Comments of the Attorneys General of Illinois, Minnesota, Arizona, Connecticut, Delaware, the District of Columbia, Maine, Maryland, Massachusetts, Michigan, New Jersey, New Mexico, New York, Oregon, Rhode Island, Vermont, and Washington and the Chief Legal Officers of the City of Chicago and the City of New York, and the California Air Resources Board

on

the U.S. Environmental Protection Agency's Proposed "Repeal of Amendments to National Emission Standards for Hazardous Air Pollutants: Coal- and Oil-Fired Electric Utility Steam Generating Units," 90 Fed. Reg. 25,535 (June 17, 2025), Docket ID No. EPA-HQ-OAR-2018-0794

August 11, 2025

The Attorneys General of Illinois, Minnesota, Arizona, Connecticut, Delaware, the District of Columbia, Maine, Maryland, Massachusetts, Michigan, New Jersey, New Mexico, New York, Oregon, Rhode Island, Vermont, and Washington, the Chief Legal Officers of the City of Chicago and the City of New York, and the California Air Resources Board ("States and Local Governments") respectfully submit these comments on the Environmental Protection Agency's ("EPA" or the "Agency") proposal entitled "National Emission Standards for Hazardous Air Pollutants: Coal- and Oil-Fired Electric Utility Steam Generating Units" ("Proposal").[1] The Proposal is the result of EPA's hasty review of its Clean Air Act ("CAA" or the "Act") Section 112 hazardous air pollutant ("HAP") emission standards promulgated through EPA's 2024 "residual risk and technology review ("2024 MATS Rule")[2] and 2012 Mercury and Air Toxics Standards Rule ("2012 MATS Rule").[3]

EPA asserts two sources of authority to adopt its Proposal. First, EPA relies on the "inherent authority" of administrative agencies "to revise previously-promulgated rules, so long as they follow the proper administrative requirements and provide a reasoned basis for the agency decision."[4] Second, the Agency argues that CAA section 112(d)(6), which directs EPA to "review and require as necessary (taking into account developments in practices, processes, and control technologies), emission standards promulgated under [CAA section 112],"[5] provides "an additional and complementary basis" for the rulemaking.[6] EPA proposes to find that "the 2024 changes were not 'necessary' under CAA section 112(d)(6)," "[g]iven the high costs and potential technical feasibility concerns with implementing" the emission standards from the 2024 MATS Rule.[7]

The States and Local Governments strongly oppose EPA's Proposal to weaken emission standards by largely repealing the 2024 MATS Rule and reverting to emission standards as they existed under the 2012 MATS Rule. Because many members of our coalition are downwind of power plants[8] with significant HAP emissions, our residents and natural resources continue to suffer from substantial exposure to mercury and other power plants' hazardous air pollution. Weakening the emission standards would meaningfully increase the serious, ongoing health and

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[1] 90 Fed. Reg. 25,535 (June 17, 2025).
[2] 89 Fed. Reg. 38,508 (May 7, 2024).
[3] 77 Fed. Reg. 9304 (Feb. 16, 2012).
[4] 90 Fed. Reg. at 25,540, *citing Clean Water Action v. EPA*, 936 F.3d 308, 313 (5th Cir. 2019).
[5] 42 U.S.C. § 7412(d)(6).
[6] 90 Fed. Reg. at 25,544.
[7] *Id*.
[8] As used here, "power plants" or "EGUs" means coal- or oil-fired electric utility steam generating units.

environmental risks posed by such pollutants, especially to communities with environmental justice concerns[9] that historically have been overburdened by environmental and health harms. At the same time, annual compliance costs for industry to reduce emissions have been significantly lower than EPA projected when it adopted the 2012 MATS Rule, due in part to improvements and cost reductions in pollution controls.[10]

Furthermore, the Proposal is arbitrary and capricious because EPA has not adequately explained its rationale for repealing the 2024 MATS Rule and reverting to the 2012 MATS Rule's standards. Nor has EPA addressed the ample evidence in the 2024 rulemaking record showing that nearly all power plants can cost-effectively comply with the 2024 MATS Rule, ignoring developments in pollution control technology. EPA's analysis also does not reflect the "significant market and regulatory changes that have occurred since" EPA's last analysis in 2024.[11] Additionally, while purporting to conduct a technology review, the Proposal fails to consider major technology developments, explicitly ignores other developments, and introduces irrelevant factors in its analysis. Because its technology review is unmoored from important parts of the problem defined in the Clean Air Act, EPA's technology review is arbitrary and capricious.[12] For these reasons, EPA must adopt stronger standards than put forth in its Proposal.

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[9] Communities with environmental justice concerns bear a disproportionate burden of environmental harms and adverse health outcomes from hazardous air pollution emitted by power plants. These impacts impede communities' ability to recover from the historic and ongoing disproportionate siting of pollution sources, underinvestment, and lack of access to essential goods and services, including food access, clean water, and health care, to poor health, including inadequate access to medical and preventative care. As detailed below, the populations disproportionately exposed to hazardous air pollution emitted by power plants include communities of color, low-income communities, Tribal Nations and Indigenous Peoples, people with low educational attainment, and children. *See infra* notes 24-36.

[10] Barbara Morin & Paul J. Miller, Northeast States for Coordinated Air Use Mgmt. ("NESCAUM"), *It Remains "Appropriate and Necessary" to Regulate Toxic Air Emissions from Coal- and Oil-Fired Electric Generating Units* 11 (Apr. 7, 2022), Exhibit A to 2019 States Comments, *infra* note 85.

[11] EPA, Regulatory Impact Analysis for the Proposed Repeal of Amendments to National Emission Standards for Hazardous Air Pollutants: Coal- and Oil-Fired Electric Utility Steam Generating Units at ES 1-2 (June 17, 2025), Doc. ID No. EPA-HQ-OAR-2018-0794-6996 ("Proposal RIA").

[12] EPA asserts authority under Executive Order 14154, 90 Fed. Reg. 8,353 (Jan. 29, 2025); Executive Order 14179, 90 Fed. Reg. 8,741 (Jan. 31, 2025); Executive Order 14192, 90 Fed. Reg. 8,741 (Jan. 31, 2025); Executive Order 14192, 90 Fed. Reg. 9,065 (Feb. 6, 2025); Executive Order 14262, 90 Fed. Reg. 15,521 (Apr. 14, 2025); Executive Order 14,241, 90 Fed. Reg. 15,517 (Apr. 14, 2025); and Executive Order 14270, 90 Fed. Reg. 15,643 (Apr. 15, 2025). 90 Fed. Reg. at 25,537. EPA additionally asserts authority to conduct a technology review under 42 U.S.C. § 7412(d)(6). 90 Fed. Reg. at 25,5

I. Weakened standards for power plants' HAP emissions under Section 112 would exacerbate ongoing harms to human health and the environment within the jurisdictions of the States and Local Governments.

Many of the undersigned States and Local Govemments have for years worked to reduce power plants' HAP emissions harms to our residents and natural resources through stringent state-based emission limits, particularly for mercury.[13] However, because upwind, out-of-state plants emit HAPs that cross our borders, strong federal standards are essential to curb this pollution in our states. Repealing the 2024 MATS Rule and reverting to the 2012 emission standards would pose major risks to our residents—especially those particularly susceptible or highly exposed to these emissions—as well as to our natural resources.

A. Weakened Federal emission standards for coal-fired power plants would harm our residents and natural resources.

1. Power plants' HAP emissions cause a wide range of serious health harms to our citizens, even at very low concentrations.

Coal- and oil-fired power plants emit a variety of HAPs, including mercury, other HAP metals, and hydrochloric acid. Because exposure to the HAPs emitted by power plants can cause a wide range of human health problems, as well as significant environmental harms,[14] HAP emissions have been of special concern to the States and Local Governments.[15]

When MATS standards were promulgated in 2012, power plants were the largest domestic source of mercury emissions and, despite significant reductions, remain a major source

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[13] *See* Comments of the Attorney General of Massachusetts, *et al.*, Doc. ID No. EPA-HQ-OAR-2018-0794-5545 at 3 (June 28, 2023) ("2023 States Comments"); Comments of the Attorney General of Massachusetts, *et al.* Doc. ID No. EPA-HQ-OAR-2018-0794-4942 at 8-9 (Apr. 11, 2022) ("2022 States Comments"). 2023 States Comments are attached as Attachment 3 and 2022 States Comments are attached as Attachment 4.

[14] David L. MacIntosh, *et al.*, *Emissions of Hazardous Air Pollutants from Coal-Fired Power Plants*, ENV'T HEALTH & ENG'G, INC. 5, tbl.1, 35 (2011), https://www.lung.org/getmedia/25962184-d2fc-42f8-b5a3-8ece3257fbab/emissionsofhazardous-air.pdf; Muhammad E. Munawer, *Human Health and Environmental Impacts of Coal Combustion and Post-Combustion Wastes*, 17 J. SUSTAINABLE MINING 87, 89, fig. 1, 93, tbl. 1 (2018), https://www.sciencedirect.com/science/article/pii/S2300396017300551; 88 Fed. Reg. 24,854, 24,857 (Apr. 24, 2023); 77 Fed. Reg. 9304, 9310 (Feb. 16, 2012) ; 76 Fed. Reg. 24,976, 24,978, 24,994–95 (May 3, 2011). *See also* 88 Fed. Reg. 13,956, 13,969 (Mar. 6, 2023)

[15] *See* 2022 States Comments at 3–4, 5–10 and 2023 States Comments at 1–3.

of emissions today.[16] Mercury exposure specifically is linked to an increased risk of diabetes,[17] autoimmune dysfunction,[18] and fatal cardiovascular effects.[19]

The huge volume of non-mercury HAP metals—including lead and known carcinogens such as arsenic, chromium, and nickel—emitted by coal-fired power plants are also of great concern to the States and Local Governments.[20] Exposure to these other HAP metals is associated with adverse neurological, cardiovascular, immunological, reproductive, liver, kidney, and respiratory effects, as well as cancer.[21] And growing evidence demonstrates that exposure to mixtures of those metals can be especially dangerous.[22] Power plants are also a large emitters of the acid gas hydrochloric acid, which can cause serious pulmonary and respiratory harms if inhaled.[23] Continued reduction of emissions of mercury, other metal HAPs, and acid gas from power plants is essential to limit our citizens' exposure to these harmful substances.

2. Harm from mercury and other toxic emissions is most acutely felt by vulnerable communities including the very young and those living near power plants.

The communities that are in closest proximity to coal and oil-fired power plants are at most risk from the harmful health impacts of power plants' emissions; these communities often

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[16] EPA, *TRI National Analysis—Mercury*, https://www.epa.gov/trinationalanalysis/mercury (Aug. 28, 2024). *See also* 88 Fed. Reg. at 24,857; 76 Fed. Reg. at 24,980, 25,002, tbl. 3.
[17] Ka He *et al.*, *Mercury Exposure in Young Adulthood and Incidence of Diabetes Later in Life: The CARDIA Trace Element Study*, 36 DIABETES CARE 1584, 1587 (2013), https://pubmed.ncbi.nlm.nih.gov/23423697/.
[18] Jennifer F. Nyland, *et al.*, *Biomarkers of Methylmercury Exposure Immunotoxicity among Fish Consumers in Amazonian Brazil*, 119(12) ENV'T HEALTH PERSP. 1733, 1736-37 (2011), https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3261989/pdf/ehp.1103741.pdf.
[19] Giuseppe Genchi *et al.*, *Mercury Exposure and Heart Diseases*, 14(1) INT'L J. ENV'T RSCH. & PUB. HEALTH 1, 8–9 (2017),
[20] *See* 87 Fed. Reg. 7624, 7640 (Feb. 9, 2022); Comments of Public Health and Environmental Organizations, EPA–HQ–OAR–2018–0794–4581, at 29-49 (Apr. 11, 2022), Attachment 20, Raina M. Maier *et al.*, National Institute of Environmental Health Sciences Superfund Research Centers at the University of Arizona and University of New Mexico, Prepared for Center for Applied Environmental Law and Policy, *Toxicity Review of Metals Emissions from Coal-Fired Power Plants*, at 20–23 (Mar. 2023).
[21] Maier, *supra* note 20, 10–11.
[22] *See* Maier., *supra* note 20, at 10–11.
[23] *See* 88 Fed. Reg. at 24,857, Ruben M. L. Colunga Biancatelli, *et al.*, *Age-Dependent Chronic Lung Injury and Pulmonary Fibrosis following Single Exposure to Hydrochloric Acid*, 22 INT'L J. MOLECULAR SCI. 8833 (2021); Am. Thoracic Soc'y, An Official American Thoracic Society Workshop Report: *Chemical Inhalational Disasters Biology of Lung Injury, Development of Novel Therapeutics, and Medical Preparedness*, 14 ANNALS AM. THORACIC SOC'Y 1060, 1064 (2017).

include communities of color, low-income communities, Tribal Nations and Indigenous Peoples, people with low educational attainment, people for whom English is not their first language, and children.[24] Because of their proximity, these communities are especially at risk for the significant health effects that can result from exposure to mercury and other toxic pollutants.[25] Moreover, communities living near power plants are at greater risk from emissions of particulate matter ("PM")—to which most non-mercury metal HAPs are bound—because those communities are already disproportionately exposed to fine PM ("PM2.5") from other sources[26] and experience disproportionate health impacts from that exposure.[27]

A 2023 study of the sociodemographic characteristics of populations living near power plants confirmed that these vulnerable groups are facing greater exposure to mercury

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[24] 88 Fed. Reg. at 24,892, 24,896; 87 Fed. Reg. at 7,646–47; 77 Fed. Reg. at 9,347, 9,354, 9,441; 76 Fed. Reg. at 24,977–78, 25,018; 65 Fed. Reg. 79,825, 79,829 (Dec. 20, 2000); EPA, *Regulatory Impact Analysis for the Final Mercury and Air Toxics Standards* 7-26, 7-35 to 7-36, 7-40 to 7-41 (2011), Doc. ID No. EPA–HQ–OAR–2009–0234–20131 ("2011 RIA").

