devices, monitoring equipment, and develop new standard operating procedures, recordkeeping templates, and reporting methodologies. In addition to conducting engineering design, assessing emissions controls, and evaluating and implementing new fenceline monitoring requirements, Enterprise must obtain appropriate air permit authorizations. With this understanding, two years is not enough time to conduct the activities that are required to comply with these new requirements. Furthermore, Enterprise has concerns related to fenceline monitoring, PRDs, and real-time sampling that are required to ensure compliance with the fenceline monitoring requirements.

To gain additional time and to avoid potential facility shutdowns, imperiling jobs, and threatening supply chains for a vital chemical building block critical to our national security, Enterprise is hereby requests a two-year exemption from the compliance obligations of the HON RTR requirements.

Enterprise Products Operating LLC appreciates this opportunity to request a two-year compliance extension for the Mont Belvieu Complex. If you have any questions or concerns, please contact Chris Benton, Senior Field Environmental Manager at (832) 501-4078 or via email at crbenton@eprod.com.

Thank you,

Jon E. Fields
Director, Field Environmental

/bjm

cc: Aaron Szabo, Senior Advisor to the Administrator, Office of the Administrator
Abigale Tardif, Principal Deputy Assistant Administrator, Office of Air and Radiation

Message

From: Mullican, Claire [Mullican.Claire@epa.gov]
Sent: 7/23/2025 9:19:48 PM
To: Szabo, Aaron [Szabo.Aaron@epa.gov]; Tardif, Abigale (Abbie) [Tardif.Abigale@epa.gov]
CC: Abboud, Michael [abboud.michael@epa.gov]
Subject: RE: OAR Office - Contact

Thank you for your note on this! We can check with them.

From: Szabo, Aaron <Szabo.Aaron@epa.gov>
Sent: Wednesday, July 23, 2025 5:18 PM
To: Mullican, Claire <Mullican.Claire@epa.gov>; Tardif, Abigale (Abbie) <Tardif.Abigale@epa.gov>
Cc: Abboud, Michael <abboud.michael@epa.gov>
Subject: Re: OAR Office - Contact

Claire - Ex. 5 Deliberative Process (DP)
Ex. 5 Deliberative Process (DP)

Thanks,

Aaron Szabo
Senior Advisor to the Administrator
202-855-3241

From: Mullican, Claire <Mullican.Claire@epa.gov>
Sent: Wednesday, July 23, 2025 1:26:41 PM
To: Tardif, Abigale (Abbie) <Tardif.Abigale@epa.gov>; Szabo, Aaron <Szabo.Aaron@epa.gov>
Cc: Abboud, Michael <abboud.michael@epa.gov>
Subject: FW: OAR Office - Contact

Do you all have someone on your staff you'd like us to send things like these along to?

From: Chris Rager <crager@plasticsindustry.org>
Sent: Wednesday, July 23, 2025 3:05 PM
To: Abboud, Michael <abboud.michael@epa.gov>; Mullican, Claire <Mullican.Claire@epa.gov>
Subject: OAR Office - Contact

> **Caution:** This email originated from outside EPA, please exercise additional caution when deciding whether to open attachments or click on provided links.

All,

Good afternoon - hope you're doing well. Wanted to see if you could share an Office of Air Radiation contact to ask a couple questions about the recently announced EO on the HON NESHAP regs (see below link)?

https://www.whitehouse.gov/presidential-actions/2025/07/regulatory-relief-for-certain-stationary-sources-to-promote-american-chemical-manufacturing-security/

Christopher L. Rager
Vice President, Government Affairs
m. 571.328.6791
e. crager@plasticsindustry.org

PLASTICS
INDUSTRY ASSOCIATION

SUBSCRIBE | VISIT THIS IS PLASTICS | RECYCLING IS REAL

This email and any files transmitted with it are confidential and intended solely for the use of the individual or entity to whom they are addressed. If you are not the named addressee, you should not disseminate, distribute or copy this email. Please notify the sender immediately by email if you have received this email by mistake and delete this email from your system. Please note that any views or opinions presented in this email are solely those of the author and do not necessarily represent those of the organization. Finally, the recipient should check this email and any attachments for the presence of viruses. The organization accepts no liability for any damage caused by any virus transmitted by this email.

Chris Rager
Vice President, Government Affairs
d. 202.974.5239 | m. 571.328.6791

SUBSCRIBE | RECYCLING IS REAL

Message

From: Hirsch, Brigit [Hirsch.Brigit@epa.gov]
Sent: 6/25/2025 4:40:32 PM
To: [redacted]@epa.gov]; Holran, Carolyn [Holran.Carolyn@epa.gov]; Vaseliou, Molly [Vaseliou.Molly@epa.gov]; Mandy, Cora [Mandy.Cora@epa.gov]; Bastasch, Mike [Bastasch.Mike@epa.gov]
CC: [redacted]@epa.gov]; [redacted]@epa.gov]
Subject: RE: APPROVAL: Ethylene Oxide / CAA Section 112 presidential exemption - Spotlight on America - DDL July 1

Thank you!

From: [redacted]@epa.gov>
Sent: Wednesday, June 25, 2025 12:39 PM
To: Hirsch, Brigit <Hirsch.Brigit@epa.gov>; Holran, Carolyn <Holran.Carolyn@epa.gov>; Vaseliou, Molly <Vaseliou.Molly@epa.gov>; Mandy, Cora <Mandy.Cora@epa.gov>; Bastasch, Mike <Bastasch.Mike@epa.gov>
Cc: [redacted]@epa.gov>; [redacted]@epa.gov>
Subject: RE: APPROVAL: Ethylene Oxide / CAA Section 112 presidential exemption - Spotlight on America - DDL July 1

Thanks!

From: Hirsch, Brigit <Hirsch.Brigit@epa.gov>
Sent: Wednesday, June 25, 2025 12:39 PM
To: [redacted]@epa.gov>; Holran, Carolyn <Holran.Carolyn@epa.gov>; Vaseliou, Molly <Vaseliou.Molly@epa.gov>; Mandy, Cora <Mandy.Cora@epa.gov>; Bastasch, Mike <Bastasch.Mike@epa.gov>
Cc: [redacted]@epa.gov>; [redacted]@epa.gov>
Subject: RE: APPROVAL: Ethylene Oxide / CAA Section 112 presidential exemption - Spotlight on America - DDL July 1

Good to go! Thanks [redacted]!

From: [redacted]@epa.gov>
Sent: Wednesday, June 25, 2025 12:29 PM
To: Holran, Carolyn <Holran.Carolyn@epa.gov>; Hirsch, Brigit <Hirsch.Brigit@epa.gov>; Vaseliou, Molly <Vaseliou.Molly@epa.gov>; Mandy, Cora <Mandy.Cora@epa.gov>; Bastasch, Mike <Bastasch.Mike@epa.gov>
Cc: [redacted]@epa.gov>; [redacted]@epa.gov>
Subject: APPROVAL: Ethylene Oxide / CAA Section 112 presidential exemption - Spotlight on America - DDL July 1

Inquiry –

My name is Andrea Nejman and I'm a producer for *Spotlight on America.*

I'm following up on the email portal set up for requests for exemption to the HON rule, including EtO emissions – using the address "[redacted]".

Please answer the following questions before our deadline of July 1st:

- Have any exemptions been granted to companies as of now?
    - If so, which companies have been granted the exemptions to the HON rule and on what grounds? Please provide documentation.
- If exemptions are still being considered, please provide a timeline for when those decisions will be made.

Response -
Section 112(i)(4) specifically states that the President may exempt any stationary source "if the President determines that the technology to implement such standard is not available and that it is in the national security interests of the United States to do so." This is an authority that solely rests with the President, not EPA.

Any further questions on this process or the status of exemptions should be directed to the White House.

Respectfully,

[redacted]
Office of Media Relations and Risk Communications
Office of Public Affairs
[redacted]
[redacted]@epa.gov

From: Andrea Nejman <anejman@sbgtv.com>
Sent: Wednesday, June 25, 2025 12:11 PM
To: [redacted]@epa.gov>
Cc: EPA Press Office <Press@epa.gov>
Subject: Ethylene Oxide

> **Caution:** This email originated from outside EPA, please exercise additional caution when deciding whether to open attachments or click on provided links.

Hi [redacted]

My name is Andrea Nejman and I'm a producer for *Spotlight on America*.

I'm following up on the email portal set up for requests for exemption to the HON rule, including EtO emissions – using the address "[redacted]@epa.gov".

Please answer the following questions before our deadline of July 1st:

- Have any exemptions been granted to companies as of now?
    - If so, which companies have been granted the exemptions to the HON rule and on what grounds? Please provide documentation.
- If exemptions are still being considered, please provide a timeline for when those decisions will be made.

Feel free to reach out with any questions.

Thank you!

Andrea Nejman | National Investigative Producer

Spotlight on America

Message

From: Bennett, Parker [Bennett.Parker@epa.gov]
Sent: 7/22/2025 6:17:46 PM
To: Szabo, Aaron [Szabo.Aaron@epa.gov]; Dominguez, Alexander [dominguez.alexander@epa.gov]; Tardif, Abigale (Abbie) [Tardif.Abigale@epa.gov]
CC: Talmage, Sarah [Talmage.Sarah@epa.gov]; Barja, Jaide [Barja.Jaide@epa.gov]
Subject: RE: Rep. Luttrell - Huntsman HON Rule

Great, thank you

From: Szabo, Aaron <Szabo.Aaron@epa.gov>
Sent: Tuesday, July 22, 2025 2:13 PM
To: Bennett, Parker <Bennett.Parker@epa.gov>; Dominguez, Alexander <dominguez.alexander@epa.gov>; Tardif, Abigale (Abbie) <Tardif.Abigale@epa.gov>
Cc: Talmage, Sarah <Talmage.Sarah@epa.gov>; Barja, Jaide <Barja.Jaide@epa.gov>
Subject: RE: Rep. Luttrell - Huntsman HON Rule

The President announced the list of facilities that were provided an exemption in the Proclamation. If a facility was not included on the list, we would recommend reaching out to the White House about why any facility was or was not included on the list as this decision was made by the White House as it is a presidential authority.

Thanks,

Aaron Szabo
Senior Advisor to the Administrator
202-855-3241

From: Bennett, Parker <Bennett.Parker@epa.gov>
Sent: Tuesday, July 22, 2025 2:11 PM
To: Dominguez, Alexander <dominguez.alexander@epa.gov>; Szabo, Aaron <Szabo.Aaron@epa.gov>; Tardif, Abigale (Abbie) <Tardif.Abigale@epa.gov>
Cc: Talmage, Sarah <Talmage.Sarah@epa.gov>; Barja, Jaide <Barja.Jaide@epa.gov>
Subject: Rep. Luttrell - Huntsman HON Rule

Hi Air Team,

I wanted to flag this request for you from Rep. Luttrell.

> "Hope you are well! Huntsman who has a facility in our district applied for a Presidential Exemption under the Clean Air Act to provide relief imposed by a 2024 EPA rule known as the HON Rule. The administration included it on a short list of regulations to be evaluated for Presidential Exemptions.
>
> Huntsman applied for an exemption for a few of their facilities, including in Conroe, TX which is in our district. It is our understanding that the exemption process is being handled by the National Energy Dominance Council (NEDC). We wanted to see if there's an update you all can share regarding the status. Any guidance is helpful!"

Is there any update we would be able to give them or is it not possible at this time?

Best,
Parker

Parker C. Bennett
Deputy Associate Administrator for House Relations
Office of Congressional and Intergovermental Relations
U.S. Environmental Protection Agency
Office: (202) 658-0534

Message

From: [redacted]@epa.gov]
Sent: 10/27/2025 6:13:30 PM
To: Bennett, Parker [Bennett.Parker@epa.gov]; Barja, Jaide [Barja.Jaide@epa.gov]
Subject: FW: EPA Response to Congressman Cohen's March 31 Letter
Attachments: 2025.03.31 EPA Zeldin presidential exemptions to CAA emissions.pdf

CUI//PRIVILEGE

Parker/Jaide—Since this is an OAR issue, I anticipate two potential ways to respond:

Ex. 5 Deliberative Process (DP)

Note that we are also working on responding to Rep. Cohen's other letter on the same topic, signed also by Sen. Markey and 59 additional Senators/Representatives. The current draft mirrors the QFR response.

QFR Response on CAA Presidential Exemptions
"Since this is a presidential authority, any concerns related to the granting of exemptions should be directed to the White House. EPA does not have any updates to provide at this time beyond the information regarding the Presidential exemptions on our stationary sources webpages, available at https://www.epa.gov/stationary-sources-air-pollution/clean-air-act-section-112-presidential-exemption-information and https://www.epa.gov/stationary-sources-air-pollution/presidential-proclamation-regulatory-relief-certain-stationary."

[redacted]
Senior Counsel, Congressional Affairs
U.S. Environmental Protection Agency

ATTORNEY-CLIENT, WORK PRODUCT, DELIBERATIVE PROCESS AND OTHER PRIVILEGES MAY APPLY

Controlled by U.S. Environmental Protection Agency

From: Dulniak, Craig <Craig.Dulniak@mail.house.gov>
Sent: Friday, October 24, 2025 2:45 PM
To: [redacted]@epa.gov>
Cc: Bennett, Parker <Bennett.Parker@epa.gov>; Barja, Jaide <Barja.Jaide@epa.gov>
Subject: RE: EPA Response to Congressman Cohen's March 31 Letter

> **Caution:** This email originated from outside EPA, please exercise additional caution when deciding whether to open attachments or click on provided links.

Good afternoon, [redacted]

Thanks for sending along the response. We appreciate being directed to the 5 proclamations announcing the companies that received EPA exemptions.

Can you also provide a list of companies from within TN-09 (or the entire state of Tennessee if that is easier) who *requested* exemptions, along with the corresponding information that Administrator Zeldin suggested should accompany the requests:

- any emissions standards or limitations subject to the request, facility(ies) and/or affected sources
- the length of the compliance period being requested
- explanation why the technology to implement the standard is not available, and
- explanation why an extension is in the national security interests of the United States

This information was requested in Congressman Cohen's letter, which I've attached for easy reference, but was not included in the response.

Thank you,

Craig Dulniak, MPP
Senior Policy Advisor to
Congressman Steve Cohen (TN-09)

STEVE

From: [redacted]@epa.gov>
Sent: Friday, October 17, 2025 4:00 PM
To: Dulniak, Craig <Craig.Dulniak@mail.house.gov>
Cc: Bennett, Parker <Bennett.Parker@epa.gov>; Barja, Jaide <Barja.Jaide@epa.gov>
Subject: EPA Response to Congressman Cohen's March 31 Letter

Good afternoon, Craig,

Attached please find EPA's response to Congressman Cohen's March 31 letter.

Thank you for your patience.

[redacted]

[redacted]
Senior Counsel, Congressional Affairs
U.S. Environmental Protection Agency

From: Dulniak, Craig <Craig.Dulniak@mail.house.gov>
Sent: Monday, April 28, 2025 4:47 PM
To: Bennett, Parker <Bennett.Parker@epa.gov>
Cc: Barja, Jaide <Barja.Jaide@epa.gov>
Subject: RE: EPA House Contact

Caution: This email originated from outside EPA, please exercise additional caution when deciding whether to open attachments or click on provided links.

Good afternoon, Bennett,

Thanks for the introduction. I look forward to working with you and Jaide. Could you provide status of the responses to the following letters that Congressman Cohen has send to Administrator Zeldin?

1) March 26 letter re: status of a Regulatory Interpretation
2) March 31 letter re: requests for presidential exemptions to the Clean Air Act in TN09
3) April 11 letter re: requests for presidential exemptions nationally

Thanks for your attention,

Craig Dulniak, MPP
Senior Policy Advisor to
Congressman Steve Cohen (TN-09)

STEVE

From: Bennett, Parker <Bennett.Parker@epa.gov>
Sent: Monday, April 28, 2025 10:57 AM
To: Bennett, Parker <Bennett.Parker@epa.gov>
Cc: Barja, Jaide <Barja.Jaide@epa.gov>
Subject: EPA House Contact

Hi Everyone,

Happy Monday and welcome back from recess.

I wanted to reach out and introduce myself. My name is Parker Bennett and I just landed over at EPA as the Deputy Associate Administrator for House Affairs. My colleague, Jaide Barja, and I will be your one-stop-shop for all of your EPA needs moving forward. Our contact information is listed below so please contact us as things come up in your offices. Likewise, any outreach or letters can come through us.

Parker C. Bennett
Deputy Associate Administrator
Bennett.Parker@epa.gov
202-658-0534

Jaide Barja
Special Advisor for House Relations
Barja.Jaide@epa.gov
202-830-4256

Again, let us know if we can be of help.

Best,



Deputy Associate Administrator for House Relations
Office of Congressional and Intergovernmental Relations
U.S. EPA
202 564 0534

ASSISTANT ADMINISTRATOR FOR AIR AND RADIATION

WASHINGTON, D.C. 20460

December 22, 2025

The Honorable Steve Daines
United States Senate
Washington, D.C. 20510

Dear Senator Daines:

Thank you for your March 31, 2025, letter to the U.S. Environmental Protection Agency (EPA) in support of NorthWestern Energy and Talen Montana's request for a two-year Presidential Exemption from the "National Emission Standards for Hazardous Air Pollutants: Coal- and Oil-Fired Electric Utility Steam Generating Units Review of the Residual Risk and Technology Review" (MATS Rule).

On April 8, 2025, President Trump signed a Proclamation exempting certain coal stationary sources, identified in Annex I of the Proclamation, from compliance with the final rule titled "National Emissions Standards for Hazardous Air Pollutants: Coal- and Oil-Fired Electric Utility Steam Generating Units Review of the Residual Risk and Technology Review" 89 FR 38508 (May 27, 2024) (Mercury and Air Toxics Standards (MATS) Rule).[1] The White House subsequently transmitted Annex 1 to EPA to inform EPA which stationary sources are covered. NorthWestern Energy and Talen Montana's Colstrip Steam Electric Station Units 3 and 4 were listed in Annex 1 and have been exempted from the MATS Rule.

On July 17, 2025, President Trump signed four more Proclamations exempting additional stationary sources from compliance with several EPA final rules.[2] Specifically, in addition to exempting several

[1] The White House, "REGULATORY RELIEF FOR CERTAIN STATIONARY SOURCES TO PROMOTE AMERICAN ENERGY," available at https ://www.whitehouse.gov/presidential-actions/2025/04/regulatory-relief-for-certain-stationary-sources-to-promote-american-energy (April 8, 2025).

[2] The White House, "REGULATORY RELIEF FOR CERTAIN STATIONARY SOURCES TO PROMOTE AMERICAN SECURITY WITH RESPECT TO STERILE MEDICAL EQUIPMENT," https://www.whitehouse.gov/presidential-actions/2025/07 /regulatory-relief-for-certain-stationary-sources-to-promote-american-security-with-respect-to-sterile-medical-equipment/ (July 17, 2025); The White House, "REGULATORY RELIEF FOR CERTAIN STATIONARY SOURCES TO FURTHER PROMOTE AMERICAN ENERGY," https://www.whitehouse.gov/presidential-actions/2025/07 /regulatory-relief-for-certain-stationary-sources-to-further-promote-american-energy / (July 17, 2025); The White House "REGULATORY RELIEF FOR CERTAIN STATIONARY SOURCES TO PROMOTE AMERICAN CHEMICAL MANUFACTURING SECURITY," https://www.whitehouse.gov/presidential-actions/2025/07 /regulatory-relief-for-certain-stationary-sources-to-promote-american-chemical-manufacturing-security/ (July 17, 2025); and The White House, "REGULATORY RELIEF FOR CERTAIN STATIONARY SOURCES TO PROMOTE AMERICAN IRON ORE PROCESSING SECURITY," available at https://www.whitehouse.gov/presidential-actions/2025/07 /regulatory-relief-for-certain-stationary-sources-to-promote-american-iron-ore-processing-security / (July 17, 2025).

additional stationary sources from the requirements in the MATS Rule, President Trump exempted certain stationary sources from the final rule requirements for commercial sterilization facilities, taconite iron ore processors, and the chemical manufacturing sector. The sources that received an exemption are identified in Annex I of the Proclamations and are available on the White House website.[3]

As set out in the Proclamation, the President's exemption lasts for a period of two years beyond the MATS Rule's compliance date -- *i.e.*, for the period beginning July 8, 2027, and concluding July 8, 2029. During the two-year period these stationary sources identified in Annex 1 are subject to the compliance obligations under the MATS as it existed prior to the MATS Rule (89 FR 38508).

Again, thank you for your letter. If you have any further questions, please contact me, or your staff may contact Amir Ingram in EPA's Office of Congressional and Intergovernmental Relations at ingram.amir@epa.gov.

Sincerely,

Aaron Szabo
Assistant Administrator

cc: The Honorable Tim Sheehy, Member of Congress
The Honorable Troy Downing, Member of Congress
The Honorable Ryan K. Zinke, Member of Congress

[3] *Id.*

ED_021114D_00000488-00002

Message

From: Szabo, Aaron [Szabo.Aaron@epa.gov]
Sent: 12/1/2025 3:37:03 PM
To: Hirsch, Brigit [Hirsch.Brigit@epa.gov]; Tardif, Abigale (Abbie) [Tardif.Abigale@epa.gov]; Dominguez, Alexander [dominguez.alexander@epa.gov]
CC: Holran, Carolyn [Holran.Carolyn@epa.gov]; Bastasch, Mike [Bastasch.Mike@epa.gov]; Murphy, Jacob [Murphy.Jacob@epa.gov]
Subject: Re: Flag (NOT PRESS): Clarification request for Presidential exemption of NESHAP for EO sterilizers

Thanks for flagging.

Get Outlook for iOS

From: Hirsch, Brigit <Hirsch.Brigit@epa.gov>
Sent: Monday, December 1, 2025 10:36:07 AM
To: Szabo, Aaron <Szabo.Aaron@epa.gov>; Tardif, Abigale (Abbie) <Tardif.Abigale@epa.gov>; Dominguez, Alexander <dominguez.alexander@epa.gov>
Cc: Holran, Carolyn <Holran.Carolyn@epa.gov>; Holran, Carolyn <Holran.Carolyn@epa.gov>; Bastasch, Mike <Bastasch.Mike@epa.gov>; Murphy, Jacob <Murphy.Jacob@epa.gov>
Subject: FW: Flag (NOT PRESS): Clarification request for Presidential exemption of NESHAP for EO sterilizers

Aaron, Abbie, and Alex,

Flagging an email that came to the press inbox for your awareness. Ex. 5 Deliberative Process (DP)

Best,
Brigit

From: daryl@ansci.us <daryl@ansci.us>
Sent: Monday, December 1, 2025 9:37 AM
To: [redacted]@epa.gov>
Subject: Clarification request for Presidential exemption of NESHAP for EO sterilizers

You don't often get email from daryl@ansci.us. Learn why this is important

Caution: This email originated from outside EPA, please exercise additional caution when deciding whether to open attachments or click on provided links.

Good Morning, [redacted],

Welcome back, and I hope you had a relaxing Thanksgiving.

We are urgently trying to ascertain whether or not Andersen Scientific, Inc., made the 2-year Presidential extension for NESHAP EO contract sterilizers. I have been trying to contact John Reiten and Marc Marie at the White House, but have had no luck.

One of our clients is the sole provider of a **Department of Defense** drug for US soldiers, and so this is a matter of urgency. We are **not** on the Whitehouse list of contract sterilizers, and I am trying to get clarification if we are or are not, and if not, what can we do considering the risks this will put to a delicate resource used by the US Government.

Is there a contact I can reach to gain some clarification on whether we made this list, and if not, what we need to do for reconsideration?

Thank you in advance.

Regards,

DARYL WOODMAN

General Manager at **Andersen Scientific, Inc.**
A 1001 Aviation Parkway, Suite 600, Morrisville, NC 27560
P 919 388 5844 **M** 919 274 5498
E daryl@ansci.us **W** www.ansci.us



An FDA Innovation Challenge Winner

Chosen by the FDA to accelerate the development of strategies to reduce ethylene oxide emissions.

This e-mail transmission may contain confidential or legally privileged information belonging to Andersen Scientific, Inc. The content of this transmission is intended only for the individual or entity named in the e-mail address. If you are not the intended recipient, you are hereby notified that any disclosure, copying, distribution, or reliance upon the content of this e-mail is strictly prohibited.
If you have received this e-mail transmission in error, please reply to sender so that we can arrange correct delivery. Then please delete this message from your inbox. Thank you

Message

From: [redacted]@epa.gov]
Sent: 7/21/2025 2:19:26 PM
To: Holran, Carolyn [Holran.Carolyn@epa.gov]; Szabo, Aaron [Szabo.Aaron@epa.gov]; Tardif, Abigale (Abbie) [Tardif.Abigale@epa.gov]; Dominguez, Alexander [dominguez.alexander@epa.gov]
CC: [redacted]@epa.gov]; [redacted]@epa.gov]
Subject: RE: Flagging: White House compliance delay re commercial sterilization facilities NESHAP - E&E - DDL 7/24

On it.

From: Holran, Carolyn <Holran.Carolyn@epa.gov>
Sent: Monday, July 21, 2025 10:19 AM
To: Szabo, Aaron <Szabo.Aaron@epa.gov>; [redacted], [redacted]@epa.gov>; Tardif, Abigale (Abbie) <Tardif.Abigale@epa.gov>; Dominguez, Alexander <dominguez.alexander@epa.gov>
Cc: [redacted]@epa.gov>; [redacted]@epa.gov>
Subject: RE: Flagging: White House compliance delay re commercial sterilization facilities NESHAP - E&E - DDL 7/24

Thanks Aaron! [redacted], Ex. 5 Deliberative Process (DP)

Ex. 5 Deliberative Process (DP)

From: Szabo, Aaron <Szabo.Aaron@epa.gov>
Sent: Monday, July 21, 2025 10:15 AM
To: [redacted]@epa.gov>; Tardif, Abigale (Abbie) <Tardif.Abigale@epa.gov>; Dominguez, Alexander <dominguez.alexander@epa.gov>
Cc: Holran, Carolyn <Holran.Carolyn@epa.gov>; [redacted]@epa.gov>; [redacted]@epa.gov>
Subject: Re: Flagging: White House compliance delay re commercial sterilization facilities NESHAP - E&E - DDL 7/24

Also - since we are currently in litigation Ex. 5 Deliberative Process (DP)

Ex. 5 Deliberative Process (DP)

Get Outlook for iOS

From: Szabo, Aaron <Szabo.Aaron@epa.gov>
Sent: Monday, July 21, 2025 9:48:38 AM
To: [redacted]@epa.gov>; Tardif, Abigale (Abbie) <Tardif.Abigale@epa.gov>; Dominguez, Alexander <dominguez.alexander@epa.gov>
Cc: Holran, Carolyn <Holran.Carolyn@epa.gov>; [redacted]@epa.gov>; [redacted]@epa.gov>
Subject: Re: Flagging: White House compliance delay re commercial sterilization facilities NESHAP - E&E - DDL 7/24

Ex. 5 Deliberative Process (DP)

Ex. 5 Deliberative Process (DP)

Get Outlook for iOS

From: [redacted]@epa.gov>
Sent: Monday, July 21, 2025 9:46:35 AM

To: Szabo, Aaron <Szabo.Aaron@epa.gov>; Tardif, Abigale (Abbie) <Tardif.Abigale@epa.gov>; Dominguez, Alexander <dominguez.alexander@epa.gov>
Cc: Holran, Carolyn <Holran.Carolyn@epa.gov>; [redacted]/@epa.gov>; [redacted]@epa.gov>
Subject: RE: Flagging: White House compliance delay re commercial sterilization facilities NESHAP - E&E - DDL 7/24

Hi Aaron, Abbie and Alex – Sean re-upped his request for information on EPA's role in the implementation of the CAA Sec. 112(i)(4) presidential exemption program. Sean's deadline is COB Thursday. Looking for guidance here. Thanks!

Inquiry -

In light of the presidential proclamations issued last Thursday, I'm seeking to clarify EPA's role in implementation of the Sec. 112 (i)(4) program, given that EPA created and maintained the email inbox to solicit applications for the program. In that context, I have the following questions:

1. When an application for an exemption was received, how did EPA then handle the application?
2. Did, for example, EPA immediately forward the application to the White House with no further action on EPA's part to process or vet the applications?
3. If so, to whom at the White House did EPA forward the application?
4. If not, what steps did EPA then take to process the application? Did EPA take any steps to evaluate the application against the statutory criteria in the Clean Air Act? Was there a written SOP for how such evaluations were to be carried out and, if so, will EPA provide a copy of that SOP?
5. Who carried out the evaluations-e.g., career staff in the Office of Air and Radiation or someone else?
6. Did political appointees have any role in the evaluation process and, if so, what was it?
7. For each application, did EPA provide a recommendation to the White House as to whether an exemption should be granted?
8. According to this EPA website (**https://www.epa.gov/stationary-sources-air-pollution/clean-air-act-section-112-presidential-exemption-information)**, the deadline for applications was March 31, 2025. Has EPA accepted applications past that deadline and, if so, who were the applicants? Does EPA continue to accept applications?

My deadline is COB Thursday, July 24. On the record responses, please.

Respectfully,

[redacted]
Office of Media Relations and Risk Communications
Office of Public Affairs
[redacted]
[redacted]@epa.gov

From: [redacted]
Sent: Friday, July 18, 2025 9:47 AM
To: Szabo, Aaron <Szabo.Aaron@epa.gov>; Tardif, Abigale (Abbie) <Tardif.Abigale@epa.gov>; Dominguez, Alexander <dominguez.alexander@epa.gov>
Cc: Holran, Carolyn <Holran.Carolyn@epa.gov>; [redacted]/@epa.gov>; [redacted]@epa.gov>
Subject: Flagging: White House compliance delay re commercial sterilization facilities NESHAP - E&E - DDL 11 a.m.

Hi Aaron, Abbie and Alex,

Flagging a follow-up question from Sean reference EPA's role in vetting CAA exemption applications. Any guidance here? The deadline is 11 a.m.

Follow-up -
Thanks for your reply which, I have to respectfully note, still doesn't directly address my question. As you know, EPA created the email inbox to receive applications for this program. Does EPA then have any role in vetting applications for consistency with the program criteria? Or does EPA simply forward the applications with no review to the White House?

Respectfully,

[redacted]
Office of Media Relations and Risk Communications
Office of Public Affairs
[redacted]
[redacted]@epa.gov

Message

From: OGC IO Notifications [OGC-IO-Notifications@epa.gov]
Sent: 6/18/2025 5:07:41 PM
To: [redacted]@epa.gov]; OGC IO Administrative Professional Staff [OGC-IO-AdminProf@epa.gov]; OGC Immediate Office MGMT [OGC_Immediate_Office_MGMT@epa.gov]
CC: [redacted]@epa.gov]; [redacted]@epa.gov]; [redacted]epa.gov]; [redacted]@epa.gov]; [redacted]pa.gov]
Subject: New Litigation: Air Alliance Houston v. EPA
Attachments: Air Alliance Houston v EPA_prez exemption DC Cir DN 2120694_Enviro_Petition for Review.pdf

Importance: Low

CUI//PRIVILEGE

Date Received: 2025-06-12

Parties/Requestors: Air Alliance Houston and environmental NGOs

Statute: Clean Air Act

Summary of Action:

Petition to review in the D.C. Cir. the list of electricity generating plants that the Presidential exemption from the 2024 Mercury and Air Toxics (MATS) Rule applies to.

Does EPA have a statutory obligation to respond?:
By what date?:

Click Here to Open Item

Controlled by U.S. Environmental Protection Agency

Message

From: Tardif, Abigale (Abbie) [Tardif.Abigale@epa.gov]
Sent: 1/7/2026 7:34:30 PM
To: Tisa, Nathaniel [Tisa.Nathaniel@epa.gov]; Szabo, Aaron [Szabo.Aaron@epa.gov]
CC: Donahue, Sean [donahue.sean@epa.gov]
Subject: RE: MATS repeal rule schedule--what the D.C. District Court expects from EPA in the NGO challenge to the 2-year Presidential Exemption for MATS compliance

CUI//PRIVILEGE

Nate-

This is helpful, thanks for sending this over.

Best,
Abbie

Abigale Tardif
Principal Deputy Assistant Administrator
Office of Air and Radiation
U.S. Environmental Protection Agency
Office: (202) 564-7017

Controlled by U.S. Environmental Protection Agency

From: Tisa, Nathaniel <Tisa.Nathaniel@epa.gov>
Sent: Wednesday, January 7, 2026 2:26 PM
To: Szabo, Aaron <Szabo.Aaron@epa.gov>; Tardif, Abigale (Abbie) <Tardif.Abigale@epa.gov>
Cc: Donahue, Sean <donahue.sean@epa.gov>
Subject: FW: MATS repeal rule schedule--what the D.C. District Court expects from EPA in the NGO challenge to the 2-year Presidential Exemption for MATS compliance

CUI//PRIVILEGE

FYSA on MATS, see below for the most recent.

Ex. 5 AC/AWP/DP

Nathaniel Tisa
Principal Deputy General Counsel
U.S. Environmental Protection Agency

(202) 658-5262

Controlled by U.S. Environmental Protection Agency

From: [redacted]@epa.gov>
Sent: Wednesday, January 7, 2026 2:16 PM
To: Tisa, Nathaniel <Tisa.Nathaniel@epa.gov>
Cc: [redacted]@epa.gov>; [redacted]@epa.gov>; [redacted]
[redacted]epa.gov>
Subject: MATS repeal rule schedule--what the D.C. District Court expects from EPA in the NGO challenge to the 2-year Presidential Exemption for MATS compliance

Per your request, here's a brief email describing what we recently told the D.C. District Court about the MATS repeal schedule, and the court's response:

Ex. 5 AC/AWP/DP

[redacted] USEPA-OGC-ARLO (202) 564-5582(O) Room 7415 WJC-North
Mailing address: Mail Code 7344A, 1200 Pennsylvania Ave. NW Washington, D.C. 20460

The contents of this message may be subject to the attorney-client, work-product, or deliberative process privileges.

From: [redacted]@usdoj.gov>
Sent: Monday, January 5, 2026 10:49 AM
To: [redacted]epa.gov>; [redacted]@epa.gov>
Cc: [redacted]@usdoj.gov>
Subject: FW: Activity in Case 1:25-cv-01852-PLF AIR ALLIANCE HOUSTON v. TRUMP et al Order

Caution: This email originated from outside EPA, please exercise additional caution when deciding whether to open attachments or click on provided links.

FYI – the Court has ordered us to submit another status report by 2/6/26

From: DCD_ECFNotice@dcd.uscourts.gov <DCD_ECFNotice@dcd.uscourts.gov>
Sent: Tuesday, December 30, 2025 4:36 PM
To: DCD_ECFNotice@dcd.uscourts.gov
Subject: Activity in Case 1:25-cv-01852-PLF AIR ALLIANCE HOUSTON v. TRUMP et al Order

This is an automatic e-mail message generated by the CM/ECF system. Please DO NOT RESPOND to this e-mail because the mail box is unattended.
*****NOTE TO PUBLIC ACCESS USERS*** Judicial Conference of the United States policy permits attorneys of record and parties in a case (including pro se litigants) to receive one free electronic copy of all documents filed electronically, if receipt is required by law or directed by the filer. PACER access fees apply to all other users. To avoid later charges, download a copy of each document during this first viewing. However, if the referenced document is a transcript, the free copy and 30 page limit do not apply.**

U.S. District Court

District of Columbia

Notice of Electronic Filing

The following transaction was entered on 12/30/2025 at 4:35 PM EDT and filed on 12/30/2025

Case Name:	AIR ALLIANCE HOUSTON v. TRUMP et al
Case Number:	1:25-cv-01852-PLF
Filer:	
Document Number:	No document attached

Docket Text:
MINUTE ORDER: In light of defendants' [47] Status Report, defendants are directed to file another status report on or before February 6, 2026 informing the Court of the status of the finalization of EPA's action. Signed by Judge Paul L. Friedman on 12/30/2025. (lczl)

1:25-cv-01852-PLF Notice has been electronically mailed to:

Brian Hamilton Lynk blynk@elpc.org, CSharp@elpc.org, aestrada@elpc.org, ktoolan@elpc.org

Sean H. Donahue sean@donahuegoldberg.com

Abel J. Russ aruss@environmentalintegrity.org

Nicholas Morales nmorales@earthjustice.org, dolazabal@earthjustice.org, efile@earthjustice.org, masnake@earthjustice.org, vhuggett@earthjustice.org

Katherine K. Desormeau kdesormeau@nrdc.org, mrobertson@nrdc.org, nvandal@nrdc.org

Joshua B. Frank joshua.frank@bakerbotts.com

Shaun A Goho sgoho@catf.us, ebarry@catf.us, hhashimoto@catf.us

Sanghyun Lee slee@environmentalintegrity.org

Sarah A. Buckley sbuckley@nrdc.org, gdu@nrdc.org

Surbhi Sarang ssarang@edf.org

Ryan Maher rmaher@biologicaldiversity.org

Catherine Rios-Keating Catherine.Rios-Keating@ag.state.mn.us, anne.kealing@ag.state.mn.us, kathryn.mitchell@ag.state.mn.us, kelly.pletz@ag.state.mn

Richard Yates, III ryates@edf.org

Laura Jane Brown laura.j.s.brown@usdoj.gov, efile_eds.enrd@usdoj.gov

1:25-cv-01852-PLF Notice will be delivered by other means to::

Message

From: [redacted]@epa.gov]
Sent: 6/13/2025 12:54:16 PM
To: Hirsch, Brigit [Hirsch.Brigit@epa.gov]; Holran, Carolyn [Holran.Carolyn@epa.gov]
CC: Vaseliou, Molly [Vaseliou.Molly@epa.gov]; Mandy, Cora [Mandy.Cora@epa.gov]; Bastasch, Mike [Bastasch.Mike@epa.gov]; [redacted]@epa.gov]
Subject: FLAGGING: Politico - Exemption lawsuit - DDL 9:30am
Attachments: environmental-groups-sue-trump-for-coal-plant-emission-exemptions.pdf

Ex. 5 Deliberative Process (DP) Less than an hour deadline?!

r/Jeff

From: Alex Guillen <aguillen@politico.com>
Sent: Friday, June 13, 2025 8:51 AM
To: EPA Press Office <Press@epa.gov>
Subject: Exemption lawsuit

> **Caution:** This email originated from outside EPA, please exercise additional caution when deciding whether to open attachments or click on provided links.

Good morning,

I'm writing about the lawsuit filed by environmental groups over President Trump's exemptions to 68 power plants from the 2024 MATS update. I know EPA rarely comments on litigation but wanted to offer an opportunity. My deadline is 9:30 a.m.

Thank you,

Alex Guillén Energy Reporter **POLITICOPRO**
1000 Wilson Boulevard. 8th Floor | Arlington. VA 22209
Phone: 703.341.4619
Email: aguillen@politico.com | Twitter: @alexeguillen | Website: www.POLITICOPro.com
Pronouns: He/him/his

Message

From: Vaseliou, Molly [Vaseliou.Molly@epa.gov]
Sent: 6/25/2025 4:38:04 PM
To: Hirsch, Brigit [Hirsch.Brigit@epa.gov]; Mandy, Cora [Mandy.Cora@epa.gov]; Bastasch, Mike [Bastasch.Mike@epa.gov]
CC: Holran, Carolyn [Holran.Carolyn@epa.gov]
Subject: RE: APPROVAL: Ethylene Oxide / CAA Section 112 presidential exemption - Spotlight on America - DDL July 1

Ok

From: Hirsch, Brigit <Hirsch.Brigit@epa.gov>
Sent: Wednesday, June 25, 2025 12:37 PM
To: Vaseliou, Molly <Vaseliou.Molly@epa.gov>; Mandy, Cora <Mandy.Cora@epa.gov>; Bastasch, Mike <Bastasch.Mike@epa.gov>
Cc: Holran, Carolyn <Holran.Carolyn@epa.gov>
Subject: RE: APPROVAL: Ethylene Oxide / CAA Section 112 presidential exemption - Spotlight on America - DDL July 1

Minus OMR – looks ok to me. OK?

From: [redacted]@epa.gov>
Sent: Wednesday, June 25, 2025 12:29 PM
To: Holran, Carolyn <Holran.Carolyn@epa.gov>; Hirsch, Brigit <Hirsch.Brigit@epa.gov>; Vaseliou, Molly <Vaseliou.Molly@epa.gov>; Mandy, Cora <Mandy.Cora@epa.gov>; Bastasch, Mike <Bastasch.Mike@epa.gov>
Cc: [redacted]@epa.gov>; [redacted]@epa.gov>
Subject: APPROVAL: Ethylene Oxide / CAA Section 112 presidential exemption - Spotlight on America - DDL July 1

Inquiry –

My name is Andrea Nejman and I'm a producer for *Spotlight on America.*

I'm following up on the email portal set up for requests for exemption to the HON rule, including EtO emissions using the address "[redacted]@epa.gov".

Please answer the following questions before our deadline of July 1st:

- Have any exemptions been granted to companies as of now?
  - If so, which companies have been granted the exemptions to the HON rule and on what grounds? Please provide documentation.
- If exemptions are still being considered, please provide a timeline for when those decisions will be made.

Response -

Section 112(i)(4) specifically states that the President may exempt any stationary source "if the President determines that the technology to implement such standard is not available and that it is in the national security interests of the United States to do so." This is an authority that solely rests with the President, not EPA.

Any further questions on this process or the status of exemptions should be directed to the White House.

Respectfully,

[redacted]
Office of Media Relations and Risk Communications
Office of Public Affairs
[redacted]@epa.gov

From: Andrea Nejman <anejman@sbgtv.com>
Sent: Wednesday, June 25, 2025 12:11 PM
To: [redacted]@epa.gov>
Cc: EPA Press Office <Press@epa.gov>
Subject: Ethylene Oxide

> **Caution:** This email originated from outside EPA, please exercise additional caution when deciding whether to open attachments or click on provided links.

Hi [redacted]

My name is Andrea Nejman and I'm a producer for *Spotlight on America.*

I'm following up on the email portal set up for requests for exemption to the HON rule, including EtO emissions using the address "[redacted]@epa.gov".

Please answer the following questions before our deadline of July 1st:

- Have any exemptions been granted to companies as of now?
  - If so, which companies have been granted the exemptions to the HON rule and on what grounds? Please provide documentation.
- If exemptions are still being considered, please provide a timeline for when those decisions will be made.

Feel free to reach out with any questions.

Thank you!

Andrea Nejman | National Investigative Producer

Spotlight on America

Message

From: Bastasch, Mike [Bastasch.Mike@epa.gov]
Sent: 10/3/2025 5:19:43 PM
To: Hirsch, Brigit [Hirsch.Brigit@epa.gov]; Holran, Carolyn [Holran.Carolyn@epa.gov]
CC: Vaseliou, Molly [Vaseliou.Molly@epa.gov]; Mandy, Cora [Mandy.Cora@epa.gov]
Subject: RE: Flagging: E&E news - deregulatory actions - deadline 4pm: Cancer--E&E News

This look good, Brigit?

From: Hirsch, Brigit <Hirsch.Brigit@epa.gov>
Sent: Friday, October 3, 2025 1:12 PM
To: Holran, Carolyn <Holran.Carolyn@epa.gov>
Cc: Vaseliou, Molly <Vaseliou.Molly@epa.gov>; Mandy, Cora <Mandy.Cora@epa.gov>; Bastasch, Mike <Bastasch.Mike@epa.gov>
Subject: RE: Flagging: E&E news - deregulatory actions - deadline 4pm: Cancer--E&E News

Minus OMR. Does anyone have initial thoughts on this? Anything else to lean into?

Ex. 5 Deliberative Process (DP)

Ex. 5 Deliberative Process (DP)

Ex. 5 Deliberative Process (DP)

From: [redacted]@epa.gov>
Sent: Friday, October 3, 2025 10:24 AM
To: Hirsch, Brigit <Hirsch.Brigit@epa.gov>; Holran, Carolyn <Holran.Carolyn@epa.gov>
Cc: [redacted]@epa.gov>; Vaseliou, Molly <Vaseliou.Molly@epa.gov>; Mandy, Cora <Mandy.Cora@epa.gov>; Bastasch, Mike <Bastasch.Mike@epa.gov>
Subject: Flagging: E&E news - deregulatory actions - deadline 4pm: Cancer--E&E News

Flagging this one from E&E, deadline is 4pm.

From: Ariel Wittenberg <awittenberg@eenews.net>
Sent: Friday, October 3, 2025 10:19 AM
To: EPA Press Office <press@epa.gov>
Subject: Cancer--E&E News

> **Caution:** This email originated from outside EPA, please exercise additional caution when deciding whether to open attachments or click on provided links.

Hi All,

It's Ariel Wittenberg at E&E News. Hope you're doing well.

I'm working on an article about how EPA's deregulatory agenda conflicts with Trump administration initiatives addressing cancer and pediatric cancer. By my count looking at the regulatory rollbacks EPA announced in March, you've target 12 regulations that limit releases of carcinogens into air and water, some of which limit exposure to multiple cancer-causing chemicals.

For example, the ELG rule that EPA is proposing to delay would avoid some 98 bladder cancer cases annually by reducing bromide releases. The NESHAPs rule EPA is now reconsidering was previously calculated to reduce air-toxics-related cancer risk by 96 percent in the communities surrounding facilities subject to that regulation.

Do you have any comment?

Also, I understand that Admin. Zeldin has said many of the agency's rollbacks are necessary for the United States to become a leader in artificial intelligence to power data centers, and that artificial intelligence plays a key role in HHS' plans to address childhood cancer, as with the Executive Order signed by President Trump this

week. Does Admin. Zeldin believe the additional cancer risk from emissions is a necessary trade off? If the Trump administration is concerned with addressing cancer, why not focus on reducing cancer cases?

My deadline is 4 pm ET.

Thanks,

Ariel

Ariel Wittenberg (she/her)

Climate/Health reporter

POLITICO's E&E News

awittenberg@eenews.net

202-737-4557

Message

From: [redacted]@epa.gov]
Sent: 10/3/2025 7:50:19 PM
To: Hirsch, Brigit [Hirsch.Brigit@epa.gov]; Holran, Carolyn [Holran.Carolyn@epa.gov]
CC: [redacted]@epa.gov]; Vaseliou, Molly [Vaseliou.Molly@epa.gov]; Mandy, Cora [Mandy.Cora@epa.gov]; Bastasch, Mike [Bastasch.Mike@epa.gov]
Subject: RE: Flagging: E&E news - deregulatory actions - deadline 4pm: Cancer--E&E News

Flag: Follow up

Got it.

[redacted]
Office of Public Affairs
U.S. Environmental Protection Agency
[redacted]

From: Hirsch, Brigit <Hirsch.Brigit@epa.gov>
Sent: Friday, October 3, 2025 3:50 PM
To: [redacted]@epa.gov>; Holran, Carolyn <Holran.Carolyn@epa.gov>
Cc: [redacted]@epa.gov>; Vaseliou, Molly <Vaseliou.Molly@epa.gov>; Mandy, Cora <Mandy.Cora@epa.gov>; Bastasch, Mike <Bastasch.Mike@epa.gov>
Subject: RE: Flagging: E&E news - deregulatory actions - deadline 4pm: Cancer--E&E News

[redacted], we can send:

Ex. 5 Deliberative Process (DP)

Ex. 5 Deliberative Process (DP)

Ex. 5 Deliberative Process (DP)

From: Hirsch, Brigit
Sent: Friday, October 3, 2025 1:52 PM
To: [redacted]@epa.gov>; Holran, Carolyn <Holran.Carolyn@epa.gov>
Cc: [redacted]@epa.gov>; Vaseliou, Molly <Vaseliou.Molly@epa.gov>; Mandy, Cora <Mandy.Cora@epa.gov>; Bastasch, Mike <Bastasch.Mike@epa.gov>
Subject: RE: Flagging: E&E news - deregulatory actions - deadline 4pm: Cancer--E&E News

[redacted], can you take the highlighted topics to the programs and see if they have anything to contribute? I know it's a fast turnaround now. Should have something for you soon.

From: [redacted]@epa.gov>
Sent: Friday, October 3, 2025 11:13 AM
To: Hirsch, Brigit <Hirsch.Brigit@epa.gov>; Holran, Carolyn <Holran.Carolyn@epa.gov>
Cc: [redacted]@epa.gov>; Vaseliou, Molly <Vaseliou.Molly@epa.gov>; Mandy, Cora <Mandy.Cora@epa.gov>; Bastasch, Mike <Bastasch.Mike@epa.gov>
Subject: RE: Flagging: E&E news - deregulatory actions - deadline 4pm: Cancer--E&E News

ELG bladder cancer cases methodology is explained on this doc from the 2024 final rule announcement beginning on page 79 with the stat on page 86 here: https://www.epa.gov/system/files/documents/2024-04/steamelectricelg_2024final_bca_508compliant.pdf. NESHAP stat comes from this document which was part of an EPA community risk assessment: https://www.epa.gov/system/files/documents/2023-04/HON%20P%26R.%20Demographic%20Analysis.Fact%20Sheet.%204.6.23.pdf

Here's the list of the 12 actions:

1. Air Quality standards for soot -- soot, benzene, formaldehyde, PAH
2. Boiler rule--soot, arsenic, cadmium, chromium, cobalt, lead, nickel
3. Carbon pollution standards for FF plants---soot, benzene, formaldehyde, PAH
4. Clean car rule--Soot, benzene
5. Clean trucks---soot, benzene, formaldehyde, PAH
6. Good neighbor rule-- Soot, benzene, formaldehyde, PAH, arsenic, cadmium, chromium, nickel

7. MATS-- arsenic, cadmium cobalt, lead, beryllium
8. Oil/gas methane rule--Benzene
9. Coal wastewater rule--arsenic nickel cadmium lead cobalt
10. NESHAP--Ethelyne oxide
11. Drinking water PFAS---PFAS
12. Risk management program for chem, oil and gas plants--Arsenic, benzene , Ethelyne oxide, formaldehyde

[redacted]
Office of Public Affairs
U.S. Environmental Protection Agency
([redacted]

From: Hirsch, Brigit <Hirsch.Brigit@epa.gov>
Sent: Friday, October 3, 2025 10:43 AM
To: [redacted]@epa.gov>; Holran, Carolyn <Holran.Carolyn@epa.gov>
Cc: [redacted]@epa.gov>; Vaseliou, Molly <Vaseliou.Molly@epa.gov>; Mandy, Cora <Mandy.Cora@epa.gov>; Bastasch, Mike <Bastasch.Mike@epa.gov>
Subject: RE: Flagging: E&E news - deregulatory actions - deadline 4pm: Cancer--E&E News

[redacted]could you also ask the programs where these are coming from? And if it's not clear to the programs, can you ask Ariel?

- *the ELG rule that EPA is proposing to delay would avoid some 98 bladder cancer cases annually by reducing bromide releases*
- *The NESHAPs rule EPA is now reconsidering was previously calculated to reduce air-toxics-related cancer risk by 96 percent in the communities surrounding facilities subject to that regulation.*

From: [redacted]@epa.gov>
Sent: Friday, October 3, 2025 10:24 AM
To: Hirsch, Brigit <Hirsch.Brigit@epa.gov>; Holran, Carolyn <Holran.Carolyn@epa.gov>
Cc: [redacted]@epa.gov>; Vaseliou, Molly <Vaseliou.Molly@epa.gov>; Mandy, Cora <Mandy.Cora@epa.gov>; Bastasch, Mike <Bastasch.Mike@epa.gov>
Subject: Flagging: E&E news - deregulatory actions - deadline 4pm: Cancer--E&E News

Flagging this one from E&E, deadline is 4pm.

From: Ariel Wittenberg <awittenberg@eenews.net>
Sent: Friday, October 3, 2025 10:19 AM
To: EPA Press Office <press@epa.gov>
Subject: Cancer--E&E News

Caution: This email originated from outside EPA, please exercise additional caution when deciding whether to open attachments or click on provided links.

Hi All,

It's Ariel Wittenberg at E&E News. Hope you're doing well.

I'm working on an article about how EPA's deregulatory agenda conflicts with Trump administration initiatives addressing cancer and pediatric cancer. By my count looking at the regulatory rollbacks EPA announced in March, you've target 12 regulations that limit releases of carcinogens into air and water, some of which limit exposure to multiple cancer-causing chemicals.

For example, the ELG rule that EPA is proposing to delay would avoid some 98 bladder cancer cases annually by reducing bromide releases. The NESHAPs rule EPA is now reconsidering was previously calculated to reduce air-toxics-related cancer risk by 96 percent in the communities surrounding facilities subject to that regulation.

Do you have any comment?

Also, I understand that Admin. Zeldin has said many of the agency's rollbacks are necessary for the United States to become a leader in artificial intelligence to power data centers, and that artificial intelligence plays a key role in HHS' plans to address childhood cancer, as with the Executive Order signed by President Trump this week. Does Admin. Zeldin believe the additional cancer risk from emissions is a necessary trade off? If the Trump administration is concerned with addressing cancer, why not focus on reducing cancer cases?

My deadline is 4 pm ET.

Thanks,

Ariel

Ariel Wittenberg (she/her)

Climate/Health reporter

POLITICO's E&E News

awittenberg@eenews.net

202-737-4557

Message

From: [redacted]@epa.gov]
Sent: 10/22/2025 4:41:48 PM
To: Hirsch, Brigit [Hirsch.Brigit@epa.gov]; Holran, Carolyn [Holran.Carolyn@epa.gov]; Bastasch, Mike [Bastasch.Mike@epa.gov]; Mandy, Cora [Mandy.Cora@epa.gov]
CC: [redacted]@epa.gov]; [redacted]@epa.gov]
Subject: APPROVAL: Law360 story on new compliance deadline lawsuit - DDL 5 p.m.
Attachments: complaint.pdf

Flag: Follow up

OGC/Dan approved –

Inquiry –
Hi, I'm doing a story today on the attached complaint filed by environmental groups who allege President Trump and the EPA have illegally delayed compliance deadlines with various air pollution rules. Does the EPA have any comment in response to the complaint? I can add a comment to the story until 5 p.m. EDT today.

Response –
In keeping with a longstanding practice, EPA does not comment on any current or pending litigation.

From: Juan-Carlos Rodriguez <jc.rodriguez@law360.com>
Sent: Wednesday, October 22, 2025 12:30 PM
To: EPA Press Office <press@epa.gov>
Subject: Law360 story on new compliance deadline lawsuit

Caution: This email originated from outside EPA, please exercise additional caution when deciding whether to open attachments or click on provided links.

Hi, I'm doing a story today on the attached complaint filed by environmental groups who allege President Trump and the EPA have illegally delayed compliance deadlines with various air pollution rules. Does the EPA have any comment in response to the complaint? I can add a comment to the story until 5 p.m. EDT today.

Thanks.

--
Juan-Carlos Rodriguez
Senior Environment Reporter

450 Park Ave. South
Floor 12
New York, NY 10016
Office: 646-783-7197
Cell: 505-353-2277

Message

From: Holran, Carolyn [Holran.Carolyn@epa.gov]
Sent: 11/20/2025 5:40:41 PM
To: Hirsch, Brigit [Hirsch.Brigit@epa.gov]; Mandy, Cora [Mandy.Cora@epa.gov]
Subject: Re: New York Times deadline inquiry: Copper smelter

Thanks

Get Outlook for iOS

From: Hirsch, Brigit <Hirsch.Brigit@epa.gov>
Sent: Thursday, November 20, 2025 12:38:03 PM
To: Holran, Carolyn <Holran.Carolyn@epa.gov>; Mandy, Cora <Mandy.Cora@epa.gov>
Subject: Fw: New York Times deadline inquiry: Copper smelter

Get Outlook for iOS

From: Maxine Joselow <maxine.joselow@nytimes.com>
Sent: Thursday, November 20, 2025 12:26:54 PM
To: EPA Press Office <press@epa.gov>; Hirsch, Brigit <Hirsch.Brigit@epa.gov>
Subject: New York Times deadline inquiry: Copper smelter

> **Caution:** This email originated from outside EPA, please exercise additional caution when deciding whether to open attachments or click on provided links.

Hi Brigit and EPA press team,

I hope you're all doing well. I'm working on an article about Freeport-McMoRan's copper smelter in Miami, Arizona, which President Trump exempted from compliance with EPA's copper rule last month.

The article will mention that Abigale Tardif, the principal deputy assistant administrator in EPA's Office of Air and Radiation, emailed with a lobbyist for Freeport-McMoRan about how the company could best position itself to obtain the presidential exemption under the Clean Air Act, according to emails obtained by the Environmental Defense Fund via the Freedom of Information Act.

I have attached those emails for your reference, and I was hoping you could answer the following questions. My deadline is currently set for **5pm ET tomorrow**, although it might be extended.

- Can you confirm whether Abigale Tardif had a call with the lobbyist for Freeport-McMoRan, Patrick Traylor, in March?
- How would EPA respond to criticism from environmentalists that these emails show a remarkable degree of coordination between the agency and one of the companies it regulates?

Please let me know and thank you for considering this request. I will also reach out to the White House regarding the presidential exemption.

Best,

Maxine
--
Maxine Joselow
Climate Reporter
The New York Times
Cell: 202-948-1924
Signal: MaxineJ.55

Message

From: Holran, Carolyn [Holran.Carolyn@epa.gov]
Sent: 11/20/2025 5:42:18 PM
To: [redacted]@epa.gov]; Hirsch, Brigit [Hirsch.Brigit@epa.gov]
Subject: Re: New York Times deadline inquiry: Copper smelter

Yes. I'm handling.

Get Outlook for iOS

From: [redacted]@epa.gov>
Sent: Thursday, November 20, 2025 12:41:34 PM
To: Hirsch, Brigit <Hirsch.Brigit@epa.gov>
Cc: Holran, Carolyn <Holran.Carolyn@epa.gov>
Subject: Fw: New York Times deadline inquiry: Copper smelter

This was tagged already as OPA leadership, so is it already being worked?

From: Maxine Joselow <maxine.joselow@nytimes.com>
Sent: Thursday, November 20, 2025 12:26 PM
To: EPA Press Office <press@epa.gov>; Hirsch, Brigit <Hirsch.Brigit@epa.gov>
Subject: New York Times deadline inquiry: Copper smelter

> **Caution:** This email originated from outside EPA, please exercise additional caution when deciding whether to open attachments or click on provided links.

Hi Brigit and EPA press team,

I hope you're all doing well. I'm working on an article about Freeport-McMoRan's copper smelter in Miami, Arizona, which President Trump exempted from compliance with EPA's copper rule last month.

The article will mention that Abigale Tardif, the principal deputy assistant administrator in EPA's Office of Air and Radiation, emailed with a lobbyist for Freeport-McMoRan about how the company could best position itself to obtain the presidential exemption under the Clean Air Act, according to emails obtained by the Environmental Defense Fund via the Freedom of Information Act.

I have attached those emails for your reference, and I was hoping you could answer the following questions. My deadline is currently set for **5pm ET tomorrow**, although it might be extended.

- Can you confirm whether Abigale Tardif had a call with the lobbyist for Freeport-McMoRan, Patrick Traylor, in March?
- How would EPA respond to criticism from environmentalists that these emails show a remarkable degree of coordination between the agency and one of the companies it regulates?

Please let me know and thank you for considering this request. I will also reach out to the White House regarding the presidential exemption.

Best,
Maxine

--
Maxine Joselow
Climate Reporter
The New York Times
Cell: 202-948-1924
Signal: MaxineJ.55

Message

From: Maxine Joselow [maxine.joselow@nytimes.com]
Sent: 11/20/2025 10:33:58 PM
To: Hirsch, Brigit [Hirsch.Brigit@epa.gov]
CC: EPA Press Office [Press@epa.gov]; Holran, Carolyn [Holran.Carolyn@epa.gov]
Subject: Re: New York Times deadline inquiry: Copper smelter

Caution: This email originated from outside EPA, please exercise additional caution when deciding whether to open attachments or click on provided links.

Great, thanks, Brigit.

On Thu, Nov 20, 2025 at 5:31 PM Hirsch, Brigit <Hirsch.Brigit@epa.gov> wrote:

Brigit Hirsch, EPA press secretary works. Thanks.

From: Maxine Joselow <maxine.joselow@nytimes.com>
Sent: Thursday, November 20, 2025 5:31 PM
To: EPA Press Office <Press@epa.gov>
Cc: Hirsch, Brigit <Hirsch.Brigit@epa.gov>; Holran, Carolyn <Holran.Carolyn@epa.gov>
Subject: Re: New York Times deadline inquiry: Copper smelter

Caution: This email originated from outside EPA, please exercise additional caution when deciding whether to open attachments or click on provided links.

Thanks so much for the quick response. As a general rule, the New York Times cannot quote anonymous spokespeople. Could I please attribute this response to Carolyn Holran or another EPA spokesperson by name? Thanks.

On Thu, Nov 20, 2025 at 3:04 PM EPA Press Office <Press@epa.gov> wrote:

Adding Carolyn Holran, who can be on all future press inquiries along with Brigit Hirsch.

Abbie Tardif never had a call with the lobbyist for Freeport-McMoRan, Patrick Traylor. You are deliberately jumping to conclusions to fit your prewritten narrative; a publicly available link was sent. Period. End of

story. EPA regularly engages with a wide range of stakeholders, including entities that we may regulate, and these engagements are an essential component of our work to protect human health and the environment.

EPA Clean Air Act section 112(i)(4) authorizes the President to exempt any stationary source from a relevant standard if he "determines that the technology to implement such standard is not available and that it is in the national security interests of the United States to do so." EPA played no role in the determinations set out in the statute and specifically vested in the President. Any requests sent to the EPA's electronic mailbox were forwarded to the White House, and any further questions about process and decisions should be directed to the White House.

This story seems like a waste of your time and begs the question: where was The New York Times when legitimate concerns were raised regarding the Biden-Harris Administration's ACTUAL coordination when they awarded 20 billion in taxpayer dollars to their friends?

From: Maxine Joselow <maxine.joselow@nytimes.com>
Sent: Thursday, November 20, 2025 12:27 PM
To: EPA Press Office <press@epa.gov>; Hirsch, Brigit <Hirsch.Brigit@epa.gov>
Subject: New York Times deadline inquiry: Copper smelter

Caution: This email originated from outside EPA, please exercise additional caution when deciding whether to open attachments or click on provided links.

Hi Brigit and EPA press team,

I hope you're all doing well. I'm working on an article about Freeport-McMoRan's copper smelter in Miami, Arizona, which President Trump exempted from compliance with EPA's copper rule last month.

The article will mention that Abigale Tardif, the principal deputy assistant administrator in EPA's Office of Air and Radiation, emailed with a lobbyist for Freeport-McMoRan about how the company could best position itself to obtain the presidential exemption under the Clean Air Act, according to emails obtained by the Environmental Defense Fund via the Freedom of Information Act.

I have attached those emails for your reference, and I was hoping you could answer the following questions. My deadline is currently set for **5pm ET tomorrow**, although it might be extended.

- Can you confirm whether Abigale Tardif had a call with the lobbyist for Freeport-McMoRan, Patrick Traylor, in March?
- How would EPA respond to criticism from environmentalists that these emails show a remarkable degree of coordination between the agency and one of the companies it regulates?

Please let me know and thank you for considering this request. I will also reach out to the White House regarding the presidential exemption.

Best,

Maxine

--

Maxine Joselow
Climate Reporter
The New York Times
Cell: 202-948-1924
Signal: MaxineJ.55

--

Maxine Joselow
Climate Reporter
The New York Times
Cell: 202-948-1924
Signal: MaxineJ.55

--

Maxine Joselow
Climate Reporter
The New York Times
Cell: 202-948-1924
Signal: MaxineJ.55

Message

From: [redacted]@epa.gov]
Sent: 12/1/2025 3:36:42 PM
To: Hirsch, Brigit [Hirsch.Brigit@epa.gov]; Holran, Carolyn [Holran.Carolyn@epa.gov]
CC: Mandy, Cora [Mandy.Cora@epa.gov]; Bastasch, Mike [Bastasch.Mike@epa.gov]; [redacted]epa.gov]; [redacted]@epa.gov]
Subject: RE: Flag (NOT PRESS): Clarification request for Presidential exemption of NESHAP for EO sterilizers

Thanks!

From: Hirsch, Brigit <Hirsch.Brigit@epa.gov>
Sent: Monday, December 1, 2025 10:36 AM
To: [redacted]@epa.gov>; Holran, Carolyn <Holran.Carolyn@epa.gov>
Cc: Mandy, Cora <Mandy.Cora@epa.gov>; Bastasch, Mike <Bastasch.Mike@epa.gov>; [redacted]@epa.gov>; [redacted]@epa.gov>
Subject: RE: Flag (NOT PRESS): Clarification request for Presidential exemption of NESHAP for EO sterilizers

[redacted] we can consider this closed!

From: [redacted]@epa.gov>
Sent: Monday, December 1, 2025 10:27 AM
To: Holran, Carolyn <Holran.Carolyn@epa.gov>; Hirsch, Brigit <Hirsch.Brigit@epa.gov>
Cc: Mandy, Cora <Mandy.Cora@epa.gov>; Bastasch, Mike <Bastasch.Mike@epa.gov>; [redacted]@epa.gov>; [redacted]@epa.gov>
Subject: Flag (NOT PRESS): Clarification request for Presidential exemption of NESHAP for EO sterilizers

Team – Please see the below from a company following up on their exemption request. The company has reached out to the WH (not sure if the folks listed in the email are the correct points of contact). Please advise.

Incoming -
We are urgently trying to ascertain whether or not Andersen Scientific, Inc., made the 2-year Presidential extension for NESHAP EO contract sterilizers. I have been trying to contact John Reiten and Marc Marie at the White House, but have had no luck.

One of our clients is the sole provider of a **Department of Defense** drug for US soldiers, and so this is a matter of urgency. We are **not** on the Whitehouse list of contract sterilizers, and I am trying to get clarification if we are or are not, and if not, what can we do considering the risks this will put to a delicate resource used by the US Government.

Is there a contact I can reach to gain some clarification on whether we made this list, and if not, what we need to do for reconsideration?

Respectfully,

[redacted]
Digital, Risk Communications, and Press Division
Office of External Affairs
[redacted]
[redacted]@epa.gov

From: daryl@ansci.us <daryl@ansci.us>
Sent: Monday, December 1, 2025 9:37 AM
To: [redacted]@epa.gov>
Subject: Clarification request for Presidential exemption of NESHAP for EO sterilizers

You don't often get email from daryl@ansci.us. Learn why this is important

Caution: This email originated from outside EPA, please exercise additional caution when deciding whether to open attachments or click on provided links.

Good Morning, [redacted],

Welcome back, and I hope you had a relaxing Thanksgiving.