[25] *See* 88 Fed. Reg. at 24,892, 24,896; 87 Fed. Reg. at 7646–47; 77 Fed. Reg. at 9347, 9354, 9441; 76 Fed. Reg. at 24,977-78, 25,018; 65 Fed. Reg. at 79,829; 2011 RIA 7-26, 7-35 to 7-36, 7-40 to 7-41. *See also* New York City Dep't of Health, *Efforts to Reduce Air Pollution Should Focus on Neighborhoods with the Worst Health Impacts*, ENV'T & HEALTH DATA PORTAL (2022), https://a816-dohbesp.nyc.gov/IndicatorPublic/data-stories/hia.

[26] Haley M. Lane, *et al.*, *Historical Redlining Is Associated with Present-Day Air Pollution Disparities in U.S. Cities*, 9 ENV'T. SCI. & TECH. LETTERS 345 (2022), https://www.ncbi.nlm.nih.gov/pmc/articles/PMC9009174/; Bart D. Ostro, *et al.*, *The Impact of Components of Fine Particulate Matter on Cardiovascular Mortality in Susceptible Subpopulations*, 65 OCCUP. ENV'T. MED. 750 (May 2008), https://pubmed.ncbi.nlm.nih.gov/18417555/. *See also* 88 Fed. Reg. at 24,896 ("EPA believes that PM2.5 and ozone exposures that exist prior to this action result in disproportionate and adverse human health or environmental effects on people of color, low-income populations and/or Indigenous peoples.").

[27] Kevin P. Josey, *et al.*, *Air Pollution and Mortality at the Intersection of Race and Social Class*, N. ENGL. J. MED. (Mar. 2023), https://www.nejm.org/doi/10.1056/NEJMsa2300523; Jiawen Liu, *et al.*, *Disparities in Air Pollution Exposure in the United States by Race/Ethnicity and Income, 1990–2010*, ENV'T. HEALTH PERSPECTIVES 129(12) (Dec. 2021), https://doi.org/10.1289/EHP8584; Abdulrahman Jbaily, *et al.*, *Air Pollution Exposure Disparities Across U.S. Population and Income Groups*, 601 NATURE 228 (Jan. 2022), https://doi.org/10.1038/s41586-021-04190-y; Timothy W. Collins, *et al.*, *Communities of Color are Disproportionately Exposed to Long-term and Short-term PM2.5 in Metropolitan America*, 214 ENV'T RESEARCH 7 (2022), https://pubmed.ncbi.nlm.nih.gov/35961542/; Ihab Mikati, *et al.*, *Disparities in Distribution of Particulate Matter Emission Sources by Race and Poverty Status*, 108(4) AM. J. PUBLIC HEALTH 480 (Apr. 2018), https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5844406/; Christopher W. Tessum, *et al., PM2.5 Polluters Disproportionately and Systemically Affect People of Color in the United States*, SCI. ADV. 7 (2021), https://pubmed.ncbi.nlm.nih.gov/33910895/.

emissions.[28] Although the overall risk of exposure to mercury from power plants in the U.S. decreased after the implementation of the 2012 MATS Rule, the study found that the populations that continued to be exposed tend to be poor, with lower levels of education, and from households with limited-English language skills.[29] Another recent study demonstrated that, historically, power plants have been more likely to be located in communities that were subjected to the discriminatory practice of redlining, the systematic denial of housing loans in communities of color.[30] As a result, the burden resulting from emissions from power plants today continues to be felt by Tribal Nations and Indigenous Peoples, people with low educational attainment, children, low-income communities, and communities of color.[31]

Similarly, children are generally more exposed to HAPs than adults; consequently, they also face greater potential harm. Compared to adults, children can take in more mercury due to their the higher respiratory and soil/dust ingestion rates. Their rapidly developing bodies and immature detoxification pathways also lead to greater potential harm from HAPs.[32] Children *in utero* and in early developmental stages are particularly susceptible to mercury exposure,[33] which can cause permanent neurological damage even before birth[34] and lifelong detrimental socioeconomic impacts.[35] Likewise, inhalation of non-mercury HAPs poses greater respiratory risks to children than adults.[36]

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[28] Mona Q. Dai, *et al.*, *Sociodemographic Disparities in Mercury Exposure from United States Coal-Fired Power Plants*, 10 ENV'T SCI. TECH. LETTERS 589 (2023), https://pubs.acs.org/doi/10.1021/acs.estlett.3c00216.

[29] *Id.*

[30] Lara J. Cushing *et al.*, *Historical red-lining is associated with fossil fuel power plant siting and present-day inequalities in air pollutant emissions*, 8 NATURE ENERGY 52 (2022), https://www.nature.com/articles/s41560-022-01162-y.

[31] *Id.*

[32] 76 Fed. Reg. at 25,018.

[33] Stephanie Bose-O'Reilly *et al.*, *Mercury Exposure and Children's Health*, 40(8) CURRENT PROBS. IN PEDIATRIC & ADOLESCENT HEALTH CARE 186, 186 (2010), https://doi.org/10.1016/j.cppeds.2010.07.002.

[34] WORLD HEALTH ORG., *Exposure to Mercury: A Major Public Health Concern* 3 (2021), https://iris.who.int/bitstream/handle/10665/340715/9789240023567-eng.pdf?sequence%20=1.

[35] Sara T.C. Orenstein *et al.*, *Prenatal Organochlorine and Methylmercury Exposure and Memory and Learning in School-Age Children in Communities Near the New Bedford Harbor Superfund Site, Massachusetts*, 122(11) ENV'T HEALTH PERSP. 1253, 1256, 1257–58 (2014), https://ehp.niehs.nih.gov/doi/10.1289/ehp.1307804; Bose-O'Reilly, *supra* note 33, at 186; World Health Org., *supra* note 34; Hans Grönqvist *et al., Understanding How Low Levels of Early Lead Exposure Affect Children's Life Trajectories*, 128 J. POL. ECON. 3376, 3423–24, 3388 n.16 (2020) https://ideas.repec.org/a/ucp/jpolec/doi10.1086-708725.html.

[36] 76 Fed. Reg. at 25,018; Colunga Biancatelli, *supra* note 23, at 1–2, 12–13.

B. State waters and fisheries are harmed by mercury and other toxic metal emissions.

1. Many rivers, lakes, and other waterways in our jurisdictions are impaired by mercury.

Despite the imposition of strict mercury emissions limits for power plants and other sources within our borders, mercury contamination remains ubiquitous in our waterbodies—and waterbodies nationwide—endangering our residents and natural resources, as well as threatening to make our states unable to meet Clean Water Act obligations. [37] As a result, thirteen states—Connecticut, Florida, Maine, Massachusetts, Michigan, Minnesota, New Hampshire, New Jersey, New York, North Carolina, Rhode Island, South Dakota, and Vermont—have developed state- and region-wide "total maximum daily loads" ("TMDLs") to meet Federal Clean Water Act water quality standards [38] and have established widespread fish consumption advisories to protect

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[37] 2022 State Comments at 7–10, 12–13; 2023 State Comments at 4–5, 7–10.

[38] *See* 33 U.S.C. § 1313(d)(1) (requiring development of TMDLs for impaired waters); Conn. Dep't of Env't Prot., *et al.*, *Northeast Regional Mercury Total Maximum Daily Load* (Oct. 24, 2007), https://www.nescaum.org/documents/final-northeast-regional-mercury-tmdl-20071024.pdf; Mass. Dep't of Env't Prot., *Northeast Regional Mercury Total Maximum Daily Load Final Addendum for Massachusetts* (CN 377.0) (Sept. 2012), https://www.mass.gov/doc/northeast-regional-mercury-total-maximum-daily-load-final-addendum-for-massachusetts/download [Northeast TMDL]; Fla. Dep't of Env't Prot., *Mercury TMDL for the State of Florida* (Oct. 24, 2013), https://floridadep.gov/sites/default/files/Mercury-TMDL.pdf [Florida TMDL]; Mich. Dep't of Env't Quality & Env't Prot. Agency, *Michigan Statewide Mercury Total Maximum Daily Load* (June 2018), https://www.michigan.gov/-/media/Project/Websites/egle/Documents/Programs/WRD/GLWARM/TMDL-Other/statewide-mercury.pdf?rev=89388fb455e7499b843b3fdfe9b07b3d [Michigan TMDL]; Minn. Pollution Control Agency, *Minnesota Statewide Mercury Total Maximum Daily Load* (Mar. 27, 2007), https://www.pca.state.mn.us/sites/default/files/wq-iw4-01b.pdf [Minnesota TMDL]; N.J. Dep't of Env't Prot., *Total Maximum Daily Load for Mercury Impairments Based on Concentration in Fish Tissue Caused Mainly by Air Deposition to Address 122 HUC 14s Statewide* (2009), https://www.nj.gov/dep/wms/bears/docs/TMDL%20HG%20document%20final%20version%209-8-09_formated%20for%20web%20posting%20js.pdf [New Jersey TMDL]; N.C. Dep't of Env't Quality, *North Carolina Mercury TMDL* (Sept. 13, 2012), https://www.deq.nc.gov/water-quality/planning/bpu/statewide/ncmercurytmdl-epasubmit/download [North Carolina TMDL]; S.D. Dep't of Env't and Nat. Res., *South Dakota Mercury Total Maximum Daily Load* (2015, Revised 2016), https://danr.sd.gov/Conservation/WatershedProtection/TMDL/docs/TableDocs/tmdl_statewidemercury.pdf ; S.D. Dep't of Env't and Nat. Res., *South Dakota Mercury Total Maximum Daily Load*, (Dec. 2016), https://danr.sd.gov/Conservation/WatershedProtection/TMDL/docs/TableDocs/tmdl_statewidemercury.pdf [South Dakota TMDL]. *See also* Michael Baker Int'l & LimnoTech, *Illinois Lake Michigan (nearshore) Mercury Final TDML Report* (April 2019),

public health.[39] Numerous other states have developed waterbody-specific mercury TMDLs within their borders.[40] In many cases, these waterbodies and other natural resources are owned or held in trust by State members of our coalition.[41]

2. Recreational and commercial fishing in our jurisdictions continues to be harmed by mercury contamination.

Power plants' HAP emissions directly contribute to the widespread mercury contamination of inland and coastal fisheries in our jurisdictions.[42] Mercury-contamination causes reproductive and behavioral harm to a wide range of piscivorous and insectivorous fish and wildlife, if not outright killing them,[43] reducing the size and sustainability of our recreational or commercial fishing areas.[44] Furthermore, states expend significant resources monitoring fish mercury levels in fisheries.[45]

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https://epa.illinois.gov/content/dam/soi/en/web/epa/topics/water-quality/watershed-management/tmdls/documents/final-illinois-lake-michigan-nearshore-mercury-tmdl-report-april-2019.pdf.

[39] *E.g.*, Minn. Dept. of Health, *Table: Fish consumption guidance updates in some impacted waterbodies by county* (April 2025), https://www.health.state.mn.us/communities/environment/fish/docs/eating/specwaters.pdf.

[40] *See* 2023 Comment *supra* note 27, *citing* Env't Prot. Agency, *TMDL Pollutant Group: Mercury*. This document, now deleted from EPA's website, shows that as of June 23, 2023, the Agency listed thirty-two states have at least one mercury TMDL, and some states with dozens.