We are urgently trying to ascertain whether or not Andersen Scientific, Inc., made the 2-year Presidential extension for NESHAP EO contract sterilizers. I have been trying to contact John Reiten and Marc Marie at the White House, but have had no luck.

One of our clients is the sole provider of a **Department of Defense** drug for US soldiers, and so this is a matter of urgency. We are **not** on the Whitehouse list of contract sterilizers, and I am trying to get clarification if we are or are not, and if not, what can we do considering the risks this will put to a delicate resource used by the US Government.

Is there a contact I can reach to gain some clarification on whether we made this list, and if not, what we need to do for reconsideration?

Thank you in advance.

Regards,

DARYL WOODMAN

General Manager at **Andersen Scientific, Inc.**
A 1001 Aviation Parkway, Suite 600, Morrisville, NC 27560
P 919 388 5844 **M** 919 274 5498
E daryl@ansci.us **W** www.ansci.us



An FDA Innovation Challenge Winner

Chosen by the FDA to accelerate the development of strategies to reduce ethylene oxide emissions.

This e-mail transmission may contain confidential or legally privileged information belonging to Andersen Scientific, Inc. The content of this transmission is intended only for the individual or entity named in the e-mail address. If you are not the intended recipient, you are hereby notified that any disclosure, copying, distribution, or reliance upon the content of this e-mail is strictly prohibited.
If you have received this e-mail transmission in error, please reply to sender so that we can arrange correct delivery. Then please delete this message from your inbox. Thank you.

Message

From: Bastasch, Mike [Bastasch.Mike@epa.gov]
Sent: 2/26/2026 8:41:13 PM
To: Hirsch, Brigit [Hirsch.Brigit@epa.gov]; Holran, Carolyn [Holran.Carolyn@epa.gov]; Mandy, Cora [Mandy.Cora@epa.gov]; Murphy, Jacob [Murphy.Jacob@epa.gov]; Vaseliou, Molly [Vaseliou.Molly@epa.gov]
Subject: RE: Flag: NRDC press release/MATS exemptions - SO2 emissions - Inside EPA - DDL 4:15

Ex. 5 Deliberative Process (DP)

From: Hirsch, Brigit <Hirsch.Brigit@epa.gov>
Sent: Thursday, February 26, 2026 3:22 PM
To: Holran, Carolyn <Holran.Carolyn@epa.gov>; Bastasch, Mike <Bastasch.Mike@epa.gov>; Mandy, Cora <Mandy.Cora@epa.gov>; Murphy, Jacob <Murphy.Jacob@epa.gov>; Vaseliou, Molly <Vaseliou.Molly@epa.gov>
Subject: RE: Flag: NRDC press release/MATS exemptions - SO2 emissions - Inside EPA - DDL 4:15

Minus OMR – OK to send what we sent to WSJ on this same topic? Ex. 5 Deliberative Process (DP)

Ex. 5 Deliberative Process (DP)

Ex. 5 Deliberative Process (DP)

From: [redacted]@epa.gov>
Sent: Thursday, February 26, 2026 3:18 PM

To: Hirsch, Brigit <Hirsch.Brigit@epa.gov>; Holran, Carolyn <Holran.Carolyn@epa.gov>
Cc: Bastasch, Mike <Bastasch.Mike@epa.gov>; [redacted]@epa.gov>; [redacted]@epa.gov>; Mandy, Cora <Mandy.Cora@epa.gov>; Murphy, Jacob <Murphy.Jacob@epa.gov>; Vaseliou, Molly <Vaseliou.Molly@epa.gov>
Subject: Flag: NRDC press release/MATS exemptions - SO2 emissions - Inside EPA - DDL 4:15

Team – Flagging the below inquiry from Inside EPA. The deadline is 4:15.

Incoming –
Does EPA have a comment on a press release today from NRDC saying SO2 emissions at coal plants spiked 18 percent last year combined at facilities that received the presidential exemption?

https://www.nrdc.org/press-releases/coal-pollution-spiked-after-trump-administrations-free-pass-pollute

Respectfully,

[redacted]
Digital, Risk Communications, and Press Division
Office of External Affairs
[redacted]
[redacted]@epa.gov

From: Dawn Reeves <dreeves@iwpnews.com>
Sent: Thursday, February 26, 2026 3:02 PM
To: EPA Press Office <press@epa.gov>
Subject: does EPA have a comment

> **Caution:** This email originated from outside EPA, please exercise additional caution when deciding whether to open attachments or click on provided links.

on a press release today from NRDC saying SO2 emissions at coal plants spiked 18 percent last year combined at facilities that received the presidential exemption?

https://www.nrdc.org/press-releases/coal-pollution-spiked-after-trump-administrations-free-pass-pollute

Please let me know, my deadline is 415 today.
Thanks!
Dawn

Message

From: [redacted]@epa.gov]
Sent: 2/26/2026 9:09:40 PM
To: Hirsch, Brigit [Hirsch.Brigit@epa.gov]; Holran, Carolyn [Holran.Carolyn@epa.gov]
CC: Bastasch, Mike [Bastasch.Mike@epa.gov]; [redacted]@epa.gov] [redacted]@epa.gov]; Mandy, Cora [Mandy.Cora@epa.gov]; Murphy, Jacob [Murphy.Jacob@epa.gov]; Vaseliou, Molly [Vaseliou.Molly@epa.gov]
Subject: RE: Flag: NRDC press release/MATS exemptions - SO2 emissions - Inside EPA - DDL 4:15

The reporter can extend the deadline to 5 p.m.

I can push until 5 today and if you get me something after that we can update the story.

Respectfully,

[redacted]
Digital, Risk Communications, and Press Division
Office of External Affairs
[redacted]
[redacted]@epa.gov

From: Hirsch, Brigit <Hirsch.Brigit@epa.gov>
Sent: Thursday, February 26, 2026 4:04 PM
To: [redacted]@epa.gov>; Holran, Carolyn <Holran.Carolyn@epa.gov>
Cc: Bastasch, Mike <Bastasch.Mike@epa.gov>; [redacted]@epa.gov>; [redacted]@epa.gov>; Mandy, Cora <Mandy.Cora@epa.gov>; Murphy, Jacob <Murphy.Jacob@epa.gov>; Vaseliou, Molly <Vaseliou.Molly@epa.gov>
Subject: RE: Flag: NRDC press release/MATS exemptions - SO2 emissions - Inside EPA - DDL 4:15

Thank you!

From: [redacted]@epa.gov>
Sent: Thursday, February 26, 2026 4:03 PM
To: Hirsch, Brigit <Hirsch.Brigit@epa.gov>; Holran, Carolyn <Holran.Carolyn@epa.gov>
Cc: Bastasch, Mike <Bastasch.Mike@epa.gov>; [redacted]@epa.gov>; [redacted]@epa.gov>; Mandy, Cora <Mandy.Cora@epa.gov>; Murphy, Jacob <Murphy.Jacob@epa.gov>; Vaseliou, Molly <Vaseliou.Molly@epa.gov>
Subject: RE: Flag: NRDC press release/MATS exemptions - SO2 emissions - Inside EPA - DDL 4:15

Dawn can push it a bit. I've asked her to give me a specific time.

[redacted]

From: Hirsch, Brigit <Hirsch.Brigit@epa.gov>
Sent: Thursday, February 26, 2026 3:54 PM
To: [redacted]@epa.gov>; Holran, Carolyn <Holran.Carolyn@epa.gov>
Cc: Bastasch, Mike <Bastasch.Mike@epa.gov>; [redacted]@epa.gov>; [redacted]

[redacted]@epa.gov>; Mandy, Cora <Mandy.Cora@epa.gov>; Murphy, Jacob <Murphy.Jacob@epa.gov>; Vaseliou, Molly <Vaseliou.Molly@epa.gov>
Subject: RE: Flag: NRDC press release/MATS exemptions - SO2 emissions - Inside EPA - DDL 4:15

[redacted], could you ask for an extension?

From: [redacted]@epa.gov>
Sent: Thursday, February 26, 2026 3:18 PM
To: Hirsch, Brigit <Hirsch.Brigit@epa.gov>; Holran, Carolyn <Holran.Carolyn@epa.gov>
Cc: Bastasch, Mike <Bastasch.Mike@epa.gov>; [redacted]@epa.gov>; [redacted]@epa.gov>; Mandy, Cora <Mandy.Cora@epa.gov>; Murphy, Jacob <Murphy.Jacob@epa.gov>; Vaseliou, Molly <Vaseliou.Molly@epa.gov>
Subject: Flag: NRDC press release/MATS exemptions - SO2 emissions - Inside EPA - DDL 4:15

Team – Flagging the below inquiry from Inside EPA. The deadline is 4:15.

Incoming –
Does EPA have a comment on a press release today from NRDC saying SO2 emissions at coal plants spiked 18 percent last year combined at facilities that received the presidential exemption?

https://www.nrdc.org/press-releases/coal-pollution-spiked-after-trump-administrations-free-pass-pollute

Respectfully,

[redacted]
Digital, Risk Communications, and Press Division
Office of External Affairs
[redacted]
[redacted]@epa.gov

From: Dawn Reeves <dreeves@iwpnews.com>
Sent: Thursday, February 26, 2026 3:02 PM
To: EPA Press Office <press@epa.gov>
Subject: does EPA have a comment

> **Caution:** This email originated from outside EPA, please exercise additional caution when deciding whether to open attachments or click on provided links.

on a press release today from NRDC saying SO2 emissions at coal plants spiked 18 percent last year combined at facilities that received the presidential exemption?

https://www.nrdc.org/press-releases/coal-pollution-spiked-after-trump-administrations-free-pass-pollute

Please let me know, my deadline is 415 today.
Thanks!
Dawn

Message

From: [redacted]@epa.gov]
Sent: 2/26/2026 10:05:46 PM
To: Holran, Carolyn [Holran.Carolyn@epa.gov]; Hirsch, Brigit [Hirsch.Brigit@epa.gov]; [redacted]@epa.gov]
CC: Bastasch, Mike [Bastasch.Mike@epa.gov]; [redacted]@epa.gov]; [redacted]@epa.gov]; Mandy, Cora [Mandy.Cora@epa.gov]; Murphy, Jacob [Murphy.Jacob@epa.gov]; Vaseliou, Molly [Vaseliou.Molly@epa.gov]
Subject: RE: Flag: NRDC press release/MATS exemptions - SO2 emissions - Inside EPA - DDL 4:15

Sent.

[redacted]
Office of External Affairs
U.S. Environmental Protection Agency
[redacted]

From: Holran, Carolyn <Holran.Carolyn@epa.gov>
Sent: Thursday, February 26, 2026 5:04 PM
To: Hirsch, Brigit <Hirsch.Brigit@epa.gov>; [redacted]@epa.gov>; [redacted]@epa.gov>
Cc: Bastasch, Mike <Bastasch.Mike@epa.gov>; [redacted]@epa.gov>; [redacted]@epa.gov>; Mandy, Cora <Mandy.Cora@epa.gov>; Murphy, Jacob <Murphy.Jacob@epa.gov>; Vaseliou, Molly <Vaseliou.Molly@epa.gov>
Subject: RE: Flag: NRDC press release/MATS exemptions - SO2 emissions - Inside EPA - DDL 4:15

Looping [redacted] to help close this.

Carolyn Holran
Press Secretary
U.S. Environmental Protection Agency
C: 202-400-8387

From: Holran, Carolyn <Holran.Carolyn@epa.gov>
Sent: Thursday, February 26, 2026 5:02 PM
To: Hirsch, Brigit <Hirsch.Brigit@epa.gov>; [redacted]@epa.gov>
Cc: Bastasch, Mike <Bastasch.Mike@epa.gov>; [redacted]@epa.gov>; [redacted]@epa.gov>; Mandy, Cora <Mandy.Cora@epa.gov>; Murphy, Jacob <Murphy.Jacob@epa.gov>; Vaseliou, Molly <Vaseliou.Molly@epa.gov>
Subject: RE: Flag: NRDC press release/MATS exemptions - SO2 emissions - Inside EPA - DDL 4:15

[redacted]

You can send the below:

"NRDC is peddling misleading, cherry-picked data in a desperate attempt to drum up donations. They've been lurking behind the scenes of previous unconstitutional EPA power grab and gleefully bragged about destroying American jobs and businesses. Bottomline: they are bad faith actors who shouldn't be trusted. In fact, applying even the slightest bit of scrutiny to their "analysis" completely shatters it. For starters, MATS has little

or nothing to do with sulfur dioxide emissions. And even if the now-repealed Biden EPA 2024 MATS rule had gone into effect, compliance with the 2024 MATS requirements was not required until 2027, so those requirements did not impact 2025 emissions. Second, plants that received a presidential exemption are still required to operate under 2012 MATS standards, which NRDC SUPPORTED! Heck, the Biden EPA reaffirmed that the 2012 standards protected public health and successfully lowered emissions. As a result of the highly effective 2012 MATS standards, mercury emissions from coal-fired power plants fell 90 percent by 2021. Since the 2012 MATS rule was put into place, acid gas hazardous air pollutant emissions decreased by over 96 percent and emissions of the non-mercury metals—including nickel, arsenic, and lead—declined by more than 81 percent. Funny how NRDC neglects to mention any of this, and it's also funny how they've never once criticized China for the gargantuan levels of pollution they emit, much of which drifts over to the United States and harms our air quality. Makes you wonder what's going on in their Beijing office, doesn't it?

"Moreover, U.S. air quality has seen massive improvements in recent decades. Right now, Americans enjoy crisp clean air that would be the envy of past generations. Incorrectly cherry-picking one year of data, while ignoring the overall downward trend in emission levels is just misleading and meant to distract from the hundreds of environmental wins the Trump EPA has racked up over the past year-plus. The Trump EPA is better positioned than ever before to protect human health and the environment while also Powering the Great American Comeback." -EPA spox

On background
Clean Air Act section 112(i)(4) authorizes the President to exempt any stationary source from a relevant standard if he "determines that the technology to implement such standard is not available and that it is in the national security interests of the United States to do so." EPA played no role in the determinations set out in the statute and specifically vested in the President. Any requests sent to the EPA's electronic mailbox were forwarded to the White House, and any further questions about process and decisions should be directed to the White House.

From: Hirsch, Brigit <Hirsch.Brigit@epa.gov>
Sent: Thursday, February 26, 2026 4:11 PM
To: [redacted]@epa.gov>; Holran, Carolyn <Holran.Carolyn@epa.gov>
Cc: Bastasch, Mike <Bastasch.Mike@epa.gov>; [redacted]@epa.gov>; [redacted]@epa.gov>; Mandy, Cora <Mandy.Cora@epa.gov>; Murphy, Jacob <Murphy.Jacob@epa.gov>; Vaseliou, Molly <Vaseliou.Molly@epa.gov>
Subject: RE: Flag: NRDC press release/MATS exemptions - SO2 emissions - Inside EPA - DDL 4:15

Thank you!

From: [redacted]@epa.gov>
Sent: Thursday, February 26, 2026 4:10 PM
To: Hirsch, Brigit <Hirsch.Brigit@epa.gov>; Holran, Carolyn <Holran.Carolyn@epa.gov>
Cc: Bastasch, Mike <Bastasch.Mike@epa.gov>; [redacted]@epa.gov>; [redacted]@epa.gov>; Mandy, Cora <Mandy.Cora@epa.gov>; Murphy, Jacob <Murphy.Jacob@epa.gov>; Vaseliou, Molly <Vaseliou.Molly@epa.gov>
Subject: RE: Flag: NRDC press release/MATS exemptions - SO2 emissions - Inside EPA - DDL 4:15

The reporter can extend the deadline to 5 p.m.

I can push until 5 today and if you get me something after that we can update the story.

Respectfully,

[redacted]
Digital, Risk Communications, and Press Division
Office of External Affairs
[redacted]
[redacted]@epa.gov

From: Hirsch, Brigit <Hirsch.Brigit@epa.gov>
Sent: Thursday, February 26, 2026 4:04 PM
To: [redacted] <[redacted]@epa.gov>; Holran, Carolyn <Holran.Carolyn@epa.gov>
Cc: Bastasch, Mike <Bastasch.Mike@epa.gov>; [redacted]@epa.gov>; [redacted]@epa.gov>; Mandy, Cora <Mandy.Cora@epa.gov>; Murphy, Jacob <Murphy.Jacob@epa.gov>; Vaseliou, Molly <Vaseliou.Molly@epa.gov>
Subject: RE: Flag: NRDC press release/MATS exemptions - SO2 emissions - Inside EPA - DDL 4:15

Thank you!

From: [redacted]@epa.gov>
Sent: Thursday, February 26, 2026 4:03 PM
To: Hirsch, Brigit <Hirsch.Brigit@epa.gov>; Holran, Carolyn <Holran.Carolyn@epa.gov>
Cc: Bastasch, Mike <Bastasch.Mike@epa.gov>; [redacted]@epa.gov>; [redacted]@epa.gov>; Mandy, Cora <Mandy.Cora@epa.gov>; Murphy, Jacob <Murphy.Jacob@epa.gov>; Vaseliou, Molly <Vaseliou.Molly@epa.gov>
Subject: RE: Flag: NRDC press release/MATS exemptions - SO2 emissions - Inside EPA - DDL 4:15

Dawn can push it a bit. I've asked her to give me a specific time.

[redacted]

From: Hirsch, Brigit <Hirsch.Brigit@epa.gov>
Sent: Thursday, February 26, 2026 3:54 PM
To: [redacted]@epa.gov>; Holran, Carolyn <Holran.Carolyn@epa.gov>
Cc: Bastasch, Mike <Bastasch.Mike@epa.gov>; [redacted]@epa.gov>; [redacted]@epa.gov>; Mandy, Cora <Mandy.Cora@epa.gov>; Murphy, Jacob <Murphy.Jacob@epa.gov>; Vaseliou, Molly <Vaseliou.Molly@epa.gov>
Subject: RE: Flag: NRDC press release/MATS exemptions - SO2 emissions - Inside EPA - DDL 4:15

[redacted], could you ask for an extension?

From: [redacted]@epa.gov>
Sent: Thursday, February 26, 2026 3:18 PM
To: Hirsch, Brigit <Hirsch.Brigit@epa.gov>; Holran, Carolyn <Holran.Carolyn@epa.gov>
Cc: Bastasch, Mike <Bastasch.Mike@epa.gov>; [redacted]@epa.gov>; [redacted]@epa.gov>; Mandy, Cora <Mandy.Cora@epa.gov>; Murphy, Jacob <Murphy.Jacob@epa.gov>; Vaseliou, Molly <Vaseliou.Molly@epa.gov>
Subject: Flag: NRDC press release/MATS exemptions - SO2 emissions - Inside EPA - DDL 4:15

Team – Flagging the below inquiry from Inside EPA. The deadline is 4:15.

Incoming –
Does EPA have a comment on a press release today from NRDC saying SO2 emissions at coal plants spiked 18 percent last year combined at facilities that received the presidential exemption?

https://www.nrdc.org/press-releases/coal-pollution-spiked-after-trump-administrations-free-pass-pollute

Respectfully,

[redacted]
Digital, Risk Communications, and Press Division
Office of External Affairs
[redacted]
[redacted]@epa.gov

From: Dawn Reeves <dreeves@iwpnews.com>
Sent: Thursday, February 26, 2026 3:02 PM
To: EPA Press Office <press@epa.gov>
Subject: does EPA have a comment

> **Caution:** This email originated from outside EPA, please exercise additional caution when deciding whether to open attachments or click on provided links.

on a press release today from NRDC saying SO2 emissions at coal plants spiked 18 percent last year combined at facilities that received the presidential exemption?

https://www.nrdc.org/press-releases/coal-pollution-spiked-after-trump-administrations-free-pass-pollute

Please let me know, my deadline is 415 today.
Thanks!
Dawn

Message

From: [redacted]@epa.gov]
Sent: 2/26/2026 10:06:45 PM
To: Holran, Carolyn [Holran.Carolyn@epa.gov]; [redacted]epa.gov]; Hirsch, Brigit [Hirsch.Brigit@epa.gov]
CC: Bastasch, Mike [Bastasch.Mike@epa.gov]; [redacted]@epa.gov]; [redacted]@epa.gov]; Mandy, Cora [Mandy.Cora@epa.gov]; Murphy, Jacob [Murphy.Jacob@epa.gov]; Vaseliou, Molly [Vaseliou.Molly@epa.gov]
Subject: RE: Flag: Power plant pollution analysis - The Hill - DDL

Sent.

[redacted]
Office of External Affairs
U.S. Environmental Protection Agency
[redacted]

From: Holran, Carolyn <Holran.Carolyn@epa.gov>
Sent: Thursday, February 26, 2026 5:05 PM
To: [redacted]@epa.gov>; Hirsch, Brigit <Hirsch.Brigit@epa.gov>; [redacted]@epa.gov>
Cc: Bastasch, Mike <Bastasch.Mike@epa.gov>; [redacted]@epa.gov>; [redacted]@epa.gov>; Mandy, Cora <Mandy.Cora@epa.gov>; Murphy, Jacob <Murphy.Jacob@epa.gov>; Vaseliou, Molly <Vaseliou.Molly@epa.gov>
Subject: RE: Flag: Power plant pollution analysis - The Hill - DDL

[redacted],

Can also send it here:

"NRDC is peddling misleading, cherry-picked data in a desperate attempt to drum up donations. They've been lurking behind the scenes of previous unconstitutional EPA power grab and gleefully bragged about destroying American jobs and businesses. Bottomline: they are bad faith actors who shouldn't be trusted. In fact, applying even the slightest bit of scrutiny to their "analysis" completely shatters it. For starters, MATS has little or nothing to do with sulfur dioxide emissions. And even if the now-repealed Biden EPA 2024 MATS rule had gone into effect, compliance with the 2024 MATS requirements was not required until 2027, so those requirements did not impact 2025 emissions. Second, plants that received a presidential exemption are still required to operate under 2012 MATS standards, which NRDC SUPPORTED! Heck, the Biden EPA reaffirmed that the 2012 standards protected public health and successfully lowered emissions. As a result of the highly effective 2012 MATS standards, mercury emissions from coal-fired power plants fell 90 percent by 2021. Since the 2012 MATS rule was put into place, acid gas hazardous air pollutant emissions decreased by over 96 percent and emissions of the non-mercury metals—including nickel, arsenic, and lead—declined by more than 81 percent. Funny how NRDC neglects to mention any of this, and it's also funny how they've never once criticized China for the gargantuan levels of pollution they emit, much of which drifts over to the United States and harms our air quality. Makes you wonder what's going on in their Beijing office, doesn't it?

"Moreover, U.S. air quality has seen massive improvements in recent decades. Right now, Americans enjoy crisp clean air that would be the envy of past generations. Incorrectly cherry-picking one year of data, while ignoring the overall downward trend in emission levels is just misleading and meant to distract from the

hundreds of environmental wins the Trump EPA has racked up over the past year-plus. The Trump EPA is better positioned than ever before to protect human health and the environment while also Powering the Great American Comeback." -EPA spox

On background
Clean Air Act section 112(i)(4) authorizes the President to exempt any stationary source from a relevant standard if he "determines that the technology to implement such standard is not available and that it is in the national security interests of the United States to do so." EPA played no role in the determinations set out in the statute and specifically vested in the President. Any requests sent to the EPA's electronic mailbox were forwarded to the White House, and any further questions about process and decisions should be directed to the White House.

Carolyn Holran
Press Secretary
U.S. Environmental Protection Agency
C: 202-400-8387

From: [redacted]@epa.gov>
Sent: Thursday, February 26, 2026 3:37 PM
To: Hirsch, Brigit <Hirsch.Brigit@epa.gov>; Holran, Carolyn <Holran.Carolyn@epa.gov>
Cc: Bastasch, Mike <Bastasch.Mike@epa.gov>; [redacted]@epa.gov>; [redacted]@epa.gov>; Mandy, Cora <Mandy.Cora@epa.gov>; Murphy, Jacob <Murphy.Jacob@epa.gov>; Vaseliou, Molly <Vaseliou.Molly@epa.gov>
Subject: Flag: Power plant pollution analysis - The Hill - DDL

Team – Flagging the below from The Hill. Also including the statement sent to WSJ. I've asked for the deadline.

Inquiry -
I hope all is well and I apologize for sending two emails back-to-back.

Do you all want to comment on this analysis of power plant pollution?

Response sent to WSJ –

"Once again, the media is grasping at straws to make a lot out of nothing. Frankly speaking, you are jumping to conclusions that don't make a lot of sense. Let's get the facts straight. First, the repealed 2024 MATS amendments had little or nothing to do with sulfur dioxide emissions. Second, even if the Biden EPA's 2024 rule had gone into effect, compliance with the 2024 MATS requirements was not required until 2027, so those requirements did not impact 2025 emissions. To go even further, the U.S. has seen huge emission reductions as a result of the highly effective 2012 MATS standards. In 2021, under the original standards, mercury emissions from coal-fired power plants were already 90 percent lower than pre-MATS levels. And since the 2012 MATS rule was put into place, acid gas hazardous air pollutant emissions have been reduced by over 96 percent, and emissions of the non-mercury metals—including nickel, arsenic, and lead—have been reduced by more than 81 percent. Bottom line, the 2012 MATS requirements protect public health, and the 2024 MATS requirements were costly and unnecessary. And to drive this home, in 2024 the Biden EPA reaffirmed that the 2012 standards were protective of public health and successful in lowering emissions.

"Incorrectly cherry-picking one year of data, while ignoring the overall downward trend in emission levels is just misleading and meant to distract from the hundreds of environmental wins the Trump EPA has racked up over the past year-plus. The Trump EPA is better positioned than ever before to protect human health and the environment while also Powering the Great American Comeback." -EPA spox

On background
Clean Air Act section 112(i)(4) authorizes the President to exempt any stationary source from a relevant standard if he "determines that the technology to implement such standard is not available and that it is in the national security interests of the United States to do so." EPA played no role in the determinations set out in the statute and specifically vested in the President. Any requests sent to the EPA's electronic mailbox were forwarded to the White House, and any further questions about process and decisions should be directed to the White House.

Respectfully,

[redacted]
Digital, Risk Communications, and Press Division
Office of External Affairs
[redacted]
[redacted]@epa.gov

From: Rachel Frazin <RFrazin@TheHill.com>
Sent: Thursday, February 26, 2026 3:28 PM
To: EPA Press Office <press@epa.gov>
Subject: Power plant pollution analysis

> **Caution:** This email originated from outside EPA, please exercise additional caution when deciding whether to open attachments or click on provided links.

Hey guys,

I hope all is well and I apologize for sending two emails back-to-back.

Do you all want to comment on this analysis of power plant pollution?

Thanks,
Rachel

Rachel Frazin
Energy and Environment Reporter, The Hill
561-212-2815

Message

From: [redacted]@epa.gov]
Sent: 2/27/2026 3:30:25 PM
To: Hirsch, Brigit [Hirsch.Brigit@epa.gov]; Holran, Carolyn [Holran.Carolyn@epa.gov]
CC: Bastasch, Mike [Bastasch.Mike@epa.gov]; [redacted]@epa.gov]; [redacted]@epa.gov]; Mandy, Cora [Mandy.Cora@epa.gov]; Murphy, Jacob [Murphy.Jacob@epa.gov]; Vaseliou, Molly [Vaseliou.Molly@epa.gov]
Subject: RE: Flag: NRDC report - Politico - DDL noon

Thanks!

From: Hirsch, Brigit <Hirsch.Brigit@epa.gov>
Sent: Friday, February 27, 2026 10:30 AM
To: [redacted]@epa.gov>; Holran, Carolyn <Holran.Carolyn@epa.gov>
Cc: Bastasch, Mike <Bastasch.Mike@epa.gov>; [redacted]@epa.gov>; [redacted]@epa.gov>; Mandy, Cora <Mandy.Cora@epa.gov>; Murphy, Jacob <Murphy.Jacob@epa.gov>; Vaseliou, Molly <Vaseliou.Molly@epa.gov>
Subject: RE: Flag: NRDC report - Politico - DDL noon

Good, thanks!

From: [redacted]@epa.gov>
Sent: Friday, February 27, 2026 10:29 AM
To: Hirsch, Brigit <Hirsch.Brigit@epa.gov>; Holran, Carolyn <Holran.Carolyn@epa.gov>
Cc: Bastasch, Mike <Bastasch.Mike@epa.gov>; [redacted]@epa.gov>; [redacted]@epa.gov>; Mandy, Cora <Mandy.Cora@epa.gov>; Murphy, Jacob <Murphy.Jacob@epa.gov>; Vaseliou, Molly <Vaseliou.Molly@epa.gov>
Subject: Flag: NRDC report - Politico - DDL noon

Flagging the below inquiry from Politico on the NRDC report. Okay to send the statement?

Inquiry -
I'm writing an item for my regulatory newsletter on the NRDC's report on an increase in SO2 emissions at power plants that got MATS exemptions last year. Does the agency have a response? My deadline is noon.

Response –

Ex. 5 Deliberative Process (DP)

Ex. 5 Deliberative Process (DP)

Respectfully,

[redacted]
Digital, Risk Communications, and Press Division
Office of External Affairs
[redacted]
[redacted]@epa.gov

From: Alex Guillen <aguillen@politico.com>
Sent: Friday, February 27, 2026 10:23 AM
To: EPA Press Office <press@epa.gov>
Subject: NRDC report

> **Caution:** This email originated from outside EPA, please exercise additional caution when deciding whether to open attachments or click on provided links.

Hello,

I'm writing an item for my regulatory newsletter on the NRDC's report on an increase in SO2 emissions at power plants that got MATS exemptions last year. Does the agency have a response? My deadline is noon.

Thank you,

Alex Guillén | Energy Reporter | **POLITICO**PRO
1000 Wilson Boulevard, 8th Floor | Arlington, VA 22209
Phone: 703-341-4619
Email: aguillen@politico.com | Twitter: @alexcguillen | Website: www.POLITICOPro.com
Pronouns: He/him/his

Message

From: [redacted]@epa.gov]
Sent: 2/27/2026 4:00:19 PM
To: Hirsch, Brigit [Hirsch.Brigit@epa.gov]; Holran, Carolyn [Holran.Carolyn@epa.gov]
CC: Bastasch, Mike [Bastasch.Mike@epa.gov]; [redacted]@epa.gov]; [redacted]@epa.gov]; Mandy, Cora [Mandy.Cora@epa.gov]; Murphy, Jacob [Murphy.Jacob@epa.gov]; Vaseliou, Molly [Vaseliou.Molly@epa.gov]
Subject: Flag: NRDC report - Bloomberg Law - DDL 2/27

Gtg?

Inquiry -
Sorry for the double email, thank you so much for getting me that statement last night for the Louisiana story.

I have one more request for comment, specifically on the NRDC analysis (confirmed independently by our own data team) that shows an 18% increase in coal plant SO2 emissions in 2025. Any chance you all have comment for that coverage as well? We can update the story throughout the day for this one.

Many thanks!

Response –

Ex. 5 Deliberative Process (DP)

Ex. 5 Deliberative Process (DP)

From: Hijazi, Jennifer <jhijazi@bloombergindustry.com>
Sent: Friday, February 27, 2026 10:42 AM
To: EPA Press Office <press@epa.gov>
Cc: [redacted]@epa.gov>
Subject: Bloomberg Law request (1 more!)

> **Caution:** This email originated from outside EPA, please exercise additional caution when deciding whether to open attachments or click on provided links.

Sorry for the double email, thank you so much for getting me that statement last night for the Louisiana story.

I have one more request for comment, specifically on the NRDC analysis (confirmed independently by our own data team) that shows an 18% increase in coal plant SO2 emissions in 2025. Any chance you all have comment for that coverage as well? We can update the story throughout the day for this one.

Many thanks!

: : : : : : : : : : : : : : : : :

Jennifer Hijazi
Air & Climate Reporter
Bloomberg Environment
(520) 247-2106
jhijazi@bloombergindustry.com
Tweeting @JenHijaz
Find my stories here
She/her

Message

From: [redacted]@epa.gov]
Sent: 2/27/2026 4:07:47 PM
To: Bastasch, Mike [Bastasch.Mike@epa.gov]; Hirsch, Brigit [Hirsch.Brigit@epa.gov]; Holran, Carolyn [Holran.Carolyn@epa.gov]
CC: [redacted]@epa.gov]; [redacted]@epa.gov]; Mandy, Cora [Mandy.Cora@epa.gov]; Murphy, Jacob [Murphy.Jacob@epa.gov]; Vaseliou, Molly [Vaseliou.Molly@epa.gov]
Subject: RE: Flag: NRDC report - Bloomberg Law - DDL 2/27

Thanks Mike!

From: Bastasch, Mike <Bastasch.Mike@epa.gov>
Sent: Friday, February 27, 2026 11:07 AM
To: [redacted]@epa.gov>; Hirsch, Brigit <Hirsch.Brigit@epa.gov>; Holran, Carolyn <Holran.Carolyn@epa.gov>
Cc: [redacted]@epa.gov>; [redacted]@epa.gov>; Mandy, Cora <Mandy.Cora@epa.gov>; Murphy, Jacob <Murphy.Jacob@epa.gov>; Vaseliou, Molly <Vaseliou.Molly@epa.gov>
Subject: RE: Flag: NRDC report - Bloomberg Law - DDL 2/27

Good. With one fix.

From: [redacted]@epa.gov>
Sent: Friday, February 27, 2026 11:00 AM
To: Hirsch, Brigit <Hirsch.Brigit@epa.gov>; Holran, Carolyn <Holran.Carolyn@epa.gov>
Cc: Bastasch, Mike <Bastasch.Mike@epa.gov>; [redacted]@epa.gov>; [redacted]@epa.gov>; Mandy, Cora <Mandy.Cora@epa.gov>; Murphy, Jacob <Murphy.Jacob@epa.gov>; Vaseliou, Molly <Vaseliou.Molly@epa.gov>
Subject: Flag: NRDC report - Bloomberg Law - DDL 2/27

Gtg?

Inquiry -
Sorry for the double email, thank you so much for getting me that statement last night for the Louisiana story.

I have one more request for comment, specifically on the NRDC analysis (confirmed independently by our own data team) that shows an 18% increase in coal plant SO2 emissions in 2025. Any chance you all have comment for that coverage as well? We can update the story throughout the day for this one.

Many thanks!

Response –

Ex. 5 Deliberative Process (DP)

Ex. 5 Deliberative Process (DP)

From: Hijazi, Jennifer <jhijazi@bloombergindustry.com>
Sent: Friday, February 27, 2026 10:42 AM
To: EPA Press Office <press@epa.gov>
Cc: [redacted]@epa.gov>
Subject: Bloomberg Law request (1 more!)

> **Caution:** This email originated from outside EPA, please exercise additional caution when deciding whether to open attachments or click on provided links.

Sorry for the double email, thank you so much for getting me that statement last night for the Louisiana story.

I have one more request for comment, specifically on the NRDC analysis (confirmed independently by our own data team) that shows an 18% increase in coal plant SO2 emissions in 2025. Any chance you all have comment for that coverage as well? We can update the story throughout the day for this one.

Many thanks!

: : : : : : : : : : : : : : : : :

Jennifer Hijazi
Air & Climate Reporter
Bloomberg Environment
(520) 247-2106
jhijazi@bloombergindustry.com
Tweeting @JenHijaz
Find my stories here
She/her

Message

From: Holran, Carolyn [Holran.Carolyn@epa.gov]
Sent: 3/4/2026 8:54:07 PM
To: Hirsch, Brigit [Hirsch.Brigit@epa.gov]; Bastasch, Mike [Bastasch.Mike@epa.gov]; Mandy, Cora [Mandy.Cora@epa.gov]; Murphy, Jacob [Murphy.Jacob@epa.gov]; Vaseliou, Molly [Vaseliou.Molly@epa.gov]
Subject: RE: Flag: Story about increased air pollution in 2025, after regulatory exemptions for coal-fired power plants - St. Louis Dispatch - DDL noon tomorrow

Thoughts on a slightly edited version below?

From: Hirsch, Brigit <Hirsch.Brigit@epa.gov>
Sent: Wednesday, March 4, 2026 3:48 PM
To: Holran, Carolyn <Holran.Carolyn@epa.gov>; Bastasch, Mike <Bastasch.Mike@epa.gov>; Mandy, Cora <Mandy.Cora@epa.gov>; Murphy, Jacob <Murphy.Jacob@epa.gov>; Vaseliou, Molly <Vaseliou.Molly@epa.gov>
Subject: RE: Flag: Story about increased air pollution in 2025, after regulatory exemptions for coal-fired power plants - St. Louis Dispatch - DDL noon tomorrow

Yes – it was about a selection of data from that website

From: Holran, Carolyn <Holran.Carolyn@epa.gov>
Sent: Wednesday, March 4, 2026 3:47 PM
To: Hirsch, Brigit <Hirsch.Brigit@epa.gov>; Bastasch, Mike <Bastasch.Mike@epa.gov>; Mandy, Cora <Mandy.Cora@epa.gov>; Murphy, Jacob <Murphy.Jacob@epa.gov>; Vaseliou, Molly <Vaseliou.Molly@epa.gov>
Subject: RE: Flag: Story about increased air pollution in 2025, after regulatory exemptions for coal-fired power plants - St. Louis Dispatch - DDL noon tomorrow

Does the NRDC press release link to the EPA website the reporter sent?

From: Hirsch, Brigit <Hirsch.Brigit@epa.gov>
Sent: Wednesday, March 4, 2026 3:35 PM
To: Holran, Carolyn <Holran.Carolyn@epa.gov>; Bastasch, Mike <Bastasch.Mike@epa.gov>; Mandy, Cora <Mandy.Cora@epa.gov>; Murphy, Jacob <Murphy.Jacob@epa.gov>; Vaseliou, Molly <Vaseliou.Molly@epa.gov>
Subject: RE: Flag: Story about increased air pollution in 2025, after regulatory exemptions for coal-fired power plants - St. Louis Dispatch - DDL noon tomorrow

Minus OMR, ok to send our presidential exemption statement here? Or given that the reporter is very likely going based off of the NRDC press release, can we send part of or the full statement?

Ex. 5 Deliberative Process (DP)

- OR

Ex. 5 Deliberative Process (DP)

Ex. 5 Deliberative Process (DP)

From: [redacted]@epa.gov>
Sent: Wednesday, March 4, 2026 3:32 PM
To: Hirsch, Brigit <Hirsch.Brigit@epa.gov>; Holran, Carolyn <Holran.Carolyn@epa.gov>
Cc: Bastasch, Mike <Bastasch.Mike@epa.gov>; [redacted]@epa.gov>; [redacted]@epa.gov>; Mandy, Cora <Mandy.Cora@epa.gov>; Murphy, Jacob <Murphy.Jacob@epa.gov>; Vaseliou, Molly <Vaseliou.Molly@epa.gov>
Subject: RE: Flag: Story about increased air pollution in 2025, after regulatory exemptions for coal-fired power plants - St. Louis Dispatch - DDL noon tomorrow

Hey Brigit –

Here are the reporter's questions –

My main questions could probably be summarized like this:

-How does the EPA respond to the environmental and public health toll posed by granting the exemptions?
-What were the agency's reasons for granting the exemptions?
-And can the agency can provide me with its response to Ameren's March 31 letter to EPA Administrator Lee Zeldin, requesting exemption for the utility?

Respectfully,

[redacted]
Digital, Risk Communications, and Press Division
Office of External Affairs
[redacted]
[redacted]@epa.gov

From: Hirsch, Brigit <Hirsch.Brigit@epa.gov>
Sent: Wednesday, March 4, 2026 3:13 PM
To: [redacted]@epa.gov>; Holran, Carolyn <Holran.Carolyn@epa.gov>
Cc: Bastasch, Mike <Bastasch.Mike@epa.gov>; [redacted]@epa.gov>; [redacted]@epa.gov>; Mandy, Cora <Mandy.Cora@epa.gov>; Murphy, Jacob <Murphy.Jacob@epa.gov>; Vaseliou, Molly <Vaseliou.Molly@epa.gov>
Subject: RE: Flag: Story about increased air pollution in 2025, after regulatory exemptions for coal-fired power plants - St. Louis Dispatch - DDL noon tomorrow

Could you let him know we can share a written response if he sends over his questions? Thanks [redacted]

From: [redacted]@epa.gov>
Sent: Wednesday, March 4, 2026 3:09 PM
To: Hirsch, Brigit <Hirsch.Brigit@epa.gov>; Holran, Carolyn <Holran.Carolyn@epa.gov>
Cc: Bastasch, Mike <Bastasch.Mike@epa.gov>; [redacted]@epa.gov>; [redacted]@epa.gov>; Mandy, Cora <Mandy.Cora@epa.gov>; Murphy, Jacob <Murphy.Jacob@epa.gov>; Vaseliou, Molly <Vaseliou.Molly@epa.gov>
Subject: Flag: Story about increased air pollution in 2025, after regulatory exemptions for coal-fired power plants - St. Louis Dispatch - DDL noon tomorrow

Hi Team,

Please see an inquiry from the St. Louis Dispatch on MATS exemptions/emissions. I asked the reporter to share relevant links as I did not want to assume he's referring to the NRDC report. He shared a link to the Clean Air Markets Program Data tool. The deadline is noon tomorrow.

Inquiry:

My name is Bryce Gray and I'm a reporter for the St. Louis Post-Dispatch. I'm hoping to ask any relevant expert some questions about recently released EPA data that shows increased emissions of air pollutants at coal-fired power plants that received certain regulatory exemptions from the agency last year.

Beyond hearing the EPA's response to the move's public health toll and its reasons for granting the exemptions, I'm also hoping that the agency can provide me with copies of its response to Ameren's March 31 letter to EPA Administrator Lee Zeldin, requesting exemption.

I can be reached at 314-340-8307. Thanks in advance for your time and help.

Thanks for the quick reply. The emissions data can be found through this query tool on the EPA's website.

As for a deadline, I'll probably need any responses by about noon tomorrow.

Ah, yes, sorry for forgetting the link. Here it is: https://campd.epa.gov/data/custom-data-download.

Respectfully,

[redacted]
Digital, Risk Communications, and Press Division
Office of External Affairs
[redacted]
[redacted]@epa.gov

From: Bryce Gray <BGray@post-dispatch.com>
Sent: Wednesday, March 4, 2026 2:44 PM
To: EPA Press Office <press@epa.gov>
Subject: Story about increased air pollution in 2025, after regulatory exemptions for coal-fired power plants

Caution: This email originated from outside EPA, please exercise additional caution when deciding whether to open attachments or click on provided links.

Hello,

My name is Bryce Gray and I'm a reporter for the St. Louis Post-Dispatch. I'm hoping to ask any relevant expert some questions about recently released EPA data that shows increased emissions of air pollutants at coal-fired power plants that received certain regulatory exemptions from the agency last year.

Beyond hearing the EPA's response to the move's public health toll and its reasons for granting the exemptions, I'm also hoping that the agency can provide me with copies of its response to Ameren's March 31 letter to EPA Administrator Lee Zeldin, requesting exemption.

I can be reached at 314-340-8307. Thanks in advance for your time and help.

Gratefully,

-Bryce

314-340-8307

Message

From: Vaseliou, Molly [Vaseliou.Molly@epa.gov]
Sent: 3/4/2026 8:58:12 PM
To: Holran, Carolyn [Holran.Carolyn@epa.gov]; Hirsch, Brigit [Hirsch.Brigit@epa.gov]; Bastasch, Mike [Bastasch.Mike@epa.gov]; Mandy, Cora [Mandy.Cora@epa.gov]; Murphy, Jacob [Murphy.Jacob@epa.gov]
Subject: RE: Flag: Story about increased air pollution in 2025, after regulatory exemptions for coal-fired power plants - St. Louis Dispatch - DDL noon tomorrow

What do you want to send? I see an or below

From: Holran, Carolyn <Holran.Carolyn@epa.gov>
Sent: Wednesday, March 4, 2026 3:57 PM
To: Hirsch, Brigit <Hirsch.Brigit@epa.gov>; Bastasch, Mike <Bastasch.Mike@epa.gov>; Mandy, Cora <Mandy.Cora@epa.gov>; Murphy, Jacob <Murphy.Jacob@epa.gov>; Vaseliou, Molly <Vaseliou.Molly@epa.gov>
Subject: RE: Flag: Story about increased air pollution in 2025, after regulatory exemptions for coal-fired power plants - St. Louis Dispatch - DDL noon tomorrow

Molly/Mike does that work for you?

From: Hirsch, Brigit <Hirsch.Brigit@epa.gov>
Sent: Wednesday, March 4, 2026 3:55 PM
To: Holran, Carolyn <Holran.Carolyn@epa.gov>; Bastasch, Mike <Bastasch.Mike@epa.gov>; Mandy, Cora <Mandy.Cora@epa.gov>; Murphy, Jacob <Murphy.Jacob@epa.gov>; Vaseliou, Molly <Vaseliou.Molly@epa.gov>
Subject: RE: Flag: Story about increased air pollution in 2025, after regulatory exemptions for coal-fired power plants - St. Louis Dispatch - DDL noon tomorrow

I think that makes the most sense here! I'll send if no objections.

From: Holran, Carolyn <Holran.Carolyn@epa.gov>
Sent: Wednesday, March 4, 2026 3:54 PM
To: Hirsch, Brigit <Hirsch.Brigit@epa.gov>; Bastasch, Mike <Bastasch.Mike@epa.gov>; Mandy, Cora <Mandy.Cora@epa.gov>; Murphy, Jacob <Murphy.Jacob@epa.gov>; Vaseliou, Molly <Vaseliou.Molly@epa.gov>
Subject: RE: Flag: Story about increased air pollution in 2025, after regulatory exemptions for coal-fired power plants - St. Louis Dispatch - DDL noon tomorrow

Thoughts on a slightly edited version below?

From: Hirsch, Brigit <Hirsch.Brigit@epa.gov>
Sent: Wednesday, March 4, 2026 3:48 PM
To: Holran, Carolyn <Holran.Carolyn@epa.gov>; Bastasch, Mike <Bastasch.Mike@epa.gov>; Mandy, Cora <Mandy.Cora@epa.gov>; Murphy, Jacob <Murphy.Jacob@epa.gov>; Vaseliou, Molly <Vaseliou.Molly@epa.gov>
Subject: RE: Flag: Story about increased air pollution in 2025, after regulatory exemptions for coal-fired power plants - St. Louis Dispatch - DDL noon tomorrow

Yes – it was about a selection of data from that website

From: Holran, Carolyn <Holran.Carolyn@epa.gov>
Sent: Wednesday, March 4, 2026 3:47 PM
To: Hirsch, Brigit <Hirsch.Brigit@epa.gov>; Bastasch, Mike <Bastasch.Mike@epa.gov>; Mandy, Cora

<Mandy.Cora@epa.gov>; Murphy, Jacob <Murphy.Jacob@epa.gov>; Vaseliou, Molly <Vaseliou.Molly@epa.gov>
Subject: RE: Flag: Story about increased air pollution in 2025, after regulatory exemptions for coal-fired power plants - St. Louis Dispatch - DDL noon tomorrow

Does the NRDC press release link to the EPA website the reporter sent?

From: Hirsch, Brigit <Hirsch.Brigit@epa.gov>
Sent: Wednesday, March 4, 2026 3:35 PM
To: Holran, Carolyn <Holran.Carolyn@epa.gov>; Bastasch, Mike <Bastasch.Mike@epa.gov>; Mandy, Cora <Mandy.Cora@epa.gov>; Murphy, Jacob <Murphy.Jacob@epa.gov>; Vaseliou, Molly <Vaseliou.Molly@epa.gov>
Subject: RE: Flag: Story about increased air pollution in 2025, after regulatory exemptions for coal-fired power plants - St. Louis Dispatch - DDL noon tomorrow

Minus OMR, ok to send our presidential exemption statement here? Or given that the reporter is very likely going based off of the NRDC press release, can we send part of or the full statement?

Ex. 5 Deliberative Process (DP)

- OR

Ex. 5 Deliberative Process (DP)

Ex. 5 Deliberative Process (DP)

From: [redacted]@epa.gov>
Sent: Wednesday, March 4, 2026 3:32 PM
To: Hirsch, Brigit <Hirsch.Brigit@epa.gov>; Holran, Carolyn <Holran.Carolyn@epa.gov>
Cc: Bastasch, Mike <Bastasch.Mike@epa.gov>; [redacted]@epa.gov>; [redacted]@epa.gov>; Mandy, Cora <Mandy.Cora@epa.gov>; Murphy, Jacob <Murphy.Jacob@epa.gov>; Vaseliou, Molly <Vaseliou.Molly@epa.gov>
Subject: RE: Flag: Story about increased air pollution in 2025, after regulatory exemptions for coal-fired power plants - St. Louis Dispatch - DDL noon tomorrow

Hey Brigit –

Here are the reporter's questions –

My main questions could probably be summarized like this:

-How does the EPA respond to the environmental and public health toll posed by granting the exemptions?
-What were the agency's reasons for granting the exemptions?
-And can the agency can provide me with its response to Ameren's March 31 letter to EPA Administrator Lee Zeldin, requesting exemption for the utility?

Respectfully,

[redacted]
Digital, Risk Communications, and Press Division
Office of External Affairs
[redacted]
[redacted]@epa.gov

From: Hirsch, Brigit <Hirsch.Brigit@epa.gov>
Sent: Wednesday, March 4, 2026 3:13 PM
To: [redacted]@epa.gov>; Holran, Carolyn <Holran.Carolyn@epa.gov>
Cc: Bastasch, Mike <Bastasch.Mike@epa.gov>; [redacted]@epa.gov>; [redacted]@epa.gov>; Mandy, Cora <Mandy.Cora@epa.gov>; Murphy, Jacob <Murphy.Jacob@epa.gov>; Vaseliou, Molly <Vaseliou.Molly@epa.gov>
Subject: RE: Flag: Story about increased air pollution in 2025, after regulatory exemptions for coal-fired power plants - St. Louis Dispatch - DDL noon tomorrow

Could you let him know we can share a written response if he sends over his questions? Thanks [redacted]

From: [redacted]@epa.gov>
Sent: Wednesday, March 4, 2026 3:09 PM

To: Hirsch, Brigit <Hirsch.Brigit@epa.gov>; Holran, Carolyn <Holran.Carolyn@epa.gov>
Cc: Bastasch, Mike <Bastasch.Mike@epa.gov>; [redacted]@epa.gov>; [redacted]@epa.gov>; Mandy, Cora <Mandy.Cora@epa.gov>; Murphy, Jacob <Murphy.Jacob@epa.gov>; Vaseliou, Molly <Vaseliou.Molly@epa.gov>
Subject: Flag: Story about increased air pollution in 2025, after regulatory exemptions for coal-fired power plants - St. Louis Dispatch - DDL noon tomorrow

Hi Team,

Please see an inquiry from the St. Louis Dispatch on MATS exemptions/emissions. I asked the reporter to share relevant links as I did not want to assume he's referring to the NRDC report. He shared a link to the Clean Air Markets Program Data tool. The deadline is noon tomorrow.

Inquiry:

My name is Bryce Gray and I'm a reporter for the St. Louis Post-Dispatch. I'm hoping to ask any relevant expert some questions about recently released EPA data that shows increased emissions of air pollutants at coal-fired power plants that received certain regulatory exemptions from the agency last year.

Beyond hearing the EPA's response to the move's public health toll and its reasons for granting the exemptions, I'm also hoping that the agency can provide me with copies of its response to Ameren's March 31 letter to EPA Administrator Lee Zeldin, requesting exemption.

I can be reached at 314-340-8307. Thanks in advance for your time and help.

Thanks for the quick reply. The emissions data can be found through this query tool on the EPA's website.

As for a deadline, I'll probably need any responses by about noon tomorrow.

Ah, yes, sorry for forgetting the link. Here it is: https://campd.epa.gov/data/custom-data-download.

Respectfully,

[redacted]
Digital, Risk Communications, and Press Division
Office of External Affairs
[redacted]
[redacted]@epa.gov

From: Bryce Gray <BGray@post-dispatch.com>
Sent: Wednesday, March 4, 2026 2:44 PM
To: EPA Press Office <press@epa.gov>
Subject: Story about increased air pollution in 2025, after regulatory exemptions for coal-fired power plants

Caution: This email originated from outside EPA, please exercise additional caution when deciding whether to open attachments or click on provided links.

Hello,

My name is Bryce Gray and I'm a reporter for the St. Louis Post-Dispatch. I'm hoping to ask any relevant expert some questions about recently released EPA data that shows increased emissions of air pollutants at coal-fired power plants that received certain regulatory exemptions from the agency last year.

Beyond hearing the EPA's response to the move's public health toll and its reasons for granting the exemptions, I'm also hoping that the agency can provide me with copies of its response to Ameren's March 31 letter to EPA Administrator Lee Zeldin, requesting exemption.

I can be reached at 314-340-8307. Thanks in advance for your time and help.

Gratefully,

-Bryce

314-340-8307

Message

From: [redacted]@epa.gov]
Sent: 3/4/2026 9:04:27 PM
To: Hirsch, Brigit [Hirsch.Brigit@epa.gov]; Holran, Carolyn [Holran.Carolyn@epa.gov]
CC: Bastasch, Mike [Bastasch.Mike@epa.gov]; [redacted]@epa.gov]; [redacted]@epa.gov]; Mandy, Cora [Mandy.Cora@epa.gov]; Murphy, Jacob [Murphy.Jacob@epa.gov]; Vaseliou, Molly [Vaseliou.Molly@epa.gov]
Subject: RE: Flag: Story about increased air pollution in 2025, after regulatory exemptions for coal-fired power plants - St. Louis Dispatch - DDL noon tomorrow

Thanks Brigit!

From: Hirsch, Brigit <Hirsch.Brigit@epa.gov>
Sent: Wednesday, March 4, 2026 4:04 PM
To: [redacted]@epa.gov>; Holran, Carolyn <Holran.Carolyn@epa.gov>
Cc: Bastasch, Mike <Bastasch.Mike@epa.gov>; [redacted]@epa.gov>; [redacted]@epa.gov>; Mandy, Cora <Mandy.Cora@epa.gov>; Murphy, Jacob <Murphy.Jacob@epa.gov>; Vaseliou, Molly <Vaseliou.Molly@epa.gov>
Subject: RE: Flag: Story about increased air pollution in 2025, after regulatory exemptions for coal-fired power plants - St. Louis Dispatch - DDL noon tomorrow

[redacted] we can send:

"We only have to assume you fell for the very misleading and cherry-picked data the NRDC is spreading in a desperate attempt to drum up donations. Bottom line: they are bad faith actors who shouldn't be trusted. In fact, applying even the slightest bit of scrutiny to their "analysis" completely shatters it. For starters, MATS has little or nothing to do with sulfur dioxide emissions. And even if the now-repealed Biden EPA 2024 MATS rule had gone into effect, compliance with the 2024 MATS requirements was not required until 2027, so those requirements did not impact 2025 emissions. Second, plants that received a presidential exemption are still required to operate under 2012 MATS standards. The Biden EPA reaffirmed that the 2012 standards protected public health and successfully lowered emissions. As a result of the highly effective 2012 MATS standards, mercury emissions from coal-fired power plants fell 90 percent by 2021. Since the 2012 MATS rule was put into place, acid gas hazardous air pollutant emissions decreased by over 96 percent and emissions of the non-mercury metals—including nickel, arsenic, and lead—declined by more than 81 percent. Maybe you should check the facts next time before relying on the NRDC, if in fact that is where you are getting this from. Regardless, the facts about EPA's action remain unchanged.

Moreover, U.S. air quality has seen massive improvements in recent decades. Right now, Americans enjoy crisp clean air that would be the envy of past generations. Incorrectly cherry-picking one year of data, while ignoring the overall downward trend in emission levels is just misleading and meant to distract from the hundreds of environmental wins the Trump EPA has racked up over the past year-plus. The Trump EPA is better positioned than ever before to protect human health and the environment while also Powering the Great American Comeback." - EPA spox

On background
Clean Air Act section 112(i)(4) authorizes the President to exempt any stationary source from a relevant standard if he "determines that the technology to implement such standard is not available and that it is in the national security interests of the United States to do so." EPA played no role in the determinations set out in the statute and specifically vested in the President. Any requests sent to the EPA's electronic mailbox were

forwarded to the White House, and any further questions about process and decisions should be directed to the White House.

From: [redacted]@epa.gov>
Sent: Wednesday, March 4, 2026 3:32 PM
To: Hirsch, Brigit <Hirsch.Brigit@epa.gov>; Holran, Carolyn <Holran.Carolyn@epa.gov>
Cc: Bastasch, Mike <Bastasch.Mike@epa.gov>; [redacted]@epa.gov>; [redacted]@epa.gov>; Mandy, Cora <Mandy.Cora@epa.gov>; Murphy, Jacob <Murphy.Jacob@epa.gov>; Vaseliou, Molly <Vaseliou.Molly@epa.gov>
Subject: RE: Flag: Story about increased air pollution in 2025, after regulatory exemptions for coal-fired power plants - St. Louis Dispatch - DDL noon tomorrow

Hey Brigit –

Here are the reporter's questions –

My main questions could probably be summarized like this:

-How does the EPA respond to the environmental and public health toll posed by granting the exemptions?
-What were the agency's reasons for granting the exemptions?
-And can the agency can provide me with its response to Ameren's March 31 letter to EPA Administrator Lee Zeldin, requesting exemption for the utility?

Respectfully,

[redacted]
Digital, Risk Communications, and Press Division
Office of External Affairs
[redacted]
[redacted]@epa.gov

From: Hirsch, Brigit <Hirsch.Brigit@epa.gov>
Sent: Wednesday, March 4, 2026 3:13 PM
To: [redacted]@epa.gov>; Holran, Carolyn <Holran.Carolyn@epa.gov>
Cc: Bastasch, Mike <Bastasch.Mike@epa.gov>; [redacted]@epa.gov>; [redacted]@epa.gov>; Mandy, Cora <Mandy.Cora@epa.gov>; Murphy, Jacob <Murphy.Jacob@epa.gov>; Vaseliou, Molly <Vaseliou.Molly@epa.gov>
Subject: RE: Flag: Story about increased air pollution in 2025, after regulatory exemptions for coal-fired power plants - St. Louis Dispatch - DDL noon tomorrow

Could you let him know we can share a written response if he sends over his questions? Thanks [redacted]

From: [redacted]@epa.gov>
Sent: Wednesday, March 4, 2026 3:09 PM
To: Hirsch, Brigit <Hirsch.Brigit@epa.gov>; Holran, Carolyn <Holran.Carolyn@epa.gov>
Cc: Bastasch, Mike <Bastasch.Mike@epa.gov>; [redacted]@epa.gov>; [redacted]

[redacted]@epa.gov>; Mandy, Cora <Mandy.Cora@epa.gov>; Murphy, Jacob <Murphy.Jacob@epa.gov>; Vaseliou, Molly <Vaseliou.Molly@epa.gov>
Subject: Flag: Story about increased air pollution in 2025, after regulatory exemptions for coal-fired power plants - St. Louis Dispatch - DDL noon tomorrow

Hi Team,

Please see an inquiry from the St. Louis Dispatch on MATS exemptions/emissions. I asked the reporter to share relevant links as I did not want to assume he's referring to the NRDC report. He shared a link to the Clean Air Markets Program Data tool. The deadline is noon tomorrow.

Inquiry:

My name is Bryce Gray and I'm a reporter for the St. Louis Post-Dispatch. I'm hoping to ask any relevant expert some questions about recently released EPA data that shows increased emissions of air pollutants at coal-fired power plants that received certain regulatory exemptions from the agency last year.

Beyond hearing the EPA's response to the move's public health toll and its reasons for granting the exemptions, I'm also hoping that the agency can provide me with copies of its response to Ameren's March 31 letter to EPA Administrator Lee Zeldin, requesting exemption.

I can be reached at 314-340-8307. Thanks in advance for your time and help.

Thanks for the quick reply. The emissions data can be found through this query tool on the EPA's website.

As for a deadline, I'll probably need any responses by about noon tomorrow.

Ah, yes, sorry for forgetting the link. Here it is: https://campd.epa.gov/data/custom-data-download.

Respectfully,

[redacted]
Digital, Risk Communications, and Press Division
Office of External Affairs
[redacted]@epa.gov

From: Bryce Gray <BGray@post-dispatch.com>
Sent: Wednesday, March 4, 2026 2:44 PM
To: EPA Press Office <press@epa.gov>
Subject: Story about increased air pollution in 2025, after regulatory exemptions for coal-fired power plants

> **Caution:** This email originated from outside EPA, please exercise additional caution when deciding whether to open attachments or click on provided links.

Hello,

My name is Bryce Gray and I'm a reporter for the St. Louis Post-Dispatch. I'm hoping to ask any relevant expert some questions about recently released EPA data that shows increased emissions of air pollutants at coal-fired power plants that received certain regulatory exemptions from the agency last year.

Beyond hearing the EPA's response to the move's public health toll and its reasons for granting the exemptions, I'm also hoping that the agency can provide me with copies of its response to Ameren's March 31 letter to EPA Administrator Lee Zeldin, requesting exemption.

I can be reached at 314-340-8307. Thanks in advance for your time and help.

Gratefully,

-Bryce

314-340-8307

Message

From: [redacted]@epa.gov]
Sent: 3/11/2026 4:55:42 PM
To: Hirsch, Brigit [Hirsch.Brigit@epa.gov]; Holran, Carolyn [Holran.Carolyn@epa.gov]
CC: Bastasch, Mike [Bastasch.Mike@epa.gov]; [redacted]@epa.gov] [redacted]@epa.gov]; Mandy, Cora [Mandy.Cora@epa.gov]; Murphy, Jacob [Murphy.Jacob@epa.gov]; Vaseliou, Molly [Vaseliou.Molly@epa.gov]
Subject: RE: Flag: CNN - MATs story, checking for comment - DDL 2 p.m. Friday, March 13

On it!

From: Hirsch, Brigit <Hirsch.Brigit@epa.gov>
Sent: Wednesday, March 11, 2026 12:53 PM
To: [redacted]@epa.gov>; Holran, Carolyn <Holran.Carolyn@epa.gov>
Cc: Bastasch, Mike <Bastasch.Mike@epa.gov>; [redacted]@epa.gov>; [redacted]@epa.gov>; Mandy, Cora <Mandy.Cora@epa.gov>; Murphy, Jacob <Murphy.Jacob@epa.gov>; Vaseliou, Molly <Vaseliou.Molly@epa.gov>
Subject: Re: Flag: CNN - MATs story, checking for comment - DDL 2 p.m. Friday, March 13

Thanks for flagging, [redacted]. Could you confirm with the program whether the first point was a presidential exemption? Ex. 5 Deliberative Process (DP)

Ex. 5 Deliberative Process (DP)

From: [redacted]@epa.gov>
Sent: Wednesday, March 11, 2026 12:47:04 PM
To: Hirsch, Brigit <Hirsch.Brigit@epa.gov>; Holran, Carolyn <Holran.Carolyn@epa.gov>
Cc: Bastasch, Mike <Bastasch.Mike@epa.gov>; [redacted]@epa.gov>; [redacted]@epa.gov>; Mandy, Cora <Mandy.Cora@epa.gov>; Murphy, Jacob <Murphy.Jacob@epa.gov>; Vaseliou, Molly <Vaseliou.Molly@epa.gov>
Subject: Flag: CNN - MATs story, checking for comment - DDL 2 p.m. Friday, March 13

Good afternoon, Team –

Flagging an inquiry from CNN on MATS. The deadline is 2 p.m. Friday. Let me know if you'd like me to take any of this to the program.

Inquiry –
Hi, I'm working on a story for next week about the Trump administration's recent rollback of the Biden-era MATs rules and communities impacted by that rollback. The story is focused in part on the Colstrip power plant in Montana, and I had the following questions.

- Last year, Colstrip applied and was granted an exemption for pollution controls used by every other coal plant in the US, citing economic harms. Why did EPA exempt the plant from installing technology that's in widespread use by other power plants to control such pollution?
- Colstrip is mentioned in EPA's final rule as having some of the largest costs to comply with pollution controls of any plant in the nation — amounting to nearly half of the Biden-era rule's total compliance costs. How big of a factor was Colstrip's costs in EPA's rollback of the Biden-era rules?

- Critics of the rollback have pointed to concerns that the Biden-era MATs rule required something that 90% of coal plants were already complying with and wouldn't have presented significant added costs to plants. Do you have a response to that critique?
- Do you have any response to concerns from the local community and Montana public health experts about mercury pollution and other particulate pollution from the Colstrip power plant?
- Anything else you'd like to address?

I'm looking for a response by 2pm EST Friday, March 13.

Respectfully,

[redacted]
Digital, Risk Communications, and Press Division
Office of External Affairs
[redacted]
[redacted]@epa.gov

From: Nilsen, Ella <ella.nilsen@cnn.com>
Sent: Wednesday, March 11, 2026 12:43 PM
To: EPA Press Office <press@epa.gov>
Subject: CNN - MATs story, checking for comment

> **Caution:** This email originated from outside EPA, please exercise additional caution when deciding whether to open attachments or click on provided links.

Hi, I'm working on a story for next week about the Trump administration's recent rollback of the Biden-era MATs rules and communities impacted by that rollback. The story is focused in part on the Colstrip power plant in Montana, and I had the following questions.

- Last year, Colstrip applied and was granted an exemption for pollution controls used by every other coal plant in the US, citing economic harms. Why did EPA exempt the plant from installing technology that's in widespread use by other power plants to control such pollution?
- Colstrip is mentioned in EPA's final rule as having some of the largest costs to comply with pollution controls of any plant in the nation — amounting to nearly half of the Biden-era rule's total compliance costs. How big of a factor was Colstrip's costs in EPA's rollback of the Biden-era rules?
- Critics of the rollback have pointed to concerns that the Biden-era MATs rule required something that 90% of coal plants were already complying with and wouldn't have presented significant added costs to plants. Do you have a response to that critique?
- Do you have any response to concerns from the local community and Montana public health experts about mercury pollution and other particulate pollution from the Colstrip power plant?
- Anything else you'd like to address?

I'm looking for a response by 2pm EST Friday, March 13.

Thanks,

Ella

Message

From: [redacted]@epa.gov]
Sent: 3/11/2026 8:03:02 PM
To: Hirsch, Brigit [Hirsch.Brigit@epa.gov]; Holran, Carolyn [Holran.Carolyn@epa.gov]
CC: Bastasch, Mike [Bastasch.Mike@epa.gov]; [redacted]@epa.gov]; [redacted]@epa.gov]; Mandy, Cora [Mandy.Cora@epa.gov]; Murphy, Jacob [Murphy.Jacob@epa.gov]; Vaseliou, Molly [Vaseliou.Molly@epa.gov]
Subject: RE: Flag: CNN - MATs story, checking for comment - DDL 2 p.m. Friday, March 13

Sounds good. Thanks Brigit.

From: Hirsch, Brigit <Hirsch.Brigit@epa.gov>
Sent: Wednesday, March 11, 2026 4:01 PM
To: [redacted]@epa.gov>; Holran, Carolyn <Holran.Carolyn@epa.gov>
Cc: Bastasch, Mike <Bastasch.Mike@epa.gov>; [redacted]@epa.gov>; [redacted]@epa.gov>; Mandy, Cora <Mandy.Cora@epa.gov>; Murphy, Jacob <Murphy.Jacob@epa.gov>; Vaseliou, Molly <Vaseliou.Molly@epa.gov>
Subject: Re: Flag: CNN - MATs story, checking for comment - DDL 2 p.m. Friday, March 13

No need to route through the IO. I will whip up something that answers all of the questions before bugging them for approval. Please let me know when we hear back from the region. Thanks [redacted]

From: [redacted]@epa.gov>
Sent: Wednesday, March 11, 2026 3:42:02 PM
To: Hirsch, Brigit <Hirsch.Brigit@epa.gov>; Holran, Carolyn <Holran.Carolyn@epa.gov>
Cc: Bastasch, Mike <Bastasch.Mike@epa.gov>; [redacted]@epa.gov>; [redacted]@epa.gov>; Mandy, Cora <Mandy.Cora@epa.gov>; Murphy, Jacob <Murphy.Jacob@epa.gov>; Vaseliou, Molly <Vaseliou.Molly@epa.gov>
Subject: RE: Flag: CNN - MATs story, checking for comment - DDL 2 p.m. Friday, March 13

Hey Brigit – Please see the below from OCAP. Would you like the OAR IO to review?

See answer to Brigit's question below:

Per the Annex that the WH shared with EPA, which is now posted on our website (https://www.epa.gov/system/files/documents/2025-04/regulatory-relief-for-certain-stationary-annex-1.pdf), Talen Montana, LLC and NorthWestern Energy a. Affected Facility/Source: Colstrip Steam Electric Station Units 3 and 4 is covered by the President's exemption.

Not sure this needs to be routed through the OAR IO since OCAP was able to definitively answer Brigit's question, but let me know.

Thanks!
Jill

Respectfully,

[redacted]
Digital, Risk Communications, and Press Division
Office of External Affairs
[redacted]
[redacted]@epa.gov

From: Hirsch, Brigit <Hirsch.Brigit@epa.gov>
Sent: Wednesday, March 11, 2026 12:53 PM
To: [redacted]@epa.gov>; Holran, Carolyn <Holran.Carolyn@epa.gov>
Cc: Bastasch, Mike <Bastasch.Mike@epa.gov>; [redacted]@epa.gov>; [redacted]@epa.gov>; Mandy, Cora <Mandy.Cora@epa.gov>; Murphy, Jacob <Murphy.Jacob@epa.gov>; Vaseliou, Molly <Vaseliou.Molly@epa.gov>
Subject: Re: Flag: CNN - MATs story, checking for comment - DDL 2 p.m. Friday, March 13

Thanks for flagging, [redacted] Could you confirm with the program whether the first point was a presidential exemption? Ex. 5 Deliberative Process (DP)
Ex. 5 Deliberative Process (DP)

From: [redacted]@epa.gov>
Sent: Wednesday, March 11, 2026 12:47:04 PM
To: Hirsch, Brigit <Hirsch.Brigit@epa.gov>; Holran, Carolyn <Holran.Carolyn@epa.gov>
Cc: Bastasch, Mike <Bastasch.Mike@epa.gov>; [redacted]@epa.gov>; [redacted]@epa.gov>; Mandy, Cora <Mandy.Cora@epa.gov>; Murphy, Jacob <Murphy.Jacob@epa.gov>; Vaseliou, Molly <Vaseliou.Molly@epa.gov>
Subject: Flag: CNN - MATs story, checking for comment - DDL 2 p.m. Friday, March 13

Good afternoon, Team –

Flagging an inquiry from CNN on MATS. The deadline is 2 p.m. Friday. Let me know if you'd like me to take any of this to the program.

Inquiry –
Hi, I'm working on a story for next week about the Trump administration's recent rollback of the Biden-era MATs rules and communities impacted by that rollback. The story is focused in part on the Colstrip power plant in Montana, and I had the following questions.

- Last year, Colstrip applied and was granted an exemption for pollution controls used by every other coal plant in the US, citing economic harms. Why did EPA exempt the plant from installing technology that's in widespread use by other power plants to control such pollution?
- Colstrip is mentioned in EPA's final rule as having some of the largest costs to comply with pollution controls of any plant in the nation — amounting to nearly half of the Biden-era rule's total compliance costs. How big of a factor was Colstrip's costs in EPA's rollback of the Biden-era rules?
- Critics of the rollback have pointed to concerns that the Biden-era MATs rule required something that 90% of coal plants were already complying with and wouldn't have presented significant added costs to plants. Do you have a response to that critique?
- Do you have any response to concerns from the local community and Montana public health experts about mercury pollution and other particulate pollution from the Colstrip power plant?

- Anything else you'd like to address?

I'm looking for a response by 2pm EST Friday, March 13.

Respectfully,

[redacted]
Digital, Risk Communications, and Press Division
Office of External Affairs
[redacted]@epa.gov

From: Nilsen, Ella <ella.nilsen@cnn.com>
Sent: Wednesday, March 11, 2026 12:43 PM
To: EPA Press Office <press@epa.gov>
Subject: CNN - MATs story, checking for comment

Caution: This email originated from outside EPA, please exercise additional caution when deciding whether to open attachments or click on provided links.

Hi, I'm working on a story for next week about the Trump administration's recent rollback of the Biden-era MATs rules and communities impacted by that rollback. The story is focused in part on the Colstrip power plant in Montana, and I had the following questions.

- Last year, Colstrip applied and was granted an exemption for pollution controls used by every other coal plant in the US, citing economic harms. Why did EPA exempt the plant from installing technology that's in widespread use by other power plants to control such pollution?
- Colstrip is mentioned in EPA's final rule as having some of the largest costs to comply with pollution controls of any plant in the nation — amounting to nearly half of the Biden-era rule's total compliance costs. How big of a factor was Colstrip's costs in EPA's rollback of the Biden-era rules?
- Critics of the rollback have pointed to concerns that the Biden-era MATs rule required something that 90% of coal plants were already complying with and wouldn't have presented significant added costs to plants. Do you have a response to that critique?
- Do you have any response to concerns from the local community and Montana public health experts about mercury pollution and other particulate pollution from the Colstrip power plant?
- Anything else you'd like to address?

I'm looking for a response by 2pm EST Friday, March 13.

Thanks,
Ella

Message

From: [redacted]@epa.gov]
Sent: 3/13/2026 2:31:42 PM
To: Hirsch, Brigit [Hirsch.Brigit@epa.gov]; Holran, Carolyn [Holran.Carolyn@epa.gov]
CC: Bastasch, Mike [Bastasch.Mike@epa.gov]; [redacted]@epa.gov]; [redacted]@epa.gov]; Mandy, Cora [Mandy.Cora@epa.gov]; Murphy, Jacob [Murphy.Jacob@epa.gov]; Vaseliou, Molly [Vaseliou.Molly@epa.gov]
Subject: RE: Flag: CNN - MATs story, checking for comment - DDL 2 p.m. Friday, March 13

Thanks Brigit!

From: Hirsch, Brigit <Hirsch.Brigit@epa.gov>
Sent: Friday, March 13, 2026 10:28 AM
To: [redacted]@epa.gov>; Holran, Carolyn <Holran.Carolyn@epa.gov>
Cc: Bastasch, Mike <Bastasch.Mike@epa.gov>; [redacted]@epa.gov>; [redacted]@epa.gov>; Mandy, Cora <Mandy.Cora@epa.gov>; Murphy, Jacob <Murphy.Jacob@epa.gov>; Vaseliou, Molly <Vaseliou.Molly@epa.gov>
Subject: Re: Flag: CNN - MATs story, checking for comment - DDL 2 p.m. Friday, March 13

[redacted], the below is good to go:

"The 2024 MATS regulation was another notch in the Biden-Harris Administration's war on coal. The rule imposed massive costs and red tape on coal-and oil-fired power plants, driving up the cost of living for American families, jeopardizing our grid reliability and national security, and limiting American energy and manufacturing dominance. The Trump EPA's repeal of the Biden 2024 MATS amendments ensures the continuation of the highly effective and robust 2012 MATS requirements, which have protected of public health and the environment for years. By doing so, EPA is fulfilling its core mission without compromising America's energy or economic prosperity. Since the 2012 MATS rule was put into place, acid gas hazardous air pollutant emissions have been reduced by over 96 percent, and emissions of the non-mercury metals — including nickel, arsenic, and lead — have been reduced by more than 81 percent. Even the Biden-Harris Administration reaffirmed the success of these standards when stating the original 2012 standards provided an ample margin of safety to protect public health in their regulatory impact analysis. Ensuring affordable baseload power, including coal, is essential for keeping the lights on and heating American homes. We saw this recently during Winter Storm Fern. EPA is committed to ensuring clean air for all Americans regardless of race, gender, creed, or background." — EPA spox

On Background
At minimum a reporter should get the basic facts correct— Clean Air Act section 112(i)(4) authorizes the ***President*** to exempt any stationary source from a relevant standard if he "determines that the technology to implement such standard is not available and that it is in the national security interests of the United States to do so." ***EPA played no role*** in the determinations set out in the statute and specifically vested in the President. Any requests sent to the EPA's electronic mailbox were forwarded to the White House, and any further questions about process and decisions should be directed to the White House.

From: Hirsch, Brigit <Hirsch.Brigit@epa.gov>
Sent: Thursday, March 12, 2026 9:26:46 AM
To: [redacted]@epa.gov>; Holran, Carolyn <Holran.Carolyn@epa.gov>

Cc: Bastasch, Mike <Bastasch.Mike@epa.gov>; [redacted]@epa.gov>; [redacted]@epa.gov>; Mandy, Cora <Mandy.Cora@epa.gov>; Murphy, Jacob <Murphy.Jacob@epa.gov>; Vaseliou, Molly <Vaseliou.Molly@epa.gov>
Subject: Re: Flag: CNN - MATs story, checking for comment - DDL 2 p.m. Friday, March 13

Thank you [redacted] This is great. Working on something now

From: [redacted]@epa.gov>
Sent: Thursday, March 12, 2026 9:24:25 AM
To: Hirsch, Brigit <Hirsch.Brigit@epa.gov>; Holran, Carolyn <Holran.Carolyn@epa.gov>
Cc: Bastasch, Mike <Bastasch.Mike@epa.gov>; [redacted]@epa.gov>; [redacted]@epa.gov>; Mandy, Cora <Mandy.Cora@epa.gov>; Murphy, Jacob <Murphy.Jacob@epa.gov>; Vaseliou, Molly <Vaseliou.Molly@epa.gov>
Subject: RE: Flag: CNN - MATs story, checking for comment - DDL 2 p.m. Friday, March 13

Good morning, Brigit,

From Region 8 –

Here is some additional information that we wanted to make sure you had for the response.

Ex. 5 Deliberative Process (DP)

Ex. 5 Deliberative Process (DP)

If you have any questions regarding this letter or related matters, you can contact the Air & Radiation Division Director at (720) 391-2147 or sandoval.adrienne@epa.gov. If you have specific congressional questions about the MATS Rule or more generally, please reach out to me, David Piantanida or Valerie Doornbos (doornbos.valerie@epa.gov).

Respectfully,

[redacted]
Digital, Risk Communications, and Press Division
Office of External Affairs
[redacted]
[redacted]@epa.gov

From: Hirsch, Brigit <Hirsch.Brigit@epa.gov>
Sent: Wednesday, March 11, 2026 4:01 PM
To: [redacted] [redacted]@epa.gov>; Holran, Carolyn <Holran.Carolyn@epa.gov>
Cc: Bastasch, Mike <Bastasch.Mike@epa.gov>; [redacted] [redacted]@epa.gov>; [redacted] [redacted]@epa.gov>; Mandy, Cora <Mandy.Cora@epa.gov>; Murphy, Jacob <Murphy.Jacob@epa.gov>; Vaseliou, Molly <Vaseliou.Molly@epa.gov>
Subject: Re: Flag: CNN - MATs story, checking for comment - DDL 2 p.m. Friday, March 13

No need to route through the IO. I will whip up something that answers all of the questions before bugging them for approval. Please let me know when we hear back from the region. Thanks [redacted]!

From: [redacted]@epa.gov>
Sent: Wednesday, March 11, 2026 3:42:02 PM
To: Hirsch, Brigit <Hirsch.Brigit@epa.gov>; Holran, Carolyn <Holran.Carolyn@epa.gov>
Cc: Bastasch, Mike <Bastasch.Mike@epa.gov>; [redacted]@epa.gov>; [redacted] [redacted]@epa.gov>; Mandy, Cora <Mandy.Cora@epa.gov>; Murphy, Jacob <Murphy.Jacob@epa.gov>; Vaseliou, Molly <Vaseliou.Molly@epa.gov>
Subject: RE: Flag: CNN - MATs story, checking for comment - DDL 2 p.m. Friday, March 13

Hey Brigit – Please see the below from OCAP. Would you like the OAR IO to review?

See answer to Brigit's question below:

Per the Annex that the WH shared with EPA, which is now posted on our website (https://www.epa.gov/system/files/documents/2025-04/regulatory-relief-for-certain-stationary-annex-1.pdf), Talen Montana, LLC and NorthWestern Energy a. Affected Facility/Source: Colstrip Steam Electric Station Units 3 and 4 is covered by the President's exemption.

Not sure this needs to be routed through the OAR IO since OCAP was able to definitively answer Brigit's question, but let me know.

Thanks!
Jill

Respectfully,

[redacted]
Digital, Risk Communications, and Press Division
Office of External Affairs
[redacted]@epa.gov

From: Hirsch, Brigit <Hirsch.Brigit@epa.gov>
Sent: Wednesday, March 11, 2026 12:53 PM
To: [redacted]@epa.gov>; Holran, Carolyn <Holran.Carolyn@epa.gov>
Cc: Bastasch, Mike <Bastasch.Mike@epa.gov>; [redacted]@epa.gov>; [redacted]@epa.gov>; Mandy, Cora <Mandy.Cora@epa.gov>; Murphy, Jacob <Murphy.Jacob@epa.gov>; Vaseliou, Molly <Vaseliou.Molly@epa.gov>
Subject: Re: Flag: CNN - MATs story, checking for comment - DDL 2 p.m. Friday, March 13

Thanks for flagging, [redacted]. Could you confirm with the program whether the first point was a presidential exemption? **Ex. 5 Deliberative Process (DP)**
Ex. 5 Deliberative Process (DP)

From: [redacted]@epa.gov>
Sent: Wednesday, March 11, 2026 12:47:04 PM
To: Hirsch, Brigit <Hirsch.Brigit@epa.gov>; Holran, Carolyn <Holran.Carolyn@epa.gov>
Cc: Bastasch, Mike <Bastasch.Mike@epa.gov>; [redacted]@epa.gov>; [redacted]@epa.gov>; Mandy, Cora <Mandy.Cora@epa.gov>; Murphy, Jacob <Murphy.Jacob@epa.gov>; Vaseliou, Molly <Vaseliou.Molly@epa.gov>
Subject: Flag: CNN - MATs story, checking for comment - DDL 2 p.m. Friday, March 13

Good afternoon, Team –

Flagging an inquiry from CNN on MATS. The deadline is 2 p.m. Friday. Let me know if you'd like me to take any of this to the program.

Inquiry –
Hi, I'm working on a story for next week about the Trump administration's recent rollback of the Biden-era MATs rules and communities impacted by that rollback. The story is focused in part on the Colstrip power plant in Montana, and I had the following questions.

- Last year, Colstrip applied and was granted an exemption for pollution controls used by every other coal plant in the US, citing economic harms. Why did EPA exempt the plant from installing technology that's in widespread use by other power plants to control such pollution?
- Colstrip is mentioned in EPA's final rule as having some of the largest costs to comply with pollution controls of any plant in the nation — amounting to nearly half of the Biden-era rule's total compliance costs. How big of a factor was Colstrip's costs in EPA's rollback of the Biden-era rules?

- Critics of the rollback have pointed to concerns that the Biden-era MATs rule required something that 90% of coal plants were already complying with and wouldn't have presented significant added costs to plants. Do you have a response to that critique?
- Do you have any response to concerns from the local community and Montana public health experts about mercury pollution and other particulate pollution from the Colstrip power plant?
- Anything else you'd like to address?

I'm looking for a response by 2pm EST Friday, March 13.

Respectfully,

[redacted]
Digital, Risk Communications, and Press Division
Office of External Affairs
[redacted]@epa.gov

From: Nilsen, Ella <ella.nilsen@cnn.com>
Sent: Wednesday, March 11, 2026 12:43 PM
To: EPA Press Office <press@epa.gov>
Subject: CNN - MATs story, checking for comment

Caution: This email originated from outside EPA, please exercise additional caution when deciding whether to open attachments or click on provided links.

Hi, I'm working on a story for next week about the Trump administration's recent rollback of the Biden-era MATs rules and communities impacted by that rollback. The story is focused in part on the Colstrip power plant in Montana, and I had the following questions.

- Last year, Colstrip applied and was granted an exemption for pollution controls used by every other coal plant in the US, citing economic harms. Why did EPA exempt the plant from installing technology that's in widespread use by other power plants to control such pollution?
- Colstrip is mentioned in EPA's final rule as having some of the largest costs to comply with pollution controls of any plant in the nation — amounting to nearly half of the Biden-era rule's total compliance costs. How big of a factor was Colstrip's costs in EPA's rollback of the Biden-era rules?
- Critics of the rollback have pointed to concerns that the Biden-era MATs rule required something that 90% of coal plants were already complying with and wouldn't have presented significant added costs to plants. Do you have a response to that critique?
- Do you have any response to concerns from the local community and Montana public health experts about mercury pollution and other particulate pollution from the Colstrip power plant?
- Anything else you'd like to address?

I'm looking for a response by 2pm EST Friday, March 13.

Thanks,

Ella

Message

From: Hirsch, Brigit [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=AA75886F47C84B4092E7F04AE37B550E-2BB06795-6A]
Sent: 6/25/2025 4:40:32 PM
To: [redacted]@epa.gov]; Holran, Carolyn [Holran.Carolyn@epa.gov]; Vaseliou, Molly [Vaseliou.Molly@epa.gov]; Mandy, Cora [Mandy.Cora@epa.gov]; Bastasch, Mike [Bastasch.Mike@epa.gov]
CC: [redacted]@epa.gov]; [redacted]@epa.gov]
BCC: Amidon, Eric [Amidon.Eric@epa.gov]
Subject: RE: APPROVAL: Ethylene Oxide / CAA Section 112 presidential exemption - Spotlight on America - DDL July 1

Thank you!

From: [redacted]@epa.gov>
Sent: Wednesday, June 25, 2025 12:39 PM
To: Hirsch, Brigit <Hirsch.Brigit@epa.gov>; Holran, Carolyn <Holran.Carolyn@epa.gov>; Vaseliou, Molly <Vaseliou.Molly@epa.gov>; Mandy, Cora <Mandy.Cora@epa.gov>; Bastasch, Mike <Bastasch.Mike@epa.gov>
Cc: [redacted]@epa.gov>; [redacted]@epa.gov>
Subject: RE: APPROVAL: Ethylene Oxide / CAA Section 112 presidential exemption - Spotlight on America - DDL July 1

Thanks!

From: Hirsch, Brigit <Hirsch.Brigit@epa.gov>
Sent: Wednesday, June 25, 2025 12:39 PM
To: [redacted]@epa.gov>; Holran, Carolyn <Holran.Carolyn@epa.gov>; Vaseliou, Molly <Vaseliou.Molly@epa.gov>; Mandy, Cora <Mandy.Cora@epa.gov>; Bastasch, Mike <Bastasch.Mike@epa.gov>
Cc: [redacted]@epa.gov>; [redacted]@epa.gov>
Subject: RE: APPROVAL: Ethylene Oxide / CAA Section 112 presidential exemption - Spotlight on America - DDL July 1

Good to go! Thanks [redacted]!

From: [redacted]@epa.gov>
Sent: Wednesday, June 25, 2025 12:29 PM
To: Holran, Carolyn <Holran.Carolyn@epa.gov>; Hirsch, Brigit <Hirsch.Brigit@epa.gov>; Vaseliou, Molly <Vaseliou.Molly@epa.gov>; Mandy, Cora <Mandy.Cora@epa.gov>; Bastasch, Mike <Bastasch.Mike@epa.gov>
Cc: [redacted]@epa.gov>; [redacted]@epa.gov>
Subject: APPROVAL: Ethylene Oxide / CAA Section 112 presidential exemption - Spotlight on America - DDL July 1

Inquiry –

My name is Andrea Nejman and I'm a producer for *Spotlight on America.*

I'm following up on the email portal set up for requests for exemption to the HON rule, including EtO emissions – using the address "[redacted]".

Please answer the following questions before our deadline of July 1st:

- Have any exemptions been granted to companies as of now?
    - If so, which companies have been granted the exemptions to the HON rule and on what grounds? Please provide documentation.
- If exemptions are still being considered, please provide a timeline for when those decisions will be made.

Response -
Section 112(i)(4) specifically states that the President may exempt any stationary source "if the President determines that the technology to implement such standard is not available and that it is in the national security interests of the United States to do so." This is an authority that solely rests with the President, not EPA.

Any further questions on this process or the status of exemptions should be directed to the White House.

Respectfully,

[redacted]
Office of Media Relations and Risk Communications
Office of Public Affairs
[redacted]
[redacted]@epa.gov

From: Andrea Nejman <anejman@sbgtv.com>
Sent: Wednesday, June 25, 2025 12:11 PM
To: [redacted]@epa.gov>
Cc: EPA Press Office <Press@epa.gov>
Subject: Ethylene Oxide

> **Caution:** This email originated from outside EPA, please exercise additional caution when deciding whether to open attachments or click on provided links.

H[redacted]

My name is Andrea Nejman and I'm a producer for *Spotlight on America*.

I'm following up on the email portal set up for requests for exemption to the HON rule, including EtO emissions using the address "[redacted]".

Please answer the following questions before our deadline of July 1st:

- Have any exemptions been granted to companies as of now?
    - If so, which companies have been granted the exemptions to the HON rule and on what grounds? Please provide documentation.
- If exemptions are still being considered, please provide a timeline for when those decisions will be made.

Feel free to reach out with any questions.

Thank you!

Andrea Nejman | National Investigative Producer

Spotlight on America

Message

From: Hirsch, Brigit [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=AA75886F47C84B4092E7F04AE37B550E-2BB06795-6A]
Sent: 8/15/2025 7:59:32 PM
To: Vaseliou, Molly [Vaseliou.Molly@epa.gov]
CC: Mandy, Cora [Mandy.Cora@epa.gov]; Bastasch, Mike [Bastasch.Mike@epa.gov]; Holran, Carolyn [Holran.Carolyn@epa.gov]
Subject: RE: FLAG: Last Week Tonight/HBO - Social cost or carbon-follow-up - DDL ASAP

Thanks!

From: Vaseliou, Molly <Vaseliou.Molly@epa.gov>
Sent: Friday, August 15, 2025 3:58 PM
To: Hirsch, Brigit <Hirsch.Brigit@epa.gov>
Cc: Mandy, Cora <Mandy.Cora@epa.gov>; Bastasch, Mike <Bastasch.Mike@epa.gov>; Holran, Carolyn <Holran.Carolyn@epa.gov>
Subject: Re: FLAG: Last Week Tonight/HBO - Social cost or carbon-follow-up - DDL ASAP

good with me!

Get Outlook for iOS

From: Hirsch, Brigit <Hirsch.Brigit@epa.gov>
Sent: Friday, August 15, 2025 3:52:31 PM
To: Vaseliou, Molly <Vaseliou.Molly@epa.gov>
Cc: Mandy, Cora <Mandy.Cora@epa.gov>; Bastasch, Mike <Bastasch.Mike@epa.gov>; Holran, Carolyn <Holran.Carolyn@epa.gov>
Subject: RE: FLAG: Last Week Tonight/HBO - Social cost or carbon-follow-up - DDL ASAP

Minus OMR, suggested response. I will update WH with whatever we send, too.

Section 112(i)(4) specifically states that the President may exempt any stationary source "if the President determines that the technology to implement such standard is not available and that it is in the national security interests of the United States to do so." This is an authority that solely rests with the President, not EPA.

Any further questions on this process or the status of exemptions should be directed to the White House.

From: [redacted]@epa.gov>
Sent: Friday, August 15, 2025 3:49 PM
To: Hirsch, Brigit <Hirsch.Brigit@epa.gov>; Holran, Carolyn <Holran.Carolyn@epa.gov>
Cc: Vaseliou, Molly <Vaseliou.Molly@epa.gov>; Mandy, Cora <Mandy.Cora@epa.gov>; Bastasch, Mike <Bastasch.Mike@epa.gov>
Subject: RE: FLAG: Last Week Tonight/HBO - Social cost or carbon-follow-up - DDL ASAP

Yet another follow-up, although no deadline:

Thank you for these responses. Do you have any response to this reporting, that the EPA allowed companies to email to request exemptions from requirements to reduce emissions of toxic chemicals?

https://apnews.com/article/trump-epa-clean-air-exemption-mercury-13f069f79fdc8414d3e428a18d2a01bba
As part of a push to roll back dozens of environmental regulations, the Trump administration is offering coal-fired power plants and other industrial polluters a chance for exemptions from requirements to reduce emissions of toxic chemicals such as mercury, arsenic and benzene.
The Environmental Protection Agency has set up an electronic mailbox to allow regulated companies to request a presidential exemption under the Clean Air Act to a host of Biden-era rules.

https://www.nytimes.com/2025/03/27/climate/epa-air-pollution-exemption-mercury-coal-ash.html
The latest policy allows for companies to apply for exemptions of up to two years, the maximum allowed under the Clean Air Act, from numerous new restrictions on emissions of toxic chemicals like mercury and arsenic. Another is ethylene oxide, a colorless gas that is widely used to sterilize medical devices and is also a carcinogen.

[redacted]

From: [redacted]
Sent: Friday, August 15, 2025 12:09 PM
To: Hirsch, Brigit <Hirsch.Brigit@epa.gov>; Holran, Carolyn <Holran.Carolyn@epa.gov>
Cc: Vaseliou, Molly <Vaseliou.Molly@epa.gov>; Mandy, Cora <Mandy.Cora@epa.gov>; Bastasch, Mike <Bastasch.Mike@epa.gov>
Subject: RE: FLAG: Last Week Tonight/HBO - Social cost or carbon-follow-up - DDL ASAP

Got it. Thanks.

[redacted]

From: Hirsch, Brigit <Hirsch.Brigit@epa.gov>
Sent: Friday, August 15, 2025 12:02 PM
To: [redacted]@epa.gov>; Holran, Carolyn <Holran.Carolyn@epa.gov>
Cc: Vaseliou, Molly <Vaseliou.Molly@epa.gov>; Mandy, Cora <Mandy.Cora@epa.gov>; Bastasch, Mike <Bastasch.Mike@epa.gov>
Subject: RE: FLAG: Last Week Tonight/HBO - Social cost or carbon-follow-up - DDL ASAP

We can send the below, [redacted]

From: Hirsch, Brigit
Sent: Friday, August 15, 2025 10:36 AM
To: [redacted]@epa.gov>; Holran, Carolyn <Holran.Carolyn@epa.gov>
Cc: Vaseliou, Molly <Vaseliou.Molly@epa.gov>; Mandy, Cora <Mandy.Cora@epa.gov>; Bastasch, Mike <Bastasch.Mike@epa.gov>
Subject: RE: FLAG: Last Week Tonight/HBO - Social cost or carbon-follow-up - DDL ASAP

Thank you!! [Ex. 5 Deliberative Process (DP)] Back to you shortly!

From: [redacted]@epa.gov>
Sent: Friday, August 15, 2025 10:18 AM
To: Holran, Carolyn <Holran.Carolyn@epa.gov>; Hirsch, Brigit <Hirsch.Brigit@epa.gov>

Cc: Vaseliou, Molly <Vaseliou.Molly@epa.gov>; Mandy, Cora <Mandy.Cora@epa.gov>; Bastasch, Mike <Bastasch.Mike@epa.gov>
Subject: FLAG: Last Week Tonight/HBO - Social cost or carbon-follow-up - DDL ASAP

Please see a response where the reporter mentions what will be included in the segment and if we have any comments.

[redacted]

From: Wynn Van Dusen <wynn.vandusen@lastweektonight.com>
Sent: Friday, August 15, 2025 10:09 AM
To: EPA Press Office <Press@epa.gov>; [redacted]@epa.gov>; [redacted]
[redacted]@epa.gov>
Subject: Re: Request for comment from HBO TV Show // Thursday deadline

> **Caution:** This email originated from outside EPA, please exercise additional caution when deciding whether to open attachments or click on provided links.

Thank you for your responses. Our script is still in progress so I wanted to alert you to some reporting we are likely to reference in the script.

[redacted]

It is correct that EPA is proposing to repeal all "greenhouse gas" emissions standards for the power sector under Section 111 of the Clean Air Act (CAA). In *West Virginia v. EPA*, the U.S. Supreme Court held that the major questions doctrine barred EPA from misusing the Clean Air Act to manipulate Americans' energy choices and shift the balance of the nation's electrical fuel mix. The Biden Administration issued its own rule in 2024, which many critics say is just another attempt to achieve the unlawful fuel-shifting goals of the Clean Power Plan. Unlike other air pollutants with a regional or local impact, the targeted emissions are global in nature. As a result, any potential public health harms have not been accurately attributed to emissions from the U.S. power sector. In light of this, EPA is proposing that the CAA requires the agency to make a finding that the targeted emissions from fossil fuel-fired power plants significantly contribute to dangerous air pollution before regulating these emissions from this source category. In addition, EPA is proposing that greenhouse gas emissions from fossil fuel-fired power plants do not contribute significantly to dangerous air pollution within the meaning of the statute.

As EPA Administrator Lee Zeldin has said, "Affordable, reliable electricity is key to the American dream and a natural byproduct of national energy dominance. According to many, the primary purpose of these Biden-Harris administration regulations was to destroy industries that didn't align with their narrow-minded climate change zealotry. Together, these rules have been criticized as being designed to regulate coal, oil and gas out of existence."

[redacted]

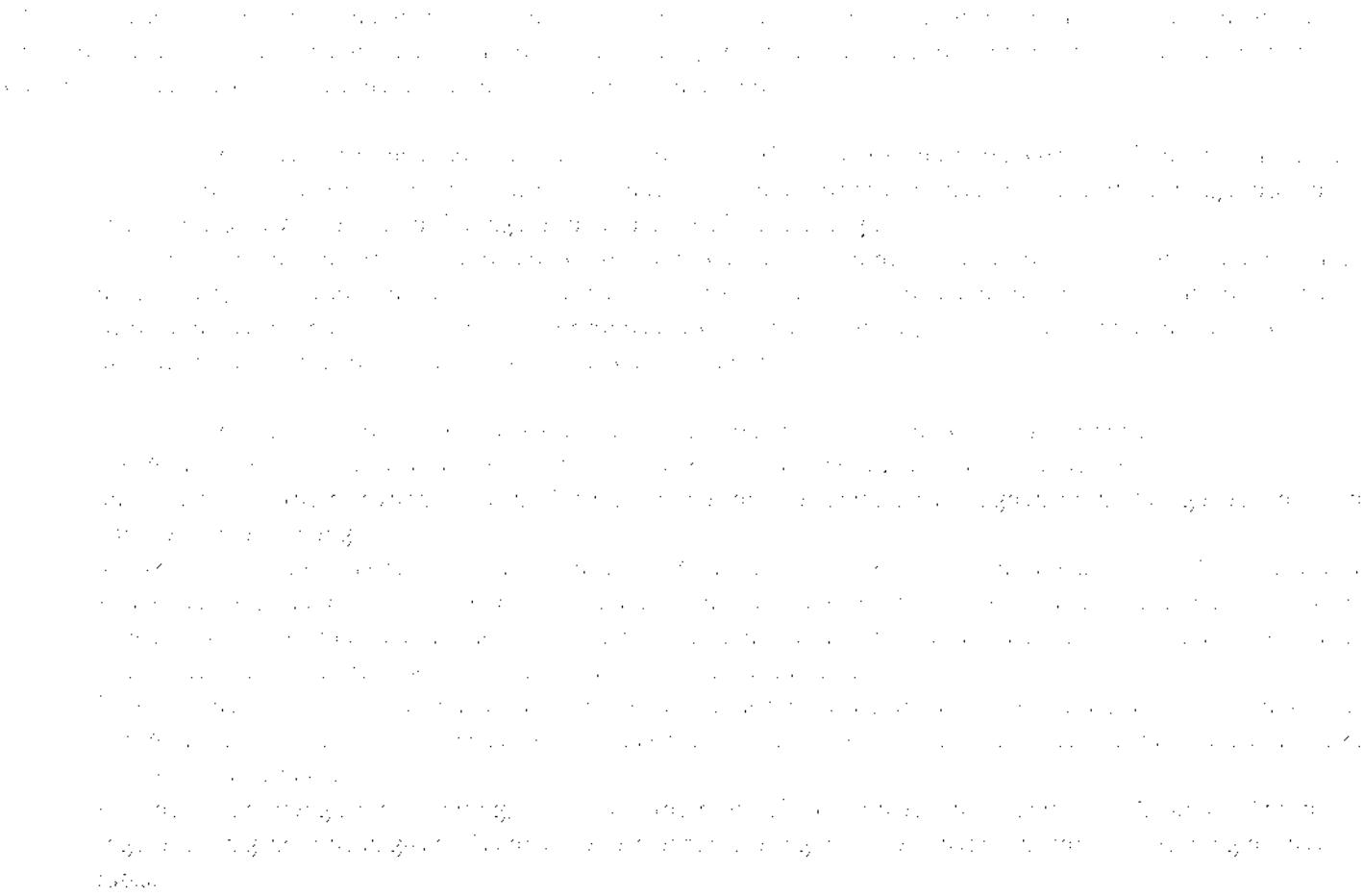
This article is incorrect: EPA's proposal would leave the Obama-era 2012 MATS requirements in place and propose to remove only the 2024 MATS Amendments, **which are not in effect** (effective date is July 8, 2027).

Again, the effective 2012 MATS requirements remain in effect. The 2012 MATS has driven sharp reductions in harmful air toxic pollutants from coal- and oil-fired power plants. Data shows:

- 2021 mercury emissions from coal-fired EGUs were 90 percent lower than pre-MATS levels;
- Since 2010, acid gas HAP emissions have been reduced by over 96 percent; and
- Emissions of the non-mercury metals – including nickel, arsenic, and lead – have been reduced by more than 81 percent.

The Biden-Harris EPA stated in its 2024 residual risk and technology review that the 2012 MATS rule for coal plants provided an ample margin of safety to protect public health, which we retained in this proposal. The Biden-Harris EPA's regulatory impact analysis also shows the 2024 MATS rule would result in net costs, not net benefits.

EPA is currently soliciting comment on other achievable and cost-effective mercury standards for lignite-fired EGUs that are based on developments in practices, processes, and control technologies for consideration as an alternative to repealing the 1.2 lb/TBtu Hg standard for lignite-fired EGUs. The public comment period closes on August 11, 2025.



It is correct that EPA has proposed to rescind the 2009 Endangerment Finding. If finalized, this proposal would undo the underpinning of $1 trillion in costly regulations, saving Americans more than $54 billion annually. Our comment:

"EPA's proposal is legal in nature. The Endangerment Finding is the legal prerequisite used by the Obama and Biden Administrations to regulate emissions from new motor vehicles and new motor vehicle engines. Absent this finding, EPA

would lack statutory authority under Section 202(a) of the Clean Air Act (CAA) to prescribe standards for greenhouse gas emissions. EPA is bound by the laws established by Congress, including under the Clean Air Act. Congress never explicitly gave EPA authority to impose greenhouse gas regulations for cars and trucks. In fact, Congress recently pulled back on the few, specific actions it previously authorized for greenhouse gases in the One Big Beautiful Bill, and it recently disapproved EPA's decisions to allow California to impose EV mandates in the name of regulating greenhouse gas emissions."

"This action is only a proposal for which EPA is requesting public comment, and no final action has been taken. The Endangerment Finding **only relates to greenhouse emissions from motor vehicles**—which no fake news outlet has accurately reported—and does not relate to any traditional air pollution and those standards would still remain in effect if this regulation is finalized."

From: EPA Press Office <Press@epa.gov>
Date: Wednesday, August 13, 2025 at 3:12 PM
To: Wynn Van Dusen <wynn.vandusen@lastweektonight.com>, [redacted]@epa.gov>
Subject: Re: Request for comment from HBO TV Show // Thursday deadline

Wynn,

Please see responses (in blue) for your use:

Wynn, fact-checking your last email and answering your other questions below. There is a lot of inaccuracy and speculation here, which is a disservice to your audience.

We are still cross-checking with you all at the EPA as well as outside subject matter experts, but it was my understanding that this refers a series of actions from the EPA and the OMB in 2025. There was a March 2025 announcement from Mr. Zeldin and the EPA announcing that they are "Overhauling Biden-Harris Administration's "Social Cost of Carbon" in what the Mr. Zeldin refers to as "... the greatest day of deregulation our nation has seen."( )

The bullet point in that press release you're presumably referring to says, "Overhaul the Biden-Harris 'Social Cost of Carbon'". This refers to reviewing and changing (AKA *overhauling*) a Biden-era metric in line with President Trump's executive orders fulfilling the will of the people as expressed at the ballot box last November. It is in no way synonymous with EPA "**declaring that it will no longer consider the social costs of pollution when crafting policy**", which is explicitly something that EPA has never said.

You do not seem to understand what the "Social Cost of Carbon" is or how it works.

Then, in May, we find EO 14154, which notes it was issued "in consultation with the EPA" and states:

Specifically, EO 14154 states that, among other things, "[t]he calculation of the 'social cost of carbon' is marked by logical deficiencies, a poor basis in empirical science, politicization, the absence of a foundation in legislation." It **also charges the EPA with issuing guidance to address the inadequacies of social cost of carbon analyses and to consider eliminating the social cost of carbon** calculation from any Federal regulatory and permitting decisions. **EO 14154 accordingly disbanded the Interagency Working Group on the Social Cost of Greenhouse Gases (IWG),** which

was established pursuant to EO 13990, and withdrew any guidance, instruction, recommendation, or document issued by the IWG. As such, it is no longer Federal government policy to maintain a uniform estimate of the monetized impacts of greenhouse gas em1ss10ns.

Once again, this refers to *overhauling* a Biden-era metric. It is in no way synonymous with "**declaring that it will no longer consider the social costs of pollution when crafting policy**", which is explicitly something that EPA has never said.

I was also looking at NYT reporting from May of this year, which notes that this move "effectively shelves" the social cost of carbon:

The White House has ordered federal agencies to stop considering the economic damage caused by climate change when writing regulations, except in cases where it is "plainly required" by law.
The directive . . . . . a powerful tool that has been used for more than two decades by the federal government to weigh the costs and benefits of a particular policy or regulation.
...
But "it is no longer federal government policy to maintain a uniform estimate of the monetized impacts of greenhouse gas emissions," Jeffrey B. Clark, the acting administrator of the White House Office of Information and Regulatory Affairs, wrote in a May 5 memo.
...
Scientists and environmental groups say that the Trump administration is denying reality.
"It's very clear that climate change is causing harms to people in the United States and around the world, and that these harms are growing worse with increasing warming," said Robert E. Kopp, a climate scientist at Rutgers University. **"By effectively saying the social cost of carbon should be treated as zero, this policy arbitrarily and capriciously ignores the science and economics of climate change."**

Michael Greenstone, an economist at the University of Chicago who first came up with the idea of the social cost of carbon as a justification for climate policy, said the new guidance means "feelings, not facts" would guide federal policy.

These examples list federal agencies not named EPA. If you were to say that EPA declared it would no longer consider the social costs of pollution when crafting policy, you would be incorrect. You also seem to be conflating greenhouse gas emissions with criteria air pollutants that EPA is legally obligated to regulate: the Clean Air Act requires EPA to set National Ambient Air Quality Standards (NAAQS) for six commonly found air pollutants known as criteria air pollutants. These are: ozone, particulate matter, carbon monoxide, lead, sulfur dioxide, and nitrogen dioxide.

But we send out these fact-checking inquiries for a reason. Would you want to make us aware of any data or literature that refutes the idea that Mr. Zeldin and the EPA are overhauling or effectively doing away with the social costs of carbon? Are we misunderstanding what Mr. Zeldin meant by the greatest day of deregulation our nation has ever seen? Or are you suggesting that the above materials are accurate but Politico's phrasing is not? Happy to discuss further.

Good thing because you have no idea what you're talking about. You have a fundamental misunderstanding of the facts based on incorrect speculation from your sources, which are not accurate or precise in their understanding of EPA's statutory obligations.

ANSWERS TO ORIGINAL QUESTIONS

1. **"Under Trump, Lee Zeldin's EPA has declared that it will no longer consider the social costs of pollution when crafting policy. It has eliminated restrictions on mercury emissions, soot and haze, all of which are pollutants with well-documented links to neurological damage and respiratory illness. As a result, mercury will now continue contaminating our water, air and food, and air pollutants will worsen asthma, weaken immune systems and increase rates of cancers, heart disease and stroke. The EPA has, in fact, moved to revoke the legal basis for regulating greenhouse gases altogether. These**

are precisely the kinds of environmental toxins that pose systemic threats to human health." (https://www.politico.com/news/magazine/2025/04/02/rfk-jr-s-maha-movement-has-a-fatal-flaw-00263926)

This is not accurate. On mercury, the 2024 MATS Amendments are not in effect (effective date is July 8, 2027). The effective 2012 MATS requirements remain in effect. The 2012 MATS has driven sharp reductions in harmful air toxic pollutants from coal- and oil-fired power plants. Data shows:

- 2021 mercury emissions from coal-fired EGUs were 90 percent lower than pre-MATS levels;
- Since 2010, acid gas HAP emissions have been reduced by over 96 percent; and
- Emissions of the non-mercury metals – including nickel, arsenic, and lead – have been reduced by more than 81 percent.

The Biden-Harris EPA stated in its 2024 residual risk and technology review that the 2012 MATS rule for coal plants provided an ample margin of safety to protect public health, which was retained in the current proposal. The Biden-Harris EPA's regulatory impact analysis also shows the 2024 MATS rule would result in net costs, not net benefits.

The public comment period on the proposal closes on August 11, 2025.

"No longer will the EPA view the goals of protecting our environment and growing our economy as binary choices. We will and we must choose both. Administrator Lee Zeldin announced his Powering the Great American Comeback initiative to better achieve the agency's statutory mission and as such the first pillar of this initiative is clean air, land, and water for EVERY American. In his first term, President Trump advanced conservation and environmental stewardship while promoting economic growth for families across the country and will continue to do so this term." – EPA spox

The Trump EPA has done incredible work to keep America clean, carrying out its core mission of protecting human health and the environment:

- The Administrator's priorities for EPA can be found here: EPA Administrator Lee Zeldin Announces EPA's "Powering the Great American Comeback" Initiative | US EPA
- On the 100th day of the Trump EPA, Administrator Zeldin announced 100 of Trump's environmental wins: 100 Days, 100 Environmental Accomplishments | US EPA
- On the 200th day of the Trump EPA, Administrator Zeldin announced 100 *more* of Trump's environmental wins: EPA Celebrates Another 100 Days with 100 More Pro-Environmental Actions | USA EPA
- Just last month, thanks to President Trump's leadership, Administrator Zeldin announced a 100% solution to the decades-old Tijuana River Sewage Crisis: United States and Mexico Reach Agreement to Permanently and Urgently End Decades-Long Tijuana River Sewage Crisis
- West Lake Landfill: After visiting St. Louis with Senator Hawley, Administrator Zeldin announced an expedited cleanup timeline for the stie. The update cuts nearly two years off of the initial draft timeline presented by PRP consultants for the West Lake site, outlining resource needs and actionable items to expedite the cleanup from a May 2029 excavation start date to a 2027 excavation start date.

In addition to all of this action in just 200 days, the Trump EPA proposed to rescind the 2009 Endangerment Finding. The Clean Air Act requires EPA to set National Ambient Air Quality Standards (NAAQS) for six commonly found air pollutants known as criteria air pollutants. These are: ozone, particulate matter, carbon monoxide, lead, sulfur dioxide, and nitrogen dioxide – this does not include greenhouse gases.

The EPA will not operate as an unconstitutional lawmaker, as it did under previous administrations. The EPA will follow the law.

As EPA Administrator Lee Zeldin said in an interview, "If Congress wants the EPA to be regulating the heck out of carbon dioxide, then they can put it into law. But even the Endangerment Finding itself in 2009 never individually studied carbon dioxide as an endangerment to public health and welfare. They had to do all these other mental leaps because they didn't have the science and the data to be able to make a direct connection."

2. **The EPA has also been slow to move on microplastics and PFAS, both substances of growing concern among scientists and the general public. These invisible but omnipresent chemicals are a priority for the MAHA movement, singled out in the White House report for further study and policymaking. The EPA, though, has delayed implementing a new standard to limit PFAS in drinking water and announced it would consider whether to raise the limits of acceptable PFAS levels in community water systems, while also slashing funding for more research on the substance's health effects. (https://www.vox.com/health/421349/trump-rfk-jr-maha-movement-epa-health)**

This is **categorically untrue**. It would be fearmongering and a disservice to your viewers to imply this at all. See the list of what EPA has accomplished in just 200 days on PFAS below:

"Building on the historic actions to address PFAS during the first Trump Administration, EPA is tackling PFAS from all of our program offices, advancing research and testing, stopping PFAS from getting into drinking water systems, holding polluters accountable, and more. This is just a fraction of the work the agency is doing on PFAS during President Trump's second term to ensure Americans have the cleanest air, land, and water." – EPA spox

Trump Administration Action
In April, U.S. Environmental Protection Agency (EPA) Administrator Lee Zeldin outlined upcoming agency action to address Per- and Polyfluoroalkyl Substances (PFAS). In this suite of actions, Administrator Zeldin announced a long list that included in part the designation of an agency lead for PFAS, the creation of effluent limitations guidelines (ELGs) for certain PFAS to stop these forever chemicals from entering drinking water systems, and initiatives to engage with Congress and industry to establish a clear liability framework that ensures the polluter pays and passive receivers are protected. This list is the first, not the last, of all decisions and actions EPA will be taking to address PFAS over the course of the Trump Administration.

In a May announcement, the Trump EPA launched the PFAS OUT initiative will enhance engagement on addressing PFAS by proactively connecting with every public water utility known to need capital improvements to address PFAS in their systems. EPA will share resources, tools, funding and technical assistance opportunities to help utilities meet the federal drinking water standards. PFAS OUT will ensure that no community is left behind as we work to protect public health and bring utilities into compliance with federal drinking water standards.

EPA continues to offer free water technical assistance (WaterTA) that provides services to water systems to improve their drinking water and help communities access available funding. EPA's WaterTA initiatives work with water systems nationwide to identify affordable solutions to assess and address PFAS, including PFOA and PFOS. EPA supports water systems in reducing PFAS and emerging contaminants (EC) in drinking water through a range of funding resources. In May, EPA announced the availability of $945 million in grants under the EC program that will go to states and territories to help small and disadvantaged communities address PFAS in their water.

EPA is supporting the U.S. Department of Justice in defending ongoing legal challenges to the PFAS National Primary Drinking Water Regulation with respect to PFOA and PFOS.

The agency determined that the process by which it promulgated the preliminary regulatory determinations simultaneously with the proposed regulation was inappropriate and may not comply with the statutory requirements of Safe Drinking Water Act for PFHxS, PFNA, HFPO-DA (commonly known as GenX), and the Hazard Index mixture of these three PFAS plus PFBS. Therefore, the agency intends to rescind the regulations and reconsider these regulatory determinations, ensuring the Agency's actions adhere to the Safe Drinking Water Act process. ***While EPA cannot pre-determine the outcome, it is possible that the result could be more stringent requirements.***

In 2019, the Trump EPA announced the PFAS Action Plan. This historic Plan responded to extensive public interest and input the agency received and represented the first time EPA built a multi-media, multi-program, national communication and research plan to address an emerging environmental challenge like PFAS. EPA's Action Plan identified both short-term solutions for addressing these chemicals and long-term strategies that will help provide the

tools and technologies states, tribes, and local communities need to provide clean and safe drinking water to their residents and to address PFAS at the source—even before it gets into the water.

Here is an easily digestible list of actions the agency already announced to address PFAS:

Strengthening the Science

- Designate an agency lead for PFAS to better align and manage PFAS efforts across agency programs
- Implement a PFAS testing strategy under Toxic Substances Control Act (TSCA) Section 4 to seek scientific information informed by hazard characteristics and exposure pathways
- Launch additional efforts on air related PFAS information collection and measurement techniques related to air emissions
- Identify and address available information gaps where not all PFAS can be measured and controlled
- Provide more frequent updates to the PFAS Destruction and Disposal Guidance—changing from every three years to annually—as EPA continues to assess the effectiveness of available treatment technologies
- Ramp up the development of testing methods to improve detection and strategies to address PFAS

Fulfilling Statutory Obligations and Enhancing Communication

- Develop effluent limitations guidelines (ELGs) for PFAS manufacturers and metal finishers and evaluate other ELGs necessary for reduction of PFAS discharges
- Address the most significant compliance challenges and requests from Congress and drinking water systems related to national primary drinking water regulations for certain PFAS
- Determine how to better use RCRA authorities to address releases from manufacturing operations of both producers and users of PFAS
- Add PFAS to the Toxic Release Inventory (TRI) in line with Congressional direction from the 2020 National Defense Authorization Act
- Enforce Clean Water Act and TSCA limitations on PFAS use and release to prevent further contamination
- Use Safe Drinking Water Act authority to investigate and address immediate endangerment
- Achieve more effective outcomes by prioritizing risk-based review of new and existing PFAS chemicals
- Implement section 8(a)7 to smartly collect necessary information, as Congress envisioned and consistent with TSCA, without overburdening small businesses and article importers.
- Work with Congress and industry to establish a clear liability framework that operates on polluter pays and protects passive receivers

Building Partnerships

- Advance remediation and cleanup efforts where drinking water supplies are impacted by PFAS contamination
- Work with states to assess risks from PFAS contamination and the development of analytical and risk assessment tools
- Finish public comment period for biosolids risk assessment and determine path forward based on comments
- Provide assistance to states and tribes on enforcement efforts
- Review and evaluate any pending state air petitions
- Resource and support investigations into violations to hold polluters accountable

3. **The MAHA report says environmental chemicals may pose risks to children's health. Citing the National Institutes of Health, it said there's a "need for continued studies from the public and private sectors, especially the NIH, to better understand the cumulative load of multiple exposures and how it may impact children's health." Meanwhile, the administration has cut funding for related studies. (https://kffhealthnews.org/news/article/maha-make-america-healthy-again-report-chronic-disease-rfk-trump-funding-cuts/) We were able to confirm that at least three of these grants listed here (https://cfpub.epa.gov/ncer_abstracts/index.cfm/fuseaction/recipients.display/rfa_id/666) were terminated by the EPA and remain so.**

   Is there anything you would like to add or make us aware of, in response to those reported details? Are they accurate? Is there anything we're missing?

We refer you to HHS and NIH for the first part of this question. The MAHA Commission is a presidential commission, so we would also refer you to the White House for comment on that commission specifically.

Of the grants you are referring to in the link, five of them have been terminated: #840198, #840199, #840201, #840202, and #840209. Our comment: "Maybe the Biden-Harris Administration shouldn't have forced their radical agenda of wasteful DEI programs and 'environmental justice' preferencing on the EPA's core mission of protecting human health and the environment." – EPA spox

- **Do you have any additional responses you wish to provide or make us aware of at this time?**

As Administrator Zeldin said to mark the 200th day of the Trump EPA, "The Trump EPA is proving that we can protect the environment and Power the Great American Comeback. 200 days, 200 top environmental actions. This is the pace that motivates us. We will continue to do everything in our power to rack up environmental win after environmental win for the American people."

Thank you,
EPA Press Office

From: Wynn Van Dusen <wynn.vandusen@lastweektonight.com>
Sent: Monday, August 11, 2025 11:40 AM
To: EPA Press Office <Press@epa.gov>; [redacted]@epa.gov>; [redacted]
<[redacted]@epa.gov>
Subject: Re: Request for comment from HBO TV Show // Thursday deadline

> **Caution:** This email originated from outside EPA, please exercise additional caution when deciding whether to open attachments or click on provided links.

We are still cross-checking with you all at the EPA as well as outside subject matter experts, but it was my understanding that this refers a series of actions from the EPA and the OMB in 2025. There was a March 2025 announcement from Mr. Zeldin and the EPA announcing that they are "Overhauling Biden-Harris Administration's "Social Cost of Carbon" in what the Mr. Zeldin refers to as "... the greatest day of deregulation our nation has seen."(March 12, 2025 EPA press release)

Then, in May, we find EO 14154, which notes it was issued "in consultation with the EPA" and states:

> OMB Memorandum: Specifically, EO 14154 states that, among other things, "[t]he calculation of the 'social cost of carbon' is marked by logical deficiencies, a poor basis in empirical science, politicization, the absence of a foundation in legislation." It **also charges the EPA with issuing guidance to address the inadequacies of social cost of carbon analyses and to consider eliminating the social cost of carbon** calculation from any Federal regulatory and permitting decisions. **EO 14154 accordingly disbanded the Interagency Working Group on the Social Cost of Greenhouse Gases (IWG),** which was established pursuant to EO 13990, and withdrew any guidance, instruction, recommendation, or document issued by the IWG. As such, it is no longer Federal government policy to maintain a uniform estimate of the monetized impacts of greenhouse gas em1ss10ns.

I was also looking at NYT reporting from May of this year, which notes that this move "effectively shelves" the social cost of carbon:

> https://www.nytimes.com/2025/05/10/climate/social-cost-carbon-trump.html
> The White House has ordered federal agencies to stop considering the economic damage caused by climate change when writing regulations, except in cases where it is "plainly required" by law.

The directive effectively shelves **a powerful tool that has been used for more than two decades by the federal government to weigh the costs and benefits of a particular policy or regulation.**

...

But "it is no longer federal government policy to maintain a uniform estimate of the monetized impacts of greenhouse gas emissions," Jeffrey B. Clark, the acting administrator of the White House Office of Information and Regulatory Affairs, wrote in a May 5 memo.

...

Scientists and environmental groups say that the Trump administration is denying reality.

"It's very clear that climate change is causing harms to people in the United States and around the world, and that these harms are growing worse with increasing warming," said Robert E. Kopp, a climate scientist at Rutgers University. **"By effectively saying the social cost of carbon should be treated as zero, this policy arbitrarily and capriciously ignores the science and economics of climate change."**

Michael Greenstone, an economist at the University of Chicago who first came up with the idea of the social cost of carbon as a justification for climate policy, said the new guidance means "feelings, not facts" would guide federal policy.

But we send out these fact-checking inquiries for a reason. Would you want to make us aware of any data or literature that refutes the idea that Mr. Zeldin and the EPA are overhauling or effectively doing away with the social costs of carbon? Are we misunderstanding what Mr. Zeldin meant by the greatest day of deregulation our nation has ever seen? Or are you suggesting that the above materials are accurate but Politico's phrasing is not? Happy to discuss further.

Thanks,

Wynn

From: EPA Press Office <Press@epa.gov>
Date: Monday, August 11, 2025 at 11:15 AM
To: Wynn Van Dusen <wynn.vandusen@lastweektonight.com>, [redacted]@epa.gov>, [redacted]@epa.gov>
Subject: Re: Request for comment from HBO TV Show // Thursday deadline

Wynn,

Recognizing this is an opinion piece, can you point out exactly where EPA made this declaration?

Thank you,
EPA Press Office

From: Wynn Van Dusen <wynn.vandusen@lastweektonight.com>
Sent: Monday, August 11, 2025 10:56 AM
To: EPA Press Office <Press@epa.gov>; [redacted]@epa.gov>; [redacted]@epa.gov>
Subject: Re: Request for comment from HBO TV Show // Thursday deadline

You don't often get email from wynn.vandusen@lastweektonight.com. Learn why this is important

Caution: This email originated from outside EPA, please exercise additional caution when deciding whether to open attachments or click on provided links.

Thank you for your response. The below quote is from a Politico op-ed, the link is included below the excerpt and I'll share it again for your review: https://www.politico.com/news/magazine/2025/04/02/rfk-jr-s-maha-movement-has-a-fatal-flaw-00263926. We are also cross-checking with subject matter experts and welcome any feedback on the accuracy of this statement you would like to provide and make us aware of.

From: EPA Press Office <Press@epa.gov>
Date: Monday, August 11, 2025 at 10:54 AM
To: Wynn Van Dusen <wynn.vandusen@lastweektonight.com>, [redacted]@epa.gov>, [redacted]@epa.gov>
Subject: Re: Request for comment from HBO TV Show // Thursday deadline

Wynn,

Could you clarify where you heard this?:

Under Trump, Lee Zeldin's EPA has declared that it will no longer consider the social costs of pollution when crafting policy.

Thank you,
EPA Press Office

From: Wynn Van Dusen <wynn.vandusen@lastweektonight.com>
Sent: Monday, August 11, 2025 6:31 AM
To: EPA Press Office <Press@epa.gov>; [redacted]@epa.gov>; [redacted]@epa.gov>
Subject: Request for comment from HBO TV Show // Thursday deadline

You don't often get email from wynn.vandusen@lastweektonight.com. Learn why this is important

Caution: This email originated from outside EPA, please exercise additional caution when deciding whether to open attachments or click on provided links.

Hi there,

My name is Wynn, and I'm a producer at Last Week Tonight with John Oliver, a show on HBO. I wanted to write because for this week's segment, airing on Sunday (8/17) and taping the day prior, we're planning on airing a piece on the Make America Healthy Again movement. As one part of that, we may briefly mention the EPA and some recent policy changes at the agency that appear to be at odds with the MAHA movement's goals. Ahead of that, I wanted to reach out to give you a heads up and a chance to respond to some specific questions we have about details that may end up in our segment.

My questions are below. **Our deadline for a response,** should you choose to provide one, is **10 am ET on Thursday, August 14th.** Please let me know if there's anyone else I should forward these inquiries to.

Our deadline for a response, should you choose to provide one, is **10 am ET on Thursday, August 14th.** Let me know if you have any questions for me, or if there's anything you'd like to discuss on the phone.

Thanks for your time.

Best,

Wynn

Questions for the EPA

- In our segment, we'll likely focus on some recent developments at the EPA, many of which feel directly at odds with some of Mr. Kennedy's concerns about toxic chemicals and pollutants. We might cite the following reported details:
    1. "Under Trump, Lee Zeldin's EPA has declared that it will no longer consider the social costs of pollution when crafting policy. It has eliminated restrictions on mercury emissions, soot and haze, all of which are pollutants with well-documented links to neurological damage and respiratory illness. As a result, mercury will now continue contaminating our water, air and food, and air pollutants will worsen asthma, weaken immune systems and increase rates of cancers, heart disease and stroke. The EPA has, in fact, moved to revoke the legal basis for regulating greenhouse gases altogether. These are precisely the kinds of environmental toxins that pose systemic threats to human health." (https://www.politico.com/news/magazine/2025/04/02/rfk-jr-s-maha-movement-has-a-fatal-flaw-00263926)
    2. The EPA has also been slow to move on microplastics and PFAS, both substances of growing concern among scientists and the general public. These invisible but omnipresent chemicals are a priority for the MAHA movement, singled out in the White House report for further study and policymaking. The EPA, though, has delayed implementing a new standard to limit PFAS in drinking water and announced it would consider whether to raise the limits of acceptable PFAS levels in community water systems, while also slashing funding for more research on the substance's health effects. (https://www.vox.com/health/421349/trump-rfk-jr-maha-movement-epa-health)
    3. The MAHA report says environmental chemicals may pose risks to children's health. Citing the National Institutes of Health, it said there's a "need for continued studies from the public and private sectors, especially the NIH, to better understand the cumulative load of multiple exposures and how it may impact children's health." Meanwhile, the administration has cut funding for related studies. (https://kffhealthnews.org/news/article/maha-make-america-healthy-again-report-chronic-disease-rfk-trump-funding-cuts/) We were able to confirm that at least three of these grants listed here (https://cfpub.epa.gov/ncer_abstracts/index.cfm/fuseaction/recipients.display/rfa_id/666) were terminated by the EPA and remain so.
    Is there anything you would like to add or make us aware of, in response to those reported details? Are they accurate? Is there anything we're missing?

- **Do you have any additional responses you wish to provide or make us aware of at this time?**

Thanks for your time. Let me know if you have any questions for me.

Best,
Wynn

--

Wynn Van Dusen
Senior News Producer, Last Week Tonight with John Oliver

Message

From: Hirsch, Brigit [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=AA75886F47C84B4092E7F04AE37B550E-2BB06795-6A]
Sent: 8/15/2025 8:06:14 PM
To: [redacted]@epa.gov]; Holran, Carolyn [Holran.Carolyn@epa.gov]
CC: Vaseliou, Molly [Vaseliou.Molly@epa.gov]; Mandy, Cora [Mandy.Cora@epa.gov]; Bastasch, Mike [Bastasch.Mike@epa.gov]
Subject: RE: FLAG: Last Week Tonight/HBO - Social cost or carbon-follow-up - DDL ASAP

Thank you!!

From: [redacted]@epa.gov>
Sent: Friday, August 15, 2025 4:02 PM
To: Hirsch, Brigit <Hirsch.Brigit@epa.gov>; Holran, Carolyn <Holran.Carolyn@epa.gov>
Cc: Vaseliou, Molly <Vaseliou.Molly@epa.gov>; Mandy, Cora <Mandy.Cora@epa.gov>; Bastasch, Mike <Bastasch.Mike@epa.gov>
Subject: RE: FLAG: Last Week Tonight/HBO - Social cost or carbon-follow-up - DDL ASAP

Got it. Will do.

[redacted]

From: Hirsch, Brigit <Hirsch.Brigit@epa.gov>
Sent: Friday, August 15, 2025 4:00 PM
To: [redacted]@epa.gov>; Holran, Carolyn <Holran.Carolyn@epa.gov>
Cc: Vaseliou, Molly <Vaseliou.Molly@epa.gov>; Mandy, Cora <Mandy.Cora@epa.gov>; Bastasch, Mike <Bastasch.Mike@epa.gov>
Subject: RE: FLAG: Last Week Tonight/HBO - Social cost or carbon-follow-up - DDL ASAP

[redacted] we can simply send this back:

Section 112(i)(4) specifically states that the President may exempt any stationary source "if the President determines that the technology to implement such standard is not available and that it is in the national security interests of the United States to do so." This is an authority that solely rests with the President, not EPA.

Any further questions on this process or the status of exemptions should be directed to the White House.

From: Hirsch, Brigit
Sent: Friday, August 15, 2025 3:51 PM
To: [redacted]@epa.gov>; Holran, Carolyn <Holran.Carolyn@epa.gov>
Cc: Vaseliou, Molly <Vaseliou.Molly@epa.gov>; Mandy, Cora <Mandy.Cora@epa.gov>; Bastasch, Mike <Bastasch.Mike@epa.gov>
Subject: RE: FLAG: Last Week Tonight/HBO - Social cost or carbon-follow-up - DDL ASAP

Thanks Jeff! On it! I want a writer's credit on this episode…

From: [redacted]@epa.gov>
Sent: Friday, August 15, 2025 3:49 PM
To: Hirsch, Brigit <Hirsch.Brigit@epa.gov>; Holran, Carolyn <Holran.Carolyn@epa.gov>
Cc: Vaseliou, Molly <Vaseliou.Molly@epa.gov>; Mandy, Cora <Mandy.Cora@epa.gov>; Bastasch, Mike <Bastasch.Mike@epa.gov>
Subject: RE: FLAG: Last Week Tonight/HBO - Social cost or carbon-follow-up - DDL ASAP

Yet another follow-up, although no deadline:

Thank you for these responses. Do you have any response to this reporting, that the EPA allowed companies to email to request exemptions from requirements to reduce emissions of toxic chemicals?

https://apnews.com/article/trump-epa-clean-air-exemption-mercury-13f009f79fdc84443a4286818d2a01bba
As part of a push to roll back dozens of environmental regulations, the Trump administration is offering coal-fired power plants and other industrial polluters a chance for exemptions from requirements to reduce emissions of toxic chemicals such as mercury, arsenic and benzene.
The Environmental Protection Agency has set up an electronic mailbox to allow regulated companies to request a presidential exemption under the Clean Air Act to a host of Biden-era rules.

https://www.nytimes.com/2025/03/27/climate/epa-air-pollution-exemption-mercury-coal-ash.html
The latest policy allows for companies to apply for exemptions of up to two years, the maximum allowed under the Clean Air Act, from numerous new restrictions on emissions of toxic chemicals like mercury and arsenic. Another is ethylene oxide, a colorless gas that is widely used to sterilize medical devices and is also a carcinogen.

[redacted]

From: [redacted]
Sent: Friday, August 15, 2025 12:09 PM
To: Hirsch, Brigit <Hirsch.Brigit@epa.gov>; Holran, Carolyn <Holran.Carolyn@epa.gov>
Cc: Vaseliou, Molly <Vaseliou.Molly@epa.gov>; Mandy, Cora <Mandy.Cora@epa.gov>; Bastasch, Mike <Bastasch.Mike@epa.gov>
Subject: RE: FLAG: Last Week Tonight/HBO - Social cost or carbon-follow-up - DDL ASAP

Got it. Thanks.

[redacted]

From: Hirsch, Brigit <Hirsch.Brigit@epa.gov>
Sent: Friday, August 15, 2025 12:02 PM
To: [redacted]@epa.gov>; Holran, Carolyn <Holran.Carolyn@epa.gov>
Cc: Vaseliou, Molly <Vaseliou.Molly@epa.gov>; Mandy, Cora <Mandy.Cora@epa.gov>; [redacted]@epa.gov>
Subject: RE: FLAG: Last Week Tonight/HBO - Social cost or carbon-follow-up - DDL ASAP

We can send the below, [redacted]!

From: Hirsch, Brigit
Sent: Friday, August 15, 2025 10:36 AM
To: [redacted]@epa.gov>; Holran, Carolyn <Holran.Carolyn@epa.gov>

Cc: Vaseliou, Molly <Vaseliou.Molly@epa.gov>; Mandy, Cora <Mandy.Cora@epa.gov>; Bastasch, Mike <Bastasch.Mike@epa.gov>
Subject: RE: FLAG: Last Week Tonight/HBO - Social cost or carbon-follow-up - DDL ASAP

Thank you!! Ex. 5 Deliberative Process (DP) Back to you shortly!