[41] *E.g.*, 38 M.R.S. §§ 436-A(7), 480-B(5); 17 M.R.S. § 3860 (Maine state laws defining "great pond", a waterbody held in trust by the State of Maine).

[42] 89 Fed. Reg. at 38,515, 38,556.

[43] *See* NESCAUM, *supra* note 10, at 15–16; D.C. Evers, *et al., A Synthesis of Patterns of Environmental Mercury Inputs, Exposure and Effects in New York State*, *Ecotoxicology* 1565, 1577–79 (2020), https://pubmed.ncbi.nlm.nih.gov/33170395/; Christopher D. Knightes, *et al.*, *Application of Ecosystem-Scale Fate and Bioaccumulation Models to Predict Fish Mercury Response Times to Changes in Atmospheric Deposition*, Envt'l Toxicology & Chemistry 881, 881–88 (Apr. 1, 2009), https://doi.org/10.1897/08-242R.1. In addition, power plant acid gas emissions contribute to acidification of freshwater aquatic ecosystems and concomitant adverse effects to aquatic organisms. 87 Fed. Reg. at 7640–42; 81 Fed. Reg. 24,420, 24,423 (Apr. 25, 2016); 65 Fed. Reg. at 79,830 (wildlife mercury exposures can be substantial because animals tend to consume fish from limited geographic areas); New York State Energy Research & Dev. Auth. (NYSDERA), *Mercury, Human Health, and the Environment*, https://www.nyserda.ny.gov/All-Programs/Environmental-Research/Atmospheric-Deposition/Mercury-Human-Health-and-the-Environment.

[44] *See* Evers, *supra* note 43, at 1577–78. 2022 State Comments at 7–10, 12–13; 2023 State Comments, at 12–13.

[45] *E.g.*, Opposition to Motion for Stay by Respondent-Intervenors Commonwealth of Massachusetts, *et al.*, Ex. 4 at ¶ 15 (Declaration of James A. Zellmer, Wisc. Dept. of Nat. Res.), No. 24-1119, D.C. Cir. (July 23, 2024), attached as Attachment 2.

Recreational fishing directly contributes more than $7.5 billion per year to the economies of twelve Northeast and Midwest states,[46] so reducing mercury in our fisheries substantially benefit our local economies.[47] Considering jobs created and consumer spending on our recreational and commercial fisheries, the overall economic value is enormous. In total, "the $12.0 billion in annual recreational fishing expenditures [in twelve Northeast and Midwest states] and the $1.6 billion in annual commercial fish landings for th[o]se [twelve] states result in a regional economic contribution of 276,696 full-time and part-time jobs, $8.7 billion in earnings, $17.2 billion in value added, and $28.1 billion in output."[48] Even small reductions of mercury contamination at fisheries causes changes to recreator and consumer behavior associated that could produce "substantial economic impacts to related economic industries at the state or regional level."[49]

C. People who frequently eat mercury-contaminated fish, especially subsistence fishers, suffer health harms.

People who eat fish from mercury-contaminated waterways, particularly Tribal and Black communities, as well as low-income communities and non-Black people of color, also suffer harm,[50] despite fish consumption advisories aimed at reducing consumption of contaminated fish.[51] Consuming mercury-contaminated fish raises the risk of fatal heart attacks and non-fatal heart disease in many people.[52] Furthermore, *in utero* children can be exposed to mercury if a contaminated fish is eaten by a pregnant person. As a result, tens of thousands of children are born each year with mercury levels exceeding EPA's reference dose, putting them at risk of permanent neurological damage.[53]

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[46] Robert E. Unsworth, *et al.*, Industrial Economics, Inc., *The Economic Benefits of the Mercury and Air Toxics Standards (MATS) Rule to the Commercial and Recreational Fishery Sectors of Northeast and Midwest States* at 3, 16 (2019), Exhibit A to 2023 States Comments ("IEc Report").

[47] *Id.* at 2–3.

[48] *Id*. at 22.

[49] *See id*. at 22–23.

[50] Luma Ismail Ibrahem, *et al.*, *Mercury pollution and its impact on aquatic organisms*, GSC Advanced Research and Reviews (2025), https://doi.org/10.30574/gscarr.2025.22.3.0075.

[51] IEc Report at 22–23. For example, New York has "issued specific warnings advising that pregnant women and children should not consume any servings of certain fish species caught in more than 130 water bodies" and "a general fish advisory alerting the public not to eat more than one meal (one-half pound) per week of fish" taken from certain waters. New York State Dept. of Envt'l Conservation, *Air Monitoring Plan for Establishing an Ambient Mercury Baseline for New York* State at 3–4 (Jan. 2020), https://www.epa.gov/sites/default/files/2020-01/documents/nysdec_epahg_grant_finalrpt_v2_0.pdf.

[52] 2023 States Comments at 4–5, 9–10; 2022 States Comments at 4.

[53] 2023 States Comments at 5; *see also* 89 Fed. Reg. at 38,515 (discussing neurodevelopmental risks from methylmercury in fetuses).

These harms are magnified for tribal subsistence fishers. In the Great Lakes Region, for example, Tribal subsistence fishers—who are estimated to have three to ten times greater mercury exposure than the general population[54]—face disproportionately large risks from power plants' mercury emissions.[55] In Minnesota, many tribal communities are located downwind of coal power plants in neighboring North Dakota.[56] Indeed, under the 2012 MATS Rule, nearly two-thirds of sampled fish in North Dakota contained high concentrations of mercury attributed to power plant emissions.[57] Furthermore, over half the fish sampled in the Southcentral United States, near Texas' coal-fired power plants, similarly contained high levels of mercury attributable to emissions from power plants.[58] And, as shown by the diagram below, both of these locations with the high mercury emissions are near populations that eat a large amount of fish.[59]

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[54] Jianping Xue *et al*., *Modeling Tribal Exposures to Methyl Mercury from Fish Consumption* 533 Sci. Total Env't 102, 108 (2015), https://pubmed.ncbi.nlm.nih.gov/26151654/. Similarly, in Wisconsin, many Anishinaabe People (the Ojibwe or Chippewa Peoples) consume walleye—a species both subject to mercury fish consumption advisories and essential to maintaining a traditional way of life—at significantly higher rates than the rest of the state's population. Adan D. DeWeese *et al*., *Efficacy of Risk-Based, Culturally Sensitive Ogaa (Walleye) Consumption Advice for Anishinaabe Tribal Members in the Great Lakes Region*, Risk Analysis 729, 730 (2009), https://pubmed.ncbi.nlm.nih.gov/19220800/; Wis. Dep't Nat. Res., *Choose Wisely: A Health Guide for Eating Fish in Wisconsin* 4 (2020), https://widnr.widen.net/s/s6mkcq6tmr/pub_fh_824_choosewisely(consumption advisories for walleye); *compare* DeWeese *et al*., at 738 & tbl. III, *with* Nancy A. Connelly *et al*., *Factors Affecting Fish Consumption among Licensed Anglers Living in the Great Lakes Region* at 37, tbl. 28, Cornell University (Sept. 2012) https://ecommons.cornell.edu/server/api/core/bitstreams/5f5582de-1011-45ba-acf0-33ca690c6a96/content.

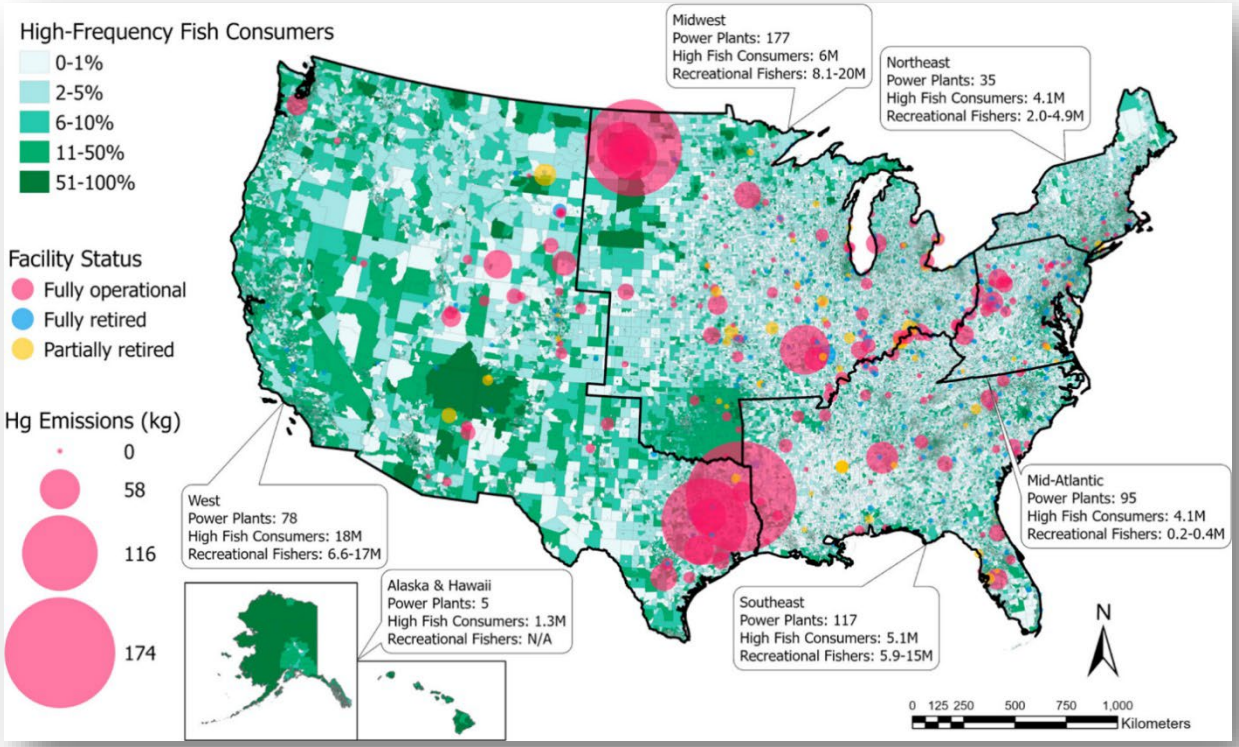
[55] 89 Fed. Reg. at 38,559–38,560 (disproportionate impacts and environmental justice considerations); *see also* 2023 States Comments at 6, 9–10; 2022 States Comments at 5; 87 Fed. Reg. at 7647; EPA, *National-Scale Mercury Risk Estimates for Cardiovascular and Neurodevelopmental Outcomes for the National Emission Standards for Hazardous Air Pollutants: Coal- and Oil-Fired Electric Utility Steam Generating Units* at 20–22, tbl. 3 (Sept. 2, 2021), Doc. ID No. EPA-HQ-OAR-2018-0794-4605 (noting that Great Lakes Tribes likely face disproportionately high risks of fatal heart attacks from power-plant mercury).

[56] *See* EPA, *Progress Report: Emissions Reductions: State-by-State Mercury Emissions from MATS Sources, 2018-2021* (July 2022), https://www3.epa.gov/airmarkets/progress/reports/emissions_reductions_mats.html#figure2 Individual state power plant mercury emissions for 2021 are available by selecting the 2021 version of map and clicking on individual states. North Dakota's plants emitted 838 pounds of mercury in 2021, more than 40 percent of the nationwide total).

[57] Dai, *supra* note 28, at 12.

[58] *Id*.

[59] *Id*. at fig. 1.