From: [redacted]@epa.gov>
Sent: Friday, August 15, 2025 10:18 AM
To: Holran, Carolyn <Holran.Carolyn@epa.gov>; Hirsch, Brigit <Hirsch.Brigit@epa.gov>
Cc: Vaseliou, Molly <Vaseliou.Molly@epa.gov>; Mandy, Cora <Mandy.Cora@epa.gov>; Bastasch, Mike <Bastasch.Mike@epa.gov>
Subject: FLAG: Last Week Tonight/HBO - Social cost or carbon-follow-up - DDL ASAP

Please see a response where the reporter mentions what will be included in the segment and if we have any comments.

[redacted]

From: Wynn Van Dusen <wynn.vandusen@lastweektonight.com>
Sent: Friday, August 15, 2025 10:09 AM
To: EPA Press Office <Press@epa.gov>; [redacted]@epa.gov>; [redacted]@epa.gov>
Subject: Re: Request for comment from HBO TV Show // Thursday deadline

> **Caution:** This email originated from outside EPA, please exercise additional caution when deciding whether to open attachments or click on provided links.

Thank you for your responses. Our script is still in progress so I wanted to alert you to some reporting we are likely to reference in the script.



It is correct that EPA is proposing to repeal all "greenhouse gas" emissions standards for the power sector under Section 111 of the Clean Air Act (CAA). In *West Virginia v. EPA,* the U.S. Supreme Court held that the major questions doctrine barred EPA from misusing the Clean Air Act to manipulate Americans' energy choices and shift the balance of the nation's electrical fuel mix. The Biden Administration issued its own rule in 2024, which many critics say is just another attempt to achieve the unlawful fuel-shifting goals of the Clean Power Plan. Unlike other air pollutants with a regional or local impact, the targeted emissions are global in nature. As a result, any potential public health harms have not been accurately attributed to emissions from the U.S. power sector. In light of this, EPA is proposing that the CAA requires the agency to make a finding that the targeted emissions from fossil fuel-fired power plants significantly contribute to dangerous air pollution before regulating these emissions from this source category. In addition, EPA is proposing that

greenhouse gas emissions from fossil fuel-fired power plants do not contribute significantly to dangerous air pollution within the meaning of the statute.

As EPA Administrator Lee Zeldin has said, "Affordable, reliable electricity is key to the American dream and a natural byproduct of national energy dominance. According to many, the primary purpose of these Biden-Harris administration regulations was to destroy industries that didn't align with their narrow-minded climate change zealotry. Together, these rules have been criticized as being designed to regulate coal, oil and gas out of existence."



This article is incorrect: EPA's proposal would leave the Obama-era 2012 MATS requirements in place and propose to remove only the 2024 MATS Amendments, **which are not in effect** (effective date is July 8, 2027).

Again, the effective 2012 MATS requirements remain in effect. The 2012 MATS has driven sharp reductions in harmful air toxic pollutants from coal- and oil-fired power plants. Data shows:

- 2021 mercury emissions from coal-fired EGUs were 90 percent lower than pre-MATS levels;
- Since 2010, acid gas HAP emissions have been reduced by over 96 percent; and
- Emissions of the non-mercury metals – including nickel, arsenic, and lead – have been reduced by more than 81 percent.

The Biden-Harris EPA stated in its 2024 residual risk and technology review that the 2012 MATS rule for coal plants provided an ample margin of safety to protect public health, which we retained in this proposal. The Biden-Harris EPA's regulatory impact analysis also shows the 2024 MATS rule would result in net costs, not net benefits.

EPA is currently soliciting comment on other achievable and cost-effective mercury standards for lignite-fired EGUs that are based on developments in practices, processes, and control technologies for consideration as an alternative to repealing the 1.2 lb/TBtu Hg standard for lignite-fired EGUs. The public comment period closes on August 11, 2025.



It is correct that EPA has proposed to rescind the 2009 Endangerment Finding. If finalized, this proposal would undo the underpinning of $1 trillion in costly regulations, saving Americans more than $54 billion annually. Our comment:

"EPA's proposal is legal in nature. The Endangerment Finding is the legal prerequisite used by the Obama and Biden Administrations to regulate emissions from new motor vehicles and new motor vehicle engines. Absent this finding, EPA would lack statutory authority under Section 202(a) of the Clean Air Act (CAA) to prescribe standards for greenhouse gas emissions. EPA is bound by the laws established by Congress, including under the Clean Air Act. Congress never explicitly gave EPA authority to impose greenhouse gas regulations for cars and trucks. In fact, Congress recently pulled back on the few, specific actions it previously authorized for greenhouse gases in the One Big Beautiful Bill, and it recently disapproved EPA's decisions to allow California to impose EV mandates in the name of regulating greenhouse gas emissions."

"This action is only a proposal for which EPA is requesting public comment, and no final action has been taken. The Endangerment Finding **only relates to greenhouse emissions from motor vehicles**—which no fake news outlet has accurately reported—and does not relate to any traditional air pollution and those standards would still remain in effect if this regulation is finalized."

From: EPA Press Office <Press@epa.gov>
Date: Wednesday, August 13, 2025 at 3:12 PM
To: Wynn Van Dusen <wynn.vandusen@lastweektonight.com>, [redacted]@epa.gov>, [redacted]@epa.gov>
Subject: Re: Request for comment from HBO TV Show // Thursday deadline

Wynn,

Please see responses (in blue) for your use:

Wynn, fact-checking your last email and answering your other questions below. There is a lot of inaccuracy and speculation here, which is a disservice to your audience.

We are still cross-checking with you all at the EPA as well as outside subject matter experts, but it was my understanding that this refers a series of actions from the EPA and the OMB in 2025. There was a March 2025 announcement from Mr. Zeldin and the EPA announcing that they are "Overhauling Biden-Harris Administration's "Social Cost of Carbon" in what the Mr. Zeldin refers to as "... the greatest day of deregulation our nation has seen."( )

The bullet point in that press release you're presumably referring to says, "Overhaul the Biden-Harris 'Social Cost of Carbon'". This refers to reviewing and changing (AKA *overhauling*) a Biden-era metric in line with President Trump's executive orders fulfilling the will of the people as expressed at the ballot box last November. It is in no way synonymous

with EPA "**declaring that it will no longer consider the social costs of pollution when crafting policy**", which is explicitly something that EPA has never said.

You do not seem to understand what the "Social Cost of Carbon" is or how it works.

Then, in May, we find EO 14154, which notes it was issued "in consultation with the EPA" and states:

Specifically, EO 14154 states that, among other things, "[t]he calculation of the 'social cost of carbon' is marked by logical deficiencies, a poor basis in empirical science, politicization, the absence of a foundation in legislation." It **also charges the EPA with issuing guidance to address the inadequacies of social cost of carbon analyses and to consider eliminating the social cost of carbon** calculation from any Federal regulatory and permitting decisions. **EO 14154 accordingly disbanded the Interagency Working Group on the Social Cost of Greenhouse Gases (IWG),** which was established pursuant to EO 13990, and withdrew any guidance, instruction, recommendation, or document issued by the IWG. As such, it is no longer Federal government policy to maintain a uniform estimate of the monetized impacts of greenhouse gas em1ss10ns.

Once again, this refers to *overhauling* a Biden-era metric. It is in no way synonymous with "**declaring that it will no longer consider the social costs of pollution when crafting policy**", which is explicitly something that EPA has never said.

I was also looking at NYT reporting from May of this year, which notes that this move "effectively shelves" the social cost of carbon:

The White House has ordered federal agencies to stop considering the economic damage caused by climate change when writing regulations, except in cases where it is "plainly required" by law.
The directive a powerful tool that has been used for more than two decades by the federal government to weigh the costs and benefits of a particular policy or regulation.
...
But "it is no longer federal government policy to maintain a uniform estimate of the monetized impacts of greenhouse gas emissions," Jeffrey B. Clark, the acting administrator of the White House Office of Information and Regulatory Affairs, wrote in a May 5 memo.
...
Scientists and environmental groups say that the Trump administration is denying reality.
"It's very clear that climate change is causing harms to people in the United States and around the world, and that these harms are growing worse with increasing warming," said Robert E. Kopp, a climate scientist at Rutgers University. **"By effectively saying the social cost of carbon should be treated as zero, this policy arbitrarily and capriciously ignores the science and economics of climate change."**

Michael Greenstone, an economist at the University of Chicago who first came up with the idea of the social cost of carbon as a justification for climate policy, said the new guidance means "feelings, not facts" would guide federal policy.

These examples list federal agencies not named EPA. If you were to say that EPA declared it would no longer consider the social costs of pollution when crafting policy, you would be incorrect. You also seem to be conflating greenhouse gas emissions with criteria air pollutants that EPA is legally obligated to regulate: the Clean Air Act requires EPA to set National Ambient Air Quality Standards (NAAQS) for six commonly found air pollutants known as criteria air pollutants. These are: ozone, particulate matter, carbon monoxide, lead, sulfur dioxide, and nitrogen dioxide.

But we send out these fact-checking inquiries for a reason. Would you want to make us aware of any data or literature that refutes the idea that Mr. Zeldin and the EPA are overhauling or effectively doing away with the social costs of carbon? Are we misunderstanding what Mr. Zeldin meant by the greatest day of deregulation our nation has ever seen? Or are you suggesting that the above materials are accurate but Politico's phrasing is not? Happy to discuss further.

Good thing because you have no idea what you're talking about. You have a fundamental misunderstanding of the facts based on incorrect speculation from your sources, which are not accurate or precise in their understanding of EPA's statutory obligations.

ANSWERS TO ORIGINAL QUESTIONS

1. **"Under Trump, Lee Zeldin's EPA has declared that it will no longer consider the social costs of pollution when crafting policy. It has eliminated restrictions on mercury emissions, soot and haze, all of which are pollutants with well-documented links to neurological damage and respiratory illness. As a result, mercury will now continue contaminating our water, air and food, and air pollutants will worsen asthma, weaken immune systems and increase rates of cancers, heart disease and stroke. The EPA has, in fact, moved to revoke the legal basis for regulating greenhouse gases altogether. These are precisely the kinds of environmental toxins that pose systemic threats to human health." (https://www.politico.com/news/magazine/2025/04/02/rfk-jr-s-maha-movement-has-a-fatal-flaw-00263926)**

This is not accurate. On mercury, the 2024 MATS Amendments are not in effect (effective date is July 8, 2027). The effective 2012 MATS requirements remain in effect. The 2012 MATS has driven sharp reductions in harmful air toxic pollutants from coal- and oil-fired power plants. Data shows:

- 2021 mercury emissions from coal-fired EGUs were 90 percent lower than pre-MATS levels;
- Since 2010, acid gas HAP emissions have been reduced by over 96 percent; and
- Emissions of the non-mercury metals – including nickel, arsenic, and lead – have been reduced by more than 81 percent.

The Biden-Harris EPA stated in its 2024 residual risk and technology review that the 2012 MATS rule for coal plants provided an ample margin of safety to protect public health, which was retained in the current proposal. The Biden-Harris EPA's regulatory impact analysis also shows the 2024 MATS rule would result in net costs, not net benefits.

The public comment period on the proposal closes on August 11, 2025.

"No longer will the EPA view the goals of protecting our environment and growing our economy as binary choices. We will and we must choose both. Administrator Lee Zeldin announced his Powering the Great American Comeback initiative to better achieve the agency's statutory mission and as such the first pillar of this initiative is clean air, land, and water for EVERY American. In his first term, President Trump advanced conservation and environmental stewardship while promoting economic growth for families across the country and will continue to do so this term." – EPA spox

The Trump EPA has done incredible work to keep America clean, carrying out its core mission of protecting human health and the environment:

- The Administrator's priorities for EPA can be found here: EPA Administrator Lee Zeldin Announces EPA's "Powering the Great American Comeback" Initiative | US EPA
- On the 100th day of the Trump EPA, Administrator Zeldin announced 100 of Trump's environmental wins: 100 Days, 100 Environmental Accomplishments | US EPA
- On the 200th day of the Trump EPA, Administrator Zeldin announced 100 *more* of Trump's environmental wins: EPA Celebrates Another 100 Days with 100 More Pro-Environmental Actions | USA EPA
- Just last month, thanks to President Trump's leadership, Administrator Zeldin announced a 100% solution to the decades-old Tijuana River Sewage Crisis: United States and Mexico Reach Agreement to Permanently and Urgently End Decades-Long Tijuana River Sewage Crisis
- West Lake Landfill: After visiting St. Louis with Senator Hawley, Administrator Zeldin announced an expedited cleanup timeline for the stie. The update cuts nearly two years off of the initial draft timeline presented by PRP consultants for the West Lake site, outlining resource needs and actionable items to expedite the cleanup from a May 2029 excavation start date to a 2027 excavation start date.

In addition to all of this action in just 200 days, the Trump EPA proposed to rescind the 2009 Endangerment Finding. The Clean Air Act requires EPA to set National Ambient Air Quality Standards (NAAQS) for six commonly found air pollutants known as criteria air pollutants. These are: ozone, particulate matter, carbon monoxide, lead, sulfur dioxide, and nitrogen dioxide – this does not include greenhouse gases.

The EPA will not operate as an unconstitutional lawmaker, as it did under previous administrations. The EPA will follow the law.

As EPA Administrator Lee Zeldin said in an interview, "If Congress wants the EPA to be regulating the heck out of carbon dioxide, then they can put it into law. But even the Endangerment Finding itself in 2009 never individually studied carbon dioxide as an endangerment to public health and welfare. They had to do all these other mental leaps because they didn't have the science and the data to be able to make a direct connection."

2. **The EPA has also been slow to move on microplastics and PFAS, both substances of growing concern among scientists and the general public. These invisible but omnipresent chemicals are a priority for the MAHA movement, singled out in the White House report for further study and policymaking. The EPA, though, has delayed implementing a new standard to limit PFAS in drinking water and announced it would consider whether to raise the limits of acceptable PFAS levels in community water systems, while also slashing funding for more research on the substance's health effects. (https://www.vox.com/health/421349/trump-rfk-jr-maha-movement-epa-health)**

This is **categorically untrue**. It would be fearmongering and a disservice to your viewers to imply this at all. See the list of what EPA has accomplished in just 200 days on PFAS below:

"Building on the historic actions to address PFAS during the first Trump Administration, EPA is tackling PFAS from all of our program offices, advancing research and testing, stopping PFAS from getting into drinking water systems, holding polluters accountable, and more. This is just a fraction of the work the agency is doing on PFAS during President Trump's second term to ensure Americans have the cleanest air, land, and water." – EPA spox

Trump Administration Action
In April, U.S. Environmental Protection Agency (EPA) Administrator Lee Zeldin outlined upcoming agency action to address Per- and Polyfluoroalkyl Substances (PFAS). In this suite of actions, Administrator Zeldin announced a long list that included in part the designation of an agency lead for PFAS, the creation of effluent limitations guidelines (ELGs) for certain PFAS to stop these forever chemicals from entering drinking water systems, and initiatives to engage with Congress and industry to establish a clear liability framework that ensures the polluter pays and passive receivers are protected. This list is the first, not the last, of all decisions and actions EPA will be taking to address PFAS over the course of the Trump Administration.

In a May announcement, the Trump EPA launched the PFAS OUT initiative will enhance engagement on addressing PFAS by proactively connecting with every public water utility known to need capital improvements to address PFAS in their systems. EPA will share resources, tools, funding and technical assistance opportunities to help utilities meet the federal drinking water standards. PFAS OUT will ensure that no community is left behind as we work to protect public health and bring utilities into compliance with federal drinking water standards.

EPA continues to offer free water technical assistance (WaterTA) that provides services to water systems to improve their drinking water and help communities access available funding. EPA's WaterTA initiatives work with water systems nationwide to identify affordable solutions to assess and address PFAS, including PFOA and PFOS. EPA supports water systems in reducing PFAS and emerging contaminants (EC) in drinking water through a range of funding resources. In May, EPA announced the availability of $945 million in grants under the EC program that will go to states and territories to help small and disadvantaged communities address PFAS in their water.

EPA is supporting the U.S. Department of Justice in defending ongoing legal challenges to the PFAS National Primary Drinking Water Regulation with respect to PFOA and PFOS.

The agency determined that the process by which it promulgated the preliminary regulatory determinations simultaneously with the proposed regulation was inappropriate and may not comply with the statutory requirements of Safe Drinking Water Act for PFHxS, PFNA, HFPO-DA (commonly known as GenX), and the Hazard Index mixture of these three PFAS plus PFBS. Therefore, the agency intends to rescind the regulations and reconsider these regulatory determinations, ensuring the Agency's actions adhere to the Safe Drinking Water Act process. ***While EPA cannot pre-determine the outcome, it is possible that the result could be more stringent requirements.***

In 2019, the Trump EPA announced the PFAS Action Plan. This historic Plan responded to extensive public interest and input the agency received and represented the first time EPA built a multi-media, multi-program, national communication and research plan to address an emerging environmental challenge like PFAS. EPA's Action Plan identified both short-term solutions for addressing these chemicals and long-term strategies that will help provide the tools and technologies states, tribes, and local communities need to provide clean and safe drinking water to their residents and to address PFAS at the source—even before it gets into the water.

Here is an easily digestible list of actions the agency already announced to address PFAS:

Strengthening the Science

- Designate an agency lead for PFAS to better align and manage PFAS efforts across agency programs
- Implement a PFAS testing strategy under Toxic Substances Control Act (TSCA) Section 4 to seek scientific information informed by hazard characteristics and exposure pathways
- Launch additional efforts on air related PFAS information collection and measurement techniques related to air emissions
- Identify and address available information gaps where not all PFAS can be measured and controlled
- Provide more frequent updates to the PFAS Destruction and Disposal Guidance—changing from every three years to annually—as EPA continues to assess the effectiveness of available treatment technologies
- Ramp up the development of testing methods to improve detection and strategies to address PFAS

Fulfilling Statutory Obligations and Enhancing Communication

- Develop effluent limitations guidelines (ELGs) for PFAS manufacturers and metal finishers and evaluate other ELGs necessary for reduction of PFAS discharges
- Address the most significant compliance challenges and requests from Congress and drinking water systems related to national primary drinking water regulations for certain PFAS
- Determine how to better use RCRA authorities to address releases from manufacturing operations of both producers and users of PFAS
- Add PFAS to the Toxic Release Inventory (TRI) in line with Congressional direction from the 2020 National Defense Authorization Act
- Enforce Clean Water Act and TSCA limitations on PFAS use and release to prevent further contamination
- Use Safe Drinking Water Act authority to investigate and address immediate endangerment
- Achieve more effective outcomes by prioritizing risk-based review of new and existing PFAS chemicals
- Implement section 8(a)7 to smartly collect necessary information, as Congress envisioned and consistent with TSCA, without overburdening small businesses and article importers.
- Work with Congress and industry to establish a clear liability framework that operates on polluter pays and protects passive receivers

Building Partnerships

- Advance remediation and cleanup efforts where drinking water supplies are impacted by PFAS contamination
- Work with states to assess risks from PFAS contamination and the development of analytical and risk assessment tools
- Finish public comment period for biosolids risk assessment and determine path forward based on comments
- Provide assistance to states and tribes on enforcement efforts
- Review and evaluate any pending state air petitions
- Resource and support investigations into violations to hold polluters accountable

3. **The MAHA report says environmental chemicals may pose risks to children's health. Citing the National Institutes of Health, it said there's a "need for continued studies from the public and private sectors, especially the NIH, to better understand the cumulative load of multiple exposures and how it may impact children's health." Meanwhile, the administration has cut funding for related studies. (https://kffhealthnews.org/news/article/maha-make-america-healthy-again-report-chronic-disease-rfk-trump-funding-cuts/) We were able to confirm that at least three of these grants listed here (https://cfpub.epa.gov/ncer_abstracts/index.cfm/fuseaction/recipients.display/rfa_id/666) were terminated by the EPA and remain so.**

   Is there anything you would like to add or make us aware of, in response to those reported details? Are they accurate? Is there anything we're missing?

We refer you to HHS and NIH for the first part of this question. The MAHA Commission is a presidential commission, so we would also refer you to the White House for comment on that commission specifically.

Of the grants you are referring to in the link, five of them have been terminated: #840198, #840199, #840201, #840202, and #840209. Our comment: "Maybe the Biden-Harris Administration shouldn't have forced their radical agenda of wasteful DEI programs and 'environmental justice' preferencing on the EPA's core mission of protecting human health and the environment." – EPA spox

- **Do you have any additional responses you wish to provide or make us aware of at this time?**

As Administrator Zeldin said to mark the 200th day of the Trump EPA, "The Trump EPA is proving that we can protect the environment and Power the Great American Comeback. 200 days, 200 top environmental actions. This is the pace that motivates us. We will continue to do everything in our power to rack up environmental win after environmental win for the American people."

Thank you,
EPA Press Office

From: Wynn Van Dusen <wynn.vandusen@lastweektonight.com>
Sent: Monday, August 11, 2025 11:40 AM
To: EPA Press Office <Press@epa.gov>; [redacted]@epa.gov>; [redacted]@epa.gov>
Subject: Re: Request for comment from HBO TV Show // Thursday deadline

> **Caution:** This email originated from outside EPA, please exercise additional caution when deciding whether to open attachments or click on provided links.

We are still cross-checking with you all at the EPA as well as outside subject matter experts, but it was my understanding that this refers a series of actions from the EPA and the OMB in 2025. There was a March 2025 announcement from Mr. Zeldin and the EPA announcing that they are "Overhauling Biden-Harris Administration's "Social Cost of Carbon" in what the Mr. Zeldin refers to as "... the greatest day of deregulation our nation has seen."(March 12, 2025 EPA press release)

Then, in May, we find EO 14154, which notes it was issued "in consultation with the EPA" and states:

> OMB Memorandum: Specifically, EO 14154 states that, among other things, "[t]he calculation of the 'social cost of carbon' is marked by logical deficiencies, a poor basis in empirical science, politicization, the absence of a

foundation in legislation." It **also charges the EPA with issuing guidance to address the inadequacies of social cost of carbon analyses and to consider eliminating the social cost of carbon** calculation from any Federal regulatory and permitting decisions. **EO 14154 accordingly disbanded the Interagency Working Group on the Social Cost of Greenhouse Gases (IWG),** which was established pursuant to EO 13990, and withdrew any guidance, instruction, recommendation, or document issued by the IWG. As such, it is no longer Federal government policy to maintain a uniform estimate of the monetized impacts of greenhouse gas em1ss10ns.

I was also looking at NYT reporting from May of this year, which notes that this move "effectively shelves" the social cost of carbon:

> https://www.nytimes.com/2025/05/10/climate/social-cost-carbon-trump.html
> The White House has ordered federal agencies to stop considering the economic damage caused by climate change when writing regulations, except in cases where it is "plainly required" by law.
> **The directive effectively shelves a powerful tool that has been used for more than two decades by the federal government to weigh the costs and benefits of a particular policy or regulation.**
> ...
> **But "it is no longer federal government policy to maintain a uniform estimate of the monetized impacts of greenhouse gas emissions,"** Jeffrey B. Clark, the acting administrator of the White House Office of Information and Regulatory Affairs, wrote in a May 5 memo.
> ...
> Scientists and environmental groups say that the Trump administration is denying reality.
> "It's very clear that climate change is causing harms to people in the United States and around the world, and that these harms are growing worse with increasing warming," said Robert E. Kopp, a climate scientist at Rutgers University. **"By effectively saying the social cost of carbon should be treated as zero, this policy arbitrarily and capriciously ignores the science and economics of climate change."**
> Michael Greenstone, an economist at the University of Chicago who first came up with the idea of the social cost of carbon as a justification for climate policy, said the new guidance means "feelings, not facts" would guide federal policy.

But we send out these fact-checking inquiries for a reason. Would you want to make us aware of any data or literature that refutes the idea that Mr. Zeldin and the EPA are overhauling or effectively doing away with the social costs of carbon? Are we misunderstanding what Mr. Zeldin meant by the greatest day of deregulation our nation has ever seen? Or are you suggesting that the above materials are accurate but Politico's phrasing is not? Happy to discuss further.

Thanks,

Wynn

From: EPA Press Office <Press@epa.gov>
Date: Monday, August 11, 2025 at 11:15 AM
To: Wynn Van Dusen <wynn.vandusen@lastweektonight.com>, [redacted]@epa.gov>, [redacted]@epa.gov>
Subject: Re: Request for comment from HBO TV Show // Thursday deadline

Wynn,

Recognizing this is an opinion piece, can you point out exactly where EPA made this declaration?

Thank you,
EPA Press Office

From: Wynn Van Dusen <wynn.vandusen@lastweektonight.com>
Sent: Monday, August 11, 2025 10:56 AM
To: EPA Press Office <Press@epa.gov>; [redacted]@epa.gov>; [redacted]
[redacted]@epa.gov>
Subject: Re: Request for comment from HBO TV Show // Thursday deadline

You don't often get email from wynn.vandusen@lastweektonight.com. Learn why this is important

Caution: This email originated from outside EPA, please exercise additional caution when deciding whether to open attachments or click on provided links.

Thank you for your response. The below quote is from a Politico op-ed, the link is included below the excerpt and I'll share it again for your review: https://www.politico.com/news/magazine/2025/04/02/rfk-jr-s-maha-movement-has-a-fatal-flaw-00263926. We are also cross-checking with subject matter experts and welcome any feedback on the accuracy of this statement you would like to provide and make us aware of.

From: EPA Press Office <Press@epa.gov>
Date: Monday, August 11, 2025 at 10:54 AM
To: Wynn Van Dusen <wynn.vandusen@lastweektonight.com>, [redacted]
[redacted]@epa.gov>, [redacted]@epa.gov>
Subject: Re: Request for comment from HBO TV Show // Thursday deadline

Wynn,

Could you clarify where you heard this?:

Under Trump, Lee Zeldin's EPA has declared that it will no longer consider the social costs of pollution when crafting policy.

Thank you,
EPA Press Office

From: Wynn Van Dusen <wynn.vandusen@lastweektonight.com>
Sent: Monday, August 11, 2025 6:31 AM
To: EPA Press Office <Press@epa.gov>; [redacted]@epa.gov>; [redacted]
[redacted]@epa.gov>
Subject: Request for comment from HBO TV Show // Thursday deadline

You don't often get email from wynn.vandusen@lastweektonight.com. Learn why this is important

Caution: This email originated from outside EPA, please exercise additional caution when deciding whether to open attachments or click on provided links.

Hi there,

My name is Wynn, and I'm a producer at Last Week Tonight with John Oliver, a show on HBO. I wanted to write because for this week's segment, airing on Sunday (8/17) and taping the day prior, we're planning on airing a piece on the Make America Healthy Again movement. As one part of that, we may briefly mention the EPA and some recent policy changes at the agency that appear to be at odds with the MAHA movement's goals. Ahead of that, I wanted to reach out to give you a heads up and a chance to respond to some specific questions we have about details that may end up in our segment.

My questions are below. **Our deadline for a response,** should you choose to provide one, is **10 am ET on Thursday, August 14th.** Please let me know if there's anyone else I should forward these inquiries to.

Our deadline for a response, should you choose to provide one, is **10 am ET on Thursday, August 14th.** Let me know if you have any questions for me, or if there's anything you'd like to discuss on the phone.

Thanks for your time.

Best,

Wynn

Questions for the EPA

- In our segment, we'll likely focus on some recent developments at the EPA, many of which feel directly at odds with some of Mr. Kennedy's concerns about toxic chemicals and pollutants. We might cite the following reported details:
    1. "Under Trump, Lee Zeldin's EPA has declared that it will no longer consider the social costs of pollution when crafting policy. It has eliminated restrictions on mercury emissions, soot and haze, all of which are pollutants with well-documented links to neurological damage and respiratory illness. As a result, mercury will now continue contaminating our water, air and food, and air pollutants will worsen asthma, weaken immune systems and increase rates of cancers, heart disease and stroke. The EPA has, in fact, moved to revoke the legal basis for regulating greenhouse gases altogether. These are precisely the kinds of environmental toxins that pose systemic threats to human health." (https://www.politico.com/news/magazine/2025/04/02/rfk-jr-s-maha-movement-has-a-fatal-flaw-00263926)
    2. The EPA has also been slow to move on microplastics and PFAS, both substances of growing concern among scientists and the general public. These invisible but omnipresent chemicals are a priority for the MAHA movement, singled out in the White House report for further study and policymaking. The EPA, though, has delayed implementing a new standard to limit PFAS in drinking water and announced it would consider whether to raise the limits of acceptable PFAS levels in community water systems, while also slashing funding for more research on the substance's health effects. (https://www.vox.com/health/421349/trump-rfk-jr-maha-movement-epa-health)
    3. The MAHA report says environmental chemicals may pose risks to children's health. Citing the National Institutes of Health, it said there's a "need for continued studies from the public and private sectors, especially the NIH, to better understand the cumulative load of multiple exposures and how it may impact children's health." Meanwhile, the administration has cut funding for related studies. (https://kffhealthnews.org/news/article/maha-make-america-healthy-again-report-chronic-disease-rfk-trump-funding-cuts/) We were able to confirm that at least three of these grants listed here (https://cfpub.epa.gov/ncer_abstracts/index.cfm/fuseaction/recipients.display/rfa_id/666) were terminated by the EPA and remain so.

Is there anything you would like to add or make us aware of, in response to those reported details? Are they accurate? Is there anything we're missing?

- **Do you have any additional responses you wish to provide or make us aware of at this time?**

Thanks for your time. Let me know if you have any questions for me.

Best,
Wynn

--

Wynn Van Dusen
Senior News Producer, Last Week Tonight with John Oliver

Message

From: Hirsch, Brigit [Hirsch.Brigit@epa.gov]
Sent: 11/20/2025 5:37:43 PM
To: Holran, Carolyn [Holran.Carolyn@epa.gov]; Mandy, Cora [Mandy.Cora@epa.gov]
Subject: Re: New York Times deadline inquiry: Copper smelter

Yes!! One sec

Get Outlook for iOS

From: Holran, Carolyn <Holran.Carolyn@epa.gov>
Sent: Thursday, November 20, 2025 12:33:36 PM
To: Hirsch, Brigit <Hirsch.Brigit@epa.gov>; Mandy, Cora <Mandy.Cora@epa.gov>
Subject: RE: New York Times deadline inquiry: Copper smelter

The attachments didn't come through. Can you send them?

From: Hirsch, Brigit <Hirsch.Brigit@epa.gov>
Sent: Thursday, November 20, 2025 12:33 PM
To: Holran, Carolyn <Holran.Carolyn@epa.gov>; Mandy, Cora <Mandy.Cora@epa.gov>
Subject: Re: New York Times deadline inquiry: Copper smelter

Thank you!!

Get Outlook for iOS

From: Holran, Carolyn <Holran.Carolyn@epa.gov>
Sent: Thursday, November 20, 2025 12:30:14 PM
To: Hirsch, Brigit <Hirsch.Brigit@epa.gov>; Mandy, Cora <Mandy.Cora@epa.gov>
Subject: RE: New York Times deadline inquiry: Copper smelter

Yup!

From: Hirsch, Brigit <Hirsch.Brigit@epa.gov>
Sent: Thursday, November 20, 2025 12:29 PM
To: Holran, Carolyn <Holran.Carolyn@epa.gov>; Mandy, Cora <Mandy.Cora@epa.gov>
Subject: Re: New York Times deadline inquiry: Copper smelter

Carolyn would you want to run point on this with Abbie? Also I'll tell Maxine to include you on these.

From: Maxine Joselow <maxine.joselow@nytimes.com>
Sent: Thursday, November 20, 2025 12:26:54 PM
To: EPA Press Office <press@epa.gov>; Hirsch, Brigit <Hirsch.Brigit@epa.gov>
Subject: New York Times deadline inquiry: Copper smelter

Caution: This email originated from outside EPA, please exercise additional caution when deciding whether to open attachments or click on provided links.

Hi Brigit and EPA press team,

I hope you're all doing well. I'm working on an article about Freeport-McMoRan's copper smelter in Miami, Arizona, which President Trump exempted from compliance with EPA's copper rule last month.

The article will mention that Abigale Tardif, the principal deputy assistant administrator in EPA's Office of Air and Radiation, emailed with a lobbyist for Freeport-McMoRan about how the company could best position itself to obtain the presidential exemption under the Clean Air Act, according to emails obtained by the Environmental Defense Fund via the Freedom of Information Act.

I have attached those emails for your reference, and I was hoping you could answer the following questions. My deadline is currently set for **5pm ET tomorrow**, although it might be extended.

- Can you confirm whether Abigale Tardif had a call with the lobbyist for Freeport-McMoRan, Patrick Traylor, in March?
- How would EPA respond to criticism from environmentalists that these emails show a remarkable degree of coordination between the agency and one of the companies it regulates?

Please let me know and thank you for considering this request. I will also reach out to the White House regarding the presidential exemption.

Best,
Maxine
--
Maxine Joselow
Climate Reporter
The New York Times
Cell: 202-948-1924
Signal: MaxineJ.55

Message

From: Hirsch, Brigit [Hirsch.Brigit@epa.gov]
Sent: 11/20/2025 5:42:09 PM
To: [redacted]@epa.gov]
CC: Holran, Carolyn [Holran.Carolyn@epa.gov]
Subject: Re: New York Times deadline inquiry: Copper smelter

Yes, thank you!!

Get Outlook for iOS

From: [redacted]@epa.gov>
Sent: Thursday, November 20, 2025 12:41:34 PM
To: Hirsch, Brigit <Hirsch.Brigit@epa.gov>
Cc: Holran, Carolyn <Holran.Carolyn@epa.gov>
Subject: Fw: New York Times deadline inquiry: Copper smelter

This was tagged already as OPA leadership, so is it already being worked?

From: Maxine Joselow <maxine.joselow@nytimes.com>
Sent: Thursday, November 20, 2025 12:26 PM
To: EPA Press Office <press@epa.gov>; Hirsch, Brigit <Hirsch.Brigit@epa.gov>
Subject: New York Times deadline inquiry: Copper smelter

> **Caution:** This email originated from outside EPA, please exercise additional caution when deciding whether to open attachments or click on provided links.

Hi Brigit and EPA press team,

I hope you're all doing well. I'm working on an article about Freeport-McMoRan's copper smelter in Miami, Arizona, which President Trump exempted from compliance with EPA's copper rule last month.

The article will mention that Abigale Tardif, the principal deputy assistant administrator in EPA's Office of Air and Radiation, emailed with a lobbyist for Freeport-McMoRan about how the company could best position itself to obtain the presidential exemption under the Clean Air Act, according to emails obtained by the Environmental Defense Fund via the Freedom of Information Act.

I have attached those emails for your reference, and I was hoping you could answer the following questions. My deadline is currently set for **5pm ET tomorrow**, although it might be extended.

- Can you confirm whether Abigale Tardif had a call with the lobbyist for Freeport-McMoRan, Patrick Traylor, in March?
- How would EPA respond to criticism from environmentalists that these emails show a remarkable degree of coordination between the agency and one of the companies it regulates?

Please let me know and thank you for considering this request. I will also reach out to the White House regarding the presidential exemption.

Best,

Maxine

--

Maxine Joselow
Climate Reporter
The New York Times
Cell: 202-948-1924
Signal: MaxineJ.55

Message

From: Hirsch, Brigit [Hirsch.Brigit@epa.gov]
Sent: 11/20/2025 7:45:19 PM
To: Tardif, Abigale (Abbie) [Tardif.Abigale@epa.gov]; Holran, Carolyn [Holran.Carolyn@epa.gov]; Mandy, Cora [Mandy.Cora@epa.gov]
Subject: RE: New York Times deadline inquiry: Copper smelter

Thanks Abbie!

From: Tardif, Abigale (Abbie) <Tardif.Abigale@epa.gov>
Sent: Thursday, November 20, 2025 2:34 PM
To: Holran, Carolyn <Holran.Carolyn@epa.gov>; Hirsch, Brigit <Hirsch.Brigit@epa.gov>; Mandy, Cora <Mandy.Cora@epa.gov>
Subject: RE: New York Times deadline inquiry: Copper smelter

This is fine with me.

-Abbie

Abigale Tardif
Principal Deputy Assistant Administrator
Office of Air and Radiation
U.S. Environmental Protection Agency
Office: (202) 564-7017

From: Holran, Carolyn <Holran.Carolyn@epa.gov>
Sent: Thursday, November 20, 2025 1:47 PM
To: Hirsch, Brigit <Hirsch.Brigit@epa.gov>; Mandy, Cora <Mandy.Cora@epa.gov>
Cc: Tardif, Abigale (Abbie) <Tardif.Abigale@epa.gov>
Subject: RE: New York Times deadline inquiry: Copper smelter

Adding Abbie. Cora, see below for suggested response. Let me know edits or thoughts you have. We don' have to keep the final paragraph.

Suggested Response:

Ex. 5 Deliberative Process (DP)

Ex. 5 Deliberative Process (DP)

From: Maxine Joselow <maxine.joselow@nytimes.com>
Sent: Thursday, November 20, 2025 12:26:54 PM
To: EPA Press Office <press@epa.gov>; Hirsch, Brigit <Hirsch.Brigit@epa.gov>
Subject: New York Times deadline inquiry: Copper smelter

Caution: This email originated from outside EPA, please exercise additional caution when deciding whether to open attachments or click on provided links.

Hi Brigit and EPA press team,

I hope you're all doing well. I'm working on an article about Freeport-McMoRan's copper smelter in Miami, Arizona, which President Trump exempted from compliance with EPA's copper rule last month.

The article will mention that Abigale Tardif, the principal deputy assistant administrator in EPA's Office of Air and Radiation, emailed with a lobbyist for Freeport-McMoRan about how the company could best position itself to obtain the presidential exemption under the Clean Air Act, according to emails obtained by the Environmental Defense Fund via the Freedom of Information Act.

I have attached those emails for your reference, and I was hoping you could answer the following questions. My deadline is currently set for **5pm ET tomorrow**, although it might be extended.

- Can you confirm whether Abigale Tardif had a call with the lobbyist for Freeport-McMoRan, Patrick Traylor, in March?
- How would EPA respond to criticism from environmentalists that these emails show a remarkable degree of coordination between the agency and one of the companies it regulates?

Please let me know and thank you for considering this request. I will also reach out to the White House regarding the presidential exemption.

Best,
Maxine
--
Maxine Joselow
Climate Reporter
The New York Times
Cell: 202-948-1924
Signal: MaxineJ.55

Message

From: Hirsch, Brigit [Hirsch.Brigit@epa.gov]
Sent: 11/20/2025 7:45:30 PM
To: Holran, Carolyn [Holran.Carolyn@epa.gov]; Mandy, Cora [Mandy.Cora@epa.gov]
Subject: RE: New York Times deadline inquiry: Copper smelter

Cora is this good with you?

From: Tardif, Abigale (Abbie) <Tardif.Abigale@epa.gov>
Sent: Thursday, November 20, 2025 2:34 PM
To: Holran, Carolyn <Holran.Carolyn@epa.gov>; Hirsch, Brigit <Hirsch.Brigit@epa.gov>; Mandy, Cora <Mandy.Cora@epa.gov>
Subject: RE: New York Times deadline inquiry: Copper smelter

This is fine with me.

-Abbie

Abigale Tardif
Principal Deputy Assistant Administrator
Office of Air and Radiation
U.S. Environmental Protection Agency
Office: (202) 564-7017

From: Holran, Carolyn <Holran.Carolyn@epa.gov>
Sent: Thursday, November 20, 2025 1:47 PM
To: Hirsch, Brigit <Hirsch.Brigit@epa.gov>; Mandy, Cora <Mandy.Cora@epa.gov>
Cc: Tardif, Abigale (Abbie) <Tardif.Abigale@epa.gov>
Subject: RE: New York Times deadline inquiry: Copper smelter

Adding Abbie. Cora, see below for suggested response. Let me know edits or thoughts you have. We don' have to keep the final paragraph.

Suggested Response:

Ex. 5 Deliberative Process (DP)

Ex. 5 Deliberative Process (DP)

From: Maxine Joselow <maxine.joselow@nytimes.com>
Sent: Thursday, November 20, 2025 12:26:54 PM
To: EPA Press Office <press@epa.gov>; Hirsch, Brigit <Hirsch.Brigit@epa.gov>
Subject: New York Times deadline inquiry: Copper smelter

Caution: This email originated from outside EPA, please exercise additional caution when deciding whether to open attachments or click on provided links.

Hi Brigit and EPA press team,

I hope you're all doing well. I'm working on an article about Freeport-McMoRan's copper smelter in Miami, Arizona, which President Trump exempted from compliance with EPA's copper rule last month.

The article will mention that Abigale Tardif, the principal deputy assistant administrator in EPA's Office of Air and Radiation, emailed with a lobbyist for Freeport-McMoRan about how the company could best position itself to obtain the presidential exemption under the Clean Air Act, according to emails obtained by the Environmental Defense Fund via the Freedom of Information Act.

I have attached those emails for your reference, and I was hoping you could answer the following questions. My deadline is currently set for **5pm ET tomorrow**, although it might be extended.

- Can you confirm whether Abigale Tardif had a call with the lobbyist for Freeport-McMoRan, Patrick Traylor, in March?
- How would EPA respond to criticism from environmentalists that these emails show a remarkable degree of coordination between the agency and one of the companies it regulates?

Please let me know and thank you for considering this request. I will also reach out to the White House regarding the presidential exemption.

Best,
Maxine
--
Maxine Joselow
Climate Reporter
The New York Times
Cell: 202-948-1924
Signal: MaxineJ.55

Message

From: Hirsch, Brigit [Hirsch.Brigit@epa.gov]
Sent: 11/20/2025 7:58:07 PM
To: Mandy, Cora [Mandy.Cora@epa.gov]; Tardif, Abigale (Abbie) [Tardif.Abigale@epa.gov]; Holran, Carolyn [Holran.Carolyn@epa.gov]
Subject: RE: New York Times deadline inquiry: Copper smelter

Thanks all! Closing this now.

From: Mandy, Cora <Mandy.Cora@epa.gov>
Sent: Thursday, November 20, 2025 2:57 PM
To: Hirsch, Brigit <Hirsch.Brigit@epa.gov>; Tardif, Abigale (Abbie) <Tardif.Abigale@epa.gov>; Holran, Carolyn <Holran.Carolyn@epa.gov>
Subject: RE: New York Times deadline inquiry: Copper smelter

Good

From: Hirsch, Brigit <Hirsch.Brigit@epa.gov>
Sent: Thursday, November 20, 2025 2:51 PM
To: Tardif, Abigale (Abbie) <Tardif.Abigale@epa.gov>; Holran, Carolyn <Holran.Carolyn@epa.gov>; Mandy, Cora <Mandy.Cora@epa.gov>
Subject: RE: New York Times deadline inquiry: Copper smelter

Cora bumping this for whenever you have time!

From: Tardif, Abigale (Abbie) <Tardif.Abigale@epa.gov>
Sent: Thursday, November 20, 2025 2:34 PM
To: Holran, Carolyn <Holran.Carolyn@epa.gov>; Hirsch, Brigit <Hirsch.Brigit@epa.gov>; Mandy, Cora <Mandy.Cora@epa.gov>
Subject: RE: New York Times deadline inquiry: Copper smelter

This is fine with me.

-Abbie

Abigale Tardif
Principal Deputy Assistant Administrator
Office of Air and Radiation
U.S. Environmental Protection Agency
Office: (202) 564-7017

From: Holran, Carolyn <Holran.Carolyn@epa.gov>
Sent: Thursday, November 20, 2025 1:47 PM
To: Hirsch, Brigit <Hirsch.Brigit@epa.gov>; Mandy, Cora <Mandy.Cora@epa.gov>
Cc: Tardif, Abigale (Abbie) <Tardif.Abigale@epa.gov>
Subject: RE: New York Times deadline inquiry: Copper smelter

Adding Abbie. Cora, see below for suggested response. Let me know edits or thoughts you have. We don' have to keep the final paragraph.

Suggested Response:

Ex. 5 Deliberative Process (DP)

From: Maxine Joselow <maxine.joselow@nytimes.com>
Sent: Thursday, November 20, 2025 12:26:54 PM
To: EPA Press Office <press@epa.gov>; Hirsch, Brigit <Hirsch.Brigit@epa.gov>
Subject: New York Times deadline inquiry: Copper smelter

Caution: This email originated from outside EPA, please exercise additional caution when deciding whether to open attachments or click on provided links.

Hi Brigit and EPA press team,

I hope you're all doing well. I'm working on an article about Freeport-McMoRan's copper smelter in Miami, Arizona, which President Trump exempted from compliance with EPA's copper rule last month.

The article will mention that Abigale Tardif, the principal deputy assistant administrator in EPA's Office of Air and Radiation, emailed with a lobbyist for Freeport-McMoRan about how the company could best position itself to obtain the presidential exemption under the Clean Air Act, according to emails obtained by the Environmental Defense Fund via the Freedom of Information Act.

I have attached those emails for your reference, and I was hoping you could answer the following questions. My deadline is currently set for **5pm ET tomorrow**, although it might be extended.

- Can you confirm whether Abigale Tardif had a call with the lobbyist for Freeport-McMoRan, Patrick Traylor, in March?
- How would EPA respond to criticism from environmentalists that these emails show a remarkable degree of coordination between the agency and one of the companies it regulates?

Please let me know and thank you for considering this request. I will also reach out to the White House regarding the presidential exemption.

Best,
Maxine
--
Maxine Joselow
Climate Reporter
The New York Times
Cell: 202-948-1924
Signal: MaxineJ.55

Message

From: Hirsch, Brigit [Hirsch.Brigit@epa.gov]
Sent: 12/1/2025 3:34:24 PM
To: Mandy, Cora [Mandy.Cora@epa.gov]; Holran, Carolyn [Holran.Carolyn@epa.gov]
CC: Bastasch, Mike [Bastasch.Mike@epa.gov]; Murphy, Jacob [Murphy.Jacob@epa.gov]
Subject: RE: Flag (NOT PRESS): Clarification request for Presidential exemption of NESHAP for EO sterilizers

Thanks!

From: Mandy, Cora <Mandy.Cora@epa.gov>
Sent: Monday, December 1, 2025 10:34 AM
To: Hirsch, Brigit <Hirsch.Brigit@epa.gov>; Holran, Carolyn <Holran.Carolyn@epa.gov>
Cc: Bastasch, Mike <Bastasch.Mike@epa.gov>; Murphy, Jacob <Murphy.Jacob@epa.gov>
Subject: RE: Flag (NOT PRESS): Clarification request for Presidential exemption of NESHAP for EO sterilizers

Ex. 5 Deliberative Process (DP)

From: Hirsch, Brigit <Hirsch.Brigit@epa.gov>
Sent: Monday, December 1, 2025 10:28 AM
To: Mandy, Cora <Mandy.Cora@epa.gov>; Holran, Carolyn <Holran.Carolyn@epa.gov>
Cc: Bastasch, Mike <Bastasch.Mike@epa.gov>; Murphy, Jacob <Murphy.Jacob@epa.gov>
Subject: RE: Flag (NOT PRESS): Clarification request for Presidential exemption of NESHAP for EO sterilizers

Ex. 5 Deliberative Process (DP)

From: [redacted]@epa.gov>
Sent: Monday, December 1, 2025 10:27 AM
To: Holran, Carolyn <Holran.Carolyn@epa.gov>; Hirsch, Brigit <Hirsch.Brigit@epa.gov>
Cc: Mandy, Cora <Mandy.Cora@epa.gov>; Bastasch, Mike <Bastasch.Mike@epa.gov>; [redacted]
[redacted]@epa.gov>[redacted] [redacted]@epa.gov>
Subject: Flag (NOT PRESS): Clarification request for Presidential exemption of NESHAP for EO sterilizers

Team – Please see the below from a company following up on their exemption request. The company has reached out to the WH (not sure if the folks listed in the email are the correct points of contact). Please advise.

Incoming -
We are urgently trying to ascertain whether or not Andersen Scientific, Inc., made the 2-year Presidential extension for NESHAP EO contract sterilizers. I have been trying to contact John Reiten and Marc Marie at the White House, but have had no luck.

One of our clients is the sole provider of a **Department of Defense** drug for US soldiers, and so this is a matter of urgency. We are **not** on the Whitehouse list of contract sterilizers, and I am trying to get clarification if we are or are not, and if not, what can we do considering the risks this will put to a delicate resource used by the US Government.

Is there a contact I can reach to gain some clarification on whether we made this list, and if not, what we need to do for reconsideration?

Respectfully,

[redacted]
Digital, Risk Communications, and Press Division
Office of External Affairs
[redacted]
[redacted]@epa.gov

From: daryl@ansci.us <daryl@ansci.us>
Sent: Monday, December 1, 2025 9:37 AM
To: [redacted]@epa.gov>
Subject: Clarification request for Presidential exemption of NESHAP for EO sterilizers

You don't often get email from daryl@ansci.us. Learn why this is important

Caution: This email originated from outside EPA, please exercise additional caution when deciding whether to open attachments or click on provided links.

Good Morning, [redacted],

Welcome back, and I hope you had a relaxing Thanksgiving.

We are urgently trying to ascertain whether or not Andersen Scientific, Inc., made the 2-year Presidential extension for NESHAP EO contract sterilizers. I have been trying to contact John Reiten and Marc Marie at the White House, but have had no luck.

One of our clients is the sole provider of a **Department of Defense** drug for US soldiers, and so this is a matter of urgency. We are **not** on the Whitehouse list of contract sterilizers, and I am trying to get clarification if we are or are not, and if not, what can we do considering the risks this will put to a delicate resource used by the US Government.

Is there a contact I can reach to gain some clarification on whether we made this list, and if not, what we need to do for reconsideration?

Thank you in advance.

Regards,

DARYL WOODMAN
General Manager at **Andersen Scientific, Inc.**
A 1001 Aviation Parkway, Suite 600, Morrisville, NC 27560
P 919 388 5844 **M** 919 274 5498
E daryl@ansci.us **W** www.ansci.us



An FDA Innovation Challenge Winner

Chosen by the FDA to accelerate the development of strategies to reduce ethylene oxide emissions.

This e-mail transmission may contain confidential or legally privileged information belonging to Andersen Scientific, Inc. The content of this transmission is intended only for the individual or entity named in the e-mail address. If you are not the intended recipient, you are hereby notified that any disclosure, copying, distribution, or reliance upon the content of this e-mail is strictly prohibited.
If you have received this e-mail transmission in error, please reply to sender so that we can arrange correct delivery. Then please delete this message from your inbox. Thank you

Message

From: Hirsch, Brigit [Hirsch.Brigit@epa.gov]
Sent: 3/13/2026 1:08:27 PM
To: Holran, Carolyn [Holran.Carolyn@epa.gov]; Bastasch, Mike [Bastasch.Mike@epa.gov]; Vaseliou, Molly [Vaseliou.Molly@epa.gov]
CC: Mandy, Cora [Mandy.Cora@epa.gov]; Murphy, Jacob [Murphy.Jacob@epa.gov]
Subject: Re: Flag: CNN - MATs story, checking for comment - DDL 2 p.m. Friday, March 13

Thanks both! Will get this closed.

From: Holran, Carolyn <Holran.Carolyn@epa.gov>
Sent: Friday, March 13, 2026 8:08:02 AM
To: Bastasch, Mike <Bastasch.Mike@epa.gov>; Hirsch, Brigit <Hirsch.Brigit@epa.gov>; Vaseliou, Molly <Vaseliou.Molly@epa.gov>
Cc: Mandy, Cora <Mandy.Cora@epa.gov>; Murphy, Jacob <Murphy.Jacob@epa.gov>
Subject: RE: Flag: CNN - MATs story, checking for comment - DDL 2 p.m. Friday, March 13

ok

From: Bastasch, Mike <Bastasch.Mike@epa.gov>
Sent: Friday, March 13, 2026 7:46 AM
To: Hirsch, Brigit <Hirsch.Brigit@epa.gov>; Holran, Carolyn <Holran.Carolyn@epa.gov>; Vaseliou, Molly <Vaseliou.Molly@epa.gov>
Cc: Mandy, Cora <Mandy.Cora@epa.gov>; Murphy, Jacob <Murphy.Jacob@epa.gov>
Subject: Re: Flag: CNN - MATs story, checking for comment - DDL 2 p.m. Friday, March 13

Ok with me if Carolyn approves.

Get Outlook for iOS

From: Hirsch, Brigit <Hirsch.Brigit@epa.gov>
Sent: Thursday, March 12, 2026 7:44:12 PM
To: Holran, Carolyn <Holran.Carolyn@epa.gov>; Vaseliou, Molly <Vaseliou.Molly@epa.gov>; Bastasch, Mike <Bastasch.Mike@epa.gov>
Cc: Mandy, Cora <Mandy.Cora@epa.gov>; Murphy, Jacob <Murphy.Jacob@epa.gov>
Subject: RE: Flag: CNN - MATs story, checking for comment - DDL 2 p.m. Friday, March 13

Ex. 5 Deliberative Process (DP)

Draft response

Ex. 5 Deliberative Process (DP)

Ex. 5 Deliberative Process (DP)

Ex. 5 Deliberative Process (DP)

From: Hirsch, Brigit <Hirsch.Brigit@epa.gov>
Sent: Thursday, March 12, 2026 9:27 AM
To: [redacted]@epa.gov>; Holran, Carolyn <Holran.Carolyn@epa.gov>
Cc: Bastasch, Mike <Bastasch.Mike@epa.gov>; [redacted]@epa.gov>; [redacted]@epa.gov>; Mandy, Cora <Mandy.Cora@epa.gov>; Murphy, Jacob <Murphy.Jacob@epa.gov>; Vaseliou, Molly <Vaseliou.Molly@epa.gov>
Subject: Re: Flag: CNN - MATs story, checking for comment - DDL 2 p.m. Friday, March 13

Thank you [redacted]! This is great. Working on something now

From: [redacted]@epa.gov>
Sent: Thursday, March 12, 2026 9:24:25 AM
To: Hirsch, Brigit <Hirsch.Brigit@epa.gov>; Holran, Carolyn <Holran.Carolyn@epa.gov>
Cc: Bastasch, Mike <Bastasch.Mike@epa.gov>; [redacted]@epa.gov>; [redacted]@epa.gov>; Mandy, Cora <Mandy.Cora@epa.gov>; Murphy, Jacob <Murphy.Jacob@epa.gov>; Vaseliou, Molly <Vaseliou.Molly@epa.gov>
Subject: RE: Flag: CNN - MATs story, checking for comment - DDL 2 p.m. Friday, March 13

Good morning, Brigit,

From Region 8 –

Here is some additional information that we wanted to make sure you had for the response.

Ex. 5 Deliberative Process (DP)

Ex. 5 Deliberative Process (DP)

Ex. 5 Deliberative Process (DP)

Ex. 5 Deliberative Process (DP)

Respectfully,

[redacted]
Digital, Risk Communications, and Press Division
Office of External Affairs
[redacted]
[redacted]@epa.gov

From: Hirsch, Brigit <Hirsch.Brigit@epa.gov>
Sent: Wednesday, March 11, 2026 4:01 PM
To: [redacted]@epa.gov>; Holran, Carolyn <Holran.Carolyn@epa.gov>
Cc: Bastasch, Mike <Bastasch.Mike@epa.gov>; [redacted]@epa.gov>; [redacted]@epa.gov>; Mandy, Cora <Mandy.Cora@epa.gov>; Murphy, Jacob <Murphy.Jacob@epa.gov>; Vaseliou, Molly <Vaseliou.Molly@epa.gov>
Subject: Re: Flag: CNN - MATs story, checking for comment - DDL 2 p.m. Friday, March 13

No need to route through the IO. I will whip up something that answers all of the questions before bugging them for approval. Please let me know when we hear back from the region. Thanks [redacted]

From: [redacted]@epa.gov>
Sent: Wednesday, March 11, 2026 3:42:02 PM
To: Hirsch, Brigit <Hirsch.Brigit@epa.gov>; Holran, Carolyn <Holran.Carolyn@epa.gov>
Cc: Bastasch, Mike <Bastasch.Mike@epa.gov>; [redacted]@epa.gov>; [redacted]@epa.gov>; Mandy, Cora <Mandy.Cora@epa.gov>; Murphy, Jacob <Murphy.Jacob@epa.gov>; Vaseliou, Molly <Vaseliou.Molly@epa.gov>
Subject: RE: Flag: CNN - MATs story, checking for comment - DDL 2 p.m. Friday, March 13

Hey Brigit – Please see the below from OCAP. Would you like the OAR IO to review?

See answer to Brigit's question below:

Per the Annex that the WH shared with EPA, which is now posted on our website (https://www.epa.gov/system/files/documents/2025-04/regulatory-relief-for-certain-stationary-annex-1.pdf), Talen Montana, LLC and NorthWestern Energy a. Affected Facility/Source: Colstrip Steam Electric Station Units 3 and 4 is covered by the President's exemption.

Not sure this needs to be routed through the OAR IO since OCAP was able to definitively answer Brigit's question, but let me know.

Thanks!
Jill

Respectfully,

[redacted]
Digital, Risk Communications, and Press Division
Office of External Affairs
[redacted]
[redacted]@epa.gov

From: Hirsch, Brigit <Hirsch.Brigit@epa.gov>
Sent: Wednesday, March 11, 2026 12:53 PM
To: [redacted]@epa.gov>; Holran, Carolyn <Holran.Carolyn@epa.gov>
Cc: Bastasch, Mike <Bastasch.Mike@epa.gov>; [redacted]@epa.gov>; [redacted]@epa.gov>; Mandy, Cora <Mandy.Cora@epa.gov>; Murphy, Jacob <Murphy.Jacob@epa.gov>; Vaseliou, Molly <Vaseliou.Molly@epa.gov>
Subject: Re: Flag: CNN - MATs story, checking for comment - DDL 2 p.m. Friday, March 13

Thanks for flagging, [redacted]. Could you confirm with the program whether the first point was a presidential exemption? And could you also ask the region for Ex. 5 Deliberative Process (DP)

Ex. 5 Deliberative Process (DP)

From: [redacted]@epa.gov>
Sent: Wednesday, March 11, 2026 12:47:04 PM
To: Hirsch, Brigit <Hirsch.Brigit@epa.gov>; Holran, Carolyn <Holran.Carolyn@epa.gov>
Cc: Bastasch, Mike <Bastasch.Mike@epa.gov>; [redacted]@epa.gov>; [redacted]@epa.gov>; Mandy, Cora <Mandy.Cora@epa.gov>; Murphy, Jacob <Murphy.Jacob@epa.gov>; Vaseliou, Molly <Vaseliou.Molly@epa.gov>
Subject: Flag: CNN - MATs story, checking for comment - DDL 2 p.m. Friday, March 13

Good afternoon, Team –

Flagging an inquiry from CNN on MATS. The deadline is 2 p.m. Friday. Let me know if you'd like me to take any of this to the program.

Inquiry –
Hi, I'm working on a story for next week about the Trump administration's recent rollback of the Biden-era MATs rules and communities impacted by that rollback. The story is focused in part on the Colstrip power plant in Montana, and I had the following questions.

- Last year, Colstrip applied and was granted an exemption for pollution controls used by every other coal plant in the US, citing economic harms. Why did EPA exempt the plant from installing technology that's in widespread use by other power plants to control such pollution?
- Colstrip is mentioned in EPA's final rule as having some of the largest costs to comply with pollution controls of any plant in the nation — amounting to nearly half of the Biden-era rule's total compliance costs. How big of a factor was Colstrip's costs in EPA's rollback of the Biden-era rules?
- Critics of the rollback have pointed to concerns that the Biden-era MATs rule required something that 90% of coal plants were already complying with and wouldn't have presented significant added costs to plants. Do you have a response to that critique?
- Do you have any response to concerns from the local community and Montana public health experts about mercury pollution and other particulate pollution from the Colstrip power plant?
- Anything else you'd like to address?

I'm looking for a response by 2pm EST Friday, March 13.

Respectfully,

[redacted]
Digital, Risk Communications, and Press Division
Office of External Affairs
[redacted]@epa.gov

From: Nilsen, Ella <ella.nilsen@cnn.com>
Sent: Wednesday, March 11, 2026 12:43 PM
To: EPA Press Office <press@epa.gov>
Subject: CNN - MATs story, checking for comment

Caution: This email originated from outside EPA, please exercise additional caution when deciding whether to open attachments or click on provided links.

Hi, I'm working on a story for next week about the Trump administration's recent rollback of the Biden-era MATs rules and communities impacted by that rollback. The story is focused in part on the Colstrip power plant in Montana, and I had the following questions.

- Last year, Colstrip applied and was granted an exemption for pollution controls used by every other coal plant in the US, citing economic harms. Why did EPA exempt the plant from installing technology that's in widespread use by other power plants to control such pollution?
- Colstrip is mentioned in EPA's final rule as having some of the largest costs to comply with pollution controls of any plant in the nation — amounting to nearly half of the Biden-era rule's total compliance costs. How big of a factor was Colstrip's costs in EPA's rollback of the Biden-era rules?
- Critics of the rollback have pointed to concerns that the Biden-era MATs rule required something that 90% of coal plants were already complying with and wouldn't have presented significant added costs to plants. Do you have a response to that critique?
- Do you have any response to concerns from the local community and Montana public health experts about mercury pollution and other particulate pollution from the Colstrip power plant?
- Anything else you'd like to address?

I'm looking for a response by 2pm EST Friday, March 13.

Thanks,
Ella

Message

From: Hirsch, Brigit [Hirsch.Brigit@epa.gov]
Sent: 3/13/2026 3:33:03 PM
To: Holran, Carolyn [holran.carolyn@epa.gov]; Murphy, Jacob [Murphy.Jacob@epa.gov]; Bastasch, Mike [Bastasch.Mike@epa.gov]
CC: Mandy, Cora [Mandy.Cora@epa.gov]; Vaseliou, Molly [Vaseliou.Molly@epa.gov]
Subject: Re: EPA Releases Proposal for Commercial Sterilizers to Safeguard the Supply of Life-Saving Medical Tools

Thanks!

From: Holran, Carolyn <holran.carolyn@epa.gov>
Sent: Friday, March 13, 2026 11:15:47 AM
To: Hirsch, Brigit <Hirsch.Brigit@epa.gov>; Murphy, Jacob <Murphy.Jacob@epa.gov>; Bastasch, Mike <Bastasch.Mike@epa.gov>
Cc: Mandy, Cora <Mandy.Cora@epa.gov>; Vaseliou, Molly <Vaseliou.Molly@epa.gov>
Subject: FW: EPA Releases Proposal for Commercial Sterilizers to Safeguard the Supply of Life-Saving Medical Tools

Team- Q&A can be found at the bottom of this doc if we get questions on this.

DRAFT Deliberative EtO Comms Plan Clean.docx

From: EPA Press <EPAPress@govdelivery.epa.gov>
Sent: Friday, March 13, 2026 11:10 AM
To: Holran, Carolyn <holran.carolyn@epa.gov>
Subject: EPA Releases Proposal for Commercial Sterilizers to Safeguard the Supply of Life-Saving Medical Tools

View as a webpage / Share

EPA.GOV/NEWSROOM

EPA Releases Proposal for Commercial Sterilizers to Safeguard the Supply of Life-Saving Medical Tools

March 13, 2026

Contact Information

EPA Press Office (press@epa.gov)

WASHINGTON — U.S. Environmental Protection Agency (EPA) proposed amendments to the Biden-era 2024 National Emissions Standards for Hazardous Air Pollutants (NESHAP) for Ethylene Oxide (EtO) Commercial Sterilization Facilities to ensure consistency with the law and gold standard science. EtO is the only safe and effective sterilization method available for many medical devices, making it indispensable for life-saving medical equipment including heart valves, pacemakers, surgical kits, gowns, drapes, ventilators, syringes, and catheters—medical equipment that newborns, the elderly, and Americans undergoing surgery rely on daily to survive. EPA is concerned that the current Biden-era EtO emission standards actively threaten facilities' ability to sterilize equipment and jeopardize one of America's only options for a secure domestic supply chain of essential medical equipment. EPA is committed to a rulemaking process that follows the law, ensures that regulation will not put countless lives at risk, and advances the agency's core mission of protecting human health and the environment, including minimizing Americans' unnecessary exposure to EtO.

> *"This proposed rule shows EPA's strong commitment to protecting people's health while maintaining a stable domestic medical supply chain,"* ***said EPA Administrator Lee Zeldin****. "The Trump EPA is committed to ensuring life-saving medical devices remain available for the critical care of America's children, elderly, and all patients without unnecessary exposure to communities."*

Congress deliberately designed CAA section 112 with detailed implementation timelines and requirements for residual risk reviews of Maximum Achievable Control Technology (MACT) standards in NESHAP rules. In 2024, however, the Biden-Harris EPA took the unprecedented step of conducting a second, "discretionary" residual risk review despite already completing the residual risk review required by law within eight years of promulgating the NESHAP. This second risk review, done in apparent contravention of the best reading of the statute using an almost decade old risk-based value for EtO, led to the 2024 EtO Commercial Sterilizer Final Rule (2024 NESHAP). During and following the promulgation of the Biden-Harris Administration's 2024 NESHAP, the medical community, industry stakeholders and other federal agencies, including the U.S. Food and Drug Administration, raised serious concerns. These concerns included the feasibility of complying with the more stringent EtO emission standards and the significant impacts the requirements would have on maintaining a strong domestic supply chain for sterilized medical equipment essential to saving American lives. Commercial sterilizers utilize EtO to sterilize 50 percent of all medical devices in the U.S. every year—or 20 billion medical devices—with no viable alternative on the market.

As a result of the 2024 NESHAP, the Biden-Harris Administration was forced in January 2025 to establish a Presidential exemption process from the administration's own rule due to facilities' inability to meet required standards before compliance deadlines, and the grave risk that the closures of these facilities posed to American lives. In response to legal, scientific and policy concerns, including the critical medical supply chain issue the U.S. faced due to the 2024 NESHAP rule, the Trump EPA issued a press release on March 12,

2025, announcing its reconsideration of the 2024 NESHAP, and on March 21, 2025, formally granted voluntary reconsideration.

With this rule, EPA is proposing that section 112(f)(2) of the CAA prevents EPA from conducting more than the one risk review EPA completed in 2006. Therefore, the second risk review the Biden EPA conducted in 2024 violated the CAA and should never been completed. In line with congressional intent, EPA is proposing to remove the risk-based CAA section 112(f)(2) standards which justified the 2024 NESHAP. EPA is also proposing to change other requirements that were promulgated from the standards, including the requirement to use continuous emission monitoring systems, technology review standards for new aeration room vents (ARV), and requirements for permanent total enclosure. If finalized as proposed, the Trump EPA's rule would give facilities the choice between installing a new monitoring system or making adjustments to the 2024 EtO standards for technology review standards for new ARV where EtO is greater than ten tons per year. These changes better reflect the complexity of facilities and give them the flexibility to work to use safe and effective equipment to sterilize medical tools and devices without compromising clean air for all Americans. EPA is proposing to keep the 2024 NESHAP standards consistent with the CAA and that result in facilities installing attainable emission controls consistent with the latest required technology review. The Trump EPA is committed to following the law exactly as it is written, while also ensuring standards effectively protect human health and the environment.

Since 2016, new information, including new epidemiological studies, advancements in statistical methods related to dose-response modeling have continued to emerge. It is known that EtO is produced within the body via normal processes and additionally from tobacco smoke or other combustion processes. As part of this rulemaking, EPA is seeking comment on new information related to these sources of EtO exposure. EPA anticipates this information would be useful for updating the agency's understanding of EtO exposure and toxicity and determining whether the 2016 EtO IRIS value remains suitable for estimating risk to inform regulatory decision-making, including the proposed amendments announced today. The agency will also consider comments regarding the Texas Commission of Environmental Quality's 2020 finalized alternative assessment of EtO's toxicity and potential to cause cancer or other alternative values not yet considered by the agency.

EPA estimates that this proposed action would save approximately $630 million in costs over 20 years, or about $43 million annually, not including the immeasurable value of the countless lives that would be saved from lethal or significantly debilitating infections that would result without properly sterilized medical equipment.

EPA will accept public comments on this proposal for 45 days after it is published in the *Federal Register*. EPA will hold a virtual public hearing for this proposed action 15 days after publication in the *Federal Register*.

For more information about this rulemaking and further details about the public hearing, please visit here.

Background

EtO is a colorless gas that is critical to the medical device supply chain. The EtO Commercial Sterilization NESHAP regulates EtO emitted from commercial sterilization facilities. Commercial sterilization covers the sterilizer process that uses EtO to sterilize or fumigate materials such as medical equipment and supplies, spices, and other miscellaneous products and items. This process is designed to eliminate microorganisms

including bacteria, viruses, fungi, and protists from products to ensure they are safe for human use and consumption.

EtO sterilization plays a key role in the medical device supply chain, sterilizing a variety of devices ranging from general health care items, such as wound dressings, to specialized devices, such as stents. For many heat- and moisture-sensitive products, EtO sterilization is the only method that effectively sterilizes a product without damaging it.

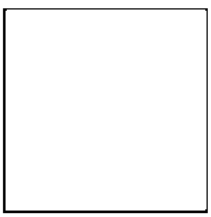
Today, there are about 90 commercial sterilization facilities owned and operated by approximately 50 companies. EPA issued the original NESHAP under section 112(d) of the CAA in 1994, establishing emission limits for sterilization chamber vents, ARVs, and catalytic oxidizer vents (CEVs). In 2001, EPA revised the NESHAP to remove requirements for CEVs due to equipment failure. In 2006, EPA finalized a residual risk and technology review under CAA sections 112(f)(2) and (d)(6) with no further changes. On April 5, 2024, EPA finalized amendments to the EtO Sterilizers NESHAP based on the results of a residual risk and technology review outside the scope of CAA statutory authority.

EPA.GOV

Stay Connected with EPA Office of the Administrator:



SUBSCRIBER SERVICES:
Manage Subscriptions | Unsubscribe All | Help



Message

From: Hirsch, Brigit [Hirsch.Brigit@epa.gov]
Sent: 3/27/2026 7:51:42 PM
To: Vaseliou, Molly [Vaseliou.Molly@epa.gov]; Bastasch, Mike [Bastasch.Mike@epa.gov]
CC: Mandy, Cora [Mandy.Cora@epa.gov]; Murphy, Jacob [Murphy.Jacob@epa.gov]; Holran, Carolyn [Holran.Carolyn@epa.gov]
Subject: RE: Bloomberg News request about EPA's Sterilizer rule reconsideration

Minus OMR, ended up crafting this with input from Juliet and Harry. Molly and Mike are you ok with this? Thoughts on my link in the answer to the 4th question?

- **EPA still recognizes ethylene oxide as a highly potent carcinogen, and the underlying science has not changed since the 2024 rule. Given that, can EPA confirm it is not rescinding the rule because the chemical is now considered less dangerous or because cancer risks have declined?**

Ex. 5 Deliberative Process (DP)

- **Does EPA agree that, without the 2024 rule, many people, including children, will face elevated lifetime cancer risks from sterilization facilities, and that the rule was expected to reduce those risks dramatically, including eliminating the highest-risk exposures?**

Ex. 5 Deliberative Process (DP)

- **If the science and risk findings are unchanged, what is the primary basis for repealing the rule—specifically, is EPA relying on a reinterpretation of the Clean Air Act or placing greater weight on costs and industry burden?**

Ex. 5 Deliberative Process (DP)

Ex. 5 Deliberative Process (DP)

- Why is EPA willing to accept higher cancer risks than the rule would have prevented, despite its own findings that the rule would cut ethylene oxide emissions and cancer risk by more than 90% for nearby communities?

Ex. 5 Deliberative Process (DP)

- What technological barriers justified last year's presidential exemptions for 40 sterilization facilities, and how does EPA justify easing standards for facilities that have already demonstrated they can meet the stricter requirements?

Ex. 5 Deliberative Process (DP)

From: [redacted]@epa.gov>
Sent: Friday, March 27, 2026 11:56 AM
To: Hirsch, Brigit <Hirsch.Brigit@epa.gov>; EPA Press Office <Press@epa.gov>

Cc: Mandy, Cora <Mandy.Cora@epa.gov>; Murphy, Jacob <Murphy.Jacob@epa.gov>; Bastasch, Mike <Bastasch.Mike@epa.gov>; Holran, Carolyn <Holran.Carolyn@epa.gov>; Vaseliou, Molly <Vaseliou.Molly@epa.gov>
Subject: RE: Bloomberg News request about EPA's Sterilizer rule reconsideration

Will do.

From: Hirsch, Brigit <Hirsch.Brigit@epa.gov>
Sent: Friday, March 27, 2026 11:56 AM
To: EPA Press Office <Press@epa.gov>; [redacted]@epa.gov>
Cc: Mandy, Cora <Mandy.Cora@epa.gov>; Murphy, Jacob <Murphy.Jacob@epa.gov>; Bastasch, Mike <Bastasch.Mike@epa.gov>; Holran, Carolyn <Holran.Carolyn@epa.gov>; Vaseliou, Molly <Vaseliou.Molly@epa.gov>
Subject: RE: Bloomberg News request about EPA's Sterilizer rule reconsideration

Minus reporters – [redacted] could you take this to the program and see if we can get it back by 1pm or so on Monday? I will want some time to review!

From: Zahra Hirji (BLOOMBERG/ NEWSROOM/) <zhirji@bloomberg.net>
Sent: Friday, March 27, 2026 11:05 AM
To: Hirsch, Brigit <Hirsch.Brigit@epa.gov>; EPA Press Office <press@epa.gov>
Cc: lkaufman27@bloomberg.net
Subject: Bloomberg News request about EPA's Sterilizer rule reconsideration

> **Caution:** This email originated from outside EPA, please exercise additional caution when deciding whether to open attachments or click on provided links.

Dear Brigit Hirsch and other EPA press team members,

My Bloomberg News colleague Leslie Kaufman, cc'ed here, and I are writing about EPA's recent proposed reconsideration of the 2024 rule, National Emission Standards for Hazardous Air Pollutants (NESHAP) for Ethylene Oxide (EtO) Commercial Sterilization Facilities, announced in Mid-March, and what this could mean for communities living near such facilities. We have a series of questions for EPA detailed below. Our deadline is end of day Monday, March 30.

- EPA still recognizes ethylene oxide as a highly potent carcinogen, and the underlying science has not changed since the 2024 rule. Given that, can EPA confirm it is not rescinding the rule because the chemical is now considered less dangerous or because cancer risks have declined?

- Does EPA agree that, without the 2024 rule, many people, including children, will face elevated lifetime cancer risks from sterilization facilities, and that the rule was expected to reduce those risks dramatically, including eliminating the highest-risk exposures?

- If the science and risk findings are unchanged, what is the primary basis for repealing the rule—specifically, is EPA relying on a reinterpretation of the Clean Air Act or placing greater weight on costs and industry burden?

- Why is EPA willing to accept higher cancer risks than the rule would have prevented, despite its own findings that the rule would cut ethylene oxide emissions and cancer risk by more than 90% for nearby communities?

- What technological barriers justified last year's presidential exemptions for 40 sterilization facilities, and how does EPA justify easing standards for facilities that have already demonstrated they can meet the stricter requirements?

We look forward to hearing EPA's responses. Again, our deadline is end of day Monday, March 30. If you have any questions or comments, please feel free to call Zahra's cell at (202) 352-0557.

Thanks,
Zahra Hirji & Leslie Kaufman

Zahra Hirji
Bloomberg Green reporter
Zhirji@bloomberg.net
Cell: (202) 352-0557
Office: (202) 807-2170

Message

From: Hirsch, Brigit [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=AA758B6F47C84B4092E7F04AE37B550E-2BB06795-6A]
Sent: 3/30/2026 4:52:54 PM
To: Farkas, Juliet [Farkas.Juliet@epa.gov]; Holran, Carolyn [Holran.Carolyn@epa.gov]
CC: Schwab, Harris [Schwab.Harris@epa.gov]
Subject: RE: Bloomberg News request about EPA's Sterilizer rule reconsideration

Juliet, thanks for the chat Friday. What do you think about the below edits?

From: Hirsch, Brigit
Sent: Friday, March 27, 2026 4:02 PM
To: Farkas, Juliet <Farkas.Juliet@epa.gov>; Schwab, Harris <Schwab.Harris@epa.gov>; Holran, Carolyn <Holran.Carolyn@epa.gov>
Subject: RE: Bloomberg News request about EPA's Sterilizer rule reconsideration

Circling back – my team is wondering if we have anything to address the second question more head-on. Juliet, if you have time for a super quick chat on that let me know.

From: Hirsch, Brigit
Sent: Friday, March 27, 2026 3:50 PM
To: Farkas, Juliet <Farkas.Juliet@epa.gov>; Schwab, Harris <Schwab.Harris@epa.gov>; Holran, Carolyn <Holran.Carolyn@epa.gov>
Subject: RE: Bloomberg News request about EPA's Sterilizer rule reconsideration

Great! I'll run past OEA leadership before we ship this over. Thanks team.

From: Farkas, Juliet <Farkas.Juliet@epa.gov>
Sent: Friday, March 27, 2026 3:38 PM
To: Hirsch, Brigit <Hirsch.Brigit@epa.gov>; Schwab, Harris <Schwab.Harris@epa.gov>; Holran, Carolyn <Holran.Carolyn@epa.gov>
Subject: RE: Bloomberg News request about EPA's Sterilizer rule reconsideration

I like it.

Juliet Farkas
Office of Air and Radiation
U.S. Environmental Protection Agency

From: Hirsch, Brigit <Hirsch.Brigit@epa.gov>
Sent: Friday, March 27, 2026 3:31 PM
To: Farkas, Juliet <Farkas.Juliet@epa.gov>; Schwab, Harris <Schwab.Harris@epa.gov>; Holran, Carolyn <Holran.Carolyn@epa.gov>
Subject: RE: Bloomberg News request about EPA's Sterilizer rule reconsideration

Juliet, what do you think about this? Ex. 5 Attorney Work Product (AWP)

Ex. 5 Deliberative Process (DP)

- EPA still recognizes ethylene oxide as a highly potent carcinogen, and the underlying science has not changed since the 2024 rule. Given that, can EPA confirm it is not rescinding the rule because the chemical is now considered less dangerous or because cancer risks have declined?

Ex. 5 Deliberative Process (DP)

- Does EPA agree that, without the 2024 rule, many people, including children, will face elevated lifetime cancer risks from sterilization facilities, and that the rule was expected to reduce those risks dramatically, including eliminating the highest-risk exposures?

Ex. 5 Deliberative Process (DP)

- If the science and risk findings are unchanged, what is the primary basis for repealing the rule—specifically, is EPA relying on a reinterpretation of the Clean Air Act or placing greater weight on costs and industry burden?

Ex. 5 Deliberative Process (DP)

Ex. 5 Deliberative Process (DP)

- **Why is EPA willing to accept higher cancer risks than the rule would have prevented, despite its own findings that the rule would cut ethylene oxide emissions and cancer risk by more than 90% for nearby communities?**

Ex. 5 Deliberative Process (DP)

- **What technological barriers justified last year's presidential exemptions for 40 sterilization facilities, and how does EPA justify easing standards for facilities that have already demonstrated they can meet the stricter requirements?**

Ex. 5 Deliberative Process (DP)

From: Farkas, Juliet <Farkas.Juliet@epa.gov>
Sent: Friday, March 27, 2026 3:13 PM
To: Schwab, Harris <Schwab.Harris@epa.gov>; Holran, Carolyn <Holran.Carolyn@epa.gov>; Hirsch, Brigit <Hirsch.Brigit@epa.gov>
Subject: RE: Bloomberg News request about EPA's Sterilizer rule reconsideration

Looping in Bridget.

Bridget, I pulled language from the approved comms plan Ex. 5 Deliberative Process (DP)

Ex. 5 Deliberative Process (DP)

Juliet Farkas
Office of Air and Radiation
U.S. Environmental Protection Agency

From: Schwab, Harris <Schwab.Harris@epa.gov>
Sent: Friday, March 27, 2026 1:01 PM
To: Holran, Carolyn <Holran.Carolyn@epa.gov>; Farkas, Juliet <Farkas.Juliet@epa.gov>
Subject: RE: Bloomberg News request about EPA's Sterilizer rule reconsideration

Defer to Juliet on this but I think our response we've used previously works for most of these questions. I think for the last bullet we can say we defer to the WH

Ex. 5 Deliberative Process (DP)

Ex. 5 Deliberative Process (DP)

Ex. 5 Deliberative Process (DP)

Best,
Harry Schwab
Senior Policy Advisor
U.S. Environmental Protection Agency
Office of Air and Radiation

From: Holran, Carolyn <Holran.Carolyn@epa.gov>
Sent: Friday, March 27, 2026 12:42 PM
To: Farkas, Juliet <Farkas.Juliet@epa.gov>; Schwab, Harris <Schwab.Harris@epa.gov>
Subject: Fw: Bloomberg News request about EPA's Sterilizer rule reconsideration

Can you work with Brigit to answer these based on FAQ. I don't think program can answer since it's messaging.

Get Outlook for iOS

From: [redacted]@epa.gov>
Sent: Friday, March 27, 2026 11:56:03 AM
To: Hirsch, Brigit <Hirsch.Brigit@epa.gov>; EPA Press Office <Press@epa.gov>
Cc: Mandy, Cora <Mandy.Cora@epa.gov>; Murphy, Jacob <Murphy.Jacob@epa.gov>; Bastasch, Mike <Bastasch.Mike@epa.gov>; Holran, Carolyn <Holran.Carolyn@epa.gov>; Vaseliou, Molly <Vaseliou.Molly@epa.gov>
Subject: RE: Bloomberg News request about EPA's Sterilizer rule reconsideration

Will do.

From: Hirsch, Brigit <Hirsch.Brigit@epa.gov>
Sent: Friday, March 27, 2026 11:56 AM
To: EPA Press Office <Press@epa.gov>; [redacted]@epa.gov>
Cc: Mandy, Cora <Mandy.Cora@epa.gov>; Murphy, Jacob <Murphy.Jacob@epa.gov>; Bastasch, Mike <Bastasch.Mike@epa.gov>; Holran, Carolyn <Holran.Carolyn@epa.gov>; Vaseliou, Molly <Vaseliou.Molly@epa.gov>
Subject: RE: Bloomberg News request about EPA's Sterilizer rule reconsideration

Minus reporters – [redacted] could you take this to the program and see if we can get it back by 1pm or so on Monday? I will want some time to review!

From: Zahra Hirji (BLOOMBERG/ NEWSROOM/) <zhirji@bloomberg.net>
Sent: Friday, March 27, 2026 11:05 AM
To: Hirsch, Brigit <Hirsch.Brigit@epa.gov>; EPA Press Office <press@epa.gov>
Cc: lkaufman27@bloomberg.net
Subject: Bloomberg News request about EPA's Sterilizer rule reconsideration

Caution: This email originated from outside EPA, please exercise additional caution when deciding whether to open attachments or click on provided links.

Dear Brigit Hirsch and other EPA press team members,

My Bloomberg News colleague Leslie Kaufman, cc'ed here, and I are writing about EPA's recent proposed reconsideration of the 2024 rule, National Emission Standards for Hazardous Air Pollutants (NESHAP) for Ethylene Oxide (EtO) Commercial Sterilization Facilities, announced in Mid-March, and what this could mean for communities living near such facilities. We have a series of questions for EPA detailed below. Our deadline is end of day Monday, March 30.

- EPA still recognizes ethylene oxide as a highly potent carcinogen, and the underlying science has not changed since the 2024 rule. Given that, can EPA confirm it is not rescinding the rule because the chemical is now considered less dangerous or because cancer risks have declined?

Ex. 5 Deliberative Process (DP)

- Does EPA agree that, without the 2024 rule, many people, including children, will face elevated lifetime cancer risks from sterilization facilities, and that the rule was expected to reduce those risks dramatically, including eliminating the highest-risk exposures?

Ex. 5 Deliberative Process (DP)

- If the science and risk findings are unchanged, what is the primary basis for repealing the rule specifically, is EPA relying on a reinterpretation of the Clean Air Act or placing greater weight on costs and industry burden?

Ex. 5 Deliberative Process (DP)

- Why is EPA willing to accept higher cancer risks than the rule would have prevented, despite its own findings that the rule would cut ethylene oxide emissions and cancer risk by more than 90% for nearby communities?

Ex. 5 Deliberative Process (DP)

- What technological barriers justified last year's presidential exemptions for 40 sterilization facilities, and how does EPA justify easing standards for facilities that have already demonstrated they can meet the stricter requirements?

Ex. 5 Deliberative Process (DP)

Ex. 5 Deliberative Process (DP)

We look forward to hearing EPA's responses. Again, our deadline is end of day Monday, March 30. If you have any questions or comments, please feel free to call Zahra's cell at (202) 352-0557.

Thanks,
Zahra Hirji & Leslie Kaufman

Zahra Hirji
Bloomberg Green reporter
Zhirji@bloomberg.net
Cell: (202) 352-0557
Office: (202) 807-2170

Message

From: Hirsch, Brigit [Hirsch.Brigit@epa.gov]
Sent: 3/31/2026 4:16:20 PM
To: Zahra Hirji [zhirji@bloomberg.net]; lkaufman27@bloomberg.net; EPA Press Office [Press@epa.gov]
Subject: RE: Bloomberg News request about EPA's Sterilizer rule reconsideration

Yes, thanks.

From: Zahra Hirji (BLOOMBERG/ NEWSROOM/) <zhirji@bloomberg.net>
Sent: Tuesday, March 31, 2026 12:14 PM
To: lkaufman27@bloomberg.net; EPA Press Office <Press@epa.gov>; Hirsch, Brigit <Hirsch.Brigit@epa.gov>
Subject: RE: Bloomberg News request about EPA's Sterilizer rule reconsideration

Caution: This email originated from outside EPA, please exercise additional caution when deciding whether to open attachments or click on provided links.

Thanks for this, and making our deadline. Who can I attribute this to? Brigit?

Zahra Hirji
Bloomberg Green reporter
Zhirji@bloomberg.net
Cell: (202) 352-0557
Office: (202) 807-2170

From: Press@epa.gov At: 03/30/26 17:26:29 UTC-4:00
To: Zahra Hirji (BLOOMBERG/ NEWSROOM/) , Hirsch.Brigit@epa.gov
Cc: Leslie Kaufman (BLOOMBERG/ NEWSROOM/)
Subject: RE: Bloomberg News request about EPA's Sterilizer rule reconsideration

Zahra,

The Trump EPA is focused on advancing the agency's core mission of protecting human health and the environment, including minimizing Americans' unnecessary exposure to EtO. Is Bloomberg aware that commercial sterilizers utilize EtO to sterilize 50 percent of all medical devices in the U.S. every year—or 20 billion medical devices—with no viable alternative on the market? EtO is the only safe and effective sterilization method available for many medical devices, making it indispensable for life-saving medical equipment including heart valves, pacemakers, surgical kits, gowns, drapes, ventilators, syringes, and catheters—medical equipment that newborns, the elderly, and Americans undergoing surgery rely on daily to survive. The 2024 rule posed a real threat to one of America's only options for a secure domestic supply chain of essential medical equipment. In fact, the Biden-Harris Administration was forced in January 2025 to establish a Presidential exemption process from the administration's own rule due to

facilities' inability to meet required standards before compliance deadlines, and the grave risk that the closures of these facilities posed to American lives.

The Trump EPA is proposing that section 112(f)(2) of the Clean Air Act (CAA) prevents EPA from conducting more than the one risk review EPA completed in 2006. In 2024, however, the Biden-Harris EPA took the unprecedented step of conducting a second, "discretionary" residual risk review despite already completing the residual risk review required by law within eight years of promulgating the NESHAP. Therefore, the second risk review the Biden EPA conducted in 2024 violated the Clean Air Act and should never been completed. In line with congressional intent, EPA is proposing to remove the risk-based CAA section 112(f)(2) standards which justified the 2024 NESHAP. It is important to note; EPA is proposing to keep the 2024 NESHAP standards consistent with the CAA and that result in facilities installing attainable emission controls consistent with the latest required technology review.

The Trump EPA is committed to making decisions based on gold-standard science and nothing less. Since 2016, new information, including new epidemiological studies, advancements in statistical methods related to dose-response modeling have continued to emerge. The Trump EPA acknowledges the uncertainty around the 2016 IRIS toxicity value for EtO. As part of this rulemaking, EPA is seeking comment on new information related to these sources of EtO exposure. It is known that EtO is produced within the body via normal processes and additionally from tobacco smoke or other combustion processes. The agency will also consider comments regarding the Texas Commission of Environmental Quality's 2020 finalized alternative assessment of EtO's toxicity and potential to cause cancer or other alternative values not yet considered by the agency. EPA anticipates this information will be useful for updating the agency's understanding of EtO exposure and toxicity and determining whether the 2016 EtO IRIS value remains suitable for estimating risk to inform regulatory decision-making, including the proposed amendments.

In terms of presidential exemptions, the Clean Air Act section 112(i)(4) authorizes the President to exempt any stationary source from a relevant standard if he "determines that the technology to implement such standard is not available and that it is in the national security interests of the United States to do so." EPA played no role in the determinations set out in the statute and specifically vested in the President. Any requests sent to the EPA's electronic mailbox were forwarded to the White House, and any further questions about process and decisions should be directed to the White House.

On July 17, 2025, President Trump signed the Proclamation, "Regulatory Relief for Certain Stationary Sources to Promote American Security with Respect to Sterile Medical Equipment". This Proclamation exempted 39 facilities from compliance with the 2024 Final Rule. The Presidential exemption is for a period of 2 years beyond the 2024 Final Rule's compliance dates. During the exemption period, facilities that were subject to the Commercial Sterilization Facilities NESHAP in effect prior to the issuance of the 2024 Final Rule must continue to comply with previously existing standards.

From: Zahra Hirji (BLOOMBERG/ NEWSROOM/) <zhirji@bloomberg.net>
Sent: Friday, March 27, 2026 11:05 AM
To: Hirsch, Brigit <Hirsch.Brigit@epa.gov>; EPA Press Office <press@epa.gov>
Cc: lkaufman27@bloomberg.net
Subject: Bloomberg News request about EPA's Sterilizer rule reconsideration

Caution: This email originated from outside EPA, please exercise additional caution when deciding whether to open attachments or click on provided links.

Dear Brigit Hirsch and other EPA press team members,

My Bloomberg News colleague Leslie Kaufman, cc'ed here, and I are writing about EPA's recent proposed reconsideration of the 2024 rule, National Emission Standards for Hazardous Air Pollutants (NESHAP) for Ethylene Oxide (EtO) Commercial Sterilization Facilities, announced in Mid-March, and what this could mean for communities living near such facilities. We have a series of questions for EPA detailed below. Our deadline is end of day Monday, March 30.

- EPA still recognizes ethylene oxide as a highly potent carcinogen, and the underlying science has not changed since the 2024 rule. Given that, can EPA confirm it is not rescinding the rule because the chemical is now considered less dangerous or because cancer risks have declined?

- Does EPA agree that, without the 2024 rule, many people, including children, will face elevated lifetime cancer risks from sterilization facilities, and that the rule was expected to reduce those risks dramatically, including eliminating the highest-risk exposures?

- If the science and risk findings are unchanged, what is the primary basis for repealing the rule specifically, is EPA relying on a reinterpretation of the Clean Air Act or placing greater weight on costs and industry burden?

- Why is EPA willing to accept higher cancer risks than the rule would have prevented, despite its own findings that the rule would cut ethylene oxide emissions and cancer risk by more than 90% for nearby communities?

- What technological barriers justified last year's presidential exemptions for 40 sterilization facilities, and how does EPA justify easing standards for facilities that have already demonstrated they can meet the stricter requirements?

We look forward to hearing EPA's responses. Again, our deadline is end of day Monday, March 30. If you have any questions or comments, please feel free to call Zahra's cell at (202) 352-0557.

Thanks,

Zahra Hirji & Leslie Kaufman

Zahra Hirji
Bloomberg Green reporter
Zhirji@bloomberg.net
Cell: (202) 352-0557
Office: (202) 807-2170

Message

From: OAR Invitations [OAR_Invitations@epa.gov]
Sent: 10/8/2025 4:44:22 PM
To: Tardif, Abigale (Abbie) [Tardif.Abigale@epa.gov]; OAR Invitations [OAR_Invitations@epa.gov]; Szabo, Aaron [Szabo.Aaron@epa.gov]
CC: OAR Invitations [OAR_Invitations@epa.gov]; Mills, Katie [Mills.Katie@epa.gov]
Subject: RE: National Lime Association

Thanks Abbie. I'll work on scheduling this meeting with program staff.

Jessica

From: Tardif, Abigale (Abbie) <Tardif.Abigale@epa.gov>
Sent: Wednesday, October 8, 2025 12:30 PM
To: OAR Invitations <OAR_Invitations@epa.gov>; Szabo, Aaron <Szabo.Aaron@epa.gov>
Cc: OAR Invitations <OAR_Invitations@epa.gov>; Mills, Katie <Mills.Katie@epa.gov>
Subject: Re: National Lime Association

I would like Aaron and I to take this meeting with staff included.

Get Outlook for iOS

From: OAR Invitations <OAR_Invitations@epa.gov>
Sent: Wednesday, October 8, 2025 12:19:59 PM
To: Szabo, Aaron <Szabo.Aaron@epa.gov>; Tardif, Abigale (Abbie) <Tardif.Abigale@epa.gov>
Cc: OAR Invitations <OAR_Invitations@epa.gov>; Mills, Katie <Mills.Katie@epa.gov>
Subject: FW: National Lime Association

Hi Aaron and Abbie,

Please see the attached external meeting request from National Lime Association re: Compliance Deadline & Reconsideration of the Lime Manufacturing NESHAP.

This meeting request was vetted with OAQPS and the recommendation is: Ex. 5 Deliberative Process (DP)
Ex. 5 Deliberative Process (DP)

Reason for recommendation: Ex. 5 Deliberative Process (DP)
Ex. 5 Deliberative Process (DP)
Is there a timing consideration? No
Is a pre-brief needed? No
Recommended program office attendees (if applicable): [redacted]
Caution: Ex. 5 Deliberative Process (DP)

Please confirm if you agree with the provided recommendation.

Thanks!
Jessica

Message

From: Tardif, Abigale (Abbie) [Tardif.Abigale@epa.gov]
Sent: 1/22/2026 2:51:15 PM
To: OAR Invitations [OAR_Invitations@epa.gov]; Mills, Katie [Mills.Katie@epa.gov]
CC: OAR Invitations [OAR_Invitations@epa.gov]; Szabo, Aaron [Szabo.Aaron@epa.gov]
Subject: Re: Bracewell

Jessica-

Please let Bracewell know if they would like to discuss the Presidential Exemption they should reach out to the White House as we play no role in this. I am happy to meet with Bracewell on the HON with program staff.

They should send an updated meeting request.

Best,
Abbie

Get Outlook for iOS

From: OAR Invitations <OAR_Invitations@epa.gov>
Sent: Thursday, January 22, 2026 9:47:52 AM
To: Tardif, Abigale (Abbie) <Tardif.Abigale@epa.gov>; Mills, Katie <Mills.Katie@epa.gov>
Cc: OAR Invitations <OAR_Invitations@epa.gov>; Szabo, Aaron <Szabo.Aaron@epa.gov>
Subject: FW: Bracewell

Good morning,

Please see the attached external meeting request from Bracewell re: To discuss the HON Rule, both the presidential exemption process and potential changes to the rule.

This meeting request was vetted with OCAP and the recommendation is: Ex. 5 Deliberative Process (DP)

- Who should take this meeting? Ex. 5 Deliberative Process (DP)
- Reason for recommendation: Ex. 5 Deliberative Process (DP)
  Ex. 5 Deliberative Process (DP)
- Recommended program office attendees (if applicable): [redacted]

Please confirm if you agree with the provided recommendation.

Thanks!
Jessica

January 22, 2026

Scott Patefield
Branch Chief, Enforcement and Compliance Assurance Division
U.S. Environmental Protection Agency, Region 8
1595 Wynkoop Street
Denver, CO 80202

Sent Via Email

Re: Extension Request Under the National Emissions Standards for Hazardous Air Pollutants: Ethylene Oxide Emissions Standards for Sterilization Facilities Residual Risk and Technology Review, 89 Fed. Reg. 24,090 (April 5, 2024)

Dear Mr. Patefield:

Solventum Corporation ("Solventum") submits this request for an extension of certain compliance periods in the final rule issued by the United States Environmental Protection Agency ("EPA") entitled "National Emission Standards for Hazardous Air Pollutants: Ethylene Oxide Emissions Standards for Sterilization Facilities Residual Risk and Technology Review" published in the Federal Register on April 5, 2024 (89 Fed. Reg. 24,090) (the "Sterilizer Rule"). Specifically, pursuant to 40 CFR 63.6(i)(4)(i) (standards established under Clean Air Act section 112(d)), Solventum requests a one-year extension of the compliance periods for certain of the Sterilizer Rule's requirements applicable to Solventum's facility in Brookings, South Dakota ("Solventum Brookings") located at 601 22nd Ave. S., Brookings, South Dakota, 57006. As described below, 112(d) authorizes the applicable requirements in the Sterilzer Rule and includes a compliance deadline of April 5, 2027.[1] Solventum requests a one-year extension to this deadline until April 5, 2028.

Solventum previously submitted the enclosed letter to you dated June 10, 2025 (the "June 2025 Letter") regarding compliance deadlines under the Sterilizer Rule. As Solventum described in its June 2025 Letter and in our prior discussions with Region 8, a one-year extension to all compliance deadlines in the Sterilizer Rule is warranted for several reasons. First, Solventum's contratct manufacturer (who uses EtO for sterilization at Solventum Brookings) plans to end its contract manufacturing relationship with Solventum next year, after which EtO use at Solventum Brookings is anticipated to be *below* the 100 lbs/year threshold in the Sterilizer Rule. Second, there is regulatory uncertainity regarding the compliance deadlines since EPA is now reconsidering the Sterilizer Rule. Third, President Trump recognized that a two-year exemption was warranted for several sources subject to the Sterilizer Rule because the rule "places severe burdens on commercial sterilization facilities" and the rule requires "compliance with standards premised on the application of emissions-control technologies that do not exist in a commercially viable form." *See* Regulatory Relief for Certain

[1] To the extent EPA believes that the compliance deadline for the applicable requirements in the Sterilizer Rule is April 2026, Solventum respectfully rquests that EPA review and respond to this extension request imminently.

ED_021114D_00002689-00001

Stationary Sources To Promote American Security With Respect to Sterile Medical Equipment, 90 Fed. Reg. 34747 (July 23, 2025)

Solventum has made good faith efforts to develop a compliance schedule for the Sterilizer Rule but additional time is needed to continue exploring planning, engineering, permitting and testing, if required. Accordingly, Solventum respectfully requests a one-year extension until April 5, 2028 to continue investigating feasible and effective installation of controls, if necessary, under the Sterilizer Rule.

This request is timely under 40 CFR 63.6(i)(4)(i)(B) because it is submitted on January 22, 2026, which is not later than 120 days prior to the affected source's compliance date. We appreciate your continued attention to this important matter.

I. Background on Solventum and the Standard Subject to this Request

Solventum is committed to enabling better, smarter, safer healthcare to improve lives. Through our people, solutions, and partnerships, we work to improve the health of the planet and human health. We care about the health of our communities and support them through our expertise, our solutions and philanthropy. We are deeply committed to continued compliance with environmental obligations and place care for health, safety, and the environment at the forefront of our business.

Solventum requests a compliance extension of the requirement that an existing SCV at a facility with EtO use of at least 1 tpy but less than 10 tpy continuously reduce emissions by 99.8 percent, and an extension of all associated regulatory requirements, including monitoring, recordkeeping, reporting, and testing (collectively, the "99.8% Reduction Requirement"). *See* Table 1 to Subpart O of Part 63. EPA cited to both section 112(d) **and** 112(f) as authorizing the standard for which Solventum requests this compliance extension. *See* Table 6, 89 Fed. Reg. at 24,098; see also id. at 24,100. Thus, as further detailed below, Solventum is requesting (and EPA is authorized to grant) a compliance extension pursuant to 40 CFR 63.6(i)(4)(i).

As described in the June 2025 Letter, Solventum Brookings contract manufactures an innovative microbiology plate test product called Petrifilm for the company Neogen. As part of the contract manufacturing process, Solventum uses EtO for sterilization of the Petrifilm products. However, Neogen plans to end its contract manufacturing relationship with Solventum Brookings in 2027, and after Neogen's departure EtO use at the Brookings facility is anticipated to be below 100 lbs/year.

Further, EPA is reconsidering the Sterilizer Rule - but has yet to issue a proposed rule, meaning there is no likelihood that a reconsidered final rule will be in place in the near term. As described in the most recent Status Report filed by EPA on December 29, 2025 in *Ethylene Oxide Sterilization Association Inc. v. EPA*, 24-180 (D.C. Cir.) (consolidated with *California Communities Against Toxics v. EPA*, 24-1178), EPA is reconsidering several aspects regarding the Sterilizer Rule and "intends to issue a proposed rule seeking public comment" and "expects to take final action by March 2026." This regulatory uncertainty with the Sterilizer Rule, coupled with the Presidential Exemption issued in July, increases the need for a compliance extension here.

ED_021114D_00002689-00002

II. EPA is Authorized to Grant a Compliance Extension Pursuant to 40 CFR 63.6(i)(4)(i).

The standard for which Solventum seeks a compliance extension pursuant to 40 CFR 63.6(i)(4)(i) is the 99.8% Reduction Requirement. *See* Table 1 to Subpart O of Part 63. In the Sterilizer Rule, EPA said that it promulgated this standard pursuant to both 112(f) and 112(d). *See* Table 6, 89 Fed. Reg. at 24,098; *see also id.* at 24,100 ("we are finalizing the following EtO emissions standards under CAA section 112(f)(2): . . . 99.8 percent reduction for SCVs at facilities where EtO use is at least 1 tpy but less than 10 tpy"); *see also id.* ("to satisfy the requirements of CAA section 112(d)(6), we are revising the standards to include . . . 99.8 percent reduction for SCVs at facilities where EtO use is at least 1 tpy but less than 10 tpy.").

Because 112(d) is a basis for EPA's authority to promulgate this standard, EPA is authorized to grant a compliance extension for the standard under 40 CFR 63.6(i)(4)(i)(A) ("The owner or operator of an existing source who is unable to comply with a relevant standard established under this part pursuant to section 112(d) of the Act may request that the Administrator (or a State, when the State has an approved part 70 permit program and the source is required to obtain a part 70 permit under that program, or a State, when the State has been delegated the authority to implement and enforce the emission standard for that source) grant an extension allowing the source up to 1 additional year to comply with the standard, if such additional period is necessary for the installation of controls."). Accordingly, Solventum is requesting a one-year extension from April 5, 2027 to April 5, 2028 to comply with the 99.8% Reduction Requirement. EPA has broad regulatory and dual authority under Section 112(d) and 112(f)[2]. 112(d) is a valid source of authority for the 99.8% Reduction Requirement and, as such, the underlying compliance date should be considered to be April 5, 2027. *See* 89 Fed. Reg. at 24,103.

III. An Extension of the Compliance Period is Necessary for the Installation of Controls.

EPA is authorized to grant a request for a one-year extension pursuant to 40 CFR 63.6(i)(4)(i) if such period is necessary for the installation of controls. Control technology must be feasible to be considered reasonably available to regulated entities. As noted above, Neogen is expected to relocate its operations out of Solventum Brookings. After Neogen's departure, Solventum Brooking's EtO usage is anticipated to be below 100 lbs/year, below the 1 ton per year threshold triggering the 99.8% Reduction Requirement.

Solventum Brookings currently achieves a 99% control rate for EtO emissions through use of a catalytic oxidizer.[3] The 99.8% Reduction Requirement would require Solventum to install a new dry bed scrubber system which requires significant planning, design engineering, permitting and testing to accomplish safely and effectively. In addition, compliance with the 99.8% Reduction Requirement will require Solventum to spend over $4.4 million – equating to an incremental cost of control of $245 million per ton of EtO. Considering the technical complexity of installation of the dry bed scrubber at

[2] EPA arguably lacks the statutory authority to conduct a secondary residual risk review under 112(f)(2), which mandates a one-time risk review contingent on a specific sequence of prerequisites. *See* 112(f)(1); 112(f)(2)(A); *but see* 112(d)(6) (mandating, in contrast, a recurring technology review by EPA). EPA previously conducted a residual risk review for the source category in 2006. *See* 71 Fed. Reg. 17,712 (April 7, 2006).

[3] EPA's residual risk assessment conducted as part of the Sterilizer Rule found that Brookings Solventum posed a risk of only 4-in-1M, well below EPA's presumptive threshold of acceptability of 100-in-1M, *before* the application of controls required by the Sterilizer Rule.

Solventum Brookings, the impending departure of Neogen, and the current state of regulatory uncertainty for the source category, an extension of the deadline is warranted to consider whether controls needed to comply with the 99.8% Reduction Requirement will be necessary.

IV. Solventum has Prepared a Compliance Schedule for the Installation of Controls.

A request for extension pursuant to 40 CFR 63.6(i)(4) must include a "description of the controls to be installed to comply with the standard; [and a] compliance schedule, including the date by which each step toward compliance will be reached." The request must include:

> (*1*) The date by which on-site construction, installation of emission control equipment, or a process change is planned to be initiated; and
> (*2*) The date by which final compliance is to be achieved.
> (*3*) The date by which on-site construction, installation of emission control equipment, or a process change is to be completed; and
> (*4*) The date by which final compliance is to be achieved.

40 CFR 63.6(i)(6).

As described above, installation of the dry bed scrubber needed to comply with the 99.8% Reduction Requirement involves significant planning, engineering, permitting and testing. The significant time and money expenditures required for compliance are unreasonable considering Neogen's impending departure and EPA's pending reconsideration action. Nonetheless, Solventum is developing the following contingent compliance schedule with good faith efforts toward compliance if required. In accordance with 40 CFR 63.6(i)(6), these dates are as follows:

- **The date by which on-site construction, installation of emission control equipment, or a process change is planned to be initiated – ONGOING NOW**
  Solventum is currently engaged in the planning and implementation of the emission controls, including discussions with outside vendors and consultants.

- **The date by which on-site construction, installation of emission control equipment, or a process change is to be completed - FEBRUARY 5, 2028**

- **The date by which final compliance is to be achieved – APRIL 5, 2028**

The dates provided herein are preliminary estimates based on Solventum's current knowledge of facility operations and past experience implementing similar control measures. Although the estimates provided are good faith approximations of the time necessary, these projects could take significantly longer to implement. Solventum makes no commitment to meet these preliminary minimum estimates.[4]

[4] Solventum reserves the right to seek such additional relief from the Sterilizer Rule's compliance deadlines as may be available under the law, both concurrently and following this request.

V. Conclusion

As set forth herein, an extension of the compliance period set by the Sterilizer Rule is necessary for the installation of controls and will not result in any unacceptable risk from Solventum Brookings. Therefore, Solventum respectfully requests an extension of the compliance deadline for the 99.8% Reduction Requirement to April 5, 2028.

Thank you for your attention to this request. Solventum is available to meet with EPA to discuss further if you need any additional information.

Sincerely,

Jay Small, CSP
Vice President Global Environmental Health & Safety
Email: ejsmall@solventum.com

Enclosure: June 10, 2025 Letter from Solventum to EPA

cc: Lee Zeldin, EPA Administrator
Environmental Protection Agency
Office of the Administrator, Mail Code 1101A
1200 Pennsylvania Avenue, NW
Washington, DC 20460
Zeldin.Lee@epa.gov

Aaron Szabo, Assistant Administrator, EPA Office of Air and Radiation
Environmental Protection Agency
Office of the Administrator, Mail Code 6103A
1200 Pennsylvania Avenue, NW
Washington, DC 20460
Szabo.Aaron@epa.gov

Abigale Tardif, Principal Deputy Assistant Administrator
Environmental Protection Agency
Office of the Administrator, Mail Code 6103A
1200 Pennsylvania Avenue, NW
Washington, DC 20460

Katie Mills, Deputy Assistant Administrator for Permitting and Regional Matters
Environmental Protection Agency
Office of the Administrator, Mail Code 6103A
1200 Pennsylvania Avenue, NW
Washington, DC 20460

Submitted via email to: [redacted]@epa.gov

June 10, 2025

[redacted]
Branch Chief, Enforcement and Compliance Assurance Division
U.S. Environmental Protection Agency, Region 8
1595 Wynkoop Street
Denver, CO 80202

USEPA,

Region 8 1595 Wynkoop Street (8ENF-AT)

Denver, CO 80202-1129

RE:

Request by Solventum Corporation for a Clean Air Act Compliance Extension Under the National Emission Standards for Hazardous Air Pollutants: Ethylene Oxide Emissions Standards for Sterilization Facilities Residual Risk and Technology Review (89 Fed. Reg. 24,090; April 5, 2024)

Dear Mr. [redacted],

Pursuant to 40 CFR 63, Subpart A, §63.6(i)(3) and §63.6(i)(4)(ii), "Request for extension of compliance" for a relevant standard established under Federal Clean Air Act Section 112(f) "Standard to protect health and environment", Solventum Corporation ("Solventum") requests an extension of compliance of up to two years after the effective date of the National Emission Standards for Hazardous Air Pollutants: Ethylene Oxide Emissions Standards for Sterilization Facilities Residual Risk and Technology Review (89 Fed. Reg. 24,090; April 5, 2024) (the "Sterilizer Rule"). Please note that Solventum is not seeking a compliance extension under the Presidential Exemption process that was announced in March 2025.

For the reasons highlighted in this letter, Solventum believes it is necessary and appropriate for the United States Environmental Protection Agency Region 8 ("US EPA") to grant an Extension of Compliance under 40 CFR 63, Subpart A, §63.6(i)(3) and §63.6(i)(4)(ii) for the ethylene oxide ("EtO") emission standards and limitations for Solventum's facility in Brookings, South Dakota ("Solventum Brookings").

Solventum strives to advance healthcare solutions that improve lives. Through our people, solutions, and partnerships, we work to improve the health of the planet and human health. We care about the health of our communities and support them through our expertise, our solutions and philanthropy. We are deeply committed to continued compliance with

environmental obligations and place care for health, safety, and the environment at the forefront of our business.

Solventum Brookings currently operates EtO emission controls that have consistently demonstrated a control efficiency exceeding 99%, in full compliance with current EtO NESHAP, 40 CFR 63.362(c), as documented by the testing results submitted to EPA Region 8 for Petrifilm on April 27, 2018, and for Attest on June 20, 2019. Solventum remains fully committed to upholding compliance with all current and future air emission regulations at the Brookings facility.

As Region 8 is aware, in addition to the reasons set forth below on the need for a compliance extension, the current EtO emissions standards and limitations are in flux. US EPA has announced that the current rule is under active reconsideration in light of the Trump Administration regulatory reduction activities. Also, as set forth in the case *Ethylene Oxide Sterilization Association Inc. v. EPA*, 24-180 (D.C. Cir.) (consolidated with *California Communities Against Toxics v. EPA*, 24-1178) the Sterilizer Rule has been appealed and US EPA is required to provide the court with a status update by June 30th and every ninety days thereafter while the Sterilizer Rule is under reconsideration. Solventum believes that the regulatory uncertainty with the Sterilizer Rule increases the need for a compliance extension.

As detailed below, an Extension of Compliance is warranted for Solventum Brookings because the technology needed is neither practical nor reasonable. Per EPA's guidance, Solventum submits the following information in Part I (Individual Facility Information): (A) emission standards or limitations subject to the request; and (B) length of compliance period request. Supporting information justifying this request follows in Part II.

We request the U.S. EPA Region 8 Administrator swiftly consider and issue an Extension of Compliance because the technology to implement the standard is not available given the practical and cost challenges to plan, procure, and install required control technologies within the current compliance timeframe.

I. INDIVIDUAL FACILITY INFORMATION

The affected Section 112(f) stationary source (facility) is located at 601 22nd Ave. S, Brookings, South Dakota 57006. This facility is subject to Title V Site Operating Permit No. 28.9901-06, issued by South Dakota Department of Environment and Natural Resources.

Solventum Brookings contract/toll manufactures a high-tech, modern-day replacement for the laboratory petri dish. The product is sold by Neogen® company under the trade name Petrifilm AC ("Petrifilm®" or "Petrifilm® AC test kits") and is used by food and beverage producers as well as contract laboratories across the United States and around the world. A picture of the Petrifilm® product is included at Attachment A of this letter.

Petrifilm®'s easy-to-use microbiology plate tests have revolutionized the world of food safety. Petrifilm® plates are designed by scientists to help labs be more efficient while delivering

reliable and accurate test results. The finished product is critical to user's ability to prevent foodborne illness outbreaks.

As part of the contract manufacturing process, Solventum uses EtO to decontaminate Petrifilm® microbiology plates and prevent Petrifilm® plate contamination before shipment to customers. Petrifilm® is used by the Food and Drug Administration for milk laboratory analysis and has been assessed by the US Department of Agriculture Food Safety and Inspection Service.

Historically, Solventum Brookings has used just over 2,000 pounds per year ("lb/yr") [or 1 ton per year ("tpy")] of EtO in the production process. Based on historical usage, Solventum Brookings would be classified as a commercial sterilizing facility under the Sterilizer Rule with an April 2026 compliance deadline. Neogen®, the owner of the Petrifilm® brand and business, which is currently contract manufactured at Solventum Brookings, is building a new manufacturing facility in Michigan. When this operational change occurs (currently scheduled in the second half of 2026), we expect that Solventum Brookings' EtO usage will be below 100 lb/yr. Without the requested Extension of Compliance, Solventum Brookings would face costs exceeding $4.4 million to implement control technologies for incremental EtO removal and continuous emissions monitoring in an effort to meet the April 2026 deadline—without any guarantee of achieving compliance with the requirements of the revised MACT Subpart O.

Operational changes anticipated in the second half of 2026 would resolve the need to install such control technologies at Brookings since by that point, Solventum Brookings' EtO usage will be below 100 lb/yr. If an Extension of Compliance is not granted, Solventum Brookings will be required to invest over $4.4 million in additional emissions control technologies and continuous monitoring systems aimed at achieving only marginal reductions in EtO emissions. This expenditure comes despite the facility already demonstrating a proven control efficiency exceeding 99%, in full compliance with existing regulatory standards.

A. Emissions Standards or Limitations Subject to the Request

Solventum requests an Extension of Compliance from the obligations arising under the Sterilizer Rule. Given the complex requirements in the Sterilizer Rule, it is most appropriate to grant an Extension of Compliance with respect to the Sterilizer Rule in its entirety. More specifically, with respect to the specific individual emission standards and limitations within the Sterilizer Rule, we request that the following should be extended, along with their associated monitoring, reporting, and recordkeeping requirements:

40 CFR 63.362 (a): Compliance date
40 CFR 63.362 (b): Applicability of Standards
40 CFR 63.362 (c): Sterilization Chamber Vents
40 CFR 63.362 (d): Aeration Room Vents
40 CFR 63.362 (g): Group 1 Room Emissions
40 CFR 63.362 (g): Group 2 Room Emissions
40 CFR 63.362 (h): Capture Systems

40 CFR 63.362 (k): General Duty

B. Length of Compliance Period Requested.

Solventum requests a two-year Extension of Compliance from the applicable standards and limitations, in accordance with the provisions of 40 CFR 63, Subpart A, §63.6(i)(3) and §63.6(i)(4)(ii), with the possibility of renewal. For the Petrifilm® process, the requested extension would shift the compliance deadline from April 5, 2026, to April 5, 2028. For the Laboratory Sterilization process, the compliance deadline would be extended from April 5, 2027, to April 5, 2029.

II. JUSTIFICATION FOR EXTENSION OF COMPLIANCE REQUEST

A. The Technology to Implement the Above Standards Is Not Available.

The availability of technology is widely understood in environmental law frameworks to mean the conditions that allow a manufacturing facility to comply with regulatory requirements. Among other things, this requires the actual, real-time availability of the material inputs, equipment, personal protective gear, monitoring systems, validated test methods, and labor to service the technology. In addition, available technology is also understood to mean economic feasibility. Under the Clean Air Act, for example, a reasonably available control technology analysis considers whether control technology is reasonably available, including both technological and economic feasibility. In short, available technology must be practical and reasonable.

The control technology required to comply with the Sterilizer Rule is neither practical nor reasonable for implementation at Solventum Brookings. The Sterilizer Rule requires that fugitive EtO emissions from the room ventilation (Groups 1 and 2) must be captured through the installation of a permanent total enclosure (PTE), with the collected emissions directed to a control system that achieves 97% control efficiency for Group 1 vents and 86% control efficiency for Group 2 vents. After the exit of Neogen®'s Petrifilm business, expected in the second half of 2025, Solventum plans to meet the compliance requirement for Group 1 and Group 2 emissions by installing and operating a new dry bed scrubber system.

However, there is a technical concern regarding the ability to achieve high removal efficiencies when the inlet loading to the control system is extremely low, at parts per billion (ppb) or parts per trillion (ppt) levels. Given the expected ppb or ppt concentrations of EtO in the room air routed to the proposed dry bed scrubber system, it may not be feasible to verifiably achieve a 97% reduction, or an 86% reduction in EtO. While Solventum is willing to implement control technologies to address emissions from Group 1 and Group 2 vents, technology to implement the standard and demonstrate compliance with the requirements of the Sterilizer Rule is not available. This is particularly problematic if the exit concentrations fall below an instrument's detection range or if control technology does not exist to verify 97% control efficiency for Group 1 vents and 86% control efficiency for Group 2 vents. The technical challenge or infeasibility of

achieving high removal efficiency at such low inlet concentrations is well-documented and has been acknowledged by vendors of relevant control technologies.[1]

Finally, as noted, costs of over $4.4 million dollars are needed to support additional changes to control incremental EtO, that do not, at this time ensure compliance with the removal efficiencies required by the Sterilizer Rule. Therefore, control technology to implement the Sterilizer Rule is neither practical nor reasonable, and not available for low concentration Group 1 and Group 2 vent streams at Solventum Brookings.

B. The Sterilizer Rule Would Impose Extremely Costly Requirements That Are Not Justified By Emissions Reductions.

The uncontrolled emissions rate of EtO from the Petrifilm® process is 1.84 tpy (or 3,680 lb/yr). With a 99% control efficiency currently achieved using a catalytic oxidizer, the controlled emission rate is 0.0184 tpy (or 36.8 lb/yr). Installing control technology necessary to achieve an overall control efficiency of 99.8%, as required by the Sterilizer Rule, further drops the emission rate to 0.00368 tpy or (7.4 lb/yr). The difference between the 99% control efficiency and the 99.8% control efficiency is 0.015 tpy (or 30 lb/yr).

Accordingly, to seek to comply with the requirements of the Sterilizer Rule and achieve 99.8% control by the April 2026 deadline, Solventum will be required to invest over $4.4 million to install and operate the new dry bed scrubber system. On a dollar-per-ton basis, this translates to an incremental **cost of control** of **$245 million per ton of EtO**. As described above, we expect that Neogen will relocate to a new facility in Michigan, thus exiting the Solventum Brookings facility, in the second half of 2026, after the April 5, 2026, compliance deadline for commercial sterilizers using over 1 tpy of EtO. Although Solventum Brookings will remain subject to the Sterilizer Rule, its compliance obligations will reflect an EtO usage of less than 100 lb/yr, with a corresponding compliance deadline of April 5, 2027.

III. CONCLUSION

Solventum is committed to environmental compliance and being a trusted partner with those communities in which we operate. The Solventum Brookings facility has complied with previous EtO NESHAP regulations and currently operates emission control systems that have demonstrated at least 99% control efficiency for EtO. Solventum remains fully committed to maintaining compliance with all current and future air emission regulations at the Brookings site.

Because the technology to implement the Sterilizer Rule is not practical or reasonable, Solventum respectfully requests that the U.S. EPA Region 8 Administrator grant a two-year Extension of Compliance from the Sterilizer Rule to Solventum Brookings under 40 CFR 63, Subpart A, §63.6(i)(3) and §63.6(i)(4)(ii). To reiterate, for the Petrifilm® process, the requested

[1] Survey of Control Technologies for Low Concentration Organic Vapor Gas Streams. United States Environmental Protection Agency, EPA-456/R-95-003, May 1995.

extension would shift the compliance deadline from April 5, 2026, to April 5, 2028. For the Laboratory Sterilization process, the compliance deadline would be extended from April 5, 2027, to April 5, 2029.

Thank you for your attention to this request. Solventum is willing to meet at your convenience to discuss further.

Sincerely,
/s/ Jay Small
Jay Small, CSP
Vice President Global Environmental, Health & Safety
Email: ejsmall@solventum.com

ATTACHMENT A

Petrifilm® Aerobic Count Plates



- [redacted]
- [redacted]
- [redacted]
- [redacted]
- [redacted]

ASSISTANT ADMINISTRATOR FOR AIR AND RADIATION

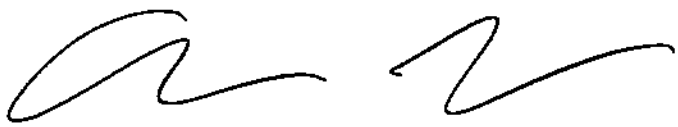
WASHINGTON, D.C. 20460

April 3, 2026

MEMORANDUM

SUBJECT: Request for No Action Assurance and an Enforcement Statement Regarding Facilities Subject to the National Emission Standards for Hazardous Air Pollutants: Ethylene Oxide Emissions Standards for Sterilization Facilities, Residual Risk and Technology Review

FROM: Aaron Szabo
Assistant Administrator
Office of Air and Radiation



TO: Jeffrey Hall
Assistant Administrator
Office of Enforcement and Compliance Assurance

The Office of Air and Radiation (OAR) requests that the Office of Enforcement and Compliance Assurance (OECA) provide No Action Assurance (NAA) and an enforcement statement regarding provisions of the final rule titled "National Emission Standards for Hazardous Air Pollutants: Ethylene Oxide Emissions Standards for Sterilization Facilities, Residual Risk and Technology Review" (2024 Final Rule), published on April 5, 2024 (89 FR 24090). Ethylene oxide (EtO) is the only safe and effective sterilization method available for many medical devices, making it indispensable for life-saving medical equipment including heart valves, pacemakers, surgical kits, gowns, drapes, ventilators, syringes, and catheters. Commercial sterilizers utilize EtO to sterilize 50 percent of all medical devices in the U.S every year with no viable alternative on the market. The EPA is concerned that the standards in the 2024 Final Rule impact facilities' ability to sterilize equipment and jeopardize one of America's only options for a secure domestic supply chain of essential medical equipment. OAR is seeking a bridge that provides enforcement discretion and greater certainty to industry until the Agency can finalize provisions in a proposed rule titled "National Emission Standards for Hazardous Air Pollutants: Ethylene Oxide Emissions Standards for Sterilization Facilities Residual Risk and Technology Review Reconsideration" (2026 Proposed Rule), published on March 17, 2026. This proposed rule was developed in response to Administrator Zeldin's March 12, 2025, announcement of planned deregulatory actions.[1] The discretion could be time-limited, expiring when a final rule becomes effective.

[1] *See* "EPA Launches Biggest Deregulatory Action in U.S. History," (March 12, 2025). Available at https://www.epa.gov/newsreleases/epa-launches-biggest-deregulatory-action-us-history (accessed December 10, 2025).

The 2024 Final Rule revised the Commercial Sterilization Facilities NESHAP (40 Code of Federal Regulations part 63, subpart O) based on a residual risk and technology review (RTR) pursuant to Clean Air Act (CAA) sections 112(f)(2) and 112(d)(6), respectively by specified compliance dates. Congress deliberately designed CAA section 112 with detailed implementation timelines and requirements for residual risk reviews. The residual risk review for this source category was originally conducted as part of the 2006 rulemaking. Despite already completing the residual risk review required by law, the 2024 Final Rule included an unprecedented second discretionary residual risk review. With the 2026 Proposed Rule, the EPA is proposing that CAA section 112(f)(2) prevents the Agency from conducting more than one risk review. Therefore, the 2024 risk review violated the CAA and should have never been completed. In line with congressional intent, the EPA is proposing to remove the risk-based 112(f)(2) standards set in the 2024 Final Rule. The 2026 Proposed Rule, if finalized, would also revise the standard promogulated under CAA 112(d)(6) for new aeration room vents (ARVs) where ethylene oxide (EtO) use is at least 10 tons per year (tpy), revise the compliance demonstration requirements to allow facilities to choose between parametric monitoring or using a continuous emission monitoring system, and rescind the requirement that permanent total enclosure (PTE) be used to ensure complete capture of EtO for Group 1 and Group 2 room air emission standards.

These changes address concerns raised by companies and trade associations. During and following the promulgation of the 2024 Final Rule, the medical community, industry stakeholders, and other Federal agencies, including the U.S. Food and Drug Administration, raised serious concerns regarding the feasibility of complying with the more stringent EtO emission standards and the impacts the requirements would have on maintaining a strong domestic supply chain for sterilized medical equipment. In response to legal, scientific, and policy concerns, the EPA issued a press release on March 12, 2025, announcing its reconsideration of the 2024 Final Rule, and on March 21, 2025, formally granted voluntary reconsideration. The EPA evaluated and granted the requests included in the 2026 Proposed Rule.

On July 17, 2025, President Trump signed the Proclamation "Regulatory Relief for Certain Stationary Sources to Promote American Security With Respect to Sterile Medical Equipment" (90 FR 34747).[2] This Proclamation exempted certain facilities, identified in Annex 1 of the Proclamation, from compliance with the 2024 Final Rule. The Presidential exemption is for a period of 2 years beyond the 2024 Final Rule's compliance dates. During the exemption period, facilities identified in Annex 1 that were subject to the Commercial Sterilization Facilities NESHAP, 40 CFR part 63, subpart O, in effect prior to the issuance of the 2024 Final Rule must continue to comply with those standards. Not all facilities subject to the 2024 Final Rule were aware of and applied for the Presidential exemption, additionally, not all facilities that applied were granted the exemption. As a result, there are an estimated 42 of the 89 facilities subject to the 2024 Final Rule that have an April 6, 2026, compliance date for the CAA 112(f)(2) emission standards (*see* Appendix 1).

The compliance date for the 2024 Final Rule standards promulgated pursuant to CAA section 112(f)(2) is currently April 6, 2026, we are requesting enforcement discretion on these standards, which are listed below:

[2] A copy of the Presidential Proclamation and Annex 1 are available in the rulemaking docket (Docket ID No. EPA-HQ-OAR-2019-0178).

ED_021114D_00002855-00002

- 99.8 percent reduction for new and existing SCVs at facilities where EtO use is at least 1 but less than tpy,
- 99.9 percent reduction for new and existing SCVs at facilities where EtO use is at least 10 but less than 30 tpy,
- 99.99 percent reduction for new and existing SCVs at facilities where EtO use is at least 30 tpy
- 99.6 percent reduction for existing ARVs at facilities where EtO use is at least 10 but less than 30 tpy,
- 99.9 percent reduction for existing ARVs at facilities where EtO use is at least 30 tpy,
- 99.9 percent reduction for new ARVs at facilities where EtO use is at least 30 tpy,
- 99.9 percent reduction for new and existing CEVs at area source facilities where EtO use is at least 60 but less than 400 tpy,
- 99.9 percent reduction for new and existing CEVs at area source facilities where EtO use is at least 400 tpy,
- 98 percent reduction for new and existing Group 1 room air emissions at area source facilities where EtO use is at least 40 tpy, and
- 98 percent reduction for new and existing Group 2 room air emissions at area source facilities where EtO use is at least 20 tpy.
- 80 percent reduction for new and existing Group 2 room air emissions at area source facilities where EtO use is at least 4 but less than 20 tpy.

After considering comments on the 2026 Proposed Rule, the EPA expects to finalize various forms of relief for these standards. OAR is requesting the following from OECA:

1. Provide an NAA now for the above-mentioned standards.
2. Consider additional NAAs for certain other provisions, for example, if we receive additional requests from affected entities and they demonstrate an inability to comply with the current requirements.
3. Issue an enforcement discretion statement for all provisions that the EPA proposed delaying or modifying.

The targeted and time-limited enforcement discretion we are seeking is in the public interest and would not jeopardize the EPA's efforts to both ensure the protection of health and the environment.

Enforcement Statement

OAR requests that OECA issue a statement noting we are aware of the circumstances and equities created by the Agency's decision to reconsider the 2024 Final Rule through the rulemaking process and are not intending to take enforcement action for noncompliance with the provisions that the EPA has proposed to revise in the 2026 Proposed Rule. Any statement should be clear that the EPA will continue to enforce provisions that would be unaffected by the 2026 Proposed Rule.

The regulatory uncertainty of the upcoming compliance dates and the delayed relief consistent with the 2026 Proposed Rule may cause supply shortage impacts. Being unable to adequately supply sterilized medical equipment to our medical personnel to safely treat patients in hospitals, operating rooms, and other medical facilities would undermine our national security. This uncertainty is expected

to cause economic burden for manufacturers, equipment installers, and in certain cases, potential end users.

If you have any further questions regarding this matter, please contact [redacted] at [redacted] or [redacted]i@epa.gov.

cc: [redacted], OECA
[redacted], OAR
[redacted], OECA

May 29, 2025

APPLICATION FOR PRESIDENTIAL EXEMPTION FOR CROSS GENERATING STATION AND WINYAH GENERATING STATION

In accordance with the procedures set forth by EPA,[1] Santee Cooper is submitting the following application for a Presidential Exemption under section 112(i)(4) of the Clean Air Act. The application requests a Presidential Exemption for the following coal-fired electric generating units (EGUs) that are owned and operated by Santee Cooper:

- Cross Generating Station, Units 1-4 located in Pineville, South Carolina with a total generating capacity of 2,390 MW, and

- Winyah Generating Station, Units 1-4 located in Georgetown, South Carolina with a total generating capacity of 1260 MW.

The Presidential Exemption expressly authorizes the issuance of a two-year extension of the compliance deadlines of the new requirements that EPA adopted on May 7, 2024, through the residual risk and technology review performed for affected coal-fired EGUs regulated by the Mercury and Air Toxics Standard Rule (MATS Rule).[2]

Prior Presidential Proclamation in Support of Santee Cooper's Application. On April 8, 2025, President Trump signed a Presidential Proclamation, entitled *Regulatory Relief for Certain Stationary Sources to Promote American Energy*. This Presidential Proclamation exempted over 100 existing coal-fired EGUs from compliance with all the applicable newly adopted MATS requirements for two years beyond its original compliance date. In effect, the Presidential Exemption issued extended for these units the MATS compliance date for two years from July 8, 2027, to July 8, 2029.

---

[1] The process for applying for a Presidential Exemption was set forth in a public notice posted on March 24, 2025, which provided specific guidelines on the information that should be included in an application. Although the guidance posted in the March 24 public notice can no longer be accessed through the current EPA website, this posting with the EPA guidance for applying for a Presidential Exemption is available at an alternative website .

[2] *See National Emission Standards for Hazardous Air Pollutants: Coal- and Oil-Fired Electric Utility Steam Generating Units Review of the Residual Risk and Technology Review*, 89 Fed. Reg. 38,508 (May 7, 2024).

In support of the Presidential Exemption issued in the April 8 Proclamation, the President made two determinations. The first was that the "technology to implement the [MATS] Rule is not available." This finding was based on a technical assessment that the "technology does not exist in a commercially viable form sufficient to allow implementation of and compliance with the [MATS] Rule by its compliance date of July 8, 2027." The second determination was that granting a two-year extension of the MATS compliance date under the Presidential Exemption was in "the national security interests of the United States." In support of this second determination, the President found:

> The [MATS] Rule places severe burdens on coal-fired power plants and, through its indirect effects, on the viability of our Nation's coal sector. Specifically, the Rule requires compliance with standards premised on the application of emissions-control technologies that do not yet exist in a commercially viable form. The current compliance timeline of the Rule therefore raises the unacceptable risk of the shutdown of many coal-fired power plants, eliminating thousands of jobs, placing our electrical grid at risk, and threatening broader, harmful economic and energy security effects. This in turn would undermine our national security, as these effects would leave America vulnerable to electricity demand shortages, increased dependence on foreign energy sources, and potential disruptions of our electricity and energy supplies, particularly in times of crisis.

Since the issuance of Presidential Proclamation on April 8, 2025, the White House has indicated that additional electric utilities will be afforded the same opportunity to apply for the Presidential Exemption. The CAA does not impose any deadline when applications for Presidential Exemptions must be submitted for consideration. Furthermore, the same technical bases for granting the two-year MATS compliance extension under the April 8 Proclamation remain for other coal-fired EGUs that may not yet have submitted applications for Presidential Exemptions granted to coal-fired EGUs on April 8 Proclamation. As discussed above, those technical bases are that the technology "does not exist in a commercially viable form" and compelling "national security interests" justify granting the time extension to avert many reliability and economic risks posed by the MATS Rule.

These same technical bases for issuing the April 8 Presidential Proclamation provide the grounds for the granting Santee Cooper's application to grant a two-year extension of the

MATS compliance dates through a Presidential Exemption issued under section 112(i)(4) of the Clean Air Act. Those grounds are further described below.