High-Frequency Fish Consumers
0-1%
2-5%
6-10%
11-50%
51-100%
Facility Status
Fully operational
Fully retired
Partially retired
Hg Emissions (kg)
0
58
116
174
Midwest
Power Plants: 177
High Fish Consumers: 6M
Recreational Fishers: 8.1-20M
Northeast
Power Plants: 35
High Fish Consumers: 4.1M
Recreational Fishers: 2.0-4.9M
West
Power Plants: 78
High Fish Consumers: 18M
Recreational Fishers: 6.6-17M
Alaska & Hawaii
Power Plants: 5
High Fish Consumers: 1.3M
Recreational Fishers: N/A
Mid-Atlantic
Power Plants: 95
High Fish Consumers: 4.1M
Recreational Fishers: 0.2-0.4M
Southeast
Power Plants: 117
High Fish Consumers: 5.1M
Recreational Fishers: 5.9-15M
N
0 125 250 500 750 1,000
Kilometers

Mercury from power plants and other sources[60] has also contaminated waterbodies within tribal areas.[61] For instance, a recent study showed that ten percent of infants born in Minnesota's Lake Superior Basin—an area containing tribal areas—have high levels of mercury in their blood; the study also found that most mercury exposure to unborn babies occurs when the mother eats mercury-contaminated fish or shellfish.[62] And in Wisconsin, walleye fish—subject to consumption advisories in many of the state's waterbodies—is consumed by tribal populations at

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[60] Comments of the Leech Lake Band of Ojibwe ("Leech Lake Band Comments"), Doc. ID No. EPA-HQ-OAR-2017-0664-0155, at 3–4 (Nov. 12, 2019); Comments of the Fond du Lac Band of Lake Superior Chippewa ("Fond du Lac Band Comments"), Doc. ID No. EPA-HQ-OAR-2017-0664-0156, at 4 (Nov. 12, 2019); Comments of the 1854 Treaty Authority ("1854 Treaty Authority Comments"), Doc. ID. No. EPA-HQ-OAR-2017-0664-0147, at 3–4 (Nov. 12, 2019). The taconite ore processing industry contributes approximately half of Minnesota's in-state mercury inventory. Minn. Pollution Control Agency, *Statewide Mercury TMDL Emissions Inventory* (Feb. 4, 2021), https://www.pca.state.mn.us/sites/default/files/wq-iw4-02i8.pdf (specifying draft 2019 mercury emissions of 676.3 pounds for "Ferrous Mining/Processing," out of 1395 pounds for all state sources). EPA has historically failed to set a mercury limit for the taconite ore processing industry despite Federal Clean Air Act requirements to do so by the year 2000. *See* 85 Fed. Reg. 45476, 45,485 (Sep. 15, 2019). That failure is the subject of separate litigation that is currently stayed before the D.C. Circuit Court of Appeals. *Minnesota v. Wheeler*, D.C. Cir. No. 20-1392. EPA has proposed to set mercury MACT standards for new and existing taconite indurating furnaces, pursuant to CAA sections 112(d)(2) and (3). 88 Fed. Reg. 30,923 (May 15, 2023). EPA proposed to set a MACT floor limit of 1.4×10^{-5} pounds per long ton ("lb/LT") for existing sources and a MACT floor limit of 3.1×10^{-6} lb/LT for new sources. *Id*. at 30,924. EPA stated that where additional controls are needed the taconite ore processing industry will use ACI with high efficiency venturi scrubbers, which would provide a combined estimated reduction of 462 pounds of mercury per year at a cost of $129 million in retrofits and annual costs of $71 million per year. *Id*. EPA declined to propose a beyond-the-floor standard that would present a cost-effectiveness (measured in dollars per pound of mercury removed) higher than cost-effective numbers that the EPA has historically considered. *Id*. at 30,925. EPA finalized this rule in 2024. 89 Fed. Reg. 16,408 (Mar. 6, 2024).

[61] *See* Fond du Lac Band Comments at 5, 9–10 (describing how ditched areas and wetlands increase rate of methylization in a reservation watershed). Due to that mercury contamination, several Northern Minnesota Tribes have issued fish consumption advisories for waters within their lands, including the Leech Lake Band of Ojibwe which conducts regular mercury sampling of fish, water, and other media within its lands. Leech Lake Band Comments at 5.

[62] Minn. Pollution Control Agency, *Environmental Justice: Overview of Areas of Concern*, https://experience.arcgis.com/experience/bff19459422443d0816b632be0c25228/page/Page/?views=EJ-areas (map of environmental justice areas in Minnesota); Minn. Dep't of Health, *Mercury in Newborns in the Lake Superior Basin*, https://www.health.state.mn.us/communities/environment/fish/techinfo/newbornhglsp.html, (noting that ten percent of tested infants born to mothers residing in Minnesota's Lake Superior Basin exceeded the reference dose); *see also* Patricia McCann, Minn. Dep't of Health, *Mercury Levels in Blood from Newborns in the Lake Superior Basin* 10, 16 tbl.2 (Nov. 30, 2011), https://www.health.state.mn.us/communities/environment/fish/docs/glnpo.pdf.

a 60% higher rate than the general population.[63] Similarly, in the Southwest, tribal communities are exposed to non-mercury metals from coal-fired power plant emissions.[64] In the Southeast, EPA's 2019 watershed-based risk assessment indicates that under the current standards low-income Black subsistence fishers face disproportionately high risks of fatal heart attacks, as compared to the general population, from exposure to emissions of mercury from power plants.[65] Consistent with that finding, a recent study of several coal-fired power plants in North Carolina, South Carolina, and Alabama shows that, relative to each state's overall population, a disproportionate number of Black individuals, as well as other people of color and people with low incomes, live within 5 kilometers of the plants,[66] exposing them to significant mercury emissions from those facilities.[67]

II. States and Local Governments have consistently supported strong federal standards for power plants' HAP emissions and implemented their own standards.

A. Advocacy by States and Local Governments has led to strengthened federal emission standards.

The States and Local Governments have, for decades, advocated for strong federal regulation of HAP emissions from power plants. EPA's Proposal is the latest of the Agency actions addressing how to regulate these HAP emissions under section 112 of the Clean Air Act and how to establish the technology-based standards required to reduce those emissions.[68]

In the 1990 amendments to the Act, Congress directed EPA to regulate HAP emissions of from power plants if, after studying the public health hazards of those emissions, the Agency determined that such regulation was "appropriate and necessary."[69] In 2000, EPA determined in the affirmative—finding it appropriate to regulate HAP emissions from coal- and oil-fired electric utility steam generating units under section 112 of the CAA because those "units are the largest domestic source of mercury emissions, and mercury in the environment presents significant hazards to public health and the environment," and "control options" exist that "effectively reduce HAP emissions from such units."[70]

EPA further explained that it is "necessary to regulate HAP emissions from coal- and oil-fired electric utility steam generating units under section 112 because the implementation of

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[63] Declaration of James A. Zellmer, *supra* note 45, at ¶14.
[64] 2023 Comment at 10, citing Maier, *supra* note 20, at 26-27.
[65] 87 Fed. Reg. at 7647; *Mercury Risk Estimates*, *supra* note 55.
[66] SELC Comments 8-9.
[67] *Id*.
[68] 42 U.S.C. § 7412.
[69] 42 U.S.C. § 7412(n)(1)(A).
[70] 65 Fed. Reg. at 79,830.

other requirements under the CAA will not adequately address the serious public health and environmental hazards arising from such emissions."[71] Accordingly, EPA listed coal- and oil-fired electric generating units as a source category to be regulated under section 112.[72]

Five years after making that appropriate and necessary finding, EPA sought—illegally—to reverse it and remove power plants from the list of regulated source categories.[73] A coalition of states, including many of those commenting here, filed suit.[74] In 2008, the U.S. Court of Appeals for the D.C. Circuit vacated EPA's action, holding that EPA could not meet section 112's specific criteria allowing for delisting only when certain health and environmental thresholds were satisfied.[75]

In 2012, EPA reaffirmed its 2000 appropriate and necessary finding based on both the 2000 record and updated scientific and public health evidence (including an extensive 2011 regulatory impact analysis). Additionally, it issued the 2012 MATS Rule, imposing technology-based limits on emissions of mercury, hazardous non-mercury metals, and acid gases from power plants.[76] In this rulemaking, EPA adopted emission standards based on what it determined at that time to be the maximum achievable control technology ("MACT").[77] In the 2012 MATS Rule and its subsequent revisions, EPA regulates filterable particulate matter ("fPM") as a surrogate for non-mercury metals because these HAPs are physically bound to fPM particles when emitted.[78]

A state and local government coalition, including many of the commenters here, intervened to defend EPA's rulemaking against legal challenges. After the D.C. Circuit upheld the 2012 MATS Rule in full,[79] the Supreme Court of the United States granted review on a narrow question: whether EPA had improperly failed to consider costs when determining that it was appropriate to regulate HAP emissions from power plants.[80] The Supreme Court held that the Agency must consider costs,[81] and on remand EPA reaffirmed the appropriate and necessary finding after weighing the massive public health and environmental benefits against the costs of

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[71] *Id*.
[72] 67 Fed. Reg. 6521, 6522, 6524 (Feb. 12, 2002).
[73] 70 Fed. Reg. 15,994 (Mar. 29, 2005); 70 Fed. Reg. 28,606 (May 18, 2005).
[74] *New Jersey v. EPA*, 517 F.3d 574 (D.C. Cir. 2008).
[75] *New Jersey*, 517 F.3d at 582 (citing 42 U.S.C. § 7412(c)(9)).
[76] 77 Fed. Reg. at 9310–11, 9363– 64, 9366–76; 2011 RIA.
[77] 77 Fed. Reg. at 9310–11, 9363– 64, 9366–76.
[78] *Id*. at 9323.
[79] *White Stallion Energy Ctr., LLC v. EPA*, 748 F.3d 1222 (D.C. Cir. 2014) (*per curiam*).
[80] *Michigan v. EPA*, 135 S. Ct. 2699 (2015).
[81] *Id.* at 2712.

regulation.[82] Many of the undersigned here again intervened to defend EPA's rulemaking against another round of challenges.[83]

In 2019, EPA again proposed to reverse the appropriate and necessary finding.[84] Despite comments from many of the undersigned and other parties cautioning that this proposed action was unlawful,[85] EPA finalized that reversal ("2020 Action"). (However, EPA left the 2012 emission standards in place and did not delist power plants as a source category.[86]) In the 2020 Action, EPA also declined to update the MACT standard for coal- and oil-fired plants when it conducted the 8-year residual risk and technology reviews, as required by CAA section 112(d)(6) and (f)(1).[87] Many of the undersigned once again sued the Agency and petitioned EPA for reconsideration in July of 2020.[88] They similarly also intervened to defend EPA's regulation of power plants under [] section 112 as appropriate and necessary in a suit brought by a coal mining company.[89]

Subsequently, on February 9, 2022, EPA proposed to revoke the 2020 Action, to reaffirm its prior determination that regulating power plants' HAP emissions is appropriate and necessary, and to solicit input on the Agency's ongoing consideration of its 2020 residual risk and technology review.[90] The many of the undersigned strongly supported EPA's revocation of the 2020 Action and reaffirmation of its appropriate and necessary finding.[91] On March 6, 2023, EPA finalized its proposal and revoked the 2020 Action, reaffirming the finding that it is "appropriate and necessary to regulate coal- and oil-fired [power plants] under CAA section 112."[92]

On April 24, 2023, EPA then proposed to amend its 2020 residual risk and technology review. Consistent with the 2022 comments of many of the undersigned, instead of retaining the 2012 MACT standard, EPA proposed to update the fPM standard based on "developments in the current emission levels of fPM from existing coal-fired EGUs, the costs of control technologies,

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[82] 81 Fed. Reg. at 24,452 (Apr. 25, 2016).
[83] *See Murray Energy Corp. v. EPA*, No. 16-1127 (D.C. Cir.).
[84] 84 Fed. Reg. 2670 (Feb. 7, 2019).
[85] *See* Comments of the Attorney General of Massachusetts, *et al.* Doc. ID No. EPA-HQ-OAR-2018-0794-0001 (Apr. 17, 2019), ("2019 States Comments"). 2019 States Comments are attached as Attachment 5.
[86] 85 Fed. Reg. at 31,289–90.
[87] *Id*.
[88] Pet. for Review, *Massachusetts v. EPA*, No. 20-1265 (D.C. Cir. July 20, 2020), Doc. No. 1853575; Attorneys General of Massachusetts, *et al.*, Pet. for Recons. EPA's Final Rule (June 21, 2020), Docket No. EPA-HQ-OAR-2018-0794.
[89] *See Westmoreland Mining Holdings, LLC v. EPA*, No. 20-1160 (D.C. Cir.).
[90] 87 Fed. Reg. at 7624.
[91] 2022 States Comments at 2.
[92] 88 Fed. Reg. 13,956–7 (Mar. 6, 2023).

[the] effectiveness of those technologies", and other statutory factors.[93] EPA also proposed to amend the mercury standard for lignite-coal-fired plants based on "information on current [mercury] emission levels and controls for lignite-fired EGUs [showing] that there are cost-effective control technologies and methods of operation that are available to achieve a more stringent standard.[94] EPA further proposed to require coal-fired power plants use particulate matter continuous emissions monitoring systems ("PM CEMS") to demonstrate compliance with the fPM standard.[95] Many of the undersigned States and Local Governments strongly supported EPA's proposal to strengthen these standards.[96] In 2024, EPA finalized those strengthened standards.[97]

The 2024 MATS Rule was challenged in court[98] and many of the undersigned States and Local Governments once again intervened in support of strong federal regulation of cross-border HAP emissions.[99] That advocacy included successfully opposing attempts to stay implementation of those strengthened standards in both the U.S. Court of Appeals for the D.C. Circuit and the Supreme Court of the United States.[100]

B. States and Local Governments have taken regulatory actions to reduce mercury emissions from power plants and other sources.