Further Technical Grounds in Support of Santee Cooper's Application. The MATS Rule has increased the stringency of the filterable particulate matter (fPM) limit by two thirds from 0.030 lb/MMBTU to 0.010 lb/MMBTU. Furthermore, it has eliminated all options for demonstrating compliance, other than using certified particulate matter continuous emissions monitoring systems (PM CEMS). Cross Units 1, 3 and 4 currently comply with the MATS fPM limit of 0.010 lb/MMBTU through periodic low mass emitter source testing. Cross Unit 2 and Winyah Units 1-4 comply using continuous parametric monitoring systems. Under the MATS Rule, all 8 of Santee Cooper's affected coal-fired units will be required to install and certify PM CEMS to demonstrate compliance with the new fPM standard of 0.010 lb/MMBTU on a 30-day rolling average basis by July 8, 2027.

Santee Cooper has begun to identify and move forward with additional technology upgrades and emission control measures to further reduce fPM emissions from affected Cross and Winyah Units. Achieving continuous (100 percent) compliance with the fPM limitation, however, is highly uncertain due to several technical uncertainties and challenges. Santee Cooper has initiated efforts to comply with this rule but has also identified multiple technical barriers to ensuring full compliance by the deadline. As discussed below, additional time is needed to be able to ensure 100 percent continuous compliance with PM CEMS and therefore provide strong grounds for the issuance of a Presidential Exemption for Cross Units 1-4 and Winyah Units 1-4.

First, Santee Cooper has a very limited historical dataset to evaluate a unit's ability to comply with the new limit on a 30-day rolling average basis. To determine if control device improvements or operational changes will be necessary for compliance, each unit must first install PM CEMS equipment, establish a correlation between the instrument and reference method measurements, and then collect adequate data to determine baseline performance.

Second, there is currently no guarantee that the strict correlation requirements of Performance Specification-11 can be achieved for these units. Correlation testing is extremely burdensome, requiring a minimum of 15 3-hour test runs per unit while varying PM loading. In some cases, an elevated PM loading may only be obtained by introducing an external source of PM to the flue gas (PM spiking) or obtaining controversial regulatory exemptions for control device detuning. If the data collected during a correlation testing program does not yield a valid correlation curve, a source cannot even begin to assess their

ability to comply with the standard let alone initiate potential capital improvements that may be required to ensure compliance and ultimately reliability.

In addition to overcoming these technical challenges, the implementation of the additional technology upgrades and emission control measures could require significant outages at all eight of the Cross and Winyah Units. Scheduling outages at these units will be another major challenge given the need to keep these units online to meet growing demands in electrical power in its service territory.

Like many utilities in the United States, Santee Cooper is facing significant load growth with limited options for meeting demand. The current deadline of the MATS Rule significantly threatens the reliability of existing reliable generating resources. Granting the two-year extension to these units under the Presidential Exemption will reduce the risk of these resources being unavailable to serve load in the event additional time is required to meet the fPM emission standard and/or the continuous monitoring requirements.

The importance of providing this relief is further underscored by the fact that both South Carolina and Santee Cooper are projecting very substantial increases in electricity load demand over the next five to ten years. In the case of Santee Cooper, this projected increase in power demand includes an additional 670 MW in generating capacity and 5,938,000 MWh in electricity on an annual basis by 2028, as compared to the current generating capacity and electricity production levels most recently forecasted for the Santee Cooper System in 2024 and 2028. This trend for strong increases in demand growth is forecasted to continue in future years through 2030 and beyond, with Santee Cooper projecting an annual need for an additional 1,037 MW in generating capacity and 9,450,000 MWh in electricity on an annual basis by 2030, and 1,516 MW in generating capacity and 13,085,000 MWh in electricity on an annual basis by 2035. This explosion of future electric demand further confirms the finding in the April 8 Presidential Proclamation that an extension of MATS compliance dates for an additional two years is in the interest of the national security interests of the United States.

Santee Cooper appreciates your consideration of this important matter. Please contact me regarding all matters pertaining to this application.



Brian Lynch, Director – Environmental Services
Email: Phone: 843-761-8000 x4620

ED_021114D_00002958-00004

Message

From: [redacted]@epa.gov]
Sent: 6/30/2025 1:26:25 PM
To: Szabo, Aaron [Szabo.Aaron@epa.gov]
Subject: RE: CPS Energy MATS Presidential Exemption Request
Attachments: MATS Rule Presidential Exemption - buckeye power.pdf

Aaron,

Two things on the 112 exemptions:

1. On MATS, I verified that we have not granted CPS Energy a petition previously. Also, there is one other MATS exemption request (from Buckeye Power) attached, that has not been granted. You may recall, this company sent us an e-mail but did not attach the correct exemption request so they resent it after the other MATS exemptions were granted. I am having the team double check to verify that there are no other unaddressed petitions for MATS.
2. I have not seen any e-mail from you re: other letters that need to be checked (per our discussion on Friday I was expecting something). Please let me know if I've missed something.

Enjoy your vacation.

- [redacted]

From: Szabo, Aaron <Szabo.Aaron@epa.gov>
Sent: Friday, June 27, 2025 4:54 PM
To: [redacted]@epa.gov>
Subject: FW: CPS Energy MATS Presidential Exemption Request

FYSA

Thanks,

Aaron Szabo
Senior Advisor to the Administrator
202-855-3241

From: Brotherman, Thomas M <TMBrotherman@CPSEnergy.com>
Sent: Thursday, June 26, 2025 3:49 PM
To: Szabo, Aaron <Szabo.Aaron@epa.gov>; Tardif, Abigale (Abbie) <Tardif.Abigale@epa.gov>; AirAction <AirAction@epa.gov>
Cc: Brockmann, Curt D. <CDBrockmann@CPSEnergy.com>; Tieken, Gregg R. <GRTieken@CPSEnergy.com>; Clyde, Lisa <MAClyde@cpsenergy.com>
Subject: CPS Energy MATS Presidential Exemption Request

Some people who received this message don't often get email from tmbrotherman@cpsenergy.com. Learn why this is important

Caution: This email originated from outside EPA, please exercise additional caution when deciding whether to open attachments or click on provided links.

Attached is CPS Energy's request for Presidential Exemption of MATS Compliance Obligations for CPS Energy's J K Spruce Unit 1 and 2 coal fired power plants. Thank you for your consideration.

Tom Brotherman
Environmental Analyst | Environmental & Sustainability Services
CPS Energy | 500 McCullough, San Antonio, Texas 78215 | MD: RT0601
Office: 210.353.3924 | Mobile: 210.255.7622
cpsenergy.com

June 26, 2025

Aaron Szabo, Assistant Administrator
Abbie Tardif, Deputy Air Administrator
United States - Environmental Protection Agency
Washington D.C.

Re: Request for Presidential Exemption of MATS Compliance Obligations
For CPS Energy Spruce Unit 1 and Spruce Unit 2 Coal Power Plants
Bexar County, Texas

CPS Energy is on schedule to cease the burning of coal at both its Spruce 1 and Spruce 2 generation units by 2028. Both plants are following the revised MATS emission standards. CPS Energy is submitting to the Environmental Protection Agency (EPA) the attached application seeking a Presidential Exemption for a two-year extension of the revised MATS compliance requirements under section 112(i)(4) of the Clean Air Act. The application seeks an extension to the revised MATS requirement that Particulate Matter Continuous Emission Monitoring Systems (PM CEMS) be installed. CPS Energy requests that it be able to continue operating under existing sampling methodology for the following reasons:

1) Both units will either be retired or converted to natural gas by 2028,
2) The units will continue to comply with the existing air emission permit limits that are protective of the environment, and
3) Any additional equipment required by the rules will only be used for a short period of time and creates a stranded investment once the plant is closured or converted.

On April 8, 2025, President Trump signed a Presidential Proclamation that provided MATS compliance extensions to many coal-fired generating units that had initially applied for the Presidential Exemption last March. However, it is our understanding that additional electric utilities will be afforded the same opportunity to apply for the Presidential Exemption through a second Presidential Proclamation that would be issued in the near term. CPS Energy requests that the EPA include in this second proclamation the attached application requesting a Presidential Exemption for CPS Energy's Spruce Units 1 and 2.

ED_021114D_00003035-00001

CPS Energy appreciates your attention on this important matter. Please contact Mr. Gregg Tieken at 210-837-2607 or GRTieken@CPSEnergy.com regarding all matters pertaining to CPS Energy's application.

Sincerely,

Curt D. Brockmann
Vice President, Compliance and Ethics

Application for Presidential Exemption for
Calaveras Power Plant, J.K. Spruce Units 1 and 2

In accordance with the procedures set forth by the EPA,[1] CPS Energy is submitting the following application for a Presidential Exemption under section 112(i)(4) of the Clean Air Act. The application requests a Presidential Exemption for Spruce Unit 1 and Unit 2, which are two coal-fired electric generating units located at the Calaveras Power Station in Bexar County, Texas.

The Presidential Exemption expressly authorizes the issuance of a two-year extension of the compliance deadlines of the new requirements that the EPA adopted on May 7, 2024, for affected coal-fired power plants regulated by the Mercury and Air Toxics Standard Rule (MATS Rule).[2]

CPS Energy is the largest publicly owned electric and natural gas utility in the United States, located in Bexar County, in south Texas. CPS Energy is seeking regulatory relief from rules imposed by the revised MATS rule for coal fired power plants.

CPS Energy requests no changes to emission standards or limits, instead we request a two-year extension to the updated MATS Rule requirement that PM CEMS be installed at both plants by July 2027. Spruce 1 is schedule for decommissioning in 2028 and Spruce 2 will cease burning coal in the fall of 2027, when it will be converted to 100% natural gas. The installation of the two PM CEMS would incur a stranded cost somewhere between $650,000 and $800,000.

Facility(ies) and/or affected source(s):

Spruce 1 and Spruce 2 coal power generation units are located at the Calaveras Power Plant, Bexar County, Texas.

Length of compliance period being requested

CPS Energy requests that the two plants be allowed to continue operating under the current MATS Low Emitting EGU (LEE) status for two years beyond the current end date of July 6, 2027. The MATS LEE status allows a reduced sampling frequency for stack testing for filterable particulate matter (fPM) in leu of installation of PM CEMS. By July 2029, both plants will either be converted to 100% natural gas or decommissioned. Incurring substantial capital costs and resources for the purchase, installation, and

[1] The process for applying for a Presidential Exemption was set forth in a public notice posted on March 24, 2025, which provided specific guidelines on the information that should be included in an application. Although the guidance posted in the March 24 public notice can no longer be accessed through the current EPA website, this posting with the EPA guidance for applying for a Presidential Exemption is available at an alternative website here.

[2] *See National Emission Standards for Hazardous Air Pollutants: Coal- and Oil-Fired Electric Utility Steam Generating Units Review of the Residual Risk and Technology Review*, 89 Fed. Reg. 38,508 (May 7, 2024).

certification of the PM CEMS would be a waste of limited resources to comply with requirements that will most likely be repealed and not replaced.

Provide a justification to support the request on the following two matters:

An explanation why the technology to implement the standard is not available:

CPS Energy requests that stack testing be allowed to demonstrate compliance with the applicable filterable particulate matter standards at both plants until each is either decommissioned or converted to 100% natural gas by July 2029. This is the most efficient and cost-effective technological approach for demonstrating compliance with the fPM performance standards.

An explanation why an extension is in the national security interests of the United States:

The installation of the PM CEMS for Particulate Matter monitoring does not reduce emissions but simply provides continuous monitoring. Currently fPM is monitored by stack tests. Generation readiness will be reduced as the installation of the PM CEMS requires shutting down the two large generation units, which are part of the baseload that generates a combined 1,340 MW at peak power. Additionally, the installation of PM CEMS requires a significant capital expense and will be obsolete in two years, if not earlier.

CPS Energy appreciates your attention on this important matter. Please contact Mr. Gregg Tieken at 210-837-2607 or GRTieken@CPSEnergy.com regarding all matters pertaining to CPS Energy's application.

Message

From: [redacted]@epa.gov]
Sent: 7/3/2025 8:15:58 PM
To: Szabo, Aaron [Szabo.Aaron@epa.gov]
Subject: RE: Review of NESHAP Information
Attachments: exemptions document to check.docx; busse hospital disposals - letter.pdf; Arthrex letter.pdf; CPS Energy MATS Presidential Exemption Request (003).pdf; Stepan Company-Request for Exemption.pdf; MATS Rule Presidential Exemption - buckeye power.pdf; steri-tech-PR letter.pdf

Attached is an annotated version of the file you asked us to check. (b) (5)

(b) (5)

Wil check back a few times this weekend in case anything else is needed.

From: Szabo, Aaron <Szabo.Aaron@epa.gov>
Sent: Thursday, July 3, 2025 2:46 PM
To: [redacted]@epa.gov>
Subject: Re: Review of NESHAP Information

No worries. Thanks.

Get Outlook for iOS

From: [redacted]@epa.gov>
Sent: Thursday, July 3, 2025 2:35:35 PM
To: Szabo, Aaron <Szabo.Aaron@epa.gov>
Subject: RE: Review of NESHAP Information

Aiming for 4:00. It took a bit longer than I anticipated because the problems were on the back end.

From: Szabo, Aaron <Szabo.Aaron@epa.gov>
Sent: Thursday, July 3, 2025 1:57 PM
To: [redacted]@epa.gov>
Subject: RE: Review of NESHAP Information

Hey [redacted] – I know that there is an early dismissal today and trying to figure out my schedule for the rest of the day. I was just wondering if you happened to have an ETA on the documents so I can make sure to be around.

Thanks,

Aaron Szabo
Senior Advisor to the Administrator
202-855-3241

From: [redacted]@epa.gov>
Sent: Wednesday, July 2, 2025 4:11 PM
To: Szabo, Aaron <Szabo.Aaron@epa.gov>
Subject: RE: Review of NESHAP Information

Aaron,

(b) (5) so we are not going to be able to provide anything new there.

We are mostly done with the other checking and will have you something early tomorrow afternoon. (b) (5)
(b) (5)

- [redacted]

From: Szabo, Aaron <Szabo.Aaron@epa.gov>
Sent: Tuesday, July 1, 2025 5:00 PM
To: [redacted]@epa.gov>
Subject: Review of NESHAP Information

CUI – INTERNAL USE ONLY – PREDECISIONAL AND DELIBERATIVE

Hey [redacted] – sorry for the delay in this getting to you. Can you and the team look through the list attached and provide the following information by the end of the day Thursday? Here is the request from the White House:

Ex. 5 Deliberative Process (DP)

If some of the information is going to extremely research intensive or unrealistic, let me know as soon as possible (b) (5) so I can convey to the White House. With respect to #3, [redacted] Ex. 5 Deliberative Process (DP) [redacted]" where that is really the question. (b) (5)

(b) (5)

Of course, if you have any questions, please do not hesitate to reach out.

Thanks,

Aaron Szabo
Senior Advisor to the Administrator
202-855-3241

STERI-TECH, INC.
Contract Sterilization & Disposable Apparel Mfg. Co. Box 1145, Salinas, P. R. 00751

Tel.: (787) 824-4040
Fax: (787) 824-5552
Email: jorgevivoni@steri-tech.com
sales@steri-tech.com

To: U.S. Environmental Protection Agency
From: Giovanni R. Sánchez Cruz / STI Technical Services Manager
Date: 05/30/25
Re: Sterilizer Rule (89 FR 24090): Steri-Tech Inc

I am writing on behalf of Steri-Tech Inc in Salinas, Puerto Rico to request that the President issue a two-year exemption according to his authority under Clean Air Act (CAA) Section 112(i)(4) for all emission standards and associated requirements created or revised in EPA's April 4, 2024 *National Emission Standards for Hazardous Air Pollutants: Ethylene Oxide Emissions Standards for Sterilization Facilities Residual Risk and Technology Review*, 89 FR 24090 (April 5, 2024) (Sterilizer Rule).

Steri-Tech requests that the President issue a two-year exemption as quickly as reasonable but designate it as taking effect on the compliance deadlines for the standards in the Sterilizer Rule. Specifically:

- For standards set or revised under CAA Section 112(f) and all corresponding requirements (including monitoring requirements), the exemption should apply as of April 6, 2026 (the compliance deadline for those standards);
- For standards set or revised under CAA Section 112(d) and all corresponding requirements (including monitoring requirements), the exemption should apply as of April 5, 2027 (the compliance deadlines for those standards).

As explained in the attached letter submitted to EPA on March 17 on behalf of the Ethylene Oxide Sterilization Association (EOSA), the technology necessary to implement the standards is not available because manufacturers cannot guarantee that existing emissions control equipment will enable sources to meet the new standards; there is not a sufficient supply of the necessary technology; and there are not enough experienced installation professional and technical experts to install and test that equipment within the current compliance timeframes.

As also explained in EOSA's March 17 letter, it is in the national security interests of the United States to issue the requested exemption because if some facilities choose to cease operations rather than attempt compliance (which is likely), that will disrupt the supply of sterilized medical devices, raise the cost of those devices, and/or force medical suppliers or providers to source sterilized medical devices from abroad.

Please don't hesitate to let me know if any additional information is needed. Steri-Tech Inc appreciates EPA's attention to this important matter and urges EPA to recommend that the President issue the requested exemption as quickly as reasonable.

Regards,

Giovanni R. Sánchez Cruz
Technical Services Manager
Mobile: 787-462-7558
Tel: 787-824-4040
Fax: 787-824-5552
Email: [redacted]

The Ethylene Oxide Sterilization Association, Inc.
Managed by E&C Consortia Management, L.L.C.

The Honorable Lee Zeldin
Administrator
Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, DC 20460
Mail Code: 1101A

Dear Administrator Zeldin:

I write on behalf of the Ethylene Oxide Sterilization Association (EOSA) to ask EPA to take near-term action regarding the *National Emission Standards for Hazardous Air Pollutants: Ethylene Oxide Emissions Standards for Sterilization Facilities Residual Risk and Technology Review*, 89 Fed. Reg. 24090 (Apr. 5, 2024), known as the "Sterilizer Rule." The Sterilizer Rule imposes extremely onerous ethylene oxide (EtO) emission standards on medical device sterilizers—the most stringent of which must be met by April 2026—and is causing substantial harm to and regulatory uncertainty for EOSA's members.

EPA announced on March 12, 2025, that it will reconsider the Sterilizer Rule (alongside other NESHAPs), which is a welcome development. EOSA was also pleased to see EPA's statement that the Administration "is considering a 2-year compliance exemption via Section 112(i)(4) of the Clean Air Act for affected facilities while EPA goes through the rulemaking process." But medical device sterilizers need to decide *now* whether to expend substantial resources to acquire technology and reconfigure their facilities to try to comply with the Sterilizer Rule—or to instead cease operations. That, in turn, may disrupt the supply of critical medical devices, harming both patients and providers, or force medical providers to source those essential medical devices from abroad—increasing the offshoring of the sterilization of medical devices and inflating costs to Americans in direct contravention of the Trump administration's economic objectives.

The Sterilizer Rule was promulgated by the Biden administration under Clean Air Act ("CAA") Section 112 on April 5, 2024. The Sterilizer Rule includes standards set under Section 112(d), the CAA's hazardous pollutant "technology review" provision, and Section 112(f), the "risk review" provision, the latter of which the D.C. Circuit described as a "*one-time* 'risk review.'" *Nat'l Ass'n for Surface Finishing v. EPA*, 795 F.3d 1, 5 (D.C. Cir. 2015) (emphasis added). There are several major flaws in the Sterilizer Rule, and a litany of other issues and errors.

First, the Sterilizer Rule unlawfully set new standards under Section 112(f) even though EPA previously undertook the one-time risk review for this source category in 2006. 71 Fed. Reg. 17, 712, 17,716 (April 7, 2006). In doing so, EPA ignored the statutory text and context, both of which indicate that Congress intended EPA to regulate primarily through periodic technology reviews under Section 112(d) and conduct only one round of risk-based review under Section 112(f). By ignoring that Congressional mandate, EPA wrongly avoided Section 112(d)'s requirement that the agency must consider costs when setting and revising technology-based standards.

Second, the emission standards set in the Sterilizer Rule—particularly under Section 112(f), but also those set under Section 112(d)—are extremely onerous, unsupported by the record data, and for some sterilizers will be impossible to meet. For example, EPA increased the standard for sterilization chamber vents using at least 30 tons per year ("tpy") of EtO from a 99% destruction

ED_021114D_00003046-00002

and removal efficiency (DRE) standard to a 99.99% DRE standard. This leaves no margin for error or equipment malfunction. Likewise, for aeration room vents ("ARVs") using at least 30 tpy of EtO, the Sterilizer Rule increased the DRE requirement from 99% to 99.9%, while wrongly rejecting commenters' request for an alternative standard. Both the SCV and ARV standards were premised on test data that EPA admitted, in the Proposed Rule, is not representative of normal operations. *See* 88 Fed. Reg. at 22,844. EPA also imposed stringent new standards on area sources; for example, EPA set a chamber exhaust vent emission standard of 99.9% DRE for facilities using at least 60 tpy of EtO. These are just a few of the stringent standards set in the Sterilizer Rule under Sections 112(f) and (d), all of which are unrealistic and unsupported by the record.

The Sterilizer Rule is also flawed because EPA arbitrarily and capriciously imposed onerous Continuous Emission Monitoring System (CEMS) mandates on facilities using at least 100 lb/year of EtO without proper notice and comment. Replacing parametric monitoring with CEMS, operating at fifteen-minutes intervals and demonstrating 90% data availability, is costly, complicated, and burdensome, while emission reduction benefits are minimal. Further, EPA failed to allow commenters to weigh in on the CEMS scheme the agency finalized, which requires application of CEMS *at each emissions inlet*, not just outlets. This CEMS scheme is thus both arbitrary and unlawful.

EOSA challenged the Sterilizer Rule in the United States Court of Appeals for the District of Columbia Circuit (No. 24-1180). In addition to raising the above major concerns, EOSA also explained that EPA wrongly set standards based on EtO *usage*, rather than based on EtO *emissions* (as the text of Section 112 requires); failed to establish technology-based standards under Section 112(d) before imposing certain of the risk-based standards; failed to consider and address comments on EPA's reliance on the flawed IRIS value for EtO; and failed to conduct rational cost/benefit analysis in deciding whether and to what extent to revise all standards. A fuller discussion of all of these issues can be found in EOSA's opening merits brief (Doc. #2080994).

As noted above, EPA has announced it will reconsider the Sterilizer Rule. EPA also recently moved to hold the litigation over the Sterilizer Rule in abeyance for 60 days "to allow new Agency leadership to review" the Sterilizer Rule and "to decide what action, if any, is necessary." *Cal. Cmtys. Against Toxics v. EPA*, No. 24-1178 (D.C. Cir. filed Feb. 18, 2025) (Doc. 2101209). EOSA appreciates EPA's recognition of the need to reconsider the Sterilizer Rule. But while EPA does so, EOSA's members continue to face the Sterilizer Rule's fast-approaching compliance deadlines: April 6, 2026, for standards set under Section 112(f) and April 5, 2027, for standards set under Section 112(d). These deadlines (particularly the former, which applies to the most stringent standards) require sterilizers to decide now whether to commit significant financial and operational resources—including to purchase new control technologies, redesign facilities, and restructure operations—to try to comply with the Sterilizer Rule, which is not possible for all facilities.

Lending further urgency to EPA's reconsideration of the Sterilizer Rule and the standards and deadlines set therein, the D.C. Circuit denied EPA's abeyance motion and the case has been set for argument on April 15, 2025. EOSA therefore urges EPA to act quickly to relieve sterilizers of the Sterilizer Rule's obligations, preventing unnecessary expenditures—and irrevocable decisions that some sterilizers will likely be forced to make absent near-term relief.

To address the urgent compliance challenges posed by the Sterilizer Rule, EOSA identifies two potential pathways for relief. Ideally, EPA should pursue both to ensure that sterilizers can continue to operate in the near term, even while EPA reconsiders the Sterilizer Rule more broadly.

Path 1: Presidential Waiver under Section 112(i)(4)

As suggested by EPA, the President should exercise his authority under CAA § 112(i)(4) to grant a two-year compliance exemption commencing on the Sterilizer Rule's compliance deadlines: April 6, 2026, for risk-based standards and April 5, 2027, for technology-based standards. The President may grant such an exemption for all sources regulated by the Sterilizer Rule in one action,[1] based upon findings that (1) "it is in the national security interests … to do so" and (2) "the technology to implement such standard is not available." 42 U.S.C. § 7412(i)(4).

The first requirement—national security interests—is satisfied due to the critical role that sterilization facilities play in maintaining the U.S. medical device supply chain. Compliance with the Sterilizer Rule's deadlines, particularly the two-year deadline for compliance with the risk-based standards set under Section 112(f), will significantly reduce sterilization capacity. This, in turn, will lead to severe shortages of life-critical medical devices such as catheters, surgical kits, syringes, bandages, IV equipment, and needles, disrupting essential healthcare services. EOSA cautioned in its Comments on the Proposed Sterilizer Rule that the loss of capacity while facility reconstruction and modifications are underway will cause "a large reduction in medical device sterilization capacity and a severe shortage of sterilized medical devices." EOSA Comments 59, EPA-HQ-OAR-2019-0178-0618. Medical industry stakeholders similarly noted that modifying sterilization equipment is "no trivial matter":

> These complex facilities, no two of which share the same design or process, typically must go at least partially offline to make modifications to the equipment. Even routine maintenance or periodic upgrades require significant planning to minimize downtime across the monthly or annual supply cycle.

Advanced Medical Technology Association Comments 9-10, EPA-HQ-OAR-2019-0178-0601.

Without relief, sterilizers may be unable to meet demand for sterilized medical devices, leading to shortages that force medical providers to seek alternative sources abroad and increase the United States' dependence on foreign suppliers for essential medical devices. This growing reliance on foreign sterilization capacity and imported medical equipment poses an immediate national security risk, as any disruption—whether from geopolitical conflicts, trade restrictions, or economic coercion—could severely limit the United States' ability to maintain an independent and resilient healthcare system, jeopardizing timely access to life-saving medical equipment.

[1] Nothing in Section 112(i)(4) bars the President from issuing an exemption that applies to all regulated sources—and the President should do so here to ensure that all sterilization facilities are relieved from the obligation to comply with the Sterilizer Rule.

The second requirement—technology unavailability—is also met. It will be impossible for all regulated sources to obtain and install necessary control technology by April 2026 due to the limited number of equipment manufacturers and workforce shortages.

EOSA has explained that many of the Sterilizer Rule's requirements "require significant facility reconstruction and major equipment procurement and installation" that could take years—particularly if all sterilizers must redesign their facilities and install equipment to meet the new standards at the same time. EOSA Comments 58–59. And "[t]he availability of the equipment, materials, and contractor services necessary to modify emission control systems is severely limited." Sterigenics Comments 28, EPA-HQ-OAR-2019-0178-0632. Between supply chain constraints, the time-intensive process of facility redesign to accommodate new equipment, and the extensive testing and validation required before any system can become operational, the necessary control technology is functionally unavailable within the required timeframes.

Further, even if it were possible for all facilities to secure the needed equipment and make the necessary design and structural changes within the current compliance periods, the limited number of experienced installation professionals and technical experts who support this industry makes timely compliance by all regulated sources logistically infeasible. *See* AdvaMed Comments at 10. There is simply no way that all regulated sources will be able to obtain both the necessary equipment *and* the skilled technicians needed to successfully install, test, and bring that equipment online within the same two-year period, as required under the Sterilizer Rule.

Finally, control device manufacturers cannot guarantee that their equipment will operate to meet the Sterilizer Rule's stringent performance deadlines. *See* Sterigenics Comments at 28. This further highlights the technological infeasibility of meeting the current compliance deadlines—as well as the irrationality and infeasibility of the standards themselves. This is a particularly compelling basis for the President to find that "the technology to implement such standard is not available," 42 U.S.C. § 7412(i)(4), and grant a two-year waiver.

Even the Biden Administration recognized the compliance challenges posed by the Sterilizer Rule. In its *Memorandum on the Orderly Implementation of the Air Toxics Standards for Ethylene Oxide Commercial Sterilizers* (Jan. 16, 2025), the Administration acknowledged that waivers or exemptions may be necessary to "achiev[ing] the … Rule's critical health protections as soon as practicable, while safeguarding the supply of safe medical products from disruption that would compromise the health and welfare of the American people."

EPA should therefore urge President Trump to exercise his authority under Section 112(i)(4) and quickly issue a two-year compliance exemption for all sources regulated under the Sterilizer Rule, effective when each set of standards set therein would otherwise apply. The exemptions then may be extended for one or more additional periods, if necessary.

Path 2: EPA Rulemaking to Stay or Extend Deadlines

Also or alternatively, EPA should take a near-term discrete administrative action to rescind the Rule 112(f) risk-based standards, or at least stay the compliance deadlines, based on a finding that the standards are likely unlawful and EPA's stated commitment to reconsider the Sterilizer Rule.

Because Section 112(f) allows EPA to grant no more than two years for compliance with risk-based standards (although, as discussed above, the President may issue a further two-year exemption—and should do so here), EPA should take near-term, discrete administrative action to rescind at least the risk-based standards set in the Sterilizer Rule based on a finding that its reliance on Section 112(f) to revise EtO emission standards was unlawful. EPA has a solid basis for taking that initial step now: under the Biden Administration, EPA ignored the statutory text and context, both of which confirm that the risk-review is (as the D.C. Circuit previously stated), a "one-time" event, and therefore EPA's conduct of a second risk review was unlawful.

Alternatively, EPA could take a discrete administrative action to stay the Sterilizer Rule's compliance deadlines (ideally for all standards, but at least the Section 112(f) risk-based standards) pending completion of reconsideration and a new notice-and-comment rulemaking process to rescind, replace, or revise the Sterilizer Rule. Such action would relieve sterilizers of near-term compliance obligations and reduce the risk that many sterilizers will cease operations and thereby disrupt the supply of medical devices even while EPA is reconsidering the Sterilizer Rule.

Because the Sterilizer Rule is the result of a notice-and-comment rulemaking process, rescinding or revising the Sterilizer Rule—or even just staying the compliance deadlines—likely also requires rulemaking to minimize the chance that a reviewing court vacates such action. But EPA could invoke the Administrative Procedure Act's "good cause" exception to notice and comment because the key legal issue—whether EPA can conduct a second round of risk review for a source category—has already been subject to a notice-and-comment process, and it is a pure statutory construction question on which EPA can correct course now. Further notice-and-comment on that issue is thus "unnecessary," and it is also "impracticable" and "contrary to the public interest" given the urgency of the issue and the impact on the medical device supply chain. *See* 5 U.S.C. 553(b)(B). Or, EPA could issue an interim final rule rescinding at least the Section 112(f) standards and thereby obviating the nearest-term compliance deadlines. This option would allow further notice and comment, but still provide immediate relief for sterilizers facing the difficult choice whether to try to comply with the Sterilizer Rule—despite the near-impossibility of doing so—or cease operations and disrupt the domestic medical supply chain.

* * * *

EOSA appreciates EPA's commitment to reconsidering the Sterilizer Rule and addressing the concerns of regulated facilities. EOSA also appreciates the Agency's willingness to consider near-term actions, such as a Presidential exemption and/or discrete administrative action to address the Section 112(f) standards and associated compliance deadlines. As many facilities confront immediate investment decisions, regulatory clarity is essential. EOSA urges EPA to take timely action to ensure that sterilization facilities remain operational while advancing long-term regulatory solutions that balance public health objectives with industry feasibility.

Thank you for your consideration. Please feel free to contact me at mzhuang@be-em.com if you have any questions regarding this request.

Sincerely,

Meibao Zhuang
Senior Manager
Ethylene Oxide Sterilization Association

Cc:

Abbie Tardif, Principal Deputy Assistant Administrator for the Office of Air and Radiation

Alex Dominguez, Deputy Assistant Administrator for Mobile Sources, Office of Air and Radiation

[redacted], Director, EPA Office of Air Quality Planning and Standards

[redacted], Director, Sector Policies and Programs Division, EPA Office of Air Quality Planning and Standards

Message

From: Tardif, Abigale (Abbie) [Tardif.Abigale@epa.gov]
Sent: 9/17/2025 9:20:22 PM
To: L'Estrange, Chloe [LEstrange.Chloe@epa.gov]; Szabo, Aaron [Szabo.Aaron@epa.gov]
CC: Johnson, Demarion [Johnson.Demarion@epa.gov]
Subject: Re: Call on Lime NESHAP

They did not submit anything

Get Outlook for iOS

From: L'Estrange, Chloe <LEstrange.Chloe@epa.gov>
Sent: Wednesday, September 17, 2025 2:49:23 PM
To: Tardif, Abigale (Abbie) <Tardif.Abigale@epa.gov>; Szabo, Aaron <Szabo.Aaron@epa.gov>
Cc: Johnson, Demarion <Johnson.Demarion@epa.gov>
Subject: RE: Call on Lime NESHAP

I was also confused by that. They did not seem to know if the constituent applied.

From: Tardif, Abigale (Abbie) <Tardif.Abigale@epa.gov>
Sent: Wednesday, September 17, 2025 2:49 PM
To: L'Estrange, Chloe <LEstrange.Chloe@epa.gov>; Szabo, Aaron <Szabo.Aaron@epa.gov>
Cc: Johnson, Demarion <Johnson.Demarion@epa.gov>
Subject: Re: Call on Lime NESHAP

I guess I'm confused if they are asking for this on behalf of the constituent did the constituent not confirm if they submitted anything?

Get Outlook for iOS

From: L'Estrange, Chloe <LEstrange.Chloe@epa.gov>
Sent: Wednesday, September 17, 2025 2:17:29 PM
To: Tardif, Abigale (Abbie) <Tardif.Abigale@epa.gov>; Szabo, Aaron <Szabo.Aaron@epa.gov>
Cc: Johnson, Demarion <Johnson.Demarion@epa.gov>
Subject: RE: Call on Lime NESHAP

Just talked with Thune's staff. They are asking on behalf of a constituent – Pete Lien and Sons. They are wanting to know if the company applied for a presidential exemption under Section 112 of the CAA. If not, they are wanting to know if EPA is considering delaying implementation of the rule.

For awareness, here are the comments the company submitted on the Biden SNPRM.

https://downloads.regulations.gov/EPA-HQ-OAR-2017-0015-0225/attachment_1.pdf

From: Tardif, Abigale (Abbie) <Tardif.Abigale@epa.gov>
Sent: Wednesday, September 17, 2025 1:42 PM
To: L'Estrange, Chloe <LEstrange.Chloe@epa.gov>; Szabo, Aaron <Szabo.Aaron@epa.gov>

Cc: Johnson, Demarion <Johnson.Demarion@epa.gov>
Subject: Re: Call on Lime NESHAP

Chloe-

I am looping in Aaron as well. We have been talking to the Lime Association and will be meeting with them again soon. I think we need more details about what regarding this NESHAP the speaker's office wants to discuss.

Best,
Abbie

Get Outlook for iOS

From: L'Estrange, Chloe <LEstrange.Chloe@epa.gov>
Sent: Wednesday, September 17, 2025 12:51:57 PM
To: Tardif, Abigale (Abbie) <Tardif.Abigale@epa.gov>
Cc: Johnson, Demarion <Johnson.Demarion@epa.gov>
Subject: FW: Call on Lime NESHAP

Hey Abbie,

Leader Thune's office reached out wanting to talk with someone about the lime NESHAP. Do you have time tomorrow or early next week to talk with his staff?

Thanks,
Chloe

From: Costello, Chance (Thune) <Chance_Costello@thune.senate.gov>
Sent: Wednesday, September 17, 2025 12:47 PM
To: Talmage, Sarah <Talmage.Sarah@epa.gov>; L'Estrange, Chloe <LEstrange.Chloe@epa.gov>
Cc: Beninga, Ashlynne (Thune) <Ashlynne_Beninga@thune.senate.gov>
Subject: Call on Lime NESHAP

> **Caution:** This email originated from outside EPA, please exercise additional caution when deciding whether to open attachments or click on provided links.

Hi Sarah and Chloe,

Hope you all are doing well. Would you have some time to touch base tomorrow or early next week on the below? We'd appreciate it.

https://www.federalregister.gov/documents/2024/12/04/2024-27874/national-emission-standards-for-hazardous-air-pollutants-lime-manufacturing-plants-technology-review

Thanks!

Chance

Chance Costello

Policy Advisor | Office of the Senate Majority Leader
U.S. Senator John Thune (R-SD)
S-230

Message

From: OAR_Correspondences [OAR_Correspondences@epa.gov]
Sent: 5/28/2025 7:45:32 PM
To: Tardif, Abigale (Abbie) [Tardif.Abigale@epa.gov]; Szabo, Aaron [Szabo.Aaron@epa.gov]
CC: OAR_Correspondences [OAR_Correspondences@epa.gov]
Subject: RE: FOR REVIEW & CONCURRENCE: 4 Draft Congressional Responses on the Presidental Exemption -- Quill Cases: 25-03378 (Cohen +3); 25-03383 (Tonko); 25-03397 (Daines) and 25-03664-AO--IOD (Cohen/Markey)

Thanks Abbie and Aaron. Yes, we'll get this to OGC and let you know if they concur.

Rod

From: Tardif, Abigale (Abbie) <Tardif.Abigale@epa.gov>
Sent: Wednesday, May 28, 2025 2:21 PM
To: Szabo, Aaron <Szabo.Aaron@epa.gov>; OAR_Correspondences <OAR_Correspondences@epa.gov>
Subject: RE: FOR REVIEW & CONCURRENCE: 4 Draft Congressional Responses on the Presidental Exemption -- Quill Cases: 25-03378 (Cohen +3); 25-03383 (Tonko); 25-03397 (Daines) and 25-03664-AO--IOD (Cohen/Markey)

Team-

Can we please run this by OGC?

Best,
Abbie

Abigale Tardif
Principal Deputy Assistant Administrator
Office of Air and Radiation
U.S. Environmental Protection Agency
Office: (202) 564-7017

From: Szabo, Aaron <Szabo.Aaron@epa.gov>
Sent: Wednesday, May 28, 2025 1:16 PM
To: Tardif, Abigale (Abbie) <Tardif.Abigale@epa.gov>; OAR_Correspondences <OAR_Correspondences@epa.gov>
Subject: RE: FOR REVIEW & CONCURRENCE: 4 Draft Congressional Responses on the Presidental Exemption -- Quill Cases: 25-03378 (Cohen +3); 25-03383 (Tonko); 25-03397 (Daines) and 25-03664-AO--IOD (Cohen/Markey)

Thanks for adding me Abbie. Ex. 5 Deliberative Process (DP)
Ex. 5 Deliberative Process (DP) If you can run it by OGC to make sure they agree with how it has been phrased I would greatly appreciate it.

Thanks,

Aaron Szabo
Senior Advisor to the Administrator
202-855-3241

From: Tardif, Abigale (Abbie) <Tardif.Abigale@epa.gov>
Sent: Wednesday, May 28, 2025 11:56 AM
To: OAR_Correspondences <OAR_Correspondences@epa.gov>
Cc: Szabo, Aaron <Szabo.Aaron@epa.gov>
Subject: RE: FOR REVIEW & CONCURRENCE: 4 Draft Congressional Responses on the Presidental Exemption -- Quill Cases: 25-03378 (Cohen +3); 25-03383 (Tonko); 25-03397 (Daines) and 25-03664-AO--IOD (Cohen/Markey)

Just wanted to make sure Aaron has an opportunity to review.

-Abbie

Abigale Tardif
Principal Deputy Assistant Administrator
Office of Air and Radiation
U.S. Environmental Protection Agency
Office: (202) 564-7017

From: OAR_Correspondences <OAR_Correspondences@epa.gov>
Sent: Wednesday, May 21, 2025 7:51 AM
To: Tardif, Abigale (Abbie) <Tardif.Abigale@epa.gov>
Cc: Szabo, Aaron <Szabo.Aaron@epa.gov>; OAR_Correspondences <OAR_Correspondences@epa.gov>
Subject: FOR REVIEW & CONCURRENCE: 4 Draft Congressional Responses on the Presidental Exemption -- Quill Cases: 25-03378 (Cohen +3); 25-03383 (Tonko); 25-03397 (Daines) and 25-03664-AO--IOD (Cohen/Markey)

Good morning,

The correspondences linked below are ready for your review and concurrence before moving to OCIR.

Staff in OAPPS worked with OCIR and OAQPS to use standard language along with parts of the FOIA response language which the IO has already approved. Three of the congressionals below are template responses for the President Exemption and one is a personalized response. See the attached incoming letters for reference.

After you concur, we will send to OCIR for their review and edits. At that point, we'll share any OCIR edits, and if they're acceptable, Abbie can sign at that time.

Thanks,
Rod

Personalized response to Senator Steve Daines +3 Colleagues – 25-03397-AO--IOD:
25-03397-AO--IOD_Draft Response_Steven D Daines_Draft Response 25-03397-AO--IOD.docx

Template Response for Congressman Steve Cohen for 25-03378 and 25-03664-AO—IOD:
25-03378-AO--IOD_Draft Response_Stephen I Cohen_Draft template response for Quill cases 25-03378_25-03383_25-03664.docx

Template Response for Senator Edward J. Markey for 25-03664-AO—IOD:
25-03664-AO--IOD_Draft Response_Stephen I Cohen_Draft template response for Quill cases 25-03378_25-03383_25-03664.docx

Template Response for Congressman Paul D. Tonko for 25-03383-AO—IOD:
25-03383-AO--IOD_Draft Response_Paul D Tonko_Draft template response for Quill cases 25-03378_25-03383_25-03664.docx

[redacted]

From: [redacted]@epa.gov>
Sent: Thursday, May 15, 2025 5:01 PM
To: [redacted]@epa.gov>
Cc: [redacted]@epa.gov>
Subject: FOR IO CONCURRENCE - 25-03397 -

Hi [redacted]
These cases are ready for OAR IO review and concurrence. I worked with OCIR and OAQPS to use standard response language along with parts of the FOIA response language that the IO had already approved.

Personalized response: 25-03397-AO--IOD_Draft Response_Steven D Daines_Draft Response 25-03397-AO--IOD.docx

Template Response: 25-03378-AO--IOD_Draft Response_Stephen I Cohen_Draft template response for Quill cases 25-03378_25-03383_25-03664.docx

Please let me know if I did anything in the wrong way and I'll fix it on Monday!
Thank you!

[redacted]

Office of Air and Radiation – Office of Air Policy & Program Support
U.S. Environmental Protection Agency Headquarters
1200 Pennsylvania Avenue NW, Washington, DC 20460
202-564-7177 WJC-N 5442R

Your office has been assigned case 25-03378-AO--IOD.

Case: 25-03378-AO--IOD
Subject: Presidential Exemption -- Request for information on companies that have a headquarters or a facility within Tennessee's 9th Congressional District that have requested a Presidential Exemption under the Clean Air Act Section 112(i)(4)
Due Date: 14-Apr-25
Status: In Review
Contact/Originator: Stephen I. Cohen

Your office has been assigned case 25-03383-AO--IOD.

Case: 25-03383-AO--IOD
Subject: Presidential Exemption - Request for information on all companies that have requested a Presidential Exemption under the Clean Air Act Section 112(i)(4)
Due Date: 14-Apr-25
Status: In Review
Contact/Originator: Paul D. Tonko

Your office has been assigned case 25-03397-AO--IOD.

Case: 25-03397-AO--IOD

Subject: Presidential Exemption - Letter of Support for NorthWestern Energy and Talen Montana's Request for a two-year Presidential Exemption from the MATS Rule
Due Date: 14-Apr-25
Status: In Review
Contact/Originator: Steven D. Daines

Your office has been assigned case 25-03664-AO--IOD.

Case: 25-03664-AO--IOD
Subject: Presidential Exemption - Request for a Comprehensive List of Companies that have Requested a Presidential Exemption
under the Clean Air Act Section 112(i)(4)
Due Date: 24-Apr-25
Status: In Review
Contact/Originator: Stephen I. Cohen

Note:
This email was automatically generated. Please do not attempt to respond to it.
Please direct questions or comments to the Quill Helpdesk at (202) 564-4985 or Quill.Info@epa.gov.

Message

From: Voyles, Travis [voyles.travis@epa.gov]
Sent: 8/6/2025 12:45:20 PM
To: Szabo, Aaron [Szabo.Aaron@epa.gov]; Tardif, Abigale (Abbie) [Tardif.Abigale@epa.gov]
Subject: FW: Forgot to raise
Attachments: White Paper EPA Copper NESHAP 13June2025.pdf

Forgot to include the attachment.

--

Travis Voyles
C: Ex. 6

From: Copley, David J. EOP/NSC <Ex. 6
Sent: Tuesday, August 5, 2025 5:28 PM
To: Voyles, Travis <voyles.travis@epa.gov>
Cc: Agen, Jarrod P. EOP/WHO <Ex. 6
Subject: FW: Forgot to raise

Caution: This email originated from outside EPA, please exercise additional caution when deciding whether to open attachments or click on provided links.

Travis – can you direct me to the person(s) at EPA who can get me smart on this issue.

Thanks
David

David J. Copley
Special Assistant to the President and Senior Director for Global Supply Chain
National Security Council
The White House
Ex. 6
Office: (
Mobile: Ex. 6
TSVOIP: Ex. 6

From: Sweeney, Katie <KSweeney@nma.org>
Sent: Monday, August 4, 2025 8:55 AM
To: Copley, David J. EOP/NSC <Ex. 6
Subject: [EXTERNAL] Forgot to raise

David,

Meant to mention this in last week's email. Just a reminder that Freeport-McMoRan Miami Inc. still needs a POTUS extension that will allow for reinvestment in their copper

smelting plant. Latest info is attached in the white paper. Let us know if you have any questions. Thanks.

Katie



Katie Sweeney
Executive Vice President and Chief Operating Officer
National Mining Association
101 Constitution Ave. NW, Suite 500 East
Washington, D.C. 20001
Phone: (202) 463-2600
Direct: (202) 463-2627
ksweeney@nma.org

Message

From: Szabo, Aaron [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=8C8381AA833244A3842DC4819F6ABE91-8C0505F1-A1]
Sent: 6/30/2025 1:28:03 PM
To: [redacted]@epa.gov]
Subject: RE: CPS Energy MATS Presidential Exemption Request

Thanks [redacted] for the info on the MATS. I am trying to get ahold of them and should know more after 12 today.

Thanks,

Aaron Szabo
Senior Advisor to the Administrator
202-855-3241

From: [redacted]@epa.gov>
Sent: Monday, June 30, 2025 9:26 AM
To: Szabo, Aaron <Szabo.Aaron@epa.gov>
Subject: RE: CPS Energy MATS Presidential Exemption Request

Aaron,

Two things on the 112 exemptions:

1. On MATS, I verified that we have not granted CPS Energy a petition previously. Also, there is one other MATS exemption request (from Buckeye Power) attached, that has not been granted. You may recall, this company sent us an e-mail but did not attach the correct exemption request so they resent it after the other MATS exemptions were granted. I am having the team double check to verify that there are no other unaddressed petitions for MATS.
2. I have not seen any e-mail from you re: other letters that need to be checked (per our discussion on Friday I was expecting something). Please let me know if I've missed something.

Enjoy your vacation.

- [redacted]

From: Szabo, Aaron <Szabo.Aaron@epa.gov>
Sent: Friday, June 27, 2025 4:54 PM
To: [redacted]@epa.gov>
Subject: FW: CPS Energy MATS Presidential Exemption Request

FYSA

Thanks,

Aaron Szabo
Senior Advisor to the Administrator
202-855-3241

From: Brotherman, Thomas M <TMBrotherman@CPSEnergy.com>
Sent: Thursday, June 26, 2025 3:49 PM
To: Szabo, Aaron <Szabo.Aaron@epa.gov>; Tardif, Abigale (Abbie) <Tardif.Abigale@epa.gov>; AirAction <AirAction@epa.gov>
Cc: Brockmann, Curt D. <CDBrockmann@CPSEnergy.com>; Tieken, Gregg R. <GRTieken@CPSEnergy.com>; Clyde, Lisa <MAClyde@cpsenergy.com>
Subject: CPS Energy MATS Presidential Exemption Request

Some people who received this message don't often get email from tmbrotherman@cpsenergy.com. Learn why this is important

Caution: This email originated from outside EPA, please exercise additional caution when deciding whether to open attachments or click on provided links.

Attached is CPS Energy's request for Presidential Exemption of MATS Compliance Obligations for CPS Energy's J K Spruce Unit 1 and 2 coal fired power plants. Thank you for your consideration.

Tom Brotherman
Environmental Analyst | Environmental & Sustainability Services
CPS Energy | 500 McCullough, San Antonio, Texas 78215 | MD: RT0601
Office: 210.353.3924 | Mobile: 210.255.7622
cpsenergy.com

Message

From: Britt Fleming [bsf@vnf.com]
Sent: 9/15/2025 4:53:40 PM
To: Tardif, Abigale (Abbie) [Tardif.Abigale@epa.gov]
Subject: RE: Presidential Exemption Question

Caution: This email originated from outside EPA, please exercise additional caution when deciding whether to open attachments or click on provided links.

Thank you very much! Really appreciate it!

Britt Speyer Fleming **Partner**
She/Her

VanNess Feldman

Washington DC

2000 Pennsylvania Ave. NW, Suite 6000
Washington, DC 20006

202.298.1863 (o); 202.361.5619 (c) bsf@vnf.com vnf.com

This communication may contain information and/or metadata that is legally privileged, confidential or exempt from disclosure. If you are not the intended recipient, please do not read or review the contents and/or metadata and do not disseminate, distribute or copy this communication. Anyone who receives this message in error should notify the sender immediately by telephone (202-298-1800) or by return e-mail and delete it from their computer.

From: Tardif, Abigale (Abbie) <Tardif.Abigale@epa.gov>
Sent: Monday, September 15, 2025 12:48 PM
To: Britt Fleming <bsf@vnf.com>
Subject: RE: Presidential Exemption Question

Britt-

No problem, John Reiten would be the best contact. His email is Ex. 6 Personal Privacy (PP)

Best,
Abbie

Abigale Tardif
Principal Deputy Assistant Administrator
Office of Air and Radiation
U.S. Environmental Protection Agency
Office: (202) 564-7017

From: Britt Fleming <bsf@vnf.com>
Sent: Monday, September 15, 2025 12:33 PM
To: Tardif, Abigale (Abbie) <Tardif.Abigale@epa.gov>
Subject: RE: Presidential Exemption Question

> **Caution:** This email originated from outside EPA, please exercise additional caution when deciding whether to open attachments or click on provided links.

Apologies for the follow-up but do you have a recommendation on a specific contact over at the WH NEDC who would be good to reach out to on this?

Britt Speyer Fleming **Partner**
She/Her

VanNess
Feldman

Washington DC

2000 Pennsylvania Ave. NW, Suite 6000
Washington, DC 20006

202.298.1863 (o); 202.361.5619 (c) bsf@vnf.com vnf.com

This communication may contain information and/or metadata that is legally privileged, confidential or exempt from disclosure. If you are not the intended recipient, please do not read or review the content and/or metadata and do not disseminate, distribute or copy this communication. Anyone who receives this message in error should notify the sender immediately by telephone (202-298-1800) or by return e-mail and delete it from their computer.

From: Tardif, Abigale (Abbie) <Tardif.Abigale@epa.gov>
Sent: Monday, September 15, 2025 11:19 AM
To: Britt Fleming <bsf@vnf.com>
Subject: RE: Presidential Exemption Question

Britt-

Thank you for reaching out, the White House is handling any Presidential Exemption requests. I would reach out to folks in NEDC at the White House.

Best,
Abbie

Abigale Tardif
Principal Deputy Assistant Administrator
Office of Air and Radiation
U.S. Environmental Protection Agency
Office: (202) 564-7017

From: Britt Fleming <bsf@vnf.com>
Sent: Friday, September 12, 2025 12:22 PM

To: Tardif, Abigale (Abbie) <Tardif.Abigale@epa.gov>
Subject: Presidential Exemption Question

You don't often get email from [redacted]. Learn why this is important

Caution: This email originated from outside EPA, please exercise additional caution when deciding whether to open attachments or click on provided links.

Hi Abbie, I hope this email finds you well. You may recall that we met several times in the spring regarding regulatory matters impacting public utilities. I have a client that is now interested in pursuing a Presidential Exemption from complying with the MATS requirements. I know that EPA is moving to finalize a repeal of several of the updated requirements in the MATS RTR; however, our client remains concerned about the ability to install CEMS in such a short time frame on a unit that will be retired in the nearer term. Can you please share with me the person to whom such a request should be addressed? If a call would be better, I would be happy to schedule something. Thanks again for your consideration here. I look forward to hearing back from you or a member of your team.

Best,
Britt Fleming

Britt Speyer Fleming **Partner**
She/Her

VanNess
Feldman

Washington DC

2000 Pennsylvania Ave. NW, Suite 6000
Washington, DC 20006

202.298.1863 (o); 202.361.5619 (c) bsf@vnf.com vnf.com

This communication may contain information that is legally privileged, confidential or exempt from disclosure. If you are not the intended recipient, please do not read, save, forward, disclose or copy the contents of this communication. If you have received this message in error, please notify the sender immediately by telephone (202-298-1800) or by return e-mail and delete it from his or her computer.

Message

From: Sarah Alexander [salexander@mindsetdc.com]
Sent: 6/16/2025 7:10:45 PM
To: Tardif, Abigale (Abbie) [Tardif.Abigale@epa.gov]
Subject: Re: HON Rule Exemption Request

Flag: Follow up

You don't often get email from salexander@mindsetdc.com. Learn why this is important

Caution: This email originated from outside EPA, please exercise additional caution when deciding whether to open attachments or click on provided links.

Fantastic! I will reach out to the White House for updates. As you work through reconsideration, I would be happy to lend a hand as well.

Let me know when works best for you to catch up over coffee, lunch, or happy hour. My cell is below if it is easier to text to coordinate on that front.

Thank you!

Sarah Alexander
SENIOR DIRECTOR

504 330 9377
salexander@mindsetdc.com
455 Massachusetts Ave NW, Suite 1200
Washington, DC 20001

Mindset

From: Tardif, Abigale (Abbie) <Tardif.Abigale@epa.gov>
Date: Monday, June 16, 2025 at 3:02 PM
To: Sarah Alexander <salexander@mindsetdc.com>
Subject: RE: HON Rule Exemption Request

Sarah-

Thanks for reaching out, happy to connect. As it relates to the Presidential Exemption those decisions are being made at the White House. At EPA we are working on reconsideration.

Best,
Abbie

Abigale Tardif
Principal Deputy Assistant Administrator
Office of Air and Radiation
U.S. Environmental Protection Agency
Office: (202) 564-7017

From: Sarah Alexander <salexander@mindsetdc.com>
Sent: Monday, June 16, 2025 2:32 PM
To: Tardif, Abigale (Abbie) <Tardif.Abigale@epa.gov>
Subject: HON Rule Exemption Request

You don't often get email from [redacted]. Learn why this is important

Caution: This email originated from outside EPA, please exercise additional caution when deciding whether to open attachments or click on provided links.

Hi Abbie,

I hope you are doing well! It is nice to reconnect now that I am back in the private sector. I would love to find time to catch up soon, so please let me know when works best for you.

In the meantime, one of our clients filed an exemption request under the HON rule. Are you working on HON rule implementation at EPA? It woud be incredibly helpful to have greater clarity into the timing of the exemption process.

Thank you!

Sarah Alexander
SENIOR DIRECTOR

504 330 9377
salexander@mindsetdc.com
455 Massachusetts Ave NW, Suite 1200
Washington, DC 20001

Mindset

Message

From: Stephen Fotis [scf@vnf.com]
Sent: 7/22/2025 12:54:56 PM
To: Szabo, Aaron [Szabo.Aaron@epa.gov]; Tardif, Abigale (Abbie) [Tardif.Abigale@epa.gov]
Subject: RE: Application for Presidential Exemption for Cross Generating Station and Winyah Generating Station

Caution: This email originated from outside EPA, please exercise additional caution when deciding whether to open attachments or click on provided links.

Thanks, Aaron for letting me know. I have made a similar inquiry to Blake, with whom we have already made a similar inquiry. Hopefully, there may be an opportunity to correct this matter assuming it was an oversight.
Best,
Stehen

Stephen C. Fotis Partner

Van Ness Feldman LLP

2000 Pennsylvania Avenue, NW
Suite 600
Washington, DC 20007

(202) 298-1908 – Office
(202) 413-2321 – Cell
scf@vnf.com vnf.com

This communication may contain information and/or metadata that is legally privileged, confidential or exempt from disclosure. If you are not the intended recipient, please do not read or review the content and/or metadata and do not disseminate, distribute or copy this communication. Anyone who receives this message in error should notify the sender immediately by telephone (202-298-1800) or by return e-mail and delete it from his or her computer.

From: Szabo, Aaron
Sent: Tuesday, July 22, 2025 8:53 AM
To: Stephen Fotis ; Tardif, Abigale (Abbie)
Subject: RE: Application for Presidential Exemption for Cross Generating Station and Winyah Generating Station

Stephen – this was a White House decision as this was a Presidential Exemption. I recommend directing your questions to them.

Thanks,

Aaron Szabo

Senior Advisor to the Administrator
202-855-3241

From: Stephen Fotis <scf@vnf.com>
Sent: Tuesday, July 22, 2025 8:46 AM
To: Szabo, Aaron <Szabo.Aaron@epa.gov>; Tardif, Abigale (Abbie) <Tardif.Abigale@epa.gov>
Subject: Application for Presidential Exemption for Cross Generating Station and Winyah Generating Station

> **Caution:** This email originated from outside EPA, please exercise additional caution when deciding whether to open attachments or click on provided links.

Aaron and Abbey – I am just checking in regarding the application for the presidential exemption that was submitted to EPA by Santee Cooper for its Cross and Winyah Generating Stations. As you can see from an attached email thread to you, Santee Cooper submitted its application to you on May 29. Could you please let me know the reason for not including the recent Presidential Proclamation to issue an exemption for the Cross and Winyah coal-fired units. Assuming that this may have been an oversight, please let me know what options may be available for obtaining an exemption for these Santee Cooper units in the near future.
Many thanks,
Stephen

Stephen C. Fotis Partner

Van Ness Feldman LLP

2000 Pennsylvania Avenue, NW
Suite 600
Washington, DC 20007

(202) 298 1908 – Office
(202) 413 2321 – Cell
scf@vnf.com vnf.com

This communication may contain information and/or metadata that is legally privileged, confidential or exempt from disclosure. If you are not the intended recipient, please do not read or review the content and/or metadata and do not disseminate, distribute or copy this communication. Anyone who receives this message in error should notify the sender immediately by telephone (202-298-1800) or by return e-mail and delete it from his or her computer.

From: Brian Lynch
Sent: Thursday, May 29, 2025 1:33 PM
To: szabo.aaron@epa.gov; tardif.abigale@epa.gov; airaction@epa.gov
Subject: Application for Presidential Exemption for Cross Generating Station and Winyah Generating Station

Mr. Szabo & Ms. Tardif,

Santee Cooper is submitting to EPA the attached application seeking a Presidential Exemption for its two coal-fired generating stations under section 112(i)(4) of the Clean Air Act. The application for a Presidential Exemption seeks a two-year extension of the MATS compliance deadlines for 8 coal-fired electric generating

units located in South Carolina at the Cross Generating Station and the Winyah Generating Station, both of which are owned and operated by Santee Cooper. We acknowledge that President Trump signed on April 8 a Presidential Proclamation that provided MATS compliance extensions to many coal-fired generating units that had initially applied for the Presidential Exemption last March. However, it is our understanding that additional electric utilities will be afforded the same opportunity to apply for the Presidential Exemption through a second proclamation that would be issued in the near term. Santee Cooper requests that EPA include in this second proclamation the attached application requesting a Presidential Exemption for the Santee Cooper's Cross and Winyah Generating Stations.

Santee Cooper appreciates your attention on this important matter. Please contact me regarding any matters pertaining to Santee Cooper's application.

Thanks,

santee cooper
Brian Lynch
Director – Environmental Services
☎ P: 843.761.8000 ext. 4620 | brian.lynch@santeecooper.com

Message

From: Britt Fleming [bsf@vnf.com]
Sent: 9/15/2025 3:25:59 PM
To: Tardif, Abigale (Abbie) [Tardif.Abigale@epa.gov]
Subject: RE: Presidential Exemption Question

You don't often get email from bsf@vnf.com. Learn why this is important

Caution: This email originated from outside EPA, please exercise additional caution when deciding whether to open attachments or click on provided links.

Thanks for your guidance here! Much appreciated!

Britt Speyer Fleming **Partner**
She/Her

VanNess Feldman

Washington DC

2000 Pennsylvania Ave. NW, Suite 6000
Washington, DC 20006

202.298.1863 (o); 202.361.5619 (c) bsf@vnf.com vnf.com

This communication may contain information and/or metadata that is legally privileged, confidential or exempt from disclosure. If you are not the intended recipient, please do not read or review the contents and/or metadata, do not disseminate, distribute or copy this communication. Anyone who receives this message in error should notify the sender immediately by telephone (202-298-1800) or by return email and delete it from their computer.

From: Tardif, Abigale (Abbie) <Tardif.Abigale@epa.gov>
Sent: Monday, September 15, 2025 11:19 AM
To: Britt Fleming <bsf@vnf.com>
Subject: RE: Presidential Exemption Question

Britt-

Thank you for reaching out, the White House is handling any Presidential Exemption requests. I would reach out to folks in NEDC at the White House.

Best,
Abbie

Abigale Tardif
Principal Deputy Assistant Administrator
Office of Air and Radiation
U.S. Environmental Protection Agency

Office: (202) 564-7017

From: Britt Fleming <bsf@vnf.com>
Sent: Friday, September 12, 2025 12:22 PM
To: Tardif, Abigale (Abbie) <Tardif.Abigale@epa.gov>
Subject: Presidential Exemption Question

You don't often get email from bsf@vnf.com. Learn why this is important

Caution: This email originated from outside EPA, please exercise additional caution when deciding whether to open attachments or click on provided links.

Hi Abbie, I hope this email finds you well. You may recall that we met several times in the spring regarding regulatory matters impacting public utilities. I have a client that is now interested in pursuing a Presidential Exemption from complying with the MATS requirements. I know that EPA is moving to finalize a repeal of several of the updated requirements in the MATS RTR; however, our client remains concerned about the ability to install CEMS in such a short time frame on a unit that will be retired in the nearer term. Can you please share with me the person to whom such a request should be addressed? If a call would be better, I would be happy to schedule something. Thanks again for your consideration here. I look forward to hearing back from you or a member of your team.

Best,
Britt Fleming

Britt Speyer Fleming **Partner**
She/Her

VanNess
Feldman

Washington DC

2000 Pennsylvania Ave. NW, Suite 6000
Washington, DC 20006

202.298.1863 (o); 202.361.5619 (c) bsf@vnf.com vnf.com

This communication may contain information and/or metadata that is legally privileged, confidential or exempt from disclosure. If you are not the intended recipient, please do not read or review the content and/or metadata and do not disseminate, distribute or copy this communication. Anyone who receives this message in error should notify the sender immediately by telephone (202.298.1800) or by return e-mail and delete it from his/her computer.

Message

From: Michael Davin [MDavin@nam.org]
Sent: 10/27/2025 3:45:03 PM
To: Tardif, Abigale (Abbie) [Tardif.Abigale@epa.gov]
Subject: RE: Question Regarding NESHAP Taconite Iron Ore Processing

Caution: This email originated from outside EPA, please exercise additional caution when deciding whether to open attachments or click on provided links.

Hey Abbie,

Apologies for the delay on this. And thank you for pointing me in the right direction!

Mike

Mike Davin
National Association of Manufacturers
Director, Energy and Resources Policy
Email: mdavin@nam.org
Mobile: (215) 300-3818



NAM Facebook | Twitter | Instagram | LinkedIn

From: Tardif, Abigale (Abbie) <Tardif.Abigale@epa.gov>
Sent: Tuesday, October 14, 2025 4:11 PM
To: Michael Davin <MDavin@nam.org>
Subject: Re: Question Regarding NESHAP Taconite Iron Ore Processing

CAUTION: This email originated from **outside** of the organization. Exercise caution when opening attachments or clicking links, especially from unknown senders.

Mike-

The White House (NEDC) would be best group to reach out to regarding the presidential exemption.

Best,
Abbie

Get Outlook for iOS

From: Michael Davin <MDavin@nam.org>
Sent: Tuesday, October 14, 2025 4:00:30 PM
To: Tardif, Abigale (Abbie) <tardif.abigale@epa.gov>
Subject: Question Regarding NESHAP Taconite Iron Ore Processing

Caution: This email originated from outside EPA, please exercise additional caution when deciding whether to open attachments or click on provided links.

Good afternoon Abbie,

I hope you are doing well and you all are hanging in there with the ongoing shutdown. We are thinking of you all and hoping it comes to an end soon.

I am reaching out because we had one of our steel manufacturers reach out with a question regarding the President's July 17th President Proclamation declaring regulatory relief for stationary sources from the Taconite Iron Ore Processing NESHAP. Regulatory Relief for Certain Stationary Sources to Promote American Iron Ore Processing Security – The White House

Do you know who would be running point for the exemption process in the White House or at EPA? Any information you can provide would be greatly appreciated!

Happy to chat if that is easier too.

Thanks!

Mike

Mike Davin
National Association of Manufacturers
Director, Energy and Resources Policy
Email: mdavin@nam.org
Mobile: (215) 300-3818



NAM Facebook | Twitter | Instagram | LinkedIn

Message

From: Bennett, Parker [Bennett.Parker@epa.gov]
Sent: 7/22/2025 6:17:46 PM
To: Szabo, Aaron [Szabo.Aaron@epa.gov]; Dominguez, Alexander [dominguez.alexander@epa.gov]; Tardif, Abigale (Abbie) [Tardif.Abigale@epa.gov]
CC: Talmage, Sarah [Talmage.Sarah@epa.gov]; Barja, Jaide [Barja.Jaide@epa.gov]
Subject: RE: Rep. Luttrell - Huntsman HON Rule

Great, thank you

From: Szabo, Aaron
Sent: Tuesday, July 22, 2025 2:13 PM
To: Bennett, Parker ; Dominguez, Alexander ; Tardif, Abigale (Abbie)
Cc: Talmage, Sarah ; Barja, Jaide
Subject: RE: Rep. Luttrell - Huntsman HON Rule

The President announced the list of facilities that were provided an exemption in the Proclamation. If a facility was not included on the list, we would recommend reaching out to the White House about why any facility was or was not included on the list as this decision was made by the White House as it is a presidential authority.

Thanks,

Aaron Szabo
Senior Advisor to the Administrator
202-855-3241

From: Bennett, Parker <Bennett.Parker@epa.gov>
Sent: Tuesday, July 22, 2025 2:11 PM
To: Dominguez, Alexander <dominguez.alexander@epa.gov>; Szabo, Aaron <Szabo.Aaron@epa.gov>; Tardif, Abigale (Abbie) <Tardif.Abigale@epa.gov>
Cc: Talmage, Sarah <Talmage.Sarah@epa.gov>; Barja, Jaide <Barja.Jaide@epa.gov>
Subject: Rep. Luttrell - Huntsman HON Rule

Hi Air Team,

I wanted to flag this request for you from Rep. Luttrell.

> "Hope you are well! Huntsman who has a facility in our district applied for a Presidential Exemption under the Clean Air Act to provide relief imposed by a 2024 EPA rule known as the HON Rule. The administration included it on a short list of regulations to be evaluated for Presidential Exemptions.
>
> Huntsman applied for an exemption for a few of their facilities, including in Conroe, TX which is in our district. It is our understanding that the exemption process is being handled by the National Energy Dominance Council (NEDC). We wanted to see if there's an update you all can share regarding the status. Any guidance is helpful!"

Is there any update we would be able to give them or is it not possible at this time?

Best,
Parker

Parker C. Bennett
Deputy Associate Administrator for House Relations
Office of Congressional and Intergovermental Relations
U.S. Environmental Protection Agency
Office: (202) 658-0534

Message

From: Tardif, Abigale (Abbie) [Tardif.Abigale@epa.gov]
Sent: 10/14/2025 8:10:46 PM
To: Michael Davin [MDavin@nam.org]
Subject: Re: Question Regarding NESHAP Taconite Iron Ore Processing

Mike-

The White House (NEDC) would be best group to reach out to regarding the presidential exemption.

Best,
Abbie

Get Outlook for iOS

From: Michael Davin <MDavin@nam.org>
Sent: Tuesday, October 14, 2025 4:00:30 PM
To: Tardif, Abigale (Abbie) <tardif.abigale@epa.gov>
Subject: Question Regarding NESHAP Taconite Iron Ore Processing

> **Caution:** This email originated from outside EPA, please exercise additional caution when deciding whether to open attachments or click on provided links.

Good afternoon Abbie,

I hope you are doing well and you all are hanging in there with the ongoing shutdown. We are thinking of you all and hoping it comes to an end soon.

I am reaching out because we had one of our steel manufacturers reach out with a question regarding the President's July 17th President Proclamation declaring regulatory relief for stationary sources from the Taconite Iron Ore Processing NESHAP. Regulatory Relief for Certain Stationary Sources to Promote American Iron Ore Processing Security – The White House

Do you know who would be running point for the exemption process in the White House or at EPA? Any information you can provide would be greatly appreciated!

Happy to chat if that is easier too.

Thanks!

Mike

Mike Davin
National Association of Manufacturers
Director, Energy and Resources Policy
Email: mdavin@nam.org
Mobile: (215) 300-3818



NAM Facebook | Twitter | Instagram | LinkedIn

Message

From: Tardif, Abigale (Abbie) [Tardif.Abigale@epa.gov]
Sent: 1/7/2026 7:34:30 PM
To: Tisa, Nathaniel [Tisa.Nathaniel@epa.gov]; Szabo, Aaron [Szabo.Aaron@epa.gov]
CC: Donahue, Sean [donahue.sean@epa.gov]
Subject: RE: MATS repeal rule schedule--what the D.C. District Court expects from EPA in the NGO challenge to the 2-year Presidential Exemption for MATS compliance

Nate-

This is helpful, thanks for sending this over.

Best,
Abbie

Abigale Tardif
Principal Deputy Assistant Administrator
Office of Air and Radiation
U.S. Environmental Protection Agency
Office: (202) 564-7017

From: Tisa, Nathaniel <Tisa.Nathaniel@epa.gov>
Sent: Wednesday, January 7, 2026 2:26 PM
To: Szabo, Aaron <Szabo.Aaron@epa.gov>; Tardif, Abigale (Abbie) <Tardif.Abigale@epa.gov>
Cc: Donahue, Sean <donahue.sean@epa.gov>
Subject: FW: MATS repeal rule schedule--what the D.C. District Court expects from EPA in the NGO challenge to the 2-year Presidential Exemption for MATS compliance

CUI//PRIVILEGE

FYSA on MATS, see below for the most recent.

Ex. 5 AC/AWP/DP

Nathaniel Tisa
Principal Deputy General Counsel
U.S. Environmental Protection Agency
(202) 658-5262

Controlled by U.S. Environmental Protection Agency

From: [redacted]@epa.gov>
Sent: Wednesday, January 7, 2026 2:16 PM
To: Tisa, Nathaniel <Tisa.Nathaniel@epa.gov>
Cc: [redacted]@epa.gov>; [redacted]@epa.gov>; [redacted]
[redacted]@epa.gov>
Subject: MATS repeal rule schedule--what the D.C. District Court expects from EPA in the NGO challenge to the 2-year Presidential Exemption for MATS compliance

Per your request, here's a brief email describing what we recently told the D.C. District Court about the MATS repeal schedule, and the court's response:

Ex. 5 AC/AWP/DP

[redacted] USEPA-OGC-ARLO (202) 564-5582(O) Room 7415 WJC-North
Mailing address: Mail Code 7344A, 1200 Pennsylvania Ave. NW Washington, D.C. 20460

The contents of this message may be subject to the attorney-client, work-product, or deliberative process privileges.

From: [redacted]@usdoj.gov>
Sent: Monday, January 5, 2026 10:49 AM
To: [redacted]@epa.gov>; [redacted]@epa.gov>
Cc: [redacted]@usdoj.gov>
Subject: FW: Activity in Case 1:25-cv-01852-PLF AIR ALLIANCE HOUSTON v. TRUMP et al Order

> **Caution:** This email originated from outside EPA, please exercise additional caution when deciding whether to open attachments or click on provided links.

FYI – the Court has ordered us to submit another status report by 2/6/26

From: DCD_ECFNotice@dcd.uscourts.gov <DCD_ECFNotice@dcd.uscourts.gov>
Sent: Tuesday, December 30, 2025 4:36 PM

To: DCD_ECFNotice@dcd.uscourts.gov
Subject: Activity in Case 1:25-cv-01852-PLF AIR ALLIANCE HOUSTON v. TRUMP et al Order

This is an automatic e-mail message generated by the CM/ECF system. Please DO NOT RESPOND to this e-mail because the mail box is unattended.
*****NOTE TO PUBLIC ACCESS USERS*** Judicial Conference of the United States policy permits attorneys of record and parties in a case (including pro se litigants) to receive one free electronic copy of all documents filed electronically, if receipt is required by law or directed by the filer. PACER access fees apply to all other users. To avoid later charges, download a copy of each document during this first viewing. However, if the referenced document is a transcript, the free copy and 30 page limit do not apply.**

U.S. District Court

District of Columbia

Notice of Electronic Filing

The following transaction was entered on 12/30/2025 at 4:35 PM EDT and filed on 12/30/2025

Case Name:	AIR ALLIANCE HOUSTON v. TRUMP et al
Case Number:	1:25-cv-01852-PLF
Filer:	
Document Number:	No document attached

Docket Text:
MINUTE ORDER: In light of defendants' [47] Status Report, defendants are directed to file another status report on or before February 6, 2026 informing the Court of the status of the finalization of EPA's action. Signed by Judge Paul L. Friedman on 12/30/2025. (lczl)

1:25-cv-01852-PLF Notice has been electronically mailed to:

Brian Hamilton Lynk blynk@elpc.org, CSharp@elpc.org, aestrada@elpc.org, ktoolan@elpc.org

Sean H. Donahue sean@donahuegoldberg.com

Abel J. Russ aruss@environmentalintegrity.org

Nicholas Morales nmorales@earthjustice.org, dolazabal@earthjustice.org, efile@earthjustice.org, masnake@earthjustice.org, vhuggett@earthjustice.org

Katherine K. Desormeau kdesormeau@nrdc.org, mrobertson@nrdc.org, nvandal@nrdc.org

Joshua B. Frank joshua.frank@bakerbotts.com

Shaun A Goho sgoho@catf.us, ebarry@catf.us, hhashimoto@catf.us

Sanghyun Lee slee@environmentalintegrity.org

Sarah A. Buckley sbuckley@nrdc.org, gdu@nrdc.org

Surbhi Sarang ssarang@edf.org

Ryan Maher rmaher@biologicaldiversity.org

Catherine Rios-Keating Catherine.Rios-Keating@ag.state.mn.us, anne.kealing@ag.state.mn.us, kathryn.mitchell@ag.state.mn.us, kelly.pletz@ag.state.mn

Richard Yates, III ryates@edf.org

Laura Jane Brown laura.j.s.brown@usdoj.gov, efile_eds.enrd@usdoj.gov

1:25-cv-01852-PLF Notice will be delivered by other means to::

Message

From: Tardif, Abigale (Abbie) [tardif.abigale@epa.gov]
Sent: 2/23/2026 3:18:24 PM
To: [redacted]@epa.gov]
Subject: FW: Follow Up on CAA §112 Exemptions
Attachments: Clean Air Act 112 Exemptions.pdf

FYI

Abigale Tardif
Principal Deputy Assistant Administrator
Office of Air and Radiation
U.S. Environmental Protection Agency
Office: (202) 564-7017

From: Edwards, Holt <holt.edwards@bracewell.com>
Sent: Thursday, February 19, 2026 3:14 PM
To: Tardif, Abigale (Abbie) <tardif.abigale@epa.gov>
Cc: Holmstead, Jeff <jeff.holmstead@bracewell.com>; Brazauskas, Joseph <joseph.brazauskas@bracewell.com>
Subject: Follow Up on CAA §112 Exemptions

You don't often get email from holt.edwards@bracewell.com. Learn why this is important

Caution: This email originated from outside EPA, please exercise additional caution when deciding whether to open attachments or click on provided links.

Abbie,

Thanks again for taking the time to meet with us several days ago. I wanted to follow up on the discussion we had about exemptions, specifically around the provision in §112 that allows EPA or a state permitting agency to grant a one-year compliance extension in order for regulated facilities to install control technology. The Bracewell put together some information in the attached document that we believe may be helpful to you. From our perspective, EPA should consider utilizing this authority on rules that:

1. Were finalized during the Biden Administration;
2. Have upcoming compliance deadlines; and
3. Have been identified by current EPA leadership as potentially needing revisiting.

Please take a look at the document when you have a moment. We are here to answer any questions that you may have.

Best,

Holt

HOLT EDWARDS
Principal
holt.edwards@bracewell.com | download v-card
T: +1.202.828.5863 | F: +1.800.404.3970

BRACEWELL LLP
2001 M Street NW, Suite 900 | Washington, D.C. | 20036-3310
bracewell.com | profile | LinkedIn | Twitter

CONFIDENTIALITY STATEMENT
This message is sent by a law firm and may contain information that is privileged or confidential. If you received this transmission in error, please notify the sender by reply e-mail and delete the message and any attachments.

Message

From: [redacted]@epa.gov]
Sent: 7/1/2025 3:33:05 PM
To: Tisa, Nathaniel [Tisa.Nathaniel@epa.gov]
CC: [redacted]@epa.gov]
Subject: FW: For Nate review- OAR Correspondence re Presidential exemptions
Attachments: 25-03397-AO--IOD_Correspondence__Incoming March 31 2025 Daines +3.pdf; 25-03378-AO--IOD_Correspondence__Incoming March 31 2025 Cohen.pdf; 25-03664-AO--IOD_Correspondence_Stephen I Cohen_2024.04.11 EPA Disclosure of Clean Air Act Presidential Exemption Applicants.pdf; 25-03383-AO--IOD_Correspondence__Tonko Letter to EPA CAA 112 Exemptions March2025.pdf; 25-03397-AO--IOD_Draft Response_Steven D Daines_Draft Response.docx; 25-03378-AO--IOD_Draft Response_Stephen I Cohen_Draft template response for Quill cases 25-03378_25-03383_25-03664.docx

Per chat, bumping this one back up.

++++++++++++++++
([redacted]

From: [redacted]
Sent: Tuesday, June 24, 2025 10:56 AM
To: Tisa, Nathaniel <Tisa.Nathaniel@epa.gov>
Cc: [redacted]@epa.gov>
Subject: For Nate review- OAR Correspondence re Presidential exemptions

Ex. 5 AC/DP

++++++++++++++++
([redacted]

From: [redacted]@epa.gov>
Sent: Monday, June 2, 2025 3:42 PM
To: [redacted]@epa.gov>; [redacted]@epa.gov>
Cc: OARcongressional <OARcongressional@epa.gov>; [redacted]@epa.gov>
Subject: OAR Correspondence for OGC Review

Happy Monday!

Ex. 5 AC/DP

Ex. 5 AC/DP

Thank you!
[redacted]

[redacted]
Office of Air and Radiation – Office of Air Policy & Program Support
U.S. Environmental Protection Agency Headquarters
1200 Pennsylvania Avenue NW, Washington, DC 20460
202-564-7177 WJC-N 5442R

Message

From: [redacted]@epa.gov]
Sent: 8/26/2025 1:55:10 PM
To: Tisa, Nathaniel [Tisa.Nathaniel@epa.gov]; [redacted]@epa.gov]
CC: [redacted]@epa.gov]
Subject: RE: For Review by 10am Tomorrow 8/26: MATS Exemption Reply for Abeyance Request

CUI//PRIVILEGE

Thanks Nate. Will do.

[redacted]
Deputy Associate General Counsel
Air and Radiation Law Office
Office of General Counsel
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, DC 20460
T: [redacted]
M: [redacted]
E: [redacted]@epa.gov

Controlled by U.S. Environmental Protection Agency

From: Tisa, Nathaniel <Tisa.Nathaniel@epa.gov>
Sent: Tuesday, August 26, 2025 9:55 AM
To: [redacted]@epa.gov>; [redacted]epa.gov>
Cc: [redacted]@epa.gov>
Subject: RE: For Review by 10am Tomorrow 8/26: MATS Exemption Reply for Abeyance Request

CUI//PRIVILEGE

Thanks, [redacted] – just added a few edits and comments. All set on my end but feel free to ping on any follow up questions.

Nathaniel Tisa
Principal Deputy General Counsel
U.S. Environmental Protection Agency
(202) 658-5262

Controlled by U.S. Environmental Protection Agency

From: [redacted]@epa.gov>
Sent: Tuesday, August 26, 2025 9:10 AM
To: [redacted]@epa.gov>; Tisa, Nathaniel <Tisa.Nathaniel@epa.gov>
Cc: [redacted]@epa.gov>
Subject: RE: For Review by 10am Tomorrow 8/26: MATS Exemption Reply for Abeyance Request

CUI//PRIVILEGE

Hi Nate,

Ex. 5 AC/AWP/DP

[redacted]

[redacted]
Deputy Associate General Counsel
Air and Radiation Law Office
Office of General Counsel
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, DC 20460
T: [redacted]
M: [redacted]
E: [redacted]@epa.gov

Controlled by U.S. Environmental Protection Agency

From: [redacted]@epa.gov>
Sent: Monday, August 25, 2025 5:06 PM
To: Tisa, Nathaniel <Tisa.Nathaniel@epa.gov>
Cc: [redacted]@epa.gov>; [redacted]@epa.gov>
Subject: For Review by 10am Tomorrow 8/26: MATS Exemption Reply for Abeyance Request

CUI//PRIVILEGE

Hi Nate,

Ex. 5 AC/AWP/DP

Thanks,

[redacted] | US EPA | Office of General Counsel | Air and Radiation Law Office | WJCN 7302A | [redacted]

Controlled by U.S. Environmental Protection Agency

Controlled by U.S. Environmental Protection Agency

From: [redacted]@usdoj.gov>
Sent: Monday, August 25, 2025 3:53 PM
To: [redacted]@epa.gov>
Cc: [redacted]@usdoj.gov>; [redacted]@epa.gov>
Subject: MATS Exemptions - Reply for Review - Comments requested by 10 am 8/26

Caution: This email originated from outside EPA, please exercise additional caution when deciding whether to open attachments or click on provided links.

Hi [redacted]

Ex. 5 AC/AWP/DP

Thank you,
[redacted]

Message

From: [redacted]@epa.gov]
Sent: 1/12/2026 6:49:55 PM
To: Tisa, Nathaniel [Tisa.Nathaniel@epa.gov]
CC: [redacted]epa.gov]; [redacted]@epa.gov]; [redacted]
[redacted]@epa.gov]
Subject: For Review by 1/15: MTD prez exemption case, TEJAS v Trump, No. 1:25cv3745 (DDC)
Attachments: 2025.10.22 Complaint.pdf

CUI//PRIVILEGE

Hello Nate,

Ex. 5 AC/AWP/DP

Thanks so much,

[redacted]

[redacted]
Attorney-Advisor, EPA OGC
[redacted]

Controlled by U.S. Environmental Protection Agency

Message

From: [redacted]@epa.gov]
Sent: 1/16/2026 11:20:51 PM
To: Tisa, Nathaniel [Tisa.Nathaniel@epa.gov]
CC: [redacted]@epa.gov]; [redacted]@epa.gov] [redacted]
[redacted]@epa.gov]
Subject: RE: For Review by 1/15: MTD prez exemption case, TEJAS v Trump, No. 1:25cv3745 (DDC)

CUI//PRIVILEGE

Ex. 5 AC/AWP/DP

Have a great weekend,
[redacted]

[redacted]
Attorney-Advisor, EPA OGC
[redacted]

Controlled by U.S. Environmental Protection Agency

From: Tisa, Nathaniel <Tisa.Nathaniel@epa.gov>
Sent: Thursday, January 15, 2026 5:17 PM
To: [redacted]@epa.gov>
Cc: [redacted]@epa.gov>; [redacted]@epa.gov>; [redacted]
[redacted]@epa.gov>
Subject: RE: For Review by 1/15: MTD prez exemption case, TEJAS v Trump, No. 1:25cv3745 (DDC)

CUI//PRIVILEGE

All set with review. Generally looked good – Ex. 5 AC/AWP/DP

Ex. 5 AC/AWP/DP

Ex. 5 AC/AWP/DP

Nathaniel Tisa
Principal Deputy General Counsel
U.S. Environmental Protection Agency
(202) 658-5262

Controlled by U.S. Environmental Protection Agency

From: [redacted]@epa.gov>
Sent: Thursday, January 15, 2026 12:47 PM
To: Tisa, Nathaniel <Tisa.Nathaniel@epa.gov>
Cc: [redacted]@epa.gov>; [redacted]@epa.gov>; [redacted]@epa.gov>
Subject: RE: For Review by 1/15: MTD prez exemption case, TEJAS v Trump, No. 1:25cv3745 (DDC)

CUI//PRIVILEGE

Hi Nate,

Ex. 5 AC/AWP/DP

Thank you so much again,
[redacted]

[redacted]
Attorney-Advisor, EPA OGC
[redacted]

Controlled by U.S. Environmental Protection Agency

From: [redacted]
Sent: Monday, January 12, 2026 1:50 PM
To: Tisa, Nathaniel <Tisa.Nathaniel@epa.gov>
Cc: [redacted]@epa.gov>; [redacted]@epa.gov>; [redacted]@epa.gov>
Subject: For Review by 1/15: MTD prez exemption case, TEJAS v Trump, No. 1:25cv3745 (DDC)

Hello Nate,

Ex. 5 AC/AWP/DP

Thanks so much,

[redacted]

[redacted]
Attorney-Advisor, EPA OGC
[redacted]

Message

From: [redacted]@epa.gov]
Sent: 2/27/2026 4:42:25 PM
To: Tisa, Nathaniel [Tisa.Nathaniel@epa.gov]
CC: [redacted]@epa.gov]
Subject: MATS Presidential Exemption litigation

Hi Nate,

Ex. 5 AC/AWP/DP

[redacted]

[redacted]
Deputy Associate General Counsel
Air and Radiation Law Office
Office of General Counsel
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, DC 20460
T: [redacted]
M: [redacted]
E: [redacted]@epa.gov

Message

From: [redacted]@epa.gov]
Sent: 3/18/2026 1:30:55 PM
To: Tisa, Nathaniel [Tisa.Nathaniel@epa.gov]
Subject: RE: MATS Presidential Exemption cases

Okay, this is helpful. Thanks!

[redacted]
Deputy Associate General Counsel
Air and Radiation Law Office
Office of General Counsel
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, DC 20460
T: [redacted]
M: [redacted]
E: [redacted]@epa.gov

From: Tisa, Nathaniel <Tisa.Nathaniel@epa.gov>
Sent: Wednesday, March 18, 2026 9:30 AM
To: [redacted]@epa.gov>
Subject: Re: MATS Presidential Exemption cases

Ex. 5 AC/AWP/DP

Get Outlook for iOS

From: [redacted]@epa.gov>
Sent: Wednesday, March 18, 2026 8:05:59 AM
To: Tisa, Nathaniel <Tisa.Nathaniel@epa.gov>
Subject: MATS Presidential Exemption cases

Good morning Nate,

Ex. 5 AC/AWP/DP

[redacted]

[redacted]
Deputy Associate General Counsel
Air and Radiation Law Office
Office of General Counsel
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, DC 20460
T: [redacted]
M: [redacted]
E: [redacted]@epa.gov

Message

From: [redacted]@epa.gov]
Sent: 8/1/2025 8:50:46 PM
To: Tisa, Nathaniel [Tisa.Nathaniel@epa.gov]; [redacted]@epa.gov]; [redacted]@epa.gov]
Subject: RE: MATS Presidential Exemption Abeyance Motions

CUI//PRIVILEGE

Thx.

Controlled by U.S. Environmental Protection Agency

From: Tisa, Nathaniel <Tisa.Nathaniel@epa.gov>
Sent: Friday, August 1, 2025 2:53 PM
To: [redacted]@epa.gov>; [redacted]@epa.gov>; [redacted]@epa.gov>
Subject: MATS Presidential Exemption Abeyance Motions

CUI//PRIVILEGE

Hi all,

Ex. 5 AC/AWP/DP

Nathaniel Tisa
Deputy General Counsel
U.S. Environmental Protection Agency
(202) 658-5262

Controlled by U.S. Environmental Protection Agency

Message

From: Tisa, Nathaniel [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=356DD7CF844C4A7F90C991F72EF60F32-AACE1BF5-59]
Sent: 8/1/2025 6:52:51 PM
To: [redacted]@epa.gov]; [redacted]@epa.gov]; [redacted]@epa.gov]
Subject: MATS Presidential Exemption Abeyance Motions

Hi all,

Ex. 5 AC/AWP/DP

Nathaniel Tisa
Deputy General Counsel
U.S. Environmental Protection Agency
(202) 658-5262

Message

From: Tisa, Nathaniel [Tisa.Nathaniel@epa.gov]
Sent: 8/26/2025 1:54:38 PM
To: [redacted]@epa.gov]; [redacted]@epa.gov]
CC: [redacted]@epa.gov]
Subject: RE: For Review by 10am Tomorrow 8/26: MATS Exemption Reply for Abeyance Request

Thanks [redacted] – just added a few edits and comments. All set on my end but feel free to ping on any follow up questions.

Nathaniel Tisa
Principal Deputy General Counsel
U.S. Environmental Protection Agency
(202) 658-5262

From: [redacted]@epa.gov>
Sent: Tuesday, August 26, 2025 9:10 AM
To: [redacted]@epa.gov>; Tisa, Nathaniel <Tisa.Nathaniel@epa.gov>
Cc: [redacted]@epa.gov>
Subject: RE: For Review by 10am Tomorrow 8/26: MATS Exemption Reply for Abeyance Request

CUI//PRIVILEGE

Hi Nate,

Ex. 5 AC/AWP/DP

[redacted]

[redacted]
Deputy Associate General Counsel
Air and Radiation Law Office
Office of General Counsel
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, DC 20460
T: [redacted]
M: [redacted]
E: [redacted]@epa.gov

Controlled by U.S. Environmental Protection Agency

From: [redacted]@epa.gov>
Sent: Monday, August 25, 2025 5:06 PM
To: Tisa, Nathaniel <Tisa.Nathaniel@epa.gov>
Cc: [redacted]@epa.gov>; [redacted]@epa.gov>
Subject: For Review by 10am Tomorrow 8/26: MATS Exemption Reply for Abeyance Request

CUI//PRIVILEGE

Hi Nate,

Ex. 5 AC/AWP/DP

Thanks,

[redacted] | US EPA | Office of General Counsel | Air and Radiation Law Office | WJCN 7302A | [redacted]

Controlled by U.S. Environmental Protection Agency

Controlled by U.S. Environmental Protection Agency

From: [redacted]@usdoi.gov>
Sent: Monday, August 25, 2025 3:53 PM
To: [redacted]@epa.gov>
Cc: [redacted]@usdoi.gov>; [redacted]@epa.gov>
Subject: MATS Exemptions - Reply for Review - Comments requested by 10 am 8/26

Caution: This email originated from outside EPA, please exercise additional caution when deciding whether to open attachments or click on provided links.

Hi Libby,

Ex. 5 AC/AWP/DP

Thank you,
[redacted]

Message

From: Tisa, Nathaniel [Tisa.Nathaniel@epa.gov]
Sent: 1/7/2026 8:48:19 PM
To: [redacted]@epa.gov]
CC: [redacted]@epa.gov]; [redacted]@epa.gov]; [redacted]@epa.gov]
Subject: Re: MATS repeal rule schedule--what the D.C. District Court expects from EPA in the NGO challenge to the 2-year Presidential Exemption for MATS compliance

Thank you! Very helpful.

Get Outlook for iOS

From: [redacted]@epa.gov>
Sent: Wednesday, January 7, 2026 2:16:17 PM
To: Tisa, Nathaniel <Tisa.Nathaniel@epa.gov>
Cc: [redacted]@epa.gov>; [redacted]@epa.gov>; [redacted]@epa.gov>
Subject: MATS repeal rule schedule--what the D.C. District Court expects from EPA in the NGO challenge to the 2-year Presidential Exemption for MATS compliance

Ex. 5 AC/AWP/DP

[redacted] USEPA-OGC-ARLO (202) 564-5582(O) Room 7415 WJC-North
Mailing address: Mail Code 7344A, 1200 Pennsylvania Ave. NW Washington, D.C. 20460

The contents of this message may be subject to the attorney-client, work-product, or deliberative process privileges.

From: [redacted]@usdoj.gov>
Sent: Monday, January 5, 2026 10:49 AM
To: [redacted]@epa.gov> [redacted]@epa.gov>
Cc: [redacted]@usdoj.gov>
Subject: FW: Activity in Case 1:25-cv-01852-PLF AIR ALLIANCE HOUSTON v. TRUMP et al Order

Caution: This email originated from outside EPA, please exercise additional caution when deciding whether to open attachments or click on provided links.

FYI – the Court has ordered us to submit another status report by 2/6/26

From: DCD_ECFNotice@dcd.uscourts.gov <DCD_ECFNotice@dcd.uscourts.gov>
Sent: Tuesday, December 30, 2025 4:36 PM
To: DCD_ECFNotice@dcd.uscourts.gov
Subject: Activity in Case 1:25-cv-01852-PLF AIR ALLIANCE HOUSTON v. TRUMP et al Order

This is an automatic e-mail message generated by the CM/ECF system. Please DO NOT RESPOND to this e-mail because the mail box is unattended.
*****NOTE TO PUBLIC ACCESS USERS*** Judicial Conference of the United States policy permits attorneys of record and parties in a case (including pro se litigants) to receive one free electronic copy of all documents filed electronically, if receipt is required by law or directed by the filer. PACER access fees apply to all other users. To avoid later charges, download a copy of each document during this first viewing. However, if the referenced document is a transcript, the free copy and 30 page limit do not apply.**

U.S. District Court

District of Columbia

Notice of Electronic Filing

The following transaction was entered on 12/30/2025 at 4:35 PM EDT and filed on 12/30/2025

Case Name:	AIR ALLIANCE HOUSTON v. TRUMP et al
Case Number:	1:25-cv-01852-PLF
Filer:	
Document Number:	No document attached

Docket Text:
MINUTE ORDER: In light of defendants' [47] Status Report, defendants are directed to file another status report on or before February 6, 2026 informing the Court of the status of the finalization of EPA's action. Signed by Judge Paul L. Friedman on 12/30/2025. (lczl)

1:25-cv-01852-PLF Notice has been electronically mailed to:

Brian Hamilton Lynk blynk@elpc.org, CSharp@elpc.org, aestrada@elpc.org, ktoolan@elpc.org

Sean H. Donahue sean@donahuegoldberg.com

Abel J. Russ aruss@environmentalintegrity.org

Nicholas Morales nmorales@earthjustice.org, dolazabal@earthjustice.org, efile@earthjustice.org, masnake@earthjustice.org, vhuggett@earthjustice.org

Katherine K. Desormeau kdesormeau@nrdc.org, mrobertson@nrdc.org, nvandal@nrdc.org

Joshua B. Frank joshua.frank@bakerbotts.com

Shaun A Goho sgoho@catf.us, ebarry@catf.us, hhashimoto@catf.us

Sanghyun Lee slee@environmentalintegrity.org

Sarah A. Buckley sbuckley@nrdc.org, gdu@nrdc.org

Surbhi Sarang ssarang@edf.org

Ryan Maher rmaher@biologicaldiversity.org

Catherine Rios-Keating Catherine.Rios-Keating@ag.state.mn.us, anne.kealing@ag.state.mn.us, kathryn.mitchell@ag.state.mn.us, kelly.pletz@ag.state.mn

Richard Yates, III ryates@edf.org

Laura Jane Brown laura.j.s.brown@usdoj.gov, efile_eds.enrd@usdoj.gov

1:25-cv-01852-PLF Notice will be delivered by other means to::

Message

From: Tisa, Nathaniel [Tisa.Nathaniel@epa.gov]
Sent: 1/15/2026 9:06:20 PM
To: [redacted]@epa.gov]
CC: [redacted]@epa.gov]; [redacted]@epa.gov]; [redacted]
[redacted]@epa.gov]
Subject: RE: For Review by 1/15: MTD prez exemption case, TEJAS v Trump, No. 1:25cv3745 (DDC)

Ex. 5 AC/AWP/DP

Nathaniel Tisa
Principal Deputy General Counsel
U.S. Environmental Protection Agency
(202) 658-5262

From: [redacted]@epa.gov>
Sent: Thursday, January 15, 2026 12:47 PM
To: Tisa, Nathaniel <Tisa.Nathaniel@epa.gov>
Cc: [redacted]@epa.gov>; [redacted]@epa.gov>; [redacted]
[redacted]@epa.gov>
Subject: RE: For Review by 1/15: MTD prez exemption case, TEJAS v Trump, No. 1:25cv3745 (DDC)

CUI//PRIVILEGE

Hi Nate,

Ex. 5 AC/AWP/DP

Thank you so much again,
[redacted]

[redacted]
Attorney-Advisor, EPA OGC
[redacted]

Controlled by U.S. Environmental Protection Agency

From: [redacted]
Sent: Monday, January 12, 2026 1:50 PM
To: Tisa, Nathaniel <Tisa.Nathaniel@epa.gov>
Cc: [redacted]@epa.gov>; [redacted]@epa.gov>; [redacted]
[redacted]@epa.gov>
Subject: For Review by 1/15: MTD prez exemption case, TEJAS v Trump, No. 1:25cv3745 (DDC)

Hello Nate,

Ex. 5 AC/AWP/DP

Thanks so much,

[redacted]

[redacted]

Attorney-Advisor, EPA OGC

[redacted]

Message

From: Tisa, Nathaniel [Tisa.Nathaniel@epa.gov]
Sent: 1/15/2026 10:17:05 PM
To: [redacted]@epa.gov]
CC: [redacted]@epa.gov]; [redacted]@epa.gov]; [redacted]
[redacted]@epa.gov]
Subject: RE: For Review by 1/15: MTD prez exemption case, TEJAS v Trump, No. 1:25cv3745 (DDC)

Ex. 5 AC/AWP/DP

Nathaniel Tisa
Principal Deputy General Counsel
U.S. Environmental Protection Agency
(202) 658-5262

From: [redacted]@epa.gov>
Sent: Thursday, January 15, 2026 12:47 PM
To: Tisa, Nathaniel <Tisa.Nathaniel@epa.gov>
Cc: [redacted]@epa.gov>; [redacted]@epa.gov>; [redacted]
[redacted]@epa.gov>
Subject: RE: For Review by 1/15: MTD prez exemption case, TEJAS v Trump, No. 1:25cv3745 (DDC)

CUI//PRIVILEGE

Hi Nate,

Ex. 5 AC/AWP/DP

Thank you so much again,
[redacted]

[redacted]
Attorney-Advisor, EPA OGC
[redacted]

Controlled by U.S. Environmental Protection Agency

From: [redacted]
Sent: Monday, January 12, 2026 1:50 PM
To: Tisa, Nathaniel <Tisa.Nathaniel@epa.gov>
Cc: [redacted]@epa.gov>; [redacted]@epa.gov>; [redacted]@epa.gov>
Subject: For Review by 1/15: MTD prez exemption case, TEJAS v Trump, No. 1:25cv3745 (DDC)

Hello Nate,

Ex. 5 AC/AWP/DP

Thanks so much,

[redacted]

[redacted]
Attorney-Advisor, EPA OGC
[redacted]

Message

From: Hirsch, Brigit [Hirsch.Brigit@epa.gov]
Sent: 1/30/2026 11:21:14 PM
To: Tisa, Nathaniel [Tisa.Nathaniel@epa.gov]; Donahue, Sean [donahue.sean@epa.gov]
CC: Mandy, Cora [Mandy.Cora@epa.gov]; Bastasch, Mike [Bastasch.Mike@epa.gov]; Holran, Carolyn [Holran.Carolyn@epa.gov]; Murphy, Jacob [Murphy.Jacob@epa.gov]
Subject: Re: Law360 media inquiry Texas Environmental Advocacy Services et al v. Trump et al
Attachments: Texas Environmental Justice Advocacy Services v. Trump motion.pdf

Thanks Nate. Attaching the filing from the reporter - sorry for missing it!

From: Tisa, Nathaniel <Tisa.Nathaniel@epa.gov>
Sent: Friday, January 30, 2026 6:12:31 PM
To: Hirsch, Brigit <Hirsch.Brigit@epa.gov>; Donahue, Sean <donahue.sean@epa.gov>
Cc: Mandy, Cora <Mandy.Cora@epa.gov>; Bastasch, Mike <Bastasch.Mike@epa.gov>; Holran, Carolyn <Holran.Carolyn@epa.gov>; Murphy, Jacob <Murphy.Jacob@epa.gov>
Subject: Re: Law360 media inquiry Texas Environmental Advocacy Services et al v. Trump et al

Ex. 5 AC/AWP/DP

Get Outlook for iOS

From: Hirsch, Brigit <Hirsch.Brigit@epa.gov>
Sent: Friday, January 30, 2026 5:55:53 PM
To: Donahue, Sean <donahue.sean@epa.gov>; Tisa, Nathaniel <Tisa.Nathaniel@epa.gov>
Cc: Mandy, Cora <Mandy.Cora@epa.gov>; Bastasch, Mike <Bastasch.Mike@epa.gov>; Holran, Carolyn <Holran.Carolyn@epa.gov>; Murphy, Jacob <Murphy.Jacob@epa.gov>
Subject: Re: Law360 media inquiry Texas Environmental Advocacy Services et al v. Trump et al

Hi Sean and Nate,

Ex. 5 AC/AWP/DP

Brigit

From: Gina Kim <gina.kim@law360.com>
Sent: Friday, January 30, 2026 5:18:11 PM
To: EPA Press Office <press@epa.gov>
Cc: webcontentmgr.enrd@usdoj.gov <webcontentmgr.enrd@usdoj.gov>
Subject: Law360 media inquiry Texas Environmental Advocacy Services et al v. Trump et al

Caution: This email originated from outside EPA, please exercise additional caution when deciding whether to open attachments or click on provided links.

Hello and Good afternoon

My name is Gina Kim and I'm a staff writer for Law360. I'm writing about the federal government's motion to dismiss a complaint filed last October by the Texas Environmental Justice Advocacy Services and several other groups alleging the Trump administration violated the Clean Air Act by postponing deadlines to comply with air pollution standards for companies in the chemical manufacturing sector.

I wanted to see if representatives for the defendants wished to issue a statement on the motion to dismiss. I can be reached at this email or at 562 217 9438. Thank you so much for your time and consideration. I hope you're having a pleasant Friday and have a wonderful weekend.

Sincerely

Gina Kim

Message

From: [redacted]@epa.gov]
Sent: 3/27/2025 4:07:42 PM
To: Vaseliou, Molly [Vaseliou.Molly@epa.gov]; Mandy, Cora [Mandy.Cora@epa.gov]; Gall, Daniel [Gall.Daniel@epa.gov]; Weiner, Ben [Weiner.Ben@epa.gov]
CC: [redacted]@epa.gov]; [redacted]@epa.gov]
Subject: RE: Flagging: Section 112 exemptions - Politico - DDL noon

Thanks, Molly!

From: Vaseliou, Molly <Vaseliou.Molly@epa.gov>
Sent: Thursday, March 27, 2025 12:07 PM
To: [redacted]@epa.gov>; Mandy, Cora <Mandy.Cora@epa.gov>; Gall, Daniel <Gall.Daniel@epa.gov>; Weiner, Ben <Weiner.Ben@epa.gov>
Cc: [redacted]@epa.gov>; [redacted]@epa.gov>
Subject: RE: Flagging: Section 112 exemptions - Politico - DDL noon

Follow up responses:

Section 112(i)(4) specifically states that the President may exempt any stationary source "if the President determines that the technology to implement such standard is not available and that it is in the national security interests of the United States to do so."

On medical sterilizers: At this time, we're not aware of any received or granted exemptions. That would be a question for our predecessors.

From: [redacted]@epa.gov>
Sent: Thursday, March 27, 2025 12:01 PM
To: Vaseliou, Molly <Vaseliou.Molly@epa.gov>; Mandy, Cora <Mandy.Cora@epa.gov>; Gall, Daniel <Gall.Daniel@epa.gov>; Weiner, Ben <Weiner.Ben@epa.gov>
Cc: [redacted]@epa.gov>; [redacted]@epa.gov>
Subject: RE: Flagging: Section 112 exemptions - Politico - DDL noon

Hi, Molly,

Flagging Alex's follow-up below. Please advise.

I understand the ultimate decision rests with the president, not EPA. But the process does appear to be running through EPA — it's on your website and the email does to an EPA address. So why is it inaccurate to say EPA acted to notify companies of the possibility of exemptions?

On medical sterilizers — were any exemptions received or granted? That EO sets up a process to seek an exemption, but doesn't specifically grant any, it seems. I do want to include it for context in my coverage and appreciate EPA flagging it, but want to offer the most up to date facts.

Respectfully,

[redacted]

Office of Media Relations and Risk Communications
Office of Public Affairs
[redacted]
[redacted]@epa.gov

From: Vaseliou, Molly <Vaseliou.Molly@epa.gov>
Sent: Thursday, March 27, 2025 11:42 AM
To: [redacted]@epa.gov>; Mandy, Cora <Mandy.Cora@epa.gov>; Gall, Daniel <Gall.Daniel@epa.gov>; Weiner, Ben <Weiner.Ben@epa.gov>
Cc: [redacted]@epa.gov>; [redacted]@epa.gov>
Subject: RE: Flagging: Section 112 exemptions - Politico - DDL noon

Edited below

From: [redacted]@epa.gov>
Sent: Thursday, March 27, 2025 11:40 AM
To: Vaseliou, Molly <Vaseliou.Molly@epa.gov>; Mandy, Cora <Mandy.Cora@epa.gov>; Gall, Daniel <Gall.Daniel@epa.gov>; Weiner, Ben <Weiner.Ben@epa.gov>
Cc: [redacted]@epa.gov>; [redacted]@epa.gov>
Subject: Flagging: Section 112 exemptions - Politico - DDL noon

Hi, Molly,

Flagging this one. Would you like me to share the below with the reporter?

Ex. 5 Deliberative Process (DP)

Respectfully,

[redacted]
Office of Media Relations and Risk Communications
Office of Public Affairs

[redacted]@epa.gov

From: Alex Guillen <aguillen@politico.com>
Sent: Thursday, March 27, 2025 11:15 AM
To: EPA Press Office <Press@epa.gov>
Subject: Section 112 exemptions

Caution: This email originated from outside EPA, please exercise additional caution when deciding whether to open attachments or click on provided links.

Hello, I'm, writing on the Section 112 exemptions EPA has offered to companies for at least nine regulations, including the MATS rule.

Has EPA received any exemption requests so far? If so, how many, and for what rules?

Why the March 31 deadline? Can't facilities seek an exemption at any time?

Has EPA ever before issued a presidential exemption under Section 112? I haven't been able to find any prior instances of that and wanted to check.

Does EPA wish to offer any other comment?

My deadline is noon.

Thank you,

Alex Guillén | Energy Reporter | **POLITICO**PRO
1000 Wilson Boulevard, 8th Floor | Arlington, VA 22209
Phone: 703.341.4619
Email: aguillen@politico.com | Twitter: @alexcguillen | Website: www.POLITICOPro.com
Pronouns: He/him/his

Message

From: [redacted]@epa.gov]
Sent: 7/18/2025 11:45:52 AM
To: Vaseliou, Molly [Vaseliou.Molly@epa.gov]; Mandy, Cora [Mandy.Cora@epa.gov]; Hirsch, Brigit [Hirsch.Brigit@epa.gov]; Holran, Carolyn [Holran.Carolyn@epa.gov]
CC: [redacted]@epa.gov]; [redacted]@epa.gov]
Subject: RE: Flagging: (Follow-up) White House compliance delay re commercial sterilization facilities NESHAP - E&E - DDL 11 a.m.

Got it!

From: Vaseliou, Molly <Vaseliou.Molly@epa.gov>
Sent: Friday, July 18, 2025 7:45 AM
To: [redacted]@epa.gov>; Mandy, Cora <Mandy.Cora@epa.gov>; Hirsch, Brigit <Hirsch.Brigit@epa.gov>; Holran, Carolyn <Holran.Carolyn@epa.gov>
Cc: [redacted]@epa.gov>; [redacted]@epa.gov>
Subject: Re: Flagging: (Follow-up) White House compliance delay re commercial sterilization facilities NESHAP - E&E - DDL 11 a.m.

You can add on background:

(b) (5)

Get Outlook for iOS

From: [redacted]@epa.gov>
Sent: Friday, July 18, 2025 7:40:40 AM
To: Vaseliou, Molly <Vaseliou.Molly@epa.gov>; Mandy, Cora <Mandy.Cora@epa.gov>; Hirsch, Brigit <Hirsch.Brigit@epa.gov>; Holran, Carolyn <Holran.Carolyn@epa.gov>
Cc: [redacted]@epa.gov>; [redacted]@epa.gov>
Subject: RE: Flagging: (Follow-up) White House compliance delay re commercial sterilization facilities NESHAP - E&E - DDL 11 a.m.

Ex. 5 Deliberative Process (DP) I'll send the quote and let him know he can attribute the response to you.

From: Vaseliou, Molly <Vaseliou.Molly@epa.gov>
Sent: Friday, July 18, 2025 7:37 AM
To: [redacted]@epa.gov>; Mandy, Cora <Mandy.Cora@epa.gov>; Hirsch, Brigit <Hirsch.Brigit@epa.gov>; Holran, Carolyn <Holran.Carolyn@epa.gov>
Cc: [redacted]@epa.gov>; [redacted]@epa.gov>
Subject: Re: Flagging: (Follow-up) White House compliance delay re commercial sterilization facilities NESHAP - E&E - DDL 11 a.m.

Ex. 5 Deliberative Process (DP)

"Decisions to grant compliance extensions is an authority that rests with the President."

These were posted and notified via the WH, not EPA. But then again Ex. 5 Deliberative Process (DP) Ex. 5 Deliberative Process (DP)

Get Outlook for iOS

From: [redacted]@epa.gov>
Sent: Friday, July 18, 2025 7:33:43 AM
To: Vaseliou, Molly <Vaseliou.Molly@epa.gov>; Mandy, Cora <Mandy.Cora@epa.gov>; Hirsch, Brigit <Hirsch.Brigit@epa.gov>; Holran, Carolyn <Holran.Carolyn@epa.gov>
Cc: [redacted]@epa.gov>; [redacted]@epa.gov>
Subject: Flagging: (Follow-up) White House compliance delay re commercial sterilization facilities NESHAP - E&E - DDL 11 a.m.

Flagging Sean's follow-up:

Received. Can you directly address my question as to whether Mr. Szabo had any involvement in the decision to grant compliance extensions to some commercial sterilization facilities? Also, to whom can I attribute this response?

Best regards,
Sean

From: Vaseliou, Molly <Vaseliou.Molly@epa.gov>
Sent: Friday, July 18, 2025 7:20 AM
To: [redacted]@epa.gov>; Mandy, Cora <Mandy.Cora@epa.gov>; Hirsch, Brigit <Hirsch.Brigit@epa.gov>; Holran, Carolyn <Holran.Carolyn@epa.gov>
Cc: [redacted]@epa.gov>; [redacted]@epa.gov>
Subject: RE: Flagging: White House compliance delay re commercial sterilization facilities NESHAP - E&E - DDL 11 a.m.

Closed

From: [redacted]@epa.gov>
Sent: Friday, July 18, 2025 7:09 AM
To: Vaseliou, Molly <Vaseliou.Molly@epa.gov>; Mandy, Cora <Mandy.Cora@epa.gov>; Hirsch, Brigit <Hirsch.Brigit@epa.gov>; Holran, Carolyn <Holran.Carolyn@epa.gov>
Cc: [redacted]@epa.gov>; [redacted]@epa.gov>
Subject: Flagging: White House compliance delay re commercial sterilization facilities NESHAP - E&E - DDL 11 a.m.

Team – Flagging. The deadline is 11 a.m.

From: Sean Reilly <sreilly@eenews.net>
Sent: Thursday, July 17, 2025 11:24 PM
To: EPA Press Office <Press@epa.gov>
Cc: Hannah Northey <hnorthey@eenews.net>; Szabo, Aaron <Szabo.Aaron@epa.gov>
Subject: White House compliance delay re commercial sterilization facilities NESHAP

Caution: This email originated from outside EPA, please exercise additional caution when deciding whether to open attachments or click on provided links.

Hi folks:

Together with my colleague Hannah Northey (copied here), I'm working on a story for tomorrow that will note the White House's decision to grant a two-year compliance extension (https://www.whitehouse.gov/presidential-actions/2025/07/regulatory-relief-for-certain-stationary-sources-to-promote-american-security-with-respect-to-sterile-medical-equipment/) to some plants covered by the strengthened NESHAP rule for medical sterilization facilities promulgated last year.

The story may also note that Aaron Szabo, President Trump's nominee to head the Office of Air and Radiation, previously lobbied for the Advanced Medical Technology Association, which has a close interest in that rule. Did Mr. Szabo have any involvement in the White House's decision to grant the two-year compliance delay or in EPA's processing of applications from companies seeking the delay?

Our deadline is 11 a.m. tomorrow.

Thanks,
Sean

REGULATORY RELIEF FOR CERTAIN STATIONARY SOURCES TO PROMOTE AMERICAN SECURITY WITH RESPECT TO STERILE MEDICAL EQUIPMENT - The White House

By the President of the United States of America A Proclamation 1. The use of ethylene oxide is critical for the sterilization of medical equipment, which protects patients against infection and ...

www.whitehouse.gov

Sean Reilly

Reporter

E&E News/POLITICO

Ph: 202-316-4596

Twitter: @SeanatGreenwire

Message

From: [redacted]@epa.gov]
Sent: 7/18/2025 1:29:41 PM
To: Vaseliou, Molly [Vaseliou.Molly@epa.gov]; Mandy, Cora [Mandy.Cora@epa.gov]; Hirsch, Brigit [Hirsch.Brigit@epa.gov]; Holran, Carolyn [Holran.Carolyn@epa.gov]
CC: [redacted]@epa.gov]; [redacted]@epa.gov]
Subject: RE: Flagging: (Follow-up) White House compliance delay re commercial sterilization facilities NESHAP - E&E - DDL 11 a.m.

Okay. I'll take this to AAA.

From: Vaseliou, Molly <Vaseliou.Molly@epa.gov>
Sent: Friday, July 18, 2025 9:28 AM
To: [redacted]@epa.gov>; Mandy, Cora <Mandy.Cora@epa.gov>; Hirsch, Brigit <Hirsch.Brigit@epa.gov>; Holran, Carolyn <Holran.Carolyn@epa.gov>
Cc: [redacted]@epa.gov>; [redacted]@epa.gov>
Subject: Re: Flagging: (Follow-up) White House compliance delay re commercial sterilization facilities NESHAP - E&E - DDL 11 a.m.

You can ask OAR but I doubt we'll get an answer in time.

Get Outlook for iOS

From: [redacted]@epa.gov>
Sent: Friday, July 18, 2025 8:12:04 AM
To: Vaseliou, Molly <Vaseliou.Molly@epa.gov>; Mandy, Cora <Mandy.Cora@epa.gov>; Hirsch, Brigit <Hirsch.Brigit@epa.gov>; Holran, Carolyn <Holran.Carolyn@epa.gov>
Cc: [redacted]@epa.gov>; [redacted]@epa.gov>
Subject: RE: Flagging: (Follow-up) White House compliance delay re commercial sterilization facilities NESHAP - E&E - DDL 11 a.m.

Hi Molly,

Flagging another follow-up. Let this lie?

Thanks for your reply which, I have to respectfully note, still doesn't directly address my question. As you know, EPA created the email inbox to receive applications for this program. Does EPA then have any role in vetting applications for consistency with the program criteria? Or does EPA simply forward the applications with no review to the White House?

Respectfully,

[redacted]
Office of Media Relations and Risk Communications
Office of Public Affairs
[redacted]
[redacted]@epa.gov

From: Vaseliou, Molly <Vaseliou.Molly@epa.gov>
Sent: Friday, July 18, 2025 7:45 AM
To: [redacted]@epa.gov>; Mandy, Cora <Mandy.Cora@epa.gov>; Hirsch, Brigit <Hirsch.Brigit@epa.gov>; Holran, Carolyn <Holran.Carolyn@epa.gov>
Cc: [redacted]@epa.gov>; [redacted]@epa.gov>
Subject: Re: Flagging: (Follow-up) White House compliance delay re commercial sterilization facilities NESHAP - E&E - DDL 11 a.m.

You can add on background: Ex. 5 Deliberative Process (DP)

Ex. 5 Deliberative Process (DP)

Get Outlook for iOS

From: [redacted]@epa.gov>
Sent: Friday, July 18, 2025 7:40:40 AM
To: Vaseliou, Molly <Vaseliou.Molly@epa.gov>; Mandy, Cora <Mandy.Cora@epa.gov>; Hirsch, Brigit <Hirsch.Brigit@epa.gov>; Holran, Carolyn <Holran.Carolyn@epa.gov>
Cc: [redacted]@epa.gov>; [redacted]@epa.gov>
Subject: RE: Flagging: (Follow-up) White House compliance delay re commercial sterilization facilities NESHAP - E&E - DDL 11 a.m.

Ex. 5 Deliberative Process (DP) . I'll send the quote and let him know he can attribute the response to you.

From: Vaseliou, Molly <Vaseliou.Molly@epa.gov>
Sent: Friday, July 18, 2025 7:37 AM
To: [redacted]@epa.gov>; Mandy, Cora <Mandy.Cora@epa.gov>; Hirsch, Brigit <Hirsch.Brigit@epa.gov>; Holran, Carolyn <Holran.Carolyn@epa.gov>
Cc: [redacted]@epa.gov>; [redacted]epa.gov>
Subject: Re: Flagging: (Follow-up) White House compliance delay re commercial sterilization facilities NESHAP - E&E - DDL 11 a.m.

Ex. 5 Deliberative Process (DP)

"Decisions to grant compliance extensions is an authority that rests with the President."

These were posted and notified via the WH, not EPA. But then again Ex. 5 Deliberative Process (DP)
Ex. 5 Deliberative Process (DP)

Get Outlook for iOS

From: [redacted]@epa.gov>
Sent: Friday, July 18, 2025 7:33:43 AM
To: Vaseliou, Molly <Vaseliou.Molly@epa.gov>; Mandy, Cora <Mandy.Cora@epa.gov>; Hirsch, Brigit <Hirsch.Brigit@epa.gov>; Holran, Carolyn <Holran.Carolyn@epa.gov>
Cc: [redacted]@epa.gov>; [redacted]@epa.gov>
Subject: Flagging: (Follow-up) White House compliance delay re commercial sterilization facilities NESHAP - E&E - DDL 11 a.m.

Flagging Sean's follow-up:

Received. Can you directly address my question as to whether Mr. Szabo had any involvement in the decision to grant compliance extensions to some commercial sterilization facilities? Also, to whom can I attribute this response?

Best regards,
Sean

From: Vaseliou, Molly <Vaseliou.Molly@epa.gov>
Sent: Friday, July 18, 2025 7:20 AM
To: [redacted]@epa.gov>; Mandy, Cora <Mandy.Cora@epa.gov>; Hirsch, Brigit <Hirsch.Brigit@epa.gov>; Holran, Carolyn <Holran.Carolyn@epa.gov>
Cc: [redacted]@epa.gov>; [redacted]@epa.gov>
Subject: RE: Flagging: White House compliance delay re commercial sterilization facilities NESHAP - E&E - DDL 11 a.m.

Closed

From: [redacted]@epa.gov>
Sent: Friday, July 18, 2025 7:09 AM
To: Vaseliou, Molly <Vaseliou.Molly@epa.gov>; Mandy, Cora <Mandy.Cora@epa.gov>; Hirsch, Brigit <Hirsch.Brigit@epa.gov>; Holran, Carolyn <Holran.Carolyn@epa.gov>
Cc: [redacted]@epa.gov>; [redacted]@epa.gov>
Subject: Flagging: White House compliance delay re commercial sterilization facilities NESHAP - E&E - DDL 11 a.m.

Team – Flagging. The deadline is 11 a.m.

From: Sean Reilly <sreilly@eenews.net>
Sent: Thursday, July 17, 2025 11:24 PM
To: EPA Press Office <Press@epa.gov>
Cc: Hannah Northey <hnorthey@eenews.net>; Szabo, Aaron <Szabo.Aaron@epa.gov>
Subject: White House compliance delay re commercial sterilization facilities NESHAP

Caution: This email originated from outside EPA, please exercise additional caution when deciding whether to open attachments or click on provided links.

Hi folks:

Together with my colleague Hannah Northey (copied here), I'm working on a story for tomorrow that will note the White House's decision to grant a two-year compliance extension (https://www.whitehouse.gov/presidential-actions/2025/07/regulatory-relief-for-certain-stationary-sources-to-promote-american-security-with-respect-to-sterile-medical-equipment/) to some plants covered by the strengthened NESHAP rule for medical sterilization facilities promulgated last year.

The story may also note that Aaron Szabo, President Trump's nominee to head the Office of Air and Radiation, previously lobbied for the Advanced Medical Technology Association, which has a close interest in that rule. Did Mr.

Szabo have any involvement in the White House's decision to grant the two-year compliance delay or in EPA's processing of applications from companies seeking the delay?

Our deadline is 11 a.m. tomorrow.

Thanks,
Sean

REGULATORY RELIEF FOR CERTAIN STATIONARY SOURCES TO PROMOTE AMERICAN SECURITY WITH RESPECT TO STERILE MEDICAL EQUIPMENT - The White House

By the President of the United States of America A Proclamation 1. The use of ethylene oxide is critical for the sterilization of medical equipment which protects patients against infection and ...

www.whitehouse.gov

Sean Reilly

Reporter

E&E News/POLITICO

Ph: 202-316-4596

Twitter: @SeanatGreenwire

Message

From: Bastasch, Mike [Bastasch.Mike@epa.gov]
Sent: 9/25/2025 5:12:00 PM
To: Hirsch, Brigit [Hirsch.Brigit@epa.gov]; Holran, Carolyn [Holran.Carolyn@epa.gov]; Vaseliou, Molly [Vaseliou.Molly@epa.gov]; Mandy, Cora [Mandy.Cora@epa.gov]
Subject: RE: Flagging: Sec. 112 (i)(4) Presidential Exemption program/emails released by the Environmental Defense Fund - E&E - DDL 4 p.m.

Ex. 5 Deliberative Process (DP)

Ex. 5 Deliberative Process (DP)

From: Hirsch, Brigit <Hirsch.Brigit@epa.gov>
Sent: Thursday, September 25, 2025 1:02 PM
To: Holran, Carolyn <Holran.Carolyn@epa.gov>; Vaseliou, Molly <Vaseliou.Molly@epa.gov>; Mandy, Cora <Mandy.Cora@epa.gov>; Bastasch, Mike <Bastasch.Mike@epa.gov>
Subject: RE: Flagging: Sec. 112 (i)(4) Presidential Exemption program/emails released by the Environmental Defense Fund - E&E - DDL 4 p.m.

Minus OMR – Ex. 5 Deliberative Process (DP)
Ex. 5 Deliberative Process (DP)

Ex. 5 Deliberative Process (DP)

From: Hirsch, Brigit <Hirsch.Brigit@epa.gov>
Sent: Thursday, September 25, 2025 12:54 PM
To: [redacted]@epa.gov>; Holran, Carolyn <Holran.Carolyn@epa.gov>; Vaseliou, Molly <Vaseliou.Molly@epa.gov>; Mandy, Cora <Mandy.Cora@epa.gov>; Bastasch, Mike <Bastasch.Mike@epa.gov>
Cc: [redacted]@epa.gov>; [redacted]@epa.gov>
Subject: RE: Flagging: Sec. 112 (i)(4) Presidential Exemption program/emails released by the Environmental Defense Fund - E&E - DDL 4 p.m.

Thanks [redacted], I'll jump into this.

From: [redacted]@epa.gov>
Sent: Thursday, September 25, 2025 12:50 PM
To: Hirsch, Brigit <Hirsch.Brigit@epa.gov>; Holran, Carolyn <Holran.Carolyn@epa.gov>; Vaseliou, Molly <Vaseliou.Molly@epa.gov>; Mandy, Cora <Mandy.Cora@epa.gov>; Bastasch, Mike <Bastasch.Mike@epa.gov>
Cc: [redacted]@epa.gov>; [redacted]@epa.gov>
Subject: Flagging: Sec. 112 (i)(4) Presidential Exemption program/emails released by the Environmental Defense Fund - E&E - DDL 4 p.m.

Flagging.

From: Sean Reilly <sreilly@eenews.net>
Sent: Thursday, September 25, 2025 12:47 PM
To: EPA Press Office <press@epa.gov>
Subject: Sec. 112 (i)(4) Presidential Exemption program/emails released by the Environmental Defense Fund

Caution: This email originated from outside EPA, please exercise additional caution when deciding whether to open attachments or click on provided links.

Hi folks:

I'm writing a story this afternoon on the emails released today by EDF as noted in the news release below. The story will probably focus on what the emails show about the previously undisclosed level of EPA involvement - by both political appointees and career staff - in setting up the exemptions program and also that EPA was actively soliciting exemption applications from affected industries.

In that context, I wanted to see whether EPA has either any comment generally on the emails and/or any specific response to the statement below by Mr. Yates.

My deadline is 4 p.m. today. On the record responses, please.

Thanks,
Sean

Sean Reilly
Reporter
E&E News/POLITICO
Ph: 202-316-4596
Twitter: @SeanatGreenwire

EXTERNAL SENDER: Use caution with links and attachments.

NEWS RELEASE

Contact:

Matthew Tresaugue, 713-392-7888, mtresaugue@edf.org

Trump EPA Political Appointees Scrambled to Offer Free Pass to Pollute

Newly obtained internal emails offer window into industry insiders' influence over federal agency's decision-making

(WASHINGTON – September 25, 2025) Trump Administration political appointees with ties to industry orchestrated the process to invite industrial pollution sources to request exemptions from key Clean Air Act standards, according to internal emails obtained by Environmental Defense Fund. These important pollution limits – now being undermined by industry and Trump appointees – protect the public from toxic air pollutants like mercury, arsenic and chromium emitted by coal-fired power plants and from hazardous air pollutants released by chemical manufacturing facilities and other large industrial sources.

"The Trump EPA issued a sweeping invitation to hundreds of large industrial facilities to apply for a pass to pollute, and now we know that senior political appointees at EPA – who in the past worked for industry groups to weaken pollution limits – played a central role in designing the process to collect and facilitate industry requests," said EDF Clean Power Attorney Richard Yates. "People have a right to know why and how their government is allowing facilities to emit more dangerous, toxic chemicals into the air they breathe, and these records show that Trump EPA officials with industry ties are helping polluters call the shots."

In March, EDF filed a Freedom of Information Act (FOIA) request seeking all records related to EPA Administrator Lee Zeldin's offer of exemptions-by-email and then filed suit in April after the agency failed to produce the records or otherwise respond to the FOIA request by the legal deadline. Read more about the lawsuit here.

President Trump has now granted exemptions to more than 160 polluting facilities across the U.S. Nearly two million Americans live near a facility that has received one of these exemptions.

Section 112(i)(4) of the Clean Air Act requires that, in order to grant an exemption from pollution standards, the President must determine that the technology to implement the pollution standard is not available and that an exemption is necessary for national security. The newly released records underscore the Trump EPA's central role in soliciting and facilitating companies' requests for exemptions as well as its hand in the processing of submitted applications.

Key findings from the records **include**:

- **Exemptions process was driven by Trump political appointees with industry ties:** The design of the exemption process and website for industry appears to be driven primarily by EPA political appointee Aaron Szabo, Assistant Administrator of the Office of Air and Radiation, formerly a lobbyist for energy clients such as Duke Energy and the American Fuel and Petrochemical Manufacturers Association (AFPM), as well as a contributor to the EPA chapter of Project 2025's deregulatory blueprint (see, e.g., pages 63, 203).
- **EPA met with industry representatives ahead of exemptions announcement:** Talen Energy, the parent company of the Colstrip coal plant in Montana, met with Trump EPA appointee Abigale Tardif multiple times last spring. The Trump administration later granted the Colstrip plant an exemption from standards for mercury and other toxic pollutants.
- **Development of the exemptions process was rushed and confused**: Several records indicate that EPA career staff did not have information about the exemption process being developed or did not have advance awareness of parts of the announcement (see, e.g., pages 62, 196).

More details are available in this fact sheet.

Following the March 31 deadline for submitting applications, the President announced on April 8 that an undisclosed number of coal plants would be exempted from standards for mercury, arsenic, chromium and other toxic pollutants. On April 14, for the first time and following an EDF FOIA request for public disclosure of the exempted facilities, the list of 68 coal plants exempted from Clean Air Act standards appeared on EPA's website. EDF, alongside 11 other

environmental and community groups, brought suit challenging these exemptions in the U.S. District Court for the District of Columbia and the U.S. Court of Appeals for the D.C. Circuit.

The President issued several more proclamations in July, exempting numerous additional sources from other industries, including chemical manufacturing, medical equipment sterilization, taconite iron ore processing, as well as three more coal plants.

Note that EDF has redacted, in blue, the names and identifying information of EPA career staffers from the records obtained via FOIA. Civil servants are under unprecedented attack by the Trump Administration.

###

With more than 3 million members, Environmental Defense Fund creates transformational solutions to the most serious environmental problems. To do so, EDF links science, economics, law, and innovative private-sector partnerships to turn solutions into action. edf.org

If you would rather not receive future communications from Environmental Defense Fund, let us know by clicking here.
Environmental Defense Fund, 257 Park Avenue South, New York, NY 10010 United States

Message

From: EPA Press Office [Press@epa.gov]
Sent: 1/30/2026 10:44:15 PM
To: Hirsch, Brigit [Hirsch.Brigit@epa.gov]
Subject: Fw: Law360 media inquiry Texas Environmental Advocacy Services et al v. Trump et al
Attachments: Texas Environmental Justice Advocacy Services v. Trump motion.pdf

Flag: Flag for follow up

Thanks,
EPA Press Office

From: Gina Kim <gina.kim@law360.com>
Sent: Friday, January 30, 2026 5:18:11 PM
To: EPA Press Office <press@epa.gov>
Cc: webcontentmgr.enrd@usdoj.gov <webcontentmgr.enrd@usdoj.gov>
Subject: Law360 media inquiry Texas Environmental Advocacy Services et al v. Trump et al

Caution: This email originated from outside EPA, please exercise additional caution when deciding whether to open attachments or click on provided links.

Hello and Good afternoon

My name is Gina Kim and I'm a staff writer for Law360. I'm writing about the federal government's motion to dismiss a complaint filed last October by the Texas Environmental Justice Advocacy Services and several other groups alleging the Trump administration violated the Clean Air Act by postponing deadlines to comply with air pollution standards for companies in the chemical manufacturing sector.

I wanted to see if representatives for the defendants wished to issue a statement on the motion to dismiss. I can be reached at this email or at 562 217 9438. Thank you so much for your time and consideration. I hope you're having a pleasant Friday and have a wonderful weekend.

Sincerely

Gina Kim

Message

From: Hirsch, Brigit [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=AA758B6F47C84B4092E7F04AE37B550E-2BB06795-6A]
Sent: 9/25/2025 6:05:24 PM
To: Bastasch, Mike [Bastasch.Mike@epa.gov]; Vaseliou, Molly [Vaseliou.Molly@epa.gov]
CC: Holran, Carolyn [Holran.Carolyn@epa.gov]; Mandy, Cora [Mandy.Cora@epa.gov]
Subject: RE: Question about E&E media inquiry, deadline 4pm

Bumping.

From: Hirsch, Brigit
Sent: Thursday, September 25, 2025 1:53 PM
To: Bastasch, Mike <Bastasch.Mike@epa.gov>; Vaseliou, Molly <Vaseliou.Molly@epa.gov>
Cc: Holran, Carolyn <Holran.Carolyn@epa.gov>; Mandy, Cora <Mandy.Cora@epa.gov>
Subject: RE: Question about E&E media inquiry, deadline 4pm

Just OPA. Ex. 5 Deliberative Process (DP)
Ex. 5 Deliberative Process (DP) I can work something up based on my conversation.

Ex. 5 Deliberative Process (DP)

From: Szabo, Aaron <Szabo.Aaron@epa.gov>
Sent: Thursday, September 25, 2025 1:42 PM
To: Tardif, Abigale (Abbie) <Tardif.Abigale@epa.gov>; Hirsch, Brigit <Hirsch.Brigit@epa.gov>; Dominguez, Alexander <dominguez.alexander@epa.gov>
Cc: Farkas, Juliet <Farkas.Juliet@epa.gov>; Holran, Carolyn <Holran.Carolyn@epa.gov>; Vaseliou, Molly <Vaseliou.Molly@epa.gov>; Mandy, Cora <Mandy.Cora@epa.gov>; Bastasch, Mike <Bastasch.Mike@epa.gov>
Subject: Re: Question about E&E media inquiry, deadline 4pm

Brigit - tried to call you. Feel free to give me a call.