Many of our states also have taken regulatory action to reduce emissions of mercury from power plants and other sources within our borders.[101] At least fourteen states have promulgated limits on mercury emissions from power plants[102] and nearly every state with mercury emission

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[93] 88 Fed. Reg. at 24,857.
[94] *Id*.
[95] *Id*.
[96] Comments of the Attorney General of Massachusetts, *et al.* (June 23, 2023), https://www.regulations.gov/comment/EPA-HQ-OAR-2018-0794-5988.
[97] 89 Fed. Reg. 38,510 (May 7, 2024).
[98] *North Dakota v. EPA*, Case No. 24-1119 (D.C. Cir 2024).
[99] *Id*. Motion to Intervene, (June 6, 2024), "reducing power-plant emissions of mercury and other toxic air pollutants that harm our residents' health, contaminate our natural resources, damage our economies, and impair our ability to meet environmental standards"
[100] *See* the Attorney General of Massachusetts, *et al.*, Opp. to Mot. to Stay before Supreme Court of the United States and D.C. Circuit, attached as Attachments 1 and 2.
[101] *See* NESCAUM, *supra* note 10, at 8–9.
[102] In fact, power plants in Connecticut, Massachusetts, and New Jersey were complying with those states' mercury standards three to four years before EPA's proposal of the MATS Rule in 2011. Conn. Gen. Stat. § 22a-199 (compliance by July 1, 2008); 310 Mass. Code Regs. § 7.29 (first phase compliance by Jan. 1, 2008); N.J. Admin. Code § 7:27-27.7 (compliance by Dec. 15, 2007); *see also* 5 Colo. Code Regs. § 1001-8:B.VIII (first phase compliance by Jan. 1, 2012); Del. Admin. Code tit. 7 § 1146-6 (first phase compliance by Jan. 1, 2009); Ill. Admin. Code tit. 35 § 225.230 (compliance by July 1, 2009); Md. Code Regs. tit. 26, § 11.27.03.D (first phase

standards for power plants has imposed health protective limits that are more stringent than the 2024 MATS Rule.[103]

State requirements, however, cannot eliminate interstate HAP emissions.[104] Mercury can travel hundreds of miles from the smokestack.[105] Thirty percent of Minnesota's mercury deposition, for example, originates from out-of-state domestic sources.[106] And a significant portion of mercury deposition originates from uncontrolled power plants located in other

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compliance by Jan. 1, 2010); Minn. R. 7011.0561 (first phase compliance by Jan. 1, 2018); Mont. Admin. R. 17.8.771 (compliance by Jan. 1, 2010); N.H. Rev. Stat. Ann. § 125-O:11-18 (compliance by July 1, 2013); N.Y. Comp. Codes R. & Regs. tit. 6 § 246.6 (first phase compliance by Jan. 1, 2010); Or. Admin. R. 340-228-0606 (compliance by July 1, 2012); Wis. Admin. Code NR § 446.13 (compliance by Apr. 16, 2016); *see also* Mich. Admin. Code r. 336.2503(1)(a)-(b) (2009) (compliance by Jan. 1, 2015), modified by Mich. Admin. Code r. 336.2502a (2013) (exempting covered power plants "for which [MATS] is an applicable requirement relative to emissions of mercury" and, if the Rule ceases to be an applicable requirement, extending compliance date to the sooner of three months from the date of inapplicability or April 16, 2015).

[103] The 2024 MATS Rule imposes a mercury emission standard for non-lignite plants of 1.2 lb/TBtu or 0.013 pounds per gigawatt-hour ("lb/GWh"). 40 C.F.R. § 63.10009(a)(2). Many state rate-based standards are set at 0.6 lb/TBtu or 0.008 lb/GWh. *E.g.*, Conn. Gen. Stat. § 22a-199(b)(1) (0.6 lb/TBtu); Del. Admin. Code tit. 7 § 1146– 6.2 (0.6 lb/TBtu); 35 Ill. Admin. Code § 225.230(a)(1)(A) (0.008 lb/GWh); 310 Mass. Code Regs. § 7.29(5)(a)(3)(f) (0.0025 lb/GWh); Mich. Admin. Code r. 336.2503(1)(b) (0.008 lb/TBtu); Minn. R. 7011.0561 (0.008 lb/TBtu); Mont. Admin. R. 17.8.771(1)(b)(ii) (0.9 lb/TBtu); N.J. Admin. Code § 7:27-27.7(a) (3.00 milligrams per megawatt-hour ("mg/MW-hr") (equivalent to 0.66 lb/TBtu)); N.Y. Comp. Codes R. & Regs. tit. 6 § 246.6(a) (0.6 lb/TBtu); Or. Admin. R. 340-228-0606(1) (0.6 lb/TBtu); Wis. Admin. Code NR § 446.13(1) (0.008 lb/GWh).

[104] *See* Opposition to Motion for Stay by Respondent-Intervenors Commonwealth of Massachusetts, *et al.*, Ex. 7 (Declaration of Sarah Johnson, New York City Dept. of Health & Mental Hygiene), No. 24-1119, D.C. Cir. (July 23, 2024), attached as Attachment 2. For example, New York is directly downwind of many coal-fired power plants in the Ohio River Valley and Midwest, which historically emitted large quantities of mercury that rain out or settle in New York's environment. *See* Evers, *supra* note 43.

[105] *See* 77 Fed. Reg. at 9444.

[106] Minnesota TMDL, *supra* note 38, at 20–21, 45 (stating that federal regulation of those sources, such as power plants, holds most promise for reaching Minnesota's TMDL goals); see also New Jersey TMDL, *supra* note 38, at 31 (noting that twenty-six percent of New Jersey's air deposition mercury load originates from five surrounding states); North Carolina TMDL, *supra* note 38, at 6 (noting that fifteen percent of North Carolina's total mercury deposition originates from out-of-state regional sources); *see also* Illinois Lake Michigan (nearshore) Mercury Final TMDL Report, *supra* note 38, at 23 (relying on the MATS Rule to address out-of-state regional sources contributing twelve percent of the mercury deposition load).

states.[107] Rigorous, nationally uniform standards are thus essential to protect the States and Local Governments' residents, natural resources, and economies from the dangerous quantities of mercury and other hazardous air pollution that out-of-state power plants emit.

III. EPA's Proposal to repeal the 2024 MATS Rule and revert to the 2012 MATS Rule's standards is unlawful.

EPA proposes to repeal three regulatory changes made by the 2024 MATS Rule and reinstate one previously repealed provision:

- Repeal the fPM emission standard for existing coal-fired electric utility steam generating units ("EGUs" or "power plants," as used here) from 0.010 pounds per million British thermal units ("lb/MMBtu") and restore the 2012 MATS Rule's emission standard of 0.030 lb/MMBtu;
- Repeal the requirement that coal- and oil-fired EGUs demonstrate compliance with the fPM standard by using PM CEMS, and allow compliance demonstration by use of quarterly stack testing and continuous parametric monitoring systems ("CPMS");
- Repeal the mercury ("Hg") emission standard for existing lignite-fired coal plants—1.2 pounds per trillion British thermal units ("lb/TBtu")—and restore the 2012 MATS Rule's emission standard of 4.0 lb/TBtu;
- Reinstate the "low emitting EGU" ("LEE") program, which would allow facilities that have demonstrated emissions under 50% of the corresponding emissions limit for three consecutive years to conduct stack testing of emissions less frequently.[108]

EPA asserts two separate legal bases to purportedly support its Proposal. First, EPA asserts legal authority to adopt the Proposal under "inherent authority" of administrative agencies "to revise previously-promulgated rules, so long as they follow the proper administrative requirements and provide a reasoned basis for the agency decision."[109]

Second, EPA asserts "an additional and complementary basis" for its legal authority under CAA section 112(d)(6).[110] Section 112(d)(6) directs EPA "to review and require as necessary (taking into account developments in practices, processes, and control technologies),

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[107] *See* NESCAUM, *supra* note 10, at 7. *See also* Northeast TMDL, *supra* note 38, at 44 (concluding that EPA action to "implement significant reductions from upwind out-of-region sources, primarily coal-fired power plants" is necessary to return fish methylmercury concentrations to safe levels).
[108] 90 Fed. Reg. at 25,537.
[109] *Id*. at 25,540, *citing Clean Water Action v. EPA*, 936 F.3d 308, 313 (5th Cir. 2019).
[110] *Id*. at 25,544.

emission standards promulgated under [CAA section 112] no less often than every 8 years."[111] EPA proposes to find that "the 2024 changes were not 'necessary' under CAA section 112(d)(6)," "[g]iven the high costs and potential technical feasibility concerns with implementing" the 2024 MATS Rule.[112]

Under section 112 of the Clean Air Act, Congress made clear its directive for EPA to quickly secure large reductions in the volume of air toxics emissions from stationary sources based on technological developments in control technologies because of its recognition of the hazards to public health and the environment that result from exposure to such emissions.[113] The Act requires EPA to establish technology-based standards that achieve the "maximum degree of reduction," "including a prohibition on such emissions where achievable"—statutory instructions that must be read in concert with the mandated periodic technology reviews to update corresponding standards.[114] EPA must also review standards promulgated under section 112 and revise them "as necessary (taking into account developments in practices, processes, and control technologies)."[115] As part of that review, EPA is required to address regulatory gaps, such as missing standards for listed air toxics known to be emitted from the source category.[116]

EPA's proposed repeal of the 2024 MATS Rule's filterable particulate matter standard is arbitrary and capricious under both of the Agency's purported sources of authority. As the Supreme Court has explained, "[o]ne of the basic procedural requirements of administrative rulemaking is that an agency must give adequate reasons for its decisions."[117] Here, EPA's Proposal represents a reversal of EPA's "former views as to the proper course."[118] Thus, EPA must: "display awareness that it is changing position"; show that "the new policy is permissible under the statute"; "believe[]" the new policy is better; and provide "good reasons for the new policy."[119] EPA has not met any of these requirements.

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[111] 42 U.S.C. § 7412(d)(6) (added emphasis removed).
[112] 90 Fed. Reg. at 25,544.
[113] 89 Fed. Reg. at 38514.
[114] 42 U.S.C. § 7412(d)(2).
[115] 42 U.S.C. § 7412(d)(6); *Portland Cement Ass'n v. EPA*, 665 F.3d 177, 189 (D.C. Cir. 2011) ("Though EPA must review and revise standards 'no less often than every eight years,' 42 U.S.C. § 7412(d)(6), nothing prohibits EPA from reassessing its standards more often.").
[116] *Louisiana Environmental Action Network v. EPA*, 955 F.3d 1088, 1095–1101 (D.C. Cir. 2020) ("*LEAN*").
[117] *Encino Motorcars, LLC v. Navarro*, 579 U.S. 211, 221 (2016).
[118] *See Pub. Citizen v. Steed*, 733 F.2d 93, 98 (D.C. Cir. 1984), *citing Motor Vehicle Mfrs. Ass'n of the U.S., Inc. v. State Farm Mut. Auto. Ins. Co.,* 463 U.S. 29, 51 (1983) (*State Farm*).
[119] *FCC v. Fox Television Stations, Inc.*, 556 U.S. 502, 515 (2009); *see also Lone Mountain Processing, Inc. v. Secretary of Interior*, 709 F.3d 1161, 1164 (D.C. Cir. 2013) ("[A]n agency changing its course must supply a reasoned analysis indicating that prior policies and standards

As detailed below, EPA has ignored critical information in the rulemaking record that undermines its conclusions and has failed entirely to consider any potential alternatives to returning to the emission standards under the 2012 MATS Rule. Neither asserted legal basis supports EPA's Proposal: the Agency has failed to provide a reasoned basis for its decision and failed to adequately consider developments in practices, processes, and control technologies in finding it "necessary" to revert to outdated standards.

A. EPA's Proposal to revert to the 2012 fPM standard is arbitrary and capricious.

1. Reverting to the 2012 fPM standard ignores significant developments since 2012.

EPA cannot repeal the 2024 MATS Rule and revert to the outdated 2012 fPM standard because doing so fails to comply with the Clean Air Act's requirement that EPA "tak[e] into account developments in practices, processes, and control technologies" that have occurred in the affected industry since EPA promulgated the fPM standard in 2012.[120] EPA has acknowledged, and the Proposal does not dispute, that significant developments in the affected industry have occurred since 2012, including:

- reduced costs and improvements of existing control technologies;[121]
- better practices for monitoring the operation of electrostatic precipitators;[122]
- more durable filter-bag materials for fabric filters.[123]

Given these and other developments, the vast majority of coal-fired EGUs report fPM emissions well below the 0.010 lb/MMBtu limit adopted in the 2024 MATS Rule.[124] The chart below, from EPA's 2024 Technical Memo, demonstrates significant reductions in fPM emissions, with 93 percent of the industry achieving the standard and 77 percent achieving levels well below the standard at 0.006 lb/MMBtu or better:[125]

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are being deliberately changed, not casually ignored. Failing to supply such analysis renders the agency's action arbitrary and capricious.") (citations omitted).

[120] 42 U.S.C. § 7412(d)(6).

[121] 89 Fed. Reg. at 38,530.

[122] *Id*. at 38,521.

[123] *Id*.

[124] *Id*. at 38,552.

[125] EPA, *2024 Update to the 2023 Proposed Technology Review for the Coal- and Oil-Fired EGU Source* Category at 13 (fig. 4), Doc. No. EPA-HQ-OAR-2018-0794-6919 (Jan. 2024) ("2024 Technical Memo").

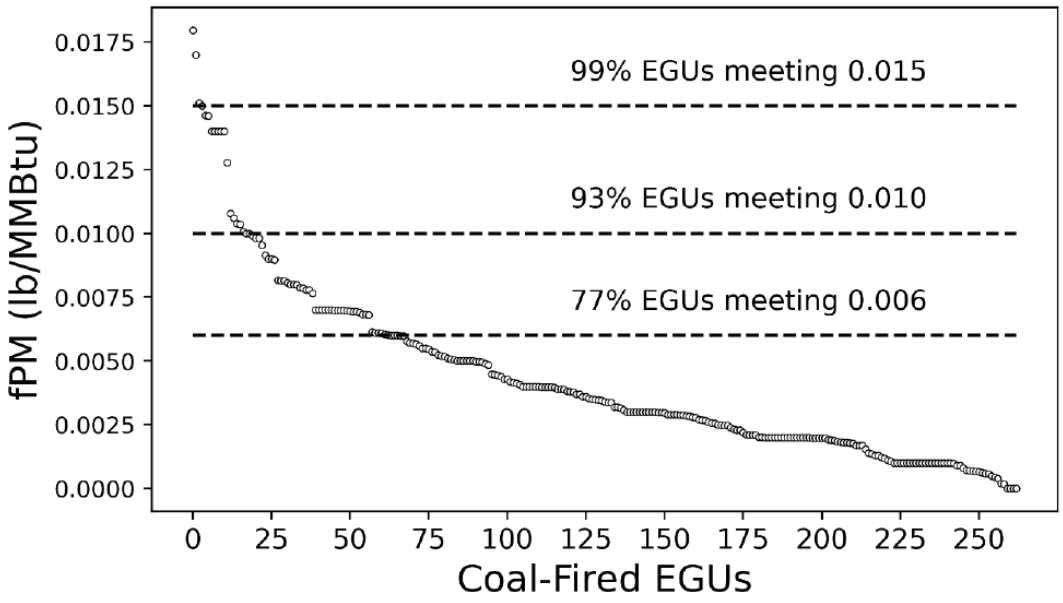

Figure 4. fPM emission rates from coal-fired EGUs ranked, from left to right, from highest fPM emitting to lowest fPM emitting. The dashed lines show the percentage of units that have previously demonstrated emission rates below 0.015, 0.010, and 0.006 lb/MMBtu.

For example, the median fPM emission rate of the 296 coal-fired EGUs assessed in EPA's 2024 Technical Memo is 0.004 lb/MMBtu—60 percent below the revised fPM limit of 0.010 lb/MMBtu.[126] The median fPM rate of the best-performing quarter of EGUs (*i.e.*, the 74 best-performing EGUs) is 0.002 lb/MMBtu—about 80 percent below the 2024 fPM limit of 0.010 lb/MMBtu.[127]

EPA's failure to consider that most EGUs are already emitting well below the 0.010 lb/MMBtu standard adopted in 2024 shows the unreasonableness of EPA's Proposal. To illustrate, if EPA were to recalculate the MACT floor today, it would be no higher than 0.002 lb/MMBtu, considering that the top 25 percent of EGUs are already meeting that rate.[128] EPA's Proposal to revert back to the outdated 0.030 lb/MMBtu standard—15 times less stringent than what a recalculated MACT floor would have been—is unreasonable and unsupported by the record.

[126] 89 Fed. Reg. at 38,552.
[127] *Id*.
[128] 2024 Technical Memo, *supra* note 125, at 13 (fig. 4).

Indeed, EPA's 2025 Proposal acknowledges these significant developments have in fact occurred. And EPA acknowledges that the developments are the reason the industry is exceeding the 2012 standard. Yet, EPA has chosen to disregard these developments and revert to the 2012 standard.[129] In doing so, EPA provides no reasoned explanation for repealing the 2024 standard, which at least 93 percent of the industry is already attaining according to EPA's own analysis.[130] However, rescinding the 2024 MATS Rule may cause these high levels of compliance to dwindle, leading to higher levels of emissions.

2. The Proposal unreasonably fails to consider any alternatives to the 2012 fPM standard and irrationally relies on outlier data.

EPA's decision to not consider any alternatives other than a full repeal of the 2024 fPM standard is plainly arbitrary and capricious. "An agency is required to consider responsible alternatives to its chosen policy and to give a reasoned explanation for its rejection of such alternatives."[131] Courts have found agency actions arbitrary and capricious when the agency "fail[ed] … to consider obvious alternatives."[132] And while an agency need not consider "every alternative,"[133] it must consider "significant and viable … alternatives,"[134] and an agency's failure to "consider *any* alternatives" is particularly arbitrary and capricious.[135] And therefore an agency must consider "alternative[s] within the ambit of the existing standard," short of full repeal.[136]

Thus, even if there were any basis to repeal the 2024 MATS Rule's fPM standard (which there is not), EPA's decision to simply revert back to 0.030 lb/MMBtu while failing to consider any alternatives is unreasonable. That is especially true here because EPA already completed the technical work necessary to inform its consideration of alternatives.[137] For example, as shown in

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[129] 90 Fed. Reg. at 25,541.
[130] 2024 Technical Memo, *supra* note 125, at 13 (fig. 4).
[131] *Spirit Airlines v. U.S. Dep't of Transp.*, 997 F.3d 1247, 1255 (D.C. Cir. 2021) (quoting *Am. Radio Relay League v. FCC*, 524 F.3d 227, 241 (D.C. Cir. 2008)); *Allied Local & Reg'l Mfrs. Caucus v. EPA*, 215 F.3d 61, 80 (D.C. Cir. 2000) ("To be regarded as rational, an agency must ... consider significant alternatives to the course it ultimately chooses.").
[132] *Yakima Valley Cablevision v. FCC*, 794 F.2d 737, 746 n.36 (D.C. Cir. 1986).
[133] *State Farm,* 463 U.S. at 51.
[134] *10 Ring Precision v. Jones*, 722 F.3d 711, 724 (5th Cir. 2013).
[135] *Tik Tok v. Trump*, 507 F. Supp. 3d 92, 111–12 (D.D.C. 2020) (emphasis added).
[136] *State Farm*, 463 U.S. at 51; *see also Dep't of Homeland Sec. v. Regents of the Univ. of Cal.*, 591 U.S. 1, 30 (2020) (agency's recission of rule is arbitrary and capricious without considering whether agency should maintain key component of rule that could operate independently).
[137] EPA asks for comments on "other cost-effective and achievable fPM limits for existing coal-fired EGUs . . . that the EPA should consider as an alternative to repealing the 0.010 lb/MMBtu standard[.]" 90 Fed. Reg. at 25,544. However, the Proposal does not consider any such

EPA's chart reprinted above, EPA's analysis from the 2024 MATS Rule shows that 99 percent of the affected industry is already able to meet a 0.015 lb/MMBtu standard. EPA's failure to analyze and consider that alternative is unreasonable.

Further, the Proposal cites compliance-costs to justify reverting to the 2012 standard, improperly relying on one particular plant's costs to comply with 2024 MATS Rule: the Colstrip Power Plant in Montana. Colstrip alone comprises almost half of all compliance costs in the 2024 MATS Rule.[138] And Colstrip lags so far behind the rest of the industry because it alone lacks modern particulate matter controls installed at every other affected plant in the industry—though the Agency also ignores this fact.[139] In essence, EPA's Proposal to revert to the 2012 fPM standard is based on data that is skewed because of Colstrip's resistance to keeping up with the rest of the industry.

Relying on Colstrip's performance—an extreme outlier—is unreasonable and irrational, as is extending Colstrip's outlier data to justify reverting to the 0.030 lb/MMBtu standard. Had EPA considered alternatives that excluded Colstrip, then the costs across the rest of the industry would be miniscule for the 0.010 lb/MMBtu standard (to say nothing of a 0.015 lb/MMBtu alternative).

EPA calculated the cost-effectiveness of both the 0.010 lb/MMBtu and 0.015 lb/MMBtu alternative standards; not surprisingly, Colstrip's costs skew those effectiveness values for both standards. For example, of the approximately $38.8 million in annualized costs (in 2019 dollars) to comply with the alternative 0.015 lb/MMBtu standard, the Colstrip plant comprises almost 95 percent of the costs (approximately $36.9 million).[140] In effect, EPA's Proposal seems largely to benefit one and only one facility—the most extreme laggard in the industry—the opposite of a technology review's purpose to update standards that bring lagging plants up to a performance similar to the majority of the industry due to developments in control technologies and practice.

In fact, EPA should strengthen the fPM standard to 0.006 lb/MMBtu. Not only is at least 77% of the affected industry is already meeting that rate,[141] but in the 2024 MATS Rule, EPA declined to set the standard at 0.006 lb/MMBtu primarily because of concerns that PM CEMS might not always be able to accurately read fPM rates that low.[142] But EPA is now proposing to

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alternative, denying commenters any ability to examine how EPA would analyze any such alternative.

[138] 90 Fed. Reg. at 25,541.

[139] 89 Fed. Reg. at 38,531.

[140] 2024 Technical Memo, *supra* note 125, Attachment 1 (spreadsheet) at Tab "0.015 Limit Assumptions."

[141] 2024 Technical Memo, *supra* note 125, at 13 (fig. 4).

[142] 89 Fed. Reg. at 38,534.

get rid of the requirement to exclusively use CEMS, which was the primary basis for not selecting a standard of 0.006 lb/MMBtu in the first place. Thus, EPA's failure to consider a 0.006 standard here is unreasonable, especially where the Agency is at the same time proposing to eliminate the PM CEMS requirement altogether.

3. The rulemaking record shows that the cost-effectiveness of the existing fPM standard, or alternatives, is not inconsistent with other NESHAP standards.

EPA's sole basis for its decision to repeal the 2024 fPM standard and revert to the 2012 standard is cost-effectiveness. While the Agency can consider cost when setting standards, the purpose of a technology-based NESHAP standard is to achieve "the maximum degree of reduction in emissions of the hazardous air pollutants."[143] In justifying its choice, the Agency compares the cost-effectiveness of fPM reductions at power plants with fPM reductions at other types of facilities. However, EPA completely fails to consider information already in the rulemaking record showing why such comparisons are unreasonable. EPA cannot ignore evidence before it.[144]

The Proposal's narrow focus on cost-effectiveness further thwarts the express mandate of section 112. because Congress determined that hazardous air pollutants are "inherently harmful" and instructed EPA to "protect[] even the most exposed and most sensitive members of the population."[145]

While the Proposal points to two examples where EPA rejected a standard for cost-effectiveness reasons (Petroleum Refinery Sector and Integrated Iron and Steel Manufacturing Facilities), EPA ignores that it has also approved revised standards that had similar or higher cost-effectiveness values to those for 0.010 lb/MMBtu. As EPA has previously noted, "EPA has accepted cost effectiveness for mercury up to about $32,000 per pound," which is the equivalent of $64 million per ton reduced.[146] The two examples in the Proposal are at the low end of this range, and EPA has approved of the cost-effectiveness of controls having a much greater price tag in terms of dollars-per-pound removed. EPA's failure to acknowledge the existing range of expenses for controls it has consistently approved as cost-effective makes it reliance on the examples from the Petroleum Refinery Sector and Integrated Iron and Steel Manufacturing Facilities categories unreasonable.

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[143] 42 U.S.C. § 7412(d)(2).
[144] *State Farm*, 463 U.S. at 43 ("an agency rule would be arbitrary and capricious if the agency… offered an explanation for its decision that runs counter to the evidence before the agency").
[145] 87 Fed. Reg. at 7645.
[146] 89 Fed. Reg. at 23,312.

Importantly, there may be differences among different HAPs that prevent reasonable comparison of the cost-effectiveness of controlling their emissions. But EPA's 2025 Proposal does not provide any explanation for why it selectively focused on two sectors where it rejected standards that imposed control measures that were less cost-effective than other actions where EPA approved of higher cost-effectiveness values. More importantly, the Proposal ignores the 2024 MATS Rule's detailed explanation for why the Petroleum Refinery Sector and Integrated Iron and Steel Manufacturing Facilities reviews were not comparable.[147] It also ignores the 2024 MATS Rule's detailed comparison of cost-effectiveness values with the Ferroalloys Production source category, in which EPA approved of even higher cost-effectiveness values than in the 2024 MATS Rule.[148] EPA has provided no explanation for its reversal and no explanation for deviating from the prior distinctions and comparisons contained in the 2024 MATS Rule.

The Proposal also fails to consider factors beyond just cost per ton when evaluating the cost-effectiveness of the fPM limits. EPA must also consider benefits of reduced health impacts associated with the reductions in the 2024 MATS Rule standard and any alternatives (which EPA failed to consider as well). EPA cites no example of cost being the sole factor supporting its decision, as it does in this Proposal.

B. The Proposal fails to adequately justify reverting from the 2024 MATS Rule's mercury standard for lignite plants to the 2012 MATS Rule's standard.

1. Power plants that burn lignite coal represent a disproportionately large share of mercury emissions across all coal-fired power plants.

Since the 2012 MATS Rule was promulgated, its mercury standard has yielded, and continues to yield, massive reductions in mercury emissions from power plants: between 2010 and 2021, power plants' mercury emissions are estimated to have declined by 90 percent.[149]

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[147] 89 Fed. Reg. at 38,524. In the 2014 ferroalloys rulemaking, there were "other relevant factors . . . in addition to cost effectiveness [that] counseled the EPA against adopting more stringent standards. For example, . . . the EPA rejected a potential control option due to questions about technical feasibility and significant economic impacts the option would create for the industry, including potential facility closures that would impact significant portions of industry production. In contrast here, the controls at issue are technically feasible (they are used at facilities throughout the country) and will not have significant effects on the industry."

[148] *Id*. at 38,523.

[149] 89 Fed. Reg. at 38,541 ("EPA is revising the Hg emission standard for lignite-fired EGUs from the 4.0 lb/TBtu standard that was finalized in the 2012 MATS Final Rule to the more stringent emission standard of 1.2 lb/TBtu" *see also* EPA, *Progress Report: Emissions Reductions: Mercury Emissions from MATS Sources, 2010-2021* (July 2022), https://www3.epa.gov/airmarkets/progress/reports/emissions_reductions_mats.html#figure1.

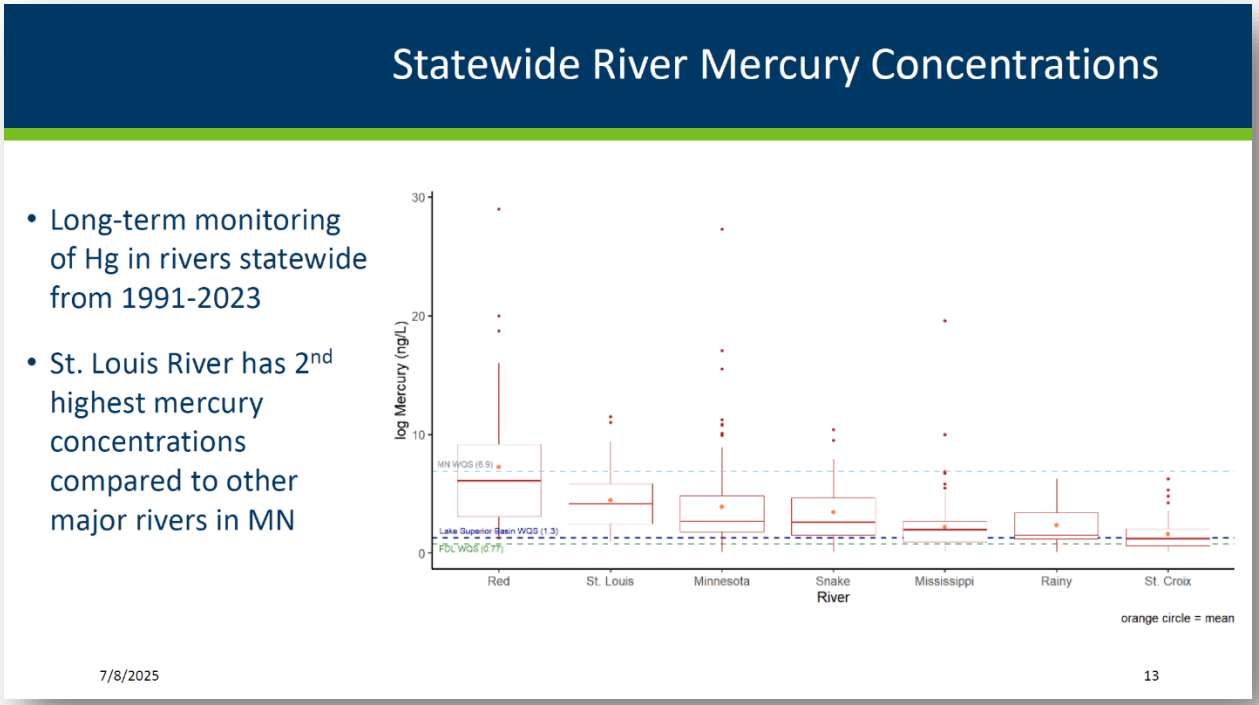
However, little of these reductions have not come from plants that burn lignite coal. Lignite-fired plants remain the most polluting of all coal-fired power plants—at least in part because the 2012 MATS Rule did not require lignite-fired plants to achieve the same mercury standard as all other coal plants.[150] In 2023, EPA determined that "16 of the top 20 Hg-emitting EGUs were lignite-fired EGUs" and "lignite-fired EGUs were responsible for almost 30 percent of all Hg emitted from coal-fired EGUs in 2021, while generating about 7 percent of total 2021 megawatt-hours."[151] These lignite-fired plants are concentrated geographically mainly in North Dakota and Texas,[152] which increases the cumulative burden of such pollutants on surrounding and downwind and vulnerable communities, including low-income communities, people with low educational attainment, and people for whom English is not their first language.[153] Furthermore, as discussed above, North Dakota's lignite-burning plants upwind of the Red River Watershed, which straddles the North Dakota-Minnesota border, has the highest concentration of mercury among all of Minnesota major watersheds:

[150] 89 Fed. Reg. at 38,537 ("However, units burning lignite (or permitted to burn lignite) accounted for a disproportionate amount of the total Hg emissions in 2021. As shown in table 5 in the 2023 Proposal (88 Fed. Reg. at 24876), 16 of the top 20 Hg-emitting EGUs in 2021 were lignite- fired EGUs. Overall, lignite-fired EGUs were responsible for almost 30 percent of all Hg emitted from coal-fired EGUs in 2021, while generating about 7 percent of total 2021 megawatt-hours. Lignite accounted for 8 percent of total U.S. coal production in 2021.")

[151] 88 Fed. Reg. at 24,876.

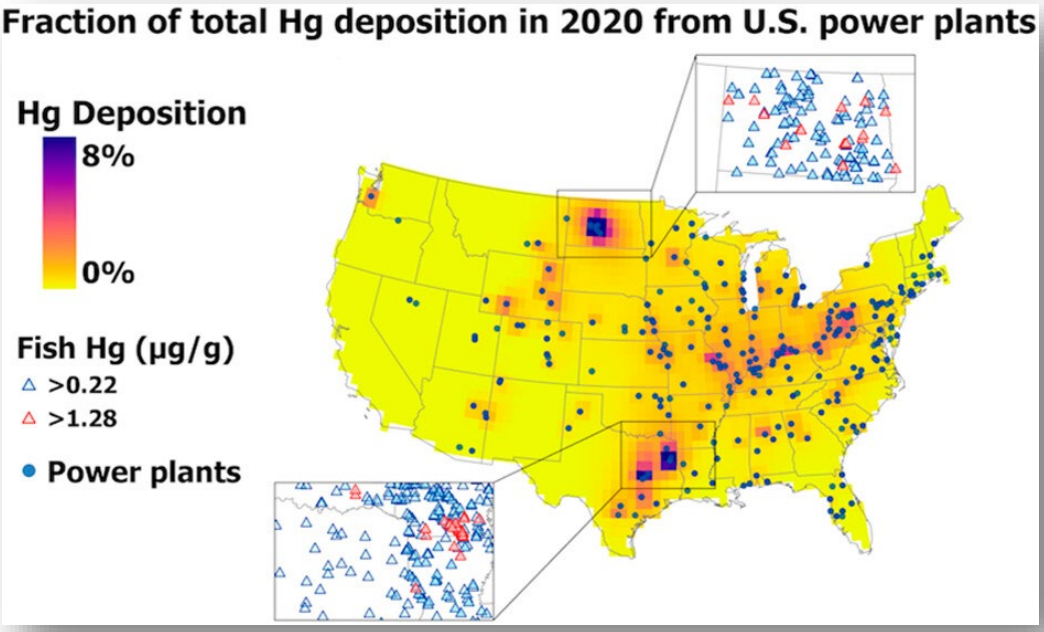
[152] *See* EPA, *supra* note 56 (individual state power plant mercury emissions for 2021 available by selecting 2021 version of map and clicking on individual states in map); Dai, *supra* note 28 (noting that "[m]ost active plants in 2020 emitted <5 kg of Hg to the atmosphere per year, but the highest emitting plants in North Dakota and Texas emitted >100 kg of Hg.").

[153] 89 Fed. Reg. at 38,541.



A recent study demonstrates the mercury present in fish near these plants that burn lignite coal.[154] The largest clusters of mercury deposition are in North Dakota and Texas—unsurprisingly near lignite-fired power plants.

[154] Dai, *supra* note 28.



2. The 2024 MATS Rule determined lignite-fired plants can use pollution controls to reduce mercury emissions at a low cost.

The 2024 MATS Rule identified developments in available control technologies and methods of operation that lignite-fired plants could use to meet the same mercury emission standard set for power plants that burn firing non-lignite coal (1.2 pound per trillion British thermal units, "lb/TBtu").[155] The 2024 MATS Rule's record supported the Agency's conclusion that commercially available control technologies and improved methods of operation were suitable for lignite-fired plants to meet the higher standard, including: (1) the current performance of emission reduction control equipment and strategies at existing lignite-fired EGUs, (2) the discrepancy between mercury emitted from lignite-fired EGUs and non-lignite coal-fired EGUs, (3) the improved performance of injected sorbents or chemical additives, and (4) the development of SO_3-tolerant sorbents.[156] EPA correctly concluded that these effective and affordable control technologies warranted applying the same mercury standard to lignite-fired that applies to plants that burn other types of coal.

Importantly, industry cost projections for pollution controls at the time regulations are set are often found to be overestimated. This was the case regarding controls installed to achieve earlier iterations of MATS emission standards, which, when implemented were more effective and less expensive than predicted in comments submitted by industry advocates.[157]

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[155] Other types of coal include, for instance, anthracite coal and bituminous coal.
[156] 89 Fed. Reg. at 38,541.
[157] 2023 States Comments at 13; 2022 States Comments at 1, 23, 29–30, 32–33, 38, 40; 87 Fed. Reg. at 7634, 7651, 7655; NESCAUM, *supra* note 10, at 11. *See also* James E. Staudt, *Update of the Cost of Compliance with*

Indeed, when proposing the 2024 MATS Rule, EPA noted that its cost approach was conservative and likely to overestimate compliance costs for lignite coal units.[158] Pollution controls have beaten cost expectations due in part to improvements and cost reductions in activated carbon injection ("ACI")[159] and baghouses (along with the co-benefits of PM and HAP controls including dry-sorbent injection, flue-gas desulfurization, wet scrubbers, and electrostatic precipitators).[160]

EPA determined that lignite-fired power plants can cost-effectively achieve a 1.2 lb/TBtu mercury emission standard[161] ACI and these other readily-available controls and methods of operation.[162] Indeed, the projected cost of the 2024 MATS Rule's lignite mercury standard, $8,703 per ton of mercury removed, is significantly lower than the cost EPA has previously found acceptable—both in calculating the existing mercury standards and in other rulemakings.[163]

In the record of the 2024 MATS Rule, EPA determined that an 800 MW lignite-fired EGU can use ACI to inject brominated carbon sorbent at a rate of 3.0 pounds per actual cubic feet ("lb/MMacf") at a cost of $3,050 per pound of mercury removed, and an incremental cost of $10,895 per pound of mercury removed. EPA also determined that increasing the injection rate to 5.0 lb/MMacf would cost $5,083 per pound of mercury removed, with the incremental cost-effectiveness of $28,176 per pound of mercury removed. The actual cost-effectiveness is likely lower than either of these estimates.[164]

3. The Proposal's criticism of the 2024 MATS Rule's findings on mercury pollution controls for lignite-fired power plants runs counter to evidence in the rulemaking record.

The Proposal does not dispute these conclusions.[165] Instead, it points to the range of lignite-fired boiler types and varying compositions of the different lignite fuels to criticize the

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MATS – Ongoing Cost of Controls 7, 8 tbl.8 (Apr. 15, 2019) Ex. C to Doc. No. EPA-HQ-OAR-2018-0794-0001 (annual incremental operating costs associated with the MATS Rule approximately $203 million).

[158] 89 Fed. Reg. at 38,537; 88 Fed. Reg. at 24,870–72.

[159] *Id*.

[160] NESCAUM, *supra* note 10, at 11.

[161] 89 Fed. Reg. at 38,537; 88 Fed. Reg. at 24,880–82.

[162] 89 Fed. Reg. at 38,548–49

[163] EPA calculated an approximately $27,000/lb of mercury cost as part of its beyond the floor analysis supporting the 2012 MATS Rule, and $27,500/lb in the Primary Copper RTR, 87 Fed. Reg. 1616 (Jan. 11, 2022).

[164] 89 Fed. Reg. at 38,548.

[165] 90 Fed. Reg. at 25,538.

work of the 2024 MATS Rule.[166] In particular, the Proposal criticizes the 2024 MATS Rule's reliance on a Twin Oaks unit that achieved (and in fact exceeded) the 1.2 lb/TBtu standard and two Red Hills units that came very close, claiming that their performance was based on an improper 30-day rolling basis demonstration and their use of fluidized bed boiler types.[167] But, as the 2024 MATS Rule noted, the Red Hills units achieved those levels while firing Mississippi lignite, which has the highest mercury concentration among coal—higher even than the coal used in North Dakota.[168]

The 2024 MATS Rule also noted that the performance at these exemplar lignite plants was not the sole source of supporting data. Most mercury control technologies can be "dialed-up"—for example, plant operators can "dial-up" the injection rates of carbon sorbents or chemical additives to achieve a desired mercury emission rate (and, in fact, lignite plants already do "dial-up" to achieve the 4.0 lb/TBtu emission standard).[169] EPA further observed that control technologies deployed at existing subbituminous plants could reduce mercury emissions below 1.2 lb/TBtu. Thus, the record for the 2024 MATS Rule was not limited to the performance of the Twin Oaks and Red Hills units; it also included the well-documented performance of controls at subbituminous-fired plants and the practice of "dialing-up" sorbents and additives to show that lignite-fired power plants can achieve the 1.2 lb/TBtu emission standard.

The Proposal also contends that the 2024 MATS Rule did not account for additional components that may need to be added in order to inject sufficient sorbents or chemical additives necessary to achieve the 1.2 lb/TBtu rate. But the 2024 MATS Rule explicitly considered that some lignite plants would need additional components yet still found these plants could cost-effectively meet the mercury emissions standard. In making this finding, EPA specifically cited the performance of non-lignite coal-fired power plants, the improved performance of injected sorbents or chemical additives, and the development of SO_3-tolerant sorbents.[170]

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[166] *Id*.
[167] *Id*. at 25,543.
[168] *Id*.
[169] *Id*.
[170] 89 Fed. Reg 58,549 ("The EPA expects that sources will be able to meet the revised emission standard using existing controls (*e.g.*, using existing sorbent injection equipment), and that significant additional capital investment is unlikely. If site-specific conditions necessitate minor capital improvements to the ACI control technology, it is important to note that any incremental capital would be small relative to ongoing sorbent costs accounted for in this analysis. Further, in addition to the EPA finding that costs are reasonable for the revised Hg standard for lignite-fired EGUs, the revised standard will also bring these higher emitting sources of Hg emission in line with Hg emission rates that are achieved by non-lignite- fired EGUs."), 58,540 ("The EPA expects that sources will be able to meet the revised emission standard using existing controls (*e.g.*, using existing sorbent injection equipment), and that significant additional capital investment is unlikely. If site-specific conditions necessitate minor capital improvements to the

The Proposal further incorrectly claims that EPA failed to consider different fuel compositions in the 2024 MATS Rule, including the prevalence of mercury and other chemical characteristics. But the 2024 MATS Rule explicitly accounted for variable mercury concentrations in the lignite coal these plants use[171] and modified its assumptions on the mercury inlet concentration using actual measured mercury concentrations from industry-supplied data.[172] The adjustment "did not change the EPA's overall conclusion that there are available controls and improved methods of operation that will allow lignite-fired EGUs to meet a more stringent Hg emission standard of 1.2 lb/TBtu."[173] The 2024 MATS Rule also expressly considered lignite's low halogen content and how that strongly influences the oxidation state of mercury in the flue gas stream, thereby directly influencing the ability to capture and contain the mercury before it is emitted.[174] It further noted that the fly ashes from lignite and subbituminous coals tend to be more alkaline due to the lower amounts of sulfur and halogen and to the presence of a more alkaline and reactive (non-glassy) form of calcium in the ash. Due to the natural alkalinity, subbituminous and lignite fly ashes can effectively neutralize the limited free halogen in the flue gas and prevent oxidation of gaseous elemental mercury vapor. This lack of free halogen in the flue gas challenges the control of mercury in lignite-fired units. But the EPA further noted that control strategies and technologies to introduce halogens to the flue gas stream are used by EGUs firing subbituminous coals to meet (and often exceed) the 1.2 lb/TBtu emission standard. Despite differences in coal composition, EPA determined that these available control technologies would allow EGUs firing any of those coal types to achieve an emission standard of 1.2 lb/TBtu. Thus, the 2025 Proposed Repeal Rule is facially incorrect when it claims that the 2024 MATS Rule failed to take into account coal types or coal composition.

In sum, rather than provide a defensible basis for reversing course, the Proposal merely mischaracterizes the 2024 MATS Rule's extensive analysis supporting its finding that lignite-burning plants can achieve the 1.2 lb/TBtu mercury standard that the rest of the industry has been meeting for years using established technologies at reasonable, well-understood costs. This fundamentally flawed explanation for repealing this standard "runs counter to the evidence before the [A]gency" and cannot "be ascribed to a difference in view or the product of [A]gency expertise."[175] EPA must explain its change in position from the 2024 MATS Rule.[176] EPA's

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ACI control technology, it is important to note that any incremental capital would be small relative to ongoing sorbent costs accounted for in this analysis.")

[171] 89 Fed. Reg. at 38,539.

[172] *Id*.

[173] *Id*.

[174] *Id*.

[175] *State Farm*, 463 U.S. at 43.

[176] *Id*. at 51.

failure to adequately explain its departure from its prior well-reasoned and well-supported conclusions is arbitrary and capricious.

C. The Proposal fails to adequately explain its decision to revert to the 2012 compliance demonstration standards.

EPA has proposed to "repeal the requirement to use PM CEMS for demonstrating compliance with the fPM emission standard . . . and return to the previous requirement that allowed owners and operators to demonstrate compliance using quarterly stack testing and PM CPMS, or PM CEMS."[177] EPA argues that under the proposed relaxed fPM standard, stack testing would be less expensive than using PM CEMS "because longer duration runs that increase stack testing costs would no longer be necessary."[178] Furthermore, EPA disputes the value of PM CEMS' advantages that the Agency relied on in the 2024 Final Rule: "EPA no longer believes that" more efficient pollutant abatement and more transparency of emissions "outweigh the increased cost of PM CEMS."[179]

EPA's Proposal fails to adequately explain its changed view on the value of PM CEMS in a variety of ways. As explained below, EPA offers no basis in the rulemaking record to substantiate its changed views on superior accuracy, transparency, and pollution reduction afforded by using PM CEMS. In fact, EPA has ignored its own technical support documents that show quarterly stack testing is an unreliable method of demonstrating compliance with the fPM standard. EPA's burden to explain its changed view is particularly high given that PM CEMS are already widely used by power plants to comply with the 2012 fPM standard and its costs are miniscule compared to a facility's overall operating expenses. The benefits of PM CEMS are further shown by state regulatory programs that rely on CEMS data to effectively limit emissions.

As further explained below, EPA's failure to explain this changed position is arbitrary and capricious.

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[177] 90 Fed. Reg. at 25,542.
[178] *Id*. Furthermore, EPA based its decision to repeal the PM CEMS requirement on its flawed decision to repeal the 2024 MATS Rule's fPM standard, and EPA cannot bootstrap its flawed PM CEMS decision to its flawed fPM repeal.
[179] *Id*.

1. PM CEMS are more accurate and more transparent than other forms of compliance demonstration.

As EPA acknowledges, PM CEMS offer numerous benefits over other methods of compliance demonstration.[180] By definition, PM CEMS offer immediate data on the levels of emissions from a source, enabling "operators to more promptly detect and correct problems with pollution controls as compared to other monitoring and testing options," including during startup, shutdown, or malfunction.[181]

This continuous stream data allows operators to more promptly detect and correct problems with PM controls as compared to periodic stack testing and PM CPMS, resulting in lower emissions. Stack testing is required to be performed four times a year, at most. And PM CPMS does not directly measure PM, rather it measures a correlated parameter such as emissions opacity. As discussed in the preamble to the 2024 MATS Rule, PM CEMS are used in the eight best performing deciles of facilities, showing that they can be used across a wide range of sources.[182]

Further, this instantaneously available data can be viewed by local governmental groups and communities living in close proximity to coal-fired units, which disproportionately include communities of color, low-income communities, Tribal Nations and Indigenous Peoples, people with low educational attainment, people for whom English is not their first language, and children.[183] In this manner, PM CEMS provide assurance to people living near facilities that emissions limits are being complied with. Quarterly stack testing and parametric monitoring, because they only periodically measure fPM emissions or rely on parameters other than fPM, do not offer these benefits.[184]

In proposing to allow compliance demonstration by stack testing, EPA also ignored its own data showing that stack testing is an unreliable means of tracking emissions. In EPA's 2024

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[180] 90 Fed. Reg. at 25,542. (EPA acknowledges PM CEMS' "advantages", including "more efficient pollution abatement and more transparency of EGU emissions").
[181] 89 Fed. Reg. at 38,528.
[182] *Id*.
[183] 88 Fed. Reg. at 24,872. *See also supra* note 25.
[184] Southern Environmental Law Center, Comments on revocation of 2020 reconsideration and affirmation of the appropriate and necessary supplemental finding, Docket No. EPA-HQ-OAR-2018-0794 (Apr. 11. 2022) (Exh. C, Dr. Ranajit Sahu, Technical Analysis in Support of SELC's Comments) (Stack tests "are not representative of normal everyday operation" of regulated united or their PM control devices because "[p]reventative maintenance is paramount to ensure proper operation of these control devices[,]" and such "maintenance is often conducted just prior to a [stack] compliance test" rather than on an ongoing basis, which "adversely and dramatically affects the efficiencies of these controls.").

Technical Memo, which is incorporated into the rulemaking record for its current Proposal, EPA assessed several case studies showing the advantages of PM CEMS.[185] In one case study, 2019 stack test data showed fPM emissions significantly *below* the emissions measured by CEMS over the following 36 months.[186] The same facility then submitted 2021 stack test data that showed emissions significantly *higher* than subsequent CEMS data—"[a]t one point in mid-2022, the continuously monitored 30-boiler operating day average fPM emissions rate . . . was about *nine times higher* than the 2021 intermittent stack test average."[187] EPA concluded that this case study "illustrates the potential benefit of having continuous, quality-assured PM CEMS data that inform owners and operators that their fPM rates are rising, prompting corrective action."[188] As EPA concluded in a separate case study, the data in the rulemaking record show "how infrequent stack testing, unlike PM CEMS, cannot reflect EGU operational variability."[189]

EPA's Proposal argues that unit operators can rely on other real-time indicators instead of PM CEMS to quickly address increased emissions. The Agency claims that units "with an ESP can track opacity, secondary corona power," or other indicators, while for units with fabric filters, "parameters like pressure differential (i.e., pressure drop), inlet temperature," and other data points "can serve as reliable indicators