Get Outlook for iOS

From: Tardif, Abigale (Abbie) <Tardif.Abigale@epa.gov>
Sent: Thursday, September 25, 2025 1:37:38 PM
To: Hirsch, Brigit <Hirsch.Brigit@epa.gov>; Szabo, Aaron <Szabo.Aaron@epa.gov>; Dominguez, Alexander <dominguez.alexander@epa.gov>
Cc: Farkas, Juliet <Farkas.Juliet@epa.gov>; Holran, Carolyn <Holran.Carolyn@epa.gov>; Vaseliou, Molly <Vaseliou.Molly@epa.gov>; Mandy, Cora <Mandy.Cora@epa.gov>; Bastasch, Mike <Bastasch.Mike@epa.gov>
Subject: RE: Question about E&E media inquiry, deadline 4pm

I defer to Aaron on how he would like to respond.

-Abbie

Abigale Tardif
Principal Deputy Assistant Administrator
Office of Air and Radiation
U.S. Environmental Protection Agency
Office: (202) 564-7017

From: Hirsch, Brigit <Hirsch.Brigit@epa.gov>
Sent: Thursday, September 25, 2025 1:20 PM
To: Szabo, Aaron <Szabo.Aaron@epa.gov>; Tardif, Abigale (Abbie) <Tardif.Abigale@epa.gov>; Dominguez, Alexander <dominguez.alexander@epa.gov>
Cc: Farkas, Juliet <Farkas.Juliet@epa.gov>; Holran, Carolyn <Holran.Carolyn@epa.gov>; Vaseliou, Molly <Vaseliou.Molly@epa.gov>; Mandy, Cora <Mandy.Cora@epa.gov>; Bastasch, Mike <Bastasch.Mike@epa.gov>
Subject: Question about E&E media inquiry, deadline 4pm

Hi Abbie, Aaron, and Alex,

Do you have a moment to chat about the below? I will pop by your offices whenever convenient.

Our usual response to this is:

Ex. 5 Deliberative Process (DP)

Brigit
202-817-6939

From the Reporter:

Hi folks:

I'm writing a story this afternoon on the emails released today by EDF as noted in the news release below. The story will probably focus on what the emails show about the previously undisclosed level of EPA involvement - by both political appointees and career staff - in setting up the exemptions program and also that EPA was actively soliciting exemption applications from affected industries.

In that context, I wanted to see whether EPA has either any comment generally on the emails and/or any specific response to the statement below by Mr. Yates.

My deadline is 4 p.m. today. On the record responses, please.

Thanks,
Sean

Sean Reilly
Reporter
E&E News/[redacted]
Ph: 202-316-4596
Twitter: @SeanatGreenwire

EXTERNAL SENDER: Use caution with links and attachments.

NEWS RELEASE

Contact:

Matthew Tresaugue, 713-392-7888, mtresaugue@edf.org

Trump EPA Political Appointees Scrambled to Offer Free Pass to Pollute

Newly obtained internal emails offer window into industry insiders' influence over federal agency's decision-making

(WASHINGTON – September 25, 2025) Trump Administration political appointees with ties to industry orchestrated the process to invite industrial pollution sources to request exemptions from key Clean Air Act standards, according to internal emails obtained by Environmental Defense Fund. These important pollution limits – now being undermined by industry and Trump appointees – protect the public from toxic air pollutants like mercury, arsenic and chromium emitted by coal-fired power plants and from hazardous air pollutants released by chemical manufacturing facilities and other large industrial sources.

"The Trump EPA issued a sweeping invitation to hundreds of large industrial facilities to apply for a pass to pollute, and now we know that senior political appointees at EPA – who in the past worked for industry groups to weaken pollution limits – played a central role in designing the process to collect and facilitate industry requests," said EDF Clean Power Attorney Richard Yates. "People have a right to know why and how their government is allowing facilities to emit more dangerous, toxic chemicals into the air they breathe, and these records show that Trump EPA officials with industry ties are helping polluters call the shots."

In March, EDF filed a Freedom of Information Act (FOIA) request seeking all records related to EPA Administrator Lee Zeldin's offer of exemptions-by-email and then filed suit in April after the agency failed to produce the records or otherwise respond to the FOIA request by the legal deadline. Read more about the lawsuit here.

President Trump has now granted exemptions to more than 160 polluting facilities across the U.S. Nearly two million Americans live near a facility that has received one of these exemptions.

Section 112(i)(4) of the Clean Air Act requires that, in order to grant an exemption from pollution standards, the President must determine that the technology to implement the pollution standard is not available and that an exemption is necessary for national security. The newly released

records underscore the Trump EPA's central role in soliciting and facilitating companies' requests for exemptions as well as its hand in the processing of submitted applications.

Key findings from the records **include**:

- **Exemptions process was driven by Trump political appointees with industry ties:** The design of the exemption process and website for industry appears to be driven primarily by EPA political appointee Aaron Szabo, Assistant Administrator of the Office of Air and Radiation, formerly a lobbyist for energy clients such as Duke Energy and the American Fuel and Petrochemical Manufacturers Association (AFPM), as well as a contributor to the EPA chapter of Project 2025's deregulatory blueprint (see, e.g., pages 63, 203).
- **EPA met with industry representatives ahead of exemptions announcement**: Talen Energy, the parent company of the Colstrip coal plant in Montana, met with Trump EPA appointee Abigale Tardif multiple times last spring. The Trump administration later granted the Colstrip plant an exemption from standards for mercury and other toxic pollutants.
- **Development of the exemptions process was rushed and confused**: Several records indicate that EPA career staff did not have information about the exemption process being developed or did not have advance awareness of parts of the announcement (see, e.g., pages 62, 196).

More details are available in this fact sheet.

Following the March 31 deadline for submitting applications, the President announced on April 8 that an undisclosed number of coal plants would be exempted from standards for mercury, arsenic, chromium and other toxic pollutants. On April 14, for the first time and following an EDF FOIA request for public disclosure of the exempted facilities, the list of 68 coal plants exempted from Clean Air Act standards appeared on EPA's website. EDF, alongside 11 other environmental and community groups, brought suit challenging these exemptions in the U.S. District Court for the District of Columbia and the U.S. Court of Appeals for the D.C. Circuit.

The President issued several more proclamations in July, exempting numerous additional sources from other industries, including chemical manufacturing, medical equipment sterilization, taconite iron ore processing, as well as three more coal plants.

Note that EDF has redacted, in blue, the names and identifying information of EPA career staffers from the records obtained via FOIA. Civil servants are under unprecedented attack by the Trump Administration.

###

With more than 3 million members, Environmental Defense Fund creates transformational solutions to the most serious environmental problems. To do so, EDF links science, economics, law, and innovative private-sector partnerships to turn solutions into action. edf.org

If you would rather not receive future communications from Environmental Defense Fund, let us know by clicking here.
Environmental Defense Fund, 257 Park Avenue South, New York, NY 10010 United States

Message

From: Hirsch, Brigit [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=AA75886F47C84B4092E7F04AE37B550E-2BB06795-6A]
Sent: 11/20/2025 6:18:46 PM
To: Holran, Carolyn [Holran.Carolyn@epa.gov]
Subject: FW: Flagging: Sec. 112 (i)(4) Presidential Exemption program/emails released by the Environmental Defense Fund - E&E - DDL 4 p.m.

From: Hirsch, Brigit
Sent: Thursday, September 25, 2025 3:18 PM
To: [redacted]@epa.gov>; Holran, Carolyn <Holran.Carolyn@epa.gov>; Vaseliou, Molly <Vaseliou.Molly@epa.gov>; Mandy, Cora <Mandy.Cora@epa.gov>; Bastasch, Mike <Bastasch.Mike@epa.gov>
Cc: [redacted]@epa.gov>; [redacted]@epa.gov>
Subject: RE: Flagging: Sec. 112 (i)(4) Presidential Exemption program/emails released by the Environmental Defense Fund - E&E - DDL 4 p.m.

Thank you!

From: [redacted]@epa.gov>
Sent: Thursday, September 25, 2025 3:18 PM
To: Hirsch, Brigit <Hirsch.Brigit@epa.gov>; Holran, Carolyn <Holran.Carolyn@epa.gov>; Vaseliou, Molly <Vaseliou.Molly@epa.gov>; Mandy, Cora <Mandy.Cora@epa.gov>; Bastasch, Mike <Bastasch.Mike@epa.gov>
Cc: [redacted]@epa.gov>; [redacted]@epa.gov>
Subject: RE: Flagging: Sec. 112 (i)(4) Presidential Exemption program/emails released by the Environmental Defense Fund - E&E - DDL 4 p.m.

Thanks Brigit. I'll give Sean your name if he asks.

From: Hirsch, Brigit <Hirsch.Brigit@epa.gov>
Sent: Thursday, September 25, 2025 3:14 PM
To: [redacted]@epa.gov>; Holran, Carolyn <Holran.Carolyn@epa.gov>; Vaseliou, Molly <Vaseliou.Molly@epa.gov>; Mandy, Cora <Mandy.Cora@epa.gov>; Bastasch, Mike <Bastasch.Mike@epa.gov>
Cc: [redacted]@epa.gov>; [redacted]@epa.gov>
Subject: RE: Flagging: Sec. 112 (i)(4) Presidential Exemption program/emails released by the Environmental Defense Fund - E&E - DDL 4 p.m.

[redacted] we can send:

Ex. 5 Deliberative Process (DP)

From: Hirsch, Brigit <Hirsch.Brigit@epa.gov>
Sent: Thursday, September 25, 2025 12:54 PM
To: [redacted]@epa.gov>; Holran, Carolyn <Holran.Carolyn@epa.gov>; Vaseliou, Molly <Vaseliou.Molly@epa.gov>; Mandy, Cora <Mandy.Cora@epa.gov>; Bastasch, Mike <Bastasch.Mike@epa.gov>
Cc: [redacted]@epa.gov>; [redacted]@epa.gov>
Subject: RE: Flagging: Sec. 112 (i)(4) Presidential Exemption program/emails released by the Environmental Defense Fund - E&E - DDL 4 p.m.

Thanks [redacted] I'll jump into this.

From: [redacted]@epa.gov>
Sent: Thursday, September 25, 2025 12:50 PM
To: Hirsch, Brigit <Hirsch.Brigit@epa.gov>; Holran, Carolyn <Holran.Carolyn@epa.gov>; Vaseliou, Molly <Vaseliou.Molly@epa.gov>; Mandy, Cora <Mandy.Cora@epa.gov>; Bastasch, Mike <Bastasch.Mike@epa.gov>
Cc: [redacted]@epa.gov>; [redacted]@epa.gov>
Subject: Flagging: Sec. 112 (i)(4) Presidential Exemption program/emails released by the Environmental Defense Fund - E&E - DDL 4 p.m.

Flagging.

From: Sean Reilly <sreilly@eenews.net>
Sent: Thursday, September 25, 2025 12:47 PM
To: EPA Press Office <press@epa.gov>
Subject: Sec. 112 (i)(4) Presidential Exemption program/emails released by the Environmental Defense Fund

> **Caution:** This email originated from outside EPA, please exercise additional caution when deciding whether to open attachments or click on provided links.

Hi folks:

I'm writing a story this afternoon on the emails released today by EDF as noted in the news release below. The story will probably focus on what the emails show about the previously undisclosed level of EPA involvement - by both political appointees and career staff - in setting up the exemptions program and also that EPA was actively soliciting exemption applications from affected industries.

In that context, I wanted to see whether EPA has either any comment generally on the emails and/or any specific response to the statement below by Mr. Yates.

My deadline is 4 p.m. today. On the record responses, please.

Thanks,
Sean

Sean Reilly
Reporter
E&E News/POLITICO
Ph: 202-316-4596
Twitter: @SeanatGreenwire

EXTERNAL SENDER: Use caution with links and attachments.

NEWS RELEASE

Contact:

Matthew Tresaugue, 713-392-7888, mtresaugue@edf.org

Trump EPA Political Appointees Scrambled to Offer Free Pass to Pollute

Newly obtained internal emails offer window into industry insiders' influence over federal agency's decision-making

(WASHINGTON – September 25, 2025) Trump Administration political appointees with ties to industry orchestrated the process to invite industrial pollution sources to request exemptions from key Clean Air Act standards, according to internal emails obtained by Environmental Defense Fund. These important pollution limits – now being undermined by industry and Trump appointees – protect the public from toxic air pollutants like mercury, arsenic and chromium emitted by coal-fired power plants and from hazardous air pollutants released by chemical manufacturing facilities and other large industrial sources.

"The Trump EPA issued a sweeping invitation to hundreds of large industrial facilities to apply for a pass to pollute, and now we know that senior political appointees at EPA – who in the past worked for industry groups to weaken pollution limits – played a central role in designing the process to collect and facilitate industry requests," said EDF Clean Power Attorney Richard Yates. "People have a right to know why and how their government is allowing facilities to emit more dangerous, toxic chemicals into the air they breathe, and these records show that Trump EPA officials with industry ties are helping polluters call the shots."

In March, EDF filed a Freedom of Information Act (FOIA) request seeking all records related to EPA Administrator Lee Zeldin's offer of exemptions-by-email and then filed suit in April after the agency failed to produce the records or otherwise respond to the FOIA request by the legal deadline. Read more about the lawsuit here.

President Trump has now granted exemptions to more than 160 polluting facilities across the U.S. Nearly two million Americans live near a facility that has received one of these exemptions.

Section 112(i)(4) of the Clean Air Act requires that, in order to grant an exemption from pollution standards, the President must determine that the technology to implement the pollution standard is not available and that an exemption is necessary for national security. The newly released records underscore the Trump EPA's central role in soliciting and facilitating companies' requests for exemptions as well as its hand in the processing of submitted applications.

Key findings from the records **include**:

- **Exemptions process was driven by Trump political appointees with industry ties:** The design of the exemption process and website for industry appears to be driven primarily by EPA political appointee Aaron Szabo, Assistant Administrator of the Office of Air and Radiation, formerly a lobbyist for energy clients such as Duke Energy and the

American Fuel and Petrochemical Manufacturers Association (AFPM), as well as a contributor to the EPA chapter of Project 2025's deregulatory blueprint (see, e.g., pages 63, 203).

- **EPA met with industry representatives ahead of exemptions announcement**: Talen Energy, the parent company of the Colstrip coal plant in Montana, met with Trump EPA appointee Abigale Tardif multiple times last spring. The Trump administration later granted the Colstrip plant an exemption from standards for mercury and other toxic pollutants.
- **Development of the exemptions process was rushed and confused**: Several records indicate that EPA career staff did not have information about the exemption process being developed or did not have advance awareness of parts of the announcement (see, e.g., pages 62, 196).

More details are available in this fact sheet.

Following the March 31 deadline for submitting applications, the President announced on April 8 that an undisclosed number of coal plants would be exempted from standards for mercury, arsenic, chromium and other toxic pollutants. On April 14, for the first time and following an EDF FOIA request for public disclosure of the exempted facilities, the list of 68 coal plants exempted from Clean Air Act standards appeared on EPA's website. EDF, alongside 11 other environmental and community groups, brought suit challenging these exemptions in the U.S. District Court for the District of Columbia and the U.S. Court of Appeals for the D.C. Circuit.

The President issued several more proclamations in July, exempting numerous additional sources from other industries, including chemical manufacturing, medical equipment sterilization, taconite iron ore processing, as well as three more coal plants.

Note that EDF has redacted, in blue, the names and identifying information of EPA career staffers from the records obtained via FOIA. Civil servants are under unprecedented attack by the Trump Administration.

###

With more than 3 million members, Environmental Defense Fund creates transformational solutions to the most serious environmental problems. To do so, EDF links science, economics, law, and innovative private-sector partnerships to turn solutions into action. edf.org

If you would rather not receive future communications from Environmental Defense Fund, let us know by clicking here.
Environmental Defense Fund, 257 Park Avenue South, New York, NY 10010 United States

Message

From: Hirsch, Brigit [Hirsch.Brigit@epa.gov]
Sent: 11/20/2025 6:20:15 PM
To: Holran, Carolyn [Holran.Carolyn@epa.gov]
Subject: RE: Question about E&E media inquiry, deadline 4pm

Ofc!!

From: Holran, Carolyn <Holran.Carolyn@epa.gov>
Sent: Thursday, November 20, 2025 1:20 PM
To: Hirsch, Brigit <Hirsch.Brigit@epa.gov>
Subject: Re: Question about E&E media inquiry, deadline 4pm

Oh perfect. Thanks!

Get Outlook for iOS

From: Hirsch, Brigit <Hirsch.Brigit@epa.gov>
Sent: Thursday, November 20, 2025 1:19:03 PM
To: Holran, Carolyn <Holran.Carolyn@epa.gov>
Subject: FW: Question about E&E media inquiry, deadline 4pm

From: Szabo, Aaron <Szabo.Aaron@epa.gov>
Sent: Thursday, September 25, 2025 2:45 PM
To: Hirsch, Brigit <Hirsch.Brigit@epa.gov>; Tardif, Abigale (Abbie) <Tardif.Abigale@epa.gov>; Dominguez, Alexander <dominguez.alexander@epa.gov>
Cc: Farkas, Juliet <Farkas.Juliet@epa.gov>; Holran, Carolyn <Holran.Carolyn@epa.gov>; Vaseliou, Molly <Vaseliou.Molly@epa.gov>; Mandy, Cora <Mandy.Cora@epa.gov>; Bastasch, Mike <Bastasch.Mike@epa.gov>
Subject: RE: Question about E&E media inquiry, deadline 4pm

Sounds good.

Thanks,

Aaron Szabo
Assistant Administrator
Office of Air and Radiation
U.S. Environmental Protection Agency
Cell: (202) 855-3241

From: Hirsch, Brigit <Hirsch.Brigit@epa.gov>
Sent: Thursday, September 25, 2025 2:44 PM
To: Szabo, Aaron <Szabo.Aaron@epa.gov>; Tardif, Abigale (Abbie) <Tardif.Abigale@epa.gov>; Dominguez, Alexander <dominguez.alexander@epa.gov>
Cc: Farkas, Juliet <Farkas.Juliet@epa.gov>; Holran, Carolyn <Holran.Carolyn@epa.gov>; Vaseliou, Molly

<Vaseliou.Molly@epa.gov>; Mandy, Cora <Mandy.Cora@epa.gov>; Bastasch, Mike <Bastasch.Mike@epa.gov>
Subject: RE: Question about E&E media inquiry, deadline 4pm

Aaron, to close the loop, we are going send the below:

Ex. 5 Deliberative Process (DP)

From: Hirsch, Brigit
Sent: Thursday, September 25, 2025 1:43 PM
To: Szabo, Aaron <Szabo.Aaron@epa.gov>; Tardif, Abigale (Abbie) <Tardif.Abigale@epa.gov>; Dominguez, Alexander <dominguez.alexander@epa.gov>
Cc: Farkas, Juliet <Farkas.Juliet@epa.gov>; Holran, Carolyn <Holran.Carolyn@epa.gov>; Vaseliou, Molly <Vaseliou.Molly@epa.gov>; Mandy, Cora <Mandy.Cora@epa.gov>; Bastasch, Mike <Bastasch.Mike@epa.gov>
Subject: RE: Question about E&E media inquiry, deadline 4pm

Thank you Aaron, I will call you back very shortly! Apologies for missing you.

From: Szabo, Aaron <Szabo.Aaron@epa.gov>
Sent: Thursday, September 25, 2025 1:42 PM
To: Tardif, Abigale (Abbie) <Tardif.Abigale@epa.gov>; Hirsch, Brigit <Hirsch.Brigit@epa.gov>; Dominguez, Alexander <dominguez.alexander@epa.gov>
Cc: Farkas, Juliet <Farkas.Juliet@epa.gov>; Holran, Carolyn <Holran.Carolyn@epa.gov>; Vaseliou, Molly <Vaseliou.Molly@epa.gov>; Mandy, Cora <Mandy.Cora@epa.gov>; Bastasch, Mike <Bastasch.Mike@epa.gov>
Subject: Re: Question about E&E media inquiry, deadline 4pm

Brigit - tried to call you. Feel free to give me a call.

Get Outlook for iOS

From: Tardif, Abigale (Abbie) <Tardif.Abigale@epa.gov>
Sent: Thursday, September 25, 2025 1:37:38 PM
To: Hirsch, Brigit <Hirsch.Brigit@epa.gov>; Szabo, Aaron <Szabo.Aaron@epa.gov>; Dominguez, Alexander <dominguez.alexander@epa.gov>
Cc: Farkas, Juliet <Farkas.Juliet@epa.gov>; Holran, Carolyn <Holran.Carolyn@epa.gov>; Vaseliou, Molly <Vaseliou.Molly@epa.gov>; Mandy, Cora <Mandy.Cora@epa.gov>; Bastasch, Mike <Bastasch.Mike@epa.gov>
Subject: RE: Question about E&E media inquiry, deadline 4pm

I defer to Aaron on how he would like to respond.

-Abbie

Abigale Tardif
Principal Deputy Assistant Administrator
Office of Air and Radiation
U.S. Environmental Protection Agency
Office: (202) 564-7017

From: Hirsch, Brigit <Hirsch.Brigit@epa.gov>
Sent: Thursday, September 25, 2025 1:20 PM
To: Szabo, Aaron <Szabo.Aaron@epa.gov>; Tardif, Abigale (Abbie) <Tardif.Abigale@epa.gov>; Dominguez, Alexander <dominguez.alexander@epa.gov>
Cc: Farkas, Juliet <Farkas.Juliet@epa.gov>; Holran, Carolyn <Holran.Carolyn@epa.gov>; Vaseliou, Molly <Vaseliou.Molly@epa.gov>; Mandy, Cora <Mandy.Cora@epa.gov>; Bastasch, Mike <Bastasch.Mike@epa.gov>
Subject: Question about E&E media inquiry, deadline 4pm

Hi Abbie, Aaron, and Alex,

Do you have a moment to chat about the below? I will pop by your offices whenever convenient.

Our usual response to this is:

Ex. 5 Deliberative Process (DP)

Brigit
202-817-6939

From the Reporter:

Hi folks:

I'm writing a story this afternoon on the emails released today by EDF as noted in the news release below. The story will probably focus on what the emails show about the previously undisclosed level of EPA involvement - by both political appointees and career staff - in setting up the exemptions program and also that EPA was actively soliciting exemption applications from affected industries.

In that context, I wanted to see whether EPA has either any comment generally on the emails and/or any specific response to the statement below by Mr. Yates.

My deadline is 4 p.m. today. On the record responses, please.

Thanks,
Sean

Sean Reilly
Reporter
E&E News/[redacted]
Ph: 202-316-4596
Twitter: @SeanatGreenwire

EXTERNAL SENDER: Use caution with links and attachments.

NEWS RELEASE

Contact:

Matthew Tresaugue, 713-392-7888, mtresaugue@edf.org

Trump EPA Political Appointees Scrambled to Offer Free Pass to Pollute

Newly obtained internal emails offer window into industry insiders' influence over federal agency's decision-making

(WASHINGTON – September 25, 2025) Trump Administration political appointees with ties to industry orchestrated the process to invite industrial pollution sources to request exemptions from key Clean Air Act standards, according to internal emails obtained by Environmental Defense Fund. These important pollution limits – now being undermined by industry and Trump appointees – protect the public from toxic air pollutants like mercury, arsenic and chromium emitted by coal-fired power plants and from hazardous air pollutants released by chemical manufacturing facilities and other large industrial sources.

"The Trump EPA issued a sweeping invitation to hundreds of large industrial facilities to apply for a pass to pollute, and now we know that senior political appointees at EPA – who in the past worked for industry groups to weaken pollution limits – played a central role in designing the process to collect and facilitate industry requests," said EDF Clean Power Attorney Richard Yates. "People have a right to know why and how their government is allowing facilities to emit more dangerous, toxic chemicals into the air they breathe, and these records show that Trump EPA officials with industry ties are helping polluters call the shots."

In March, EDF filed a Freedom of Information Act (FOIA) request seeking all records related to EPA Administrator Lee Zeldin's offer of exemptions-by-email and then filed suit in April after the agency failed to produce the records or otherwise respond to the FOIA request by the legal deadline. Read more about the lawsuit here.

President Trump has now granted exemptions to more than 160 polluting facilities across the U.S. Nearly two million Americans live near a facility that has received one of these exemptions.

Section 112(i)(4) of the Clean Air Act requires that, in order to grant an exemption from pollution standards, the President must determine that the technology to implement the pollution standard is not available and that an exemption is necessary for national security. The newly released records underscore the Trump EPA's central role in soliciting and facilitating companies' requests for exemptions as well as its hand in the processing of submitted applications.

Key findings from the records **include**:

- **Exemptions process was driven by Trump political appointees with industry ties:** The design of the exemption process and website for industry appears to be driven primarily by EPA political appointee Aaron Szabo, Assistant Administrator of the Office of Air and Radiation, formerly a lobbyist for energy clients such as Duke Energy and the American Fuel and Petrochemical Manufacturers Association (AFPM), as well as a contributor to the EPA chapter of Project 2025's deregulatory blueprint (see, e.g., pages 63, 203).
- **EPA met with industry representatives ahead of exemptions announcement**: Talen Energy, the parent company of the Colstrip coal plant in Montana, met with Trump EPA appointee Abigale Tardif multiple times last spring. The Trump administration later granted the Colstrip plant an exemption from standards for mercury and other toxic pollutants.
- **Development of the exemptions process was rushed and confused**: Several records indicate that EPA career staff did not have information about the exemption process being developed or did not have advance awareness of parts of the announcement (see, e.g., pages 62, 196).

More details are available in this fact sheet.

Following the March 31 deadline for submitting applications, the President announced on April 8 that an undisclosed number of coal plants would be exempted from standards for mercury, arsenic, chromium and other toxic pollutants. On April 14, for the first time and following an EDF FOIA request for public disclosure of the exempted facilities, the list of 68 coal plants exempted from Clean Air Act standards appeared on EPA's website. EDF, alongside 11 other environmental and community groups, brought suit challenging these exemptions in the U.S. District Court for the District of Columbia and the U.S. Court of Appeals for the D.C. Circuit.

The President issued several more proclamations in July, exempting numerous additional sources from other industries, including chemical manufacturing, medical equipment sterilization, taconite iron ore processing, as well as three more coal plants.

Note that EDF has redacted, in blue, the names and identifying information of EPA career staffers from the records obtained via FOIA. Civil servants are under unprecedented attack by the Trump Administration.

###

With more than 3 million members, Environmental Defense Fund creates transformational solutions to the most serious environmental problems. To do so, EDF links science, economics, law, and innovative private-sector partnerships to turn solutions into action. edf.org

If you would rather not receive future communications from Environmental Defense Fund, let us know by clicking here.
Environmental Defense Fund, 257 Park Avenue South, New York, NY 10010 United States

Message

From: EPA Press Office [Press@epa.gov]
Sent: 7/18/2025 11:48:11 AM
To: sreilly@eenews.net
CC: Hannah Northey [hnorthey@eenews.net]; Szabo, Aaron [Szabo.Aaron@epa.gov]
Subject: RE: White House compliance delay re commercial sterilization facilities NESHAP

Sean,

"Decisions to grant compliance extensions is an authority that rests with the President." You can attribute the response to Molly Vaseliou, EPA spokesperson.

On background: To be more explicit because you don't seem to understand, EPA is not involved in which sector or which facility receives a PRESIDENTIAL EXEMPTION but then again you actively didn't cover Avi Garbow working at Patagonia and at EPA on PFAS at the same time, so we're not holding our breath to see any shred of truth printed behind the paywall.

Thanks,
EPA Press Office

From: Sean Reilly <sreilly@eenews.net>
Sent: Friday, July 18, 2025 7:31 AM
To: EPA Press Office <Press@epa.gov>
Cc: Hannah Northey <hnorthey@eenews.net>; Szabo, Aaron <Szabo.Aaron@epa.gov>; EPA Press Office <Press@epa.gov>
Subject: Re: White House compliance delay re commercial sterilization facilities NESHAP

> **Caution:** This email originated from outside EPA, please exercise additional caution when deciding whether to open attachments or click on provided links.

Received. Can you directly address my question as to whether Mr. Szabo had any involvement in the decision to grant compliance extensions to some commercial sterilization facilities? Also, to whom can I attribute this response?

Best regards,
Sean

Sean Reilly
Reporter
E&E News/Politico
Ph: 202-316-4596
Twitter: @SeanatGreenwire

Sent from my iPhone

On Jul 18, 2025, at 7:19 AM, EPA Press Office <Press@epa.gov> wrote:

EXTERNAL SENDER: Use caution with links and attachments.

As we've shared with you many, many times.

Section 112(i)(4) specifically states that the President may exempt any stationary source "if the President determines that the technology to implement such standard is not available and that it is in the national security interests of the United States to do so." This is squarely a presidential authority.

Unlike the revolving door of staff of our predecessors that went so far as taxpayer handouts to political donors, supporters, and employers—and this is before bringing up their walking ethics violations—every Trump political appointee works with the career employees in the EPA Ethics Office to ensure all applicable ethics obligations are addressed.

Any insinuation otherwise is journalism malpractice, but then again we don't have high expectations from E&E News.

From: Sean Reilly <sreilly@eenews.net>
Sent: Thursday, July 17, 2025 11:24 PM
To: EPA Press Office <Press@epa.gov>
Cc: Hannah Northey <hnorthey@eenews.net>; Szabo, Aaron <Szabo.Aaron@epa.gov>
Subject: White House compliance delay re commercial sterilization facilities NESHAP

Caution: This email originated from outside EPA, please exercise additional caution when deciding whether to open attachments or click on provided links.

Hi folks:

Together with my colleague Hannah Northey (copied here), I'm working on a story for tomorrow that will note the White House's decision to grant a two-year compliance extension (https://www.whitehouse.gov/presidential-actions/2025/07/regulatory-relief-for-certain-stationary-sources-to-promote-american-security-with-respect-to-sterile-medical-equipment/) to some plants covered by the strengthened NESHAP rule for medical sterilization facilities promulgated last year.

The story may also note that Aaron Szabo, President Trump's nominee to head the Office of Air and Radiation, previously lobbied for the Advanced Medical Technology Association, which has a close interest in that rule. Did Mr. Szabo have any involvement in the White House's decision to grant the two-year compliance delay or in EPA's processing of applications from companies seeking the delay?

Our deadline is 11 a.m. tomorrow.

Thanks,
Sean

REGULATORY RELIEF FOR CERTAIN STATIONARY SOURCES TO PROMOTE AMERICAN SECURITY WITH RESPECT TO STERILE MEDICAL EQUIPMENT - The White House

By the President of the United States of America A Proclamation 1. The use of ethylene oxide is critical for the sterilization of medical equipment, which protects patients against infection and ...

www.whitehouse.gov

Sean Reilly

Reporter

E&E News/POLITICO

Ph: 202-316-4596

Twitter: @SeanatGreenwire

Message

From: Sean Reilly [sreilly@eenews.net]
Sent: 7/18/2025 11:59:33 AM
To: EPA Press Office [Press@epa.gov]
CC: Hannah Northey [hnorthey@eenews.net]; Szabo, Aaron [Szabo.Aaron@epa.gov]
Subject: Re: White House compliance delay re commercial sterilization facilities NESHAP

Caution: This email originated from outside EPA, please exercise additional caution when deciding whether to open attachments or click on provided links.

Hi Molly:

Thanks for your reply which, I have to respectfully note, still doesn't directly address my question. As you know, EPA created the email inbox to receive applications for this program. Does EPA then have any role in vetting applications for consistency with the program criteria? Or does EPA simply forward the applications with no review to the White House?

Best regards,
Sean

Sean Reilly
Reporter
E&E News/Politico
Ph: 202-316-4596
Twitter: @SeanatGreenwire

Sent from my iPhone

On Jul 18, 2025, at 7:48 AM, EPA Press Office <Press@epa.gov> wrote:

EXTERNAL SENDER: Use caution with links and attachments.

Sean,

"Decisions to grant compliance extensions is an authority that rests with the President." You can attribute the response to Molly Vaseliou, EPA spokesperson.

On background: To be more explicit because you don't seem to understand, EPA is not involved in which sector or which facility receives a PRESIDENTIAL EXEMPTION but then again you actively didn't cover Avi Garbow working at Patagonia and at EPA on PFAS at the same time, so we're not holding our breath to see any shred of truth printed behind the paywall.

Thanks,
EPA Press Office

From: Sean Reilly <sreilly@eenews.net>
Sent: Friday, July 18, 2025 7:31 AM
To: EPA Press Office <Press@epa.gov>
Cc: Hannah Northey <hnorthey@eenews.net>; Szabo, Aaron <Szabo.Aaron@epa.gov>; EPA Press Office <Press@epa.gov>
Subject: Re: White House compliance delay re commercial sterilization facilities NESHAP

Caution: This email originated from outside EPA, please exercise additional caution when deciding whether to open attachments or click on provided links.

Received. Can you directly address my question as to whether Mr. Szabo had any involvement in the decision to grant compliance extensions to some commercial sterilization facilities? Also, to whom can I attribute this response?

Best regards,
Sean

Sean Reilly
Reporter
E&E News/Politico
Ph: 202-316-4596
Twitter: @SeanatGreenwire

Sent from my iPhone

On Jul 18, 2025, at 7:19 AM, EPA Press Office <Press@epa.gov> wrote:

EXTERNAL SENDER: Use caution with links and attachments.

As we've shared with you many, many times.

Section 112(i)(4) specifically states that the President may exempt any stationary source "if the President determines that the technology to implement such standard is not available and that it is in the national security interests of the United States to do so." This is squarely a presidential authority.

Unlike the revolving door of staff of our predecessors that went so far as taxpayer handouts to political donors, supporters, and employers—and this is before bringing up their walking ethics violations—every Trump political appointee works with the career employees in the EPA Ethics Office to ensure all applicable ethics obligations are addressed.

Any insinuation otherwise is journalism malpractice, but then again we don't have high expectations from E&E News.

From: Sean Reilly <sreilly@eenews.net>
Sent: Thursday, July 17, 2025 11:24 PM
To: EPA Press Office <Press@epa.gov>
Cc: Hannah Northey <hnorthey@eenews.net>; Szabo, Aaron <Szabo.Aaron@epa.gov>
Subject: White House compliance delay re commercial sterilization facilities NESHAP

Caution: This email originated from outside EPA, please exercise additional caution when deciding whether to open attachments or click on provided links.

Hi folks:

Together with my colleague Hannah Northey (copied here), I'm working on a story for tomorrow that will note the White House's decision to grant a two-year compliance extension (https://www.whitehouse.gov/presidential-actions/2025/07/regulatory-relief-for-certain-stationary-sources-to-promote-american-security-with-respect-to-sterile-medical-equipment/) to some plants covered by the strengthened NESHAP rule for medical sterilization facilities promulgated last year.

The story may also note that Aaron Szabo, President Trump's nominee to head the Office of Air and Radiation, previously lobbied for the Advanced Medical Technology Association, which has a close interest in that rule. Did Mr. Szabo have any involvement in the White House's decision to grant the two-year compliance delay or in EPA's processing of applications from companies seeking the delay?

Our deadline is 11 a.m. tomorrow.

Thanks,
Sean

REGULATORY RELIEF FOR CERTAIN STATIONARY SOURCES TO PROMOTE AMERICAN SECURITY WITH RESPECT TO

STERILE MEDICAL EQUIPMENT - The White House

By the President of the United States of America A Proclamation 1. The use of ethylene oxide is critical for the sterilization of medical equipment, which protects patients against infection and ...

www.whitehouse.gov

Sean Reilly

Reporter

E&E News/POLITICO

Ph: 202-316-4596

Twitter: @SeanatGreenwire

Message

From: Tisa, Nathaniel [Tisa.Nathaniel@epa.gov]
Sent: 1/7/2026 7:26:23 PM
To: Szabo, Aaron [Szabo.Aaron@epa.gov]; Tardif, Abigale (Abbie) [Tardif.Abigale@epa.gov]
CC: Donahue, Sean [donahue.sean@epa.gov]
Subject: FW: MATS repeal rule schedule--what the D.C. District Court expects from EPA in the NGO challenge to the 2-year Presidential Exemption for MATS compliance
Attachments: show_temp (20).pdf

FYSA on MATS, see below for the most recent.

Ex. 5 AC/AWP/DP

Nathaniel Tisa
Principal Deputy General Counsel
U.S. Environmental Protection Agency
(202) 658-5262

From: [redacted]@epa.gov>
Sent: Wednesday, January 7, 2026 2:16 PM
To: Tisa, Nathaniel <Tisa.Nathaniel@epa.gov>
Cc: [redacted]@epa.gov>; [redacted]@epa.gov>; [redacted]@epa.gov>
Subject: MATS repeal rule schedule--what the D.C. District Court expects from EPA in the NGO challenge to the 2-year Presidential Exemption for MATS compliance

Per your request, here's a brief email describing what we recently told the D.C. District Court about the MATS repeal schedule, and the court's response:

Ex. 5 AC/AWP/DP

[redacted] USEPA-OGC-ARLO (202) 564-5582(O) Room 7415 WJC-North
Mailing address: Mail Code 7344A, 1200 Pennsylvania Ave. NW Washington, D.C. 20460

The contents of this message may be subject to the attorney-client, work-product, or deliberative process privileges.

From: [redacted]@usdoj.gov>
Sent: Monday, January 5, 2026 10:49 AM
To: [redacted]@epa.gov>; [redacted]@epa.gov>
Cc: [redacted]@usdoj.gov>
Subject: FW: Activity in Case 1:25-cv-01852-PLF AIR ALLIANCE HOUSTON v. TRUMP et al Order

Caution: This email originated from outside EPA, please exercise additional caution when deciding whether to open attachments or click on provided links.

FYI – the Court has ordered us to submit another status report by 2/6/26

From: DCD_ECFNotice@dcd.uscourts.gov <DCD_ECFNotice@dcd.uscourts.gov>
Sent: Tuesday, December 30, 2025 4:36 PM
To: DCD_ECFNotice@dcd.uscourts.gov
Subject: Activity in Case 1:25-cv-01852-PLF AIR ALLIANCE HOUSTON v. TRUMP et al Order

This is an automatic e-mail message generated by the CM/ECF system. Please DO NOT RESPOND to this e-mail because the mail box is unattended.
*****NOTE TO PUBLIC ACCESS USERS*** Judicial Conference of the United States policy permits attorneys of record and parties in a case (including pro se litigants) to receive one free electronic copy of all documents filed electronically, if receipt is required by law or directed by the filer. PACER access fees apply to all other users. To avoid later charges, download a copy of each document during this first viewing. However, if the referenced document is a transcript, the free copy and 30 page limit do not apply.**

U.S. District Court

District of Columbia

Notice of Electronic Filing

The following transaction was entered on 12/30/2025 at 4:35 PM EDT and filed on 12/30/2025

Case Name:	AIR ALLIANCE HOUSTON v. TRUMP et al
Case Number:	1:25-cv-01852-PLF
Filer:	
Document Number:	No document attached

Docket Text:
MINUTE ORDER: In light of defendants' [47] Status Report, defendants are directed to file another status report on or before February 6, 2026 informing the Court of the status of the finalization of EPA's action. Signed by Judge Paul L. Friedman on 12/30/2025. (lczl)

1:25-cv-01852-PLF Notice has been electronically mailed to:

Brian Hamilton Lynk blynk@elpc.org, CSharp@elpc.org, aestrada@elpc.org, ktoolan@elpc.org

Sean H. Donahue sean@donahuegoldberg.com

Abel J. Russ aruss@environmentalintegrity.org

Nicholas Morales nmorales@earthjustice.org, dolazabal@earthjustice.org, efile@earthjustice.org, masnake@earthjustice.org, vhuggett@earthjustice.org

Katherine K. Desormeau kdesormeau@nrdc.org, mrobertson@nrdc.org, nvandal@nrdc.org

Joshua B. Frank joshua.frank@bakerbotts.com

Shaun A Goho sgoho@catf.us, ebarry@catf.us, hhashimoto@catf.us

Sanghyun Lee slee@environmentalintegrity.org

Sarah A. Buckley sbuckley@nrdc.org, gdu@nrdc.org

Surbhi Sarang ssarang@edf.org

Ryan Maher rmaher@biologicaldiversity.org

Catherine Rios-Keating Catherine.Rios-Keating@ag.state.mn.us, anne.kealing@ag.state.mn.us, kathryn.mitchell@ag.state.mn.us, kelly.pletz@ag.state.mn

Richard Yates, III ryates@edf.org

Laura Jane Brown laura.j.s.brown@usdoj.gov, efile_eds.enrd@usdoj.gov

1:25-cv-01852-PLF Notice will be delivered by other means to::

[SEQ CHAPTER \h \r 1]OAR Meeting Request Form
Abigale Tardif

Date of this Request: February 27, 2025
Scheduling Point of Contact: [redacted]

Subject: Commercial Sterilizers NESHAP RTR and CAA section 112(i)(4) "Presidential Exemption" Compliance Extension.

Purpose: Provide summary of EPA's 2024 Commercial Sterilizers NESHAP RTR rulemaking, litigation status and petitions, and discuss the CAA section 112(i)(4) Presidential compliance extension process.

First possible date for meeting: March 5, 2025 (note: 2:00 to 2:45pm on 3/5/2025, if possible)
Last possible date for meeting: March 7, 2025
Duration: 45 minutes
Reasons for Requested Dates/Duration: We believe it would be beneficial to have this briefing before the OAR meeting with industry on 3/6/2025 titled "Clean Air Action Section 112."

Requested Meeting Format (select one):
Virtual
__X__ Hybrid (in-person and virtual option; pending in-office availability of leadership team)

Invitees (please list invitees by Office and in the following format: *Last.First, (ex. Blossom.Cherry,)*

OAR
Tardif, Abigale; Dominguez, Alexander

OAQPS
[redacted]

OGC
[redacted]

*Please submit this OAR internal meeting request form to [HYPERLINK "mailto:OAR_Scheduling@epa.gov"]

*Briefing materials should be submitted to [HYPERLINK "mailto:OAR_Briefings@epa.gov"] by 3 pm one working day prior to the meeting

Form updated January 2024

Message

From: [redacted]/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=50505AF25AF94494AD34EE072A4F1E45-[redacted]
Sent: 3/25/2025 3:08:46 PM
To: Tull, Whitney [Whitney_Tull@steris.com]
Subject: RE: Presidential Exemption under CAA Section 112(i)(4)

I will give you a call. I may have one or two from my team on the call as this process is evolving quickly. Look forward to talking to you later.

Thanks
[redacted]

[redacted] Senior Advisor
Office of Air Quality Planning and Standards
U.S. Environmental Protection Agency
109 T.W. Alexander Drive
Research Triangle Park, NC 27711
O: [redacted] M: [redacted]
[redacted]@epa.gov

From: Tull, Whitney <Whitney_Tull@steris.com>
Sent: Tuesday, March 25, 2025 10:47 AM
To: [redacted]@epa.gov>
Subject: Re: Presidential Exemption under CAA Section 112(i)(4)

> **Caution:** This email originated from outside EPA, please exercise additional caution when deciding whether to open attachments or click on provided links.

[redacted]
Thanks for your quick response. That would be great. You can reach me at [redacted]
Whitney

From: [redacted]@epa.gov>
Sent: Tuesday, March 25, 2025 10:46 AM
To: Tull, Whitney <Whitney_Tull@steris.com>
Subject: RE: Presidential Exemption under CAA Section 112(i)(4)

Whitney, can I call you around noon? I'm tied up in meetings this morning.

[redacted] Senior Advisor
Office of Air Quality Planning and Standards
U.S. Environmental Protection Agency
109 T.W. Alexander Drive
Research Triangle Park, NC 27711
O: [redacted] M: [redacted]
[redacted]@epa.gov

From: Tull, Whitney <Whitney_Tull@steris.com>
Sent: Tuesday, March 25, 2025 8:24 AM
To: [redacted]epa.gov>
Subject: Re: Presidential Exemption under CAA Section 112(i)(4)

[redacted] **Caution:** This email originated from outside EPA, please exercise additional caution when deciding whether to open attachments or click on provided links.

[redacted]
Thank you for your outreach. Do you have any time this morning to answer a few questions?
Appreciate your time,
Whitney

Whitney Tull

Vice President, Government Affairs

STERIS

1325 G St, NW, Ste 500

Washington, DC 20005

Whitney_Tull@steris.com

Mobile: [redacted]

www.steris.com

From: [redacted]epa.gov>
Sent: Monday, March 24, 2025 5:35 PM
Subject: Presidential Exemption under CAA Section 112(i)(4)

Hello --

EPA wanted to share with you information about submitting a request for an exemption from nine different NESHAPS using Clean Air Act section 112 (i)(4). Requests can be emailed to airactions@epa.gov by March 31, 2025. The link below provides more information:

https://www.epa.gov/stationary-sources-air-pollution/clean-air-act-section-112-presidential-exemption-information

[redacted] Senior Advisor
Office of Air Quality Planning and Standards

U.S. Environmental Protection Agency
109 T.W. Alexander Drive
Research Triangle Park, NC 27711
O: [redacted] M: [redacted]
[redacted]epa.gov

Message

From: Toomey, Megan A [Megan.Toomey@talenenergy.com]
Sent: 3/31/2025 3:27:12 PM
To: Tardif, Abigale (Abbie) [Tardif.Abigale@epa.gov]
Subject: RE: Talen Energy Follow-Up

Caution: This email originated from outside EPA, please exercise additional caution when deciding whether to open attachments or click on provided links.

Awesome ~ thanks, Abbie!

From: Tardif, Abigale (Abbie) <Tardif.Abigale@epa.gov>
Sent: Monday, March 31, 2025 10:48 AM
To: Toomey, Megan A <Megan.Toomey@talenenergy.com>
Subject: RE: Talen Energy Follow-Up

[External Email]

Megan-

Thank you for sending this over. I have reached out to my scheduling team to find time for us to chat. They should send you an email in the coming days.

Best,
Abbie

[redacted]
Abigale Tardif
Principal Deputy Assistant Administrator
Office of Air and Radiation
U.S. Environmental Protection Agency
Office: (202) 564-7017

From: Toomey, Megan A <Megan.Toomey@talenenergy.com>
Sent: Monday, March 31, 2025 8:24 AM
To: Tardif, Abigale (Abbie) <Tardif.Abigale@epa.gov>
Subject: Talen Energy Follow-Up

Caution: This email originated from outside EPA, please exercise additional caution when deciding whether to open attachments or click on provided links.

Good Morning, Abbie ~

It was a pleasure meeting you last week.

Two things I wanted to make you aware of:

1) The MATS 2yr exemption request for Colstrip was submitted on Friday (a copy is attached).

2) I'd like to schedule additional time with you to discuss MATS and other air reg priorities for Talen.

Regarding #2, please let me know what will work for your schedule.

Thanks!

Megan Toomey
Vice President – Environmental Affairs | Talen Energy
Megan.Toomey@TalenEnergy.com
Office: 610.601.0216 | Mobile: 816.872.7752
600 Hamilton Street, Suite 600 | Allentown, PA 18101



The information contained in this message is intended only for the personal and confidential use of the recipient(s) named above. If the reader of this message is not the intended recipient or an agent responsible for delivering it to the intended recipient, you are hereby notified that you have received this document in error and that any review, dissemination, distribution, or copying of this message is strictly prohibited. If you have received this communication in error, please notify us immediately, and delete the original message.

ATTENTION: This email originated from outside of the organization.
Do not open attachments or click on links unless you recognize the sender and know the content is safe.

The information contained in this message is intended only for the personal and confidential use of the recipient(s) named above. If the reader of this message is not the intended recipient or an agent responsible for delivering it to the intended recipient, you are hereby notified that you have received this document in error and that any review, dissemination, distribution, or copying of this message is strictly prohibited. If you have received this communication in error, please notify us immediately, and delete the original message.

Message

From: Bird, Brian [Brian.Bird@northwestern.com]
Sent: 3/29/2025 7:25:29 PM
To: Szabo, Aaron [Szabo.Aaron@epa.gov]; Goudarzi, Tala [tala.goudarzi@hq.doe.gov]
CC: Dede, Corinne [Corinne.Dede@northwestern.com]; Heim, Shannon [Shannon.Heim@northwestern.com]
Subject: RE: Introduction

Caution: This email originated from outside EPA, please exercise additional caution when deciding whether to open attachments or click on provided links.

Thanks Aaron. Look forward to a discussion this week. We have already filed an exemption for one of our coal plants (Colstrip) and will be filing another for two other plants on Monday.

Appreciate your help!

Brian

Brian B. Bird
President and Chief Executive Officer
3010 W 69th Street I Sioux Falls, SD 57108
Office: (605) 978-2909 I Fax: (605) 978-2905
Email: brian.bird@northwestern.com

Executive Assistant: Corinne Dede
Email: corinne.dede@northwestern.com I Office: (605) 978-2827

NorthWestern Energy
Delivering a Bright Future

From: Szabo, Aaron <Szabo.Aaron@epa.gov>
Sent: Saturday, March 29, 2025 12:39 PM
To: Bird, Brian <Brian.Bird@northwestern.com>; Goudarzi, Tala <tala.goudarzi@hq.doe.gov>
Cc: Dede, Corinne <Corinne.Dede@northwestern.com>; Heim, Shannon <Shannon.Heim@northwestern.com>
Subject: [EXTERNAL] RE: Introduction

CAUTION: This Email is from an EXTERNAL source outside of NorthWestern Energy.
The Original Sender of this email is Szabo.Aaron@epa.gov.
Are you expecting the message? Is this different from the message sender displayed above?
Do not click on links or open attachments unless you are sure you recognize the sender and you know the contents are safe.
If you believe the email to be malicious and/or phishing email, please use the **Report Phish** button.

Brian,

Let me check with his scheduler to see if that is possible, but I know his week is rather full for next week. If not, I am happy to talk to you about the MATS rule and other air-related issues. As a reminder, you can submit information related to a Presidential Exemption under Section 112 by COB Monday if you have not already (see press release).

Thanks,

Aaron Szabo
Senior Advisor to the Administrator
202-564-7043 (office)
202-855-3241 (mobile)

From: Bird, Brian <Brian.Bird@northwestern.com>
Sent: Friday, March 28, 2025 3:56 PM
To: Goudarzi, Tala <tala.goudarzi@hq.doe.gov>; Szabo, Aaron <Szabo.Aaron@epa.gov>
Cc: Dede, Corinne <Corinne.Dede@northwestern.com>; Heim, Shannon <Shannon.Heim@northwestern.com>
Subject: RE: Introduction

Caution: This email originated from outside EPA, please exercise additional caution when deciding whether to open attachments or click on provided links.

Thanks Tala.

Aaron, I would love 15 minutes with Administrator Zeldin to chat about MATs and the new rules impact on the Colstrip plant in Montana. Anything you can do to make that happen would be much appreciated.

As a bit of a teaser, the new rules requires Colstrip move from 99.6% efficient to 99.8% efficient regarding particulate matter. It appeared to us that rule was changed in order that the owners of Colstrip would be forced to close Colstrip to forego the $500 million baghouse investment necessary to comply with the new rule. Colstrip is necessary to Montana for resource adequacy purposes and to be available when the temperatures are -40 and the wind isn't blowing. It is ludicrous that our customers would have to cover the costs of a $500 million investment for such a slight improvement in particulate matter capture. Anything you can do to help would be much appreciated.

I can make myself available for a call with Mr. Zeldin any time during the week of March 31st.

Thanks, for your consideration,

Brian

Brian B. Bird
President and Chief Executive Officer
3010 W 69th Street I Sioux Falls, SD 57108
Office: (605) 978-2909 I Fax: (605) 978-2905
Email: brian.bird@northwestern.com

Executive Assistant: Corinne Dede
Email: corinne.dede@northwestern.com I Office: (605) 978-2827

NorthWestern Energy
Delivering a Bright Future

From: Goudarzi, Tala <tala.goudarzi@hq.doe.gov>
Sent: Friday, March 28, 2025 2:10 PM
To: wabo.aaron@epa.gov
Cc: Dede, Corinne <Corinne.Dede@northwestern.com>; Bird, Brian <Brian.Bird@northwestern.com>
Subject: [EXTERNAL] Introduction

CAUTION: This Email is from an EXTERNAL source outside of NorthWestern Energy.
The Original Sender of this email is prvs=0182b69d48=tala.goudarzi@hq.doe.gov.
Are you expecting the message? Is this different from the message sender displayed above?
Do not click on links or open attachments unless you are sure you recognize the sender and you know the contents are safe.
If you believe the email to be malicious and/or phishing email, please use the **Report Phish** button.

Aaron,

Please allow me to connect you to Brian Bird, CEO of NorthWestern Energy. If possible, he would love to meet with Administrator Zeldin.

I will let you all take it from here!

Thank you so much and please let me know if I can help in any way.

All the best,

Tala

U.S. DEPARTMENT of ENERGY
Follow us on social media

Tala Goudarzi
Principal Deputy Assistant Secretary
Fossil Energy and Carbon Management (FECM)
OFFICE 202.586.6660

This message is for the named person's use only. It may contain confidential, proprietary or legally privileged information. No confidentiality or privilege is waived or lost by any mistransmission. If you receive this message in error, please immediately delete it and all copies of it from your system, destroy any hard copies of it and notify the sender. You must not, directly or indirectly, use, disclose, distribute, print, or copy any part of this message if you are not the intended recipient. NorthWestern Corporation and its subsidiaries each reserve the right to monitor all e-mail communications through its network.

Message

From: Underwood, Emily A. EOP/WHO
Ex. 6 Personal Privacy (PP)
Sent: 3/7/2025 9:27:44 PM
To: Vaseliou, Molly [Vaseliou.Molly@epa.gov]; Szabo, Aaron [Szabo.Aaron@epa.gov]; Voyles, Travis [voyles.travis@epa.gov]; Amidon, Eric [Amidon.Eric@epa.gov]; Abboud, Michael [abboud.michael@epa.gov]
Subject: RE: Potential Presidential Exemption

Caution: This email originated from outside EPA, please exercise additional caution when deciding whether to open attachments or click on provided links.

Something like this should be fine – thanks!

From: Vaseliou, Molly <Vaseliou.Molly@epa.gov>
Sent: Thursday, March 6, 2025 9:41 AM
To: Szabo, Aaron <Szabo.Aaron@epa.gov>; Underwood, Emily A. EOP/WHO Ex. 6 Personal Privacy (PP)
Voyles, Travis <voyles.travis@epa.gov>; Amidon, Eric <Amidon.Eric@epa.gov>; Abboud, Michael <abboud.michael@epa.gov>
Subject: RE: Potential Presidential Exemption

Cleaned up remarks for consideration:

Topline:

- Ex. 5 Deliberative Process (DP)

POTUS specific actions:

- Ex. 5 Deliberative Process (DP)

Ex. 5 Deliberative Process (DP)

From: Szabo, Aaron <Szabo.Aaron@epa.gov>
Sent: Thursday, March 6, 2025 9:23 AM
To: Underwood, Emily A. EOP/WHO Ex. 6 Personal Privacy (PP); Vaseliou, Molly <Vaseliou.Molly@epa.gov>; Voyles, Travis <voyles.travis@epa.gov>; Amidon, Eric <Amidon.Eric@epa.gov>; Abboud, Michael <abboud.michael@epa.gov>
Subject: RE: Potential Presidential Exemption

Emily,

I spoke to Molly and just to clarify where we think the position is on the Ex. 5 Deliberative Process (DP)

Ex. 5 Deliberative Process (DP)

Thanks,

Aaron Szabo
Senior Advisor to the Administrator
202-564-7043 (office)
202-855-3241 (mobile)

From: Underwood, Emily A. EOP/WHO Ex. 6 Personal Privacy (PP)
Sent: Thursday, March 6, 2025 9:11 AM
To: Vaseliou, Molly <Vaseliou.Molly@epa.gov>; Szabo, Aaron <Szabo.Aaron@epa.gov>; Voyles, Travis <voyles.travis@epa.gov>; Amidon, Eric <Amidon.Eric@epa.gov>; Abboud, Michael <abboud.michael@epa.gov>
Subject: RE: Potential Presidential Exemption

[redacted] **Caution:** This email originated from outside EPA, please exercise additional caution when deciding whether to open attachments or click on provided links.

Understood, thanks Molly. It sounds like we're further along in the process of being in a position to action

Ex. 5 Deliberative Process (DP)

From: Vaseliou, Molly <Vaseliou.Molly@epa.gov>
Sent: Thursday, March 6, 2025 8:58 AM
To: Underwood, Emily A. EOP/WHO [Ex. 6 Personal Privacy (PP)] ; Szabo, Aaron <Szabo.Aaron@epa.gov>; Voyles, Travis <voyles.travis@epa.gov>; Amidon, Eric <Amidon.Eric@epa.gov>; Abboud, Michael <abboud.michael@epa.gov>
Subject: RE: Potential Presidential Exemption

I'll defer to Aaron on [Ex. 5 Deliberative Process (DP)] there's more than enough evidence to support that given the way these regs were written by the prior admin.

Ex. 5 Deliberative Process (DP)

Molly Vaseliou
Associate Administrator for Public Affairs
Environmental Protection Agency

From: Underwood, Emily A. EOP/WHO [Ex. 6 Personal Privacy (PP)]
Sent: Thursday, March 6, 2025 8:49 AM
To: Vaseliou, Molly <Vaseliou.Molly@epa.gov>; Szabo, Aaron <Szabo.Aaron@epa.gov>; Voyles, Travis <voyles.travis@epa.gov>; Amidon, Eric <Amidon.Eric@epa.gov>; Abboud, Michael <abboud.michael@epa.gov>
Subject: RE: Potential Presidential Exemption

[redacted] **Caution:** This email originated from outside EPA, please exercise additional caution when deciding whether to open attachments or click on provided links.

Thanks Molly! We just wanted to confirm the piece you wanted him to say about NESHAPs since the rest of the announcements are achievements but NESHAP might be more forward-looking. It sounds like

Ex. 5 Deliberative Process (DP)

[Ex. 5 Deliberative Process (DP)] Does that make sense?

From: Vaseliou, Molly <Vaseliou.Molly@epa.gov>
Sent: Thursday, March 6, 2025 8:28 AM
To: Szabo, Aaron <Szabo.Aaron@epa.gov>; Underwood, Emily A. EOP/WHO [Ex. 6 Personal Privacy (PP)]
Voyles, Travis <voyles.travis@epa.gov>; Amidon, Eric <Amidon.Eric@epa.gov>; Abboud, Michael

<abboud.michael@epa.gov>
Subject: RE: Potential Presidential Exemption

I don't have remarks drafted, but I'm happy to put something together on this. Is there anything that would be particularly helpful? Still working on some of the details, but this should be a good start. Please let me know if you have any questions!

Event Framing **Ex. 5 Deliberative Process (DP)**

Ex. 5 Deliberative Process (DP)

POTUS specific actions/talking points:

-
- # Ex. 5 Deliberative Process (DP)
-
-

Topline Messaging of the announcements:

Ex. 5 Deliberative Process (DP)

Ex. 5 Deliberative Process (DP)

Ex. 5 Deliberative Process (DP)

From: Szabo, Aaron <Szabo.Aaron@epa.gov>
Sent: Wednesday, March 5, 2025 6:43 PM
To: Underwood, Emily A. EOP/WHO; Ex. 6 Personal Privacy (PP) oyles, Travis <voyles.travis@epa.gov>; Amidon, Eric <Amidon.Eric@epa.gov>; Vaseliou, Molly <Vaseliou.Molly@epa.gov>
Subject: RE: Potential Presidential Exemption

Thanks Emily. I am adding @Amidon. Eric, @Vaseliou. Molly, and @Voyles. Travis who have been having touch points with the White House.

Thanks,

Aaron Szabo
Senior Advisor to the Administrator
202-564-7043 (office)
202-855-3241 (mobile)

From: Underwood, Emily A. EOP/WHO <Ex. 6 Personal Privacy (PP)
Sent: Wednesday, March 5, 2025 6:25 PM
To: Szabo, Aaron <Szabo.Aaron@epa.gov>
Subject: RE: Potential Presidential Exemption

[redacted] **Caution:** This email originated from outside EPA, please exercise additional caution when deciding whether to open attachments or click on provided links.

Thanks Aaron! Can we just see the copy for POTUS' proposed mention of/remarks on this before the event?

From: Szabo, Aaron <Szabo.Aaron@epa.gov>
Sent: Wednesday, March 5, 2025 5:32 PM
To: Underwood, Emily A. EOP/WHO <Ex. 6 Personal Privacy (PP)>
Subject: Potential Presidential Exemption

Hey Emily,

Under the Clean Air Act Section 112(i)(4), the President may exempt for up to 2 years (and continue each 2 years) any compliance requirements if the President determines that (1) the technology is not available and (2) it is in the national security interests of the United States. To note, the President would need to report to Congress for each exemption.

During the Biden Administration, the Biden EPA developed 112 requirements (known as NESHAPs) for the following industries. I would recommend tha[redacted] Ex. 5 Deliberative Process (DP)

Ex. 5 Deliberative Process (DP)

- Coal power plants (known as the MATS rule);
- Integrated Iron and Steel Manufacturing;
- Portland Cement;
- Commercial Sterilizers for medical devices and spices;
- Synthetic Organic Chemical Manufacturing Industry (known as the HON rule);
- Gasoline Distribution Facilities and Gasoline Distribution Bulk Terminals;
- Rubber Tire Manufacturing;
- Coke Ovens;
- Lime Manufacturing Plants;
- Lead Acid Battery Manufacturing;
- Primary Copper Smelting; and
- Taconite Iron Ore Processing.

Thanks,

Aaron Szabo
Senior Advisor to the Administrator
202-564-7043 (office)
202-855-3241 (mobile)

Message

From: Szabo, Aaron [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=8C8381AA833244A3842DC4819F6ABE91-8C0505F1-A1]
Sent: 3/5/2025 11:31:56 PM
To: Voyles, Travis [voyles.travis@epa.gov]
Subject: FW: Potential Presidential Exemption

Thanks,

Aaron Szabo
Senior Advisor to the Administrator
202-564-7043 (office)
202-855-3241 (mobile)

From: Underwood, Emily A. EOP/WHO Ex. 6 Personal Privacy (PP)
Sent: Wednesday, March 5, 2025 6:25 PM
To: Szabo, Aaron <Szabo.Aaron@epa.gov>
Subject: RE: Potential Presidential Exemption

Caution: This email originated from outside EPA, please exercise additional caution when deciding whether to open attachments or click on provided links.

Thanks Aaron! Can we just see the copy for POTUS' proposed mention of/remarks on this before the event?

From: Szabo, Aaron <Szabo.Aaron@epa.gov>
Sent: Wednesday, March 5, 2025 5:32 PM
To: Underwood, Emily A. EOP/WHO Ex. 6 Personal Privacy (PP)
Subject: Potential Presidential Exemption

Hey Emily,

Under the Clean Air Act Section 112(i)(4), the President may exempt for up to 2 years (and continue each 2 years) any compliance requirements if the President determines that (1) the technology is not available and (2) it is in the national security interests of the United States. To note, the President would need to report to Congress for each exemption.

During the Biden Administration, the Biden EPA developed 112 requirements (known as NESHAPs) for the following industries. I would recommend that th Ex. 5 Deliberative Process (DP) s

Ex. 5 Deliberative Process (DP)

- Coal power plants (known as the MATS rule);
- Integrated Iron and Steel Manufacturing;
- Portland Cement;
- Commercial Sterilizers for medical devices and spices;

- Synthetic Organic Chemical Manufacturing Industry (known as the HON rule);
- Gasoline Distribution Facilities and Gasoline Distribution Bulk Terminals;
- Rubber Tire Manufacturing;
- Coke Ovens;
- Lime Manufacturing Plants;
- Lead Acid Battery Manufacturing;
- Primary Copper Smelting; and
- Taconite Iron Ore Processing.

Thanks,

Aaron Szabo
Senior Advisor to the Administrator
202-564-7043 (office)
202-855-3241 (mobile)

Message

From: Toomey, Megan A [Megan.Toomey@talenenergy.com]
Sent: 3/31/2025 3:27:12 PM
To: Tardif, Abigale (Abbie) [Tardif.Abigale@epa.gov]
Subject: RE: Talen Energy Follow-Up

Caution: This email originated from outside EPA, please exercise additional caution when deciding whether to open attachments or click on provided links.

Awesome ~ thanks, Abbie!

From: Tardif, Abigale (Abbie) <Tardif.Abigale@epa.gov>
Sent: Monday, March 31, 2025 10:48 AM
To: Toomey, Megan A <Megan.Toomey@talenenergy.com>
Subject: RE: Talen Energy Follow-Up

[External Email]

Megan-

Thank you for sending this over. I have reached out to my scheduling team to find time for us to chat. They should send you an email in the coming days.

Best,
Abbie

[redacted]
Abigale Tardif
Principal Deputy Assistant Administrator
Office of Air and Radiation
U.S. Environmental Protection Agency
Office: (202) 564-7017

From: Toomey, Megan A <Megan.Toomey@talenenergy.com>
Sent: Monday, March 31, 2025 8:24 AM
To: Tardif, Abigale (Abbie) <Tardif.Abigale@epa.gov>
Subject: Talen Energy Follow-Up

Caution: This email originated from outside EPA, please exercise additional caution when deciding whether to open attachments or click on provided links.

Good Morning, Abbie ~

It was a pleasure meeting you last week.

Two things I wanted to make you aware of:

1) The MATS 2yr exemption request for Colstrip was submitted on Friday (a copy is attached).

2) I'd like to schedule additional time with you to discuss MATS and other air reg priorities for Talen.

Regarding #2, please let me know what will work for your schedule.

Thanks!

Megan Toomey
Vice President – Environmental Affairs | Talen Energy
Megan.Toomey@TalenEnergy.com
Office: 610.601.0216 | Mobile: 816.872.7752
600 Hamilton Street, Suite 600 | Allentown, PA 18101



The information contained in this message is intended only for the personal and confidential use of the recipient(s) named above. If the reader of this message is not the intended recipient or an agent responsible for delivering it to the intended recipient, you are hereby notified that you have received this document in error and that any review, dissemination, distribution, or copying of this message is strictly prohibited. If you have received this communication in error, please notify us immediately, and delete the original message.

ATTENTION: This email originated from outside of the organization.
Do not open attachments or click on links unless you recognize the sender and know the content is safe.

The information contained in this message is intended only for the personal and confidential use of the recipient(s) named above. If the reader of this message is not the intended recipient or an agent responsible for delivering it to the intended recipient, you are hereby notified that you have received this document in error and that any review, dissemination, distribution, or copying of this message is strictly prohibited. If you have received this communication in error, please notify us immediately, and delete the original message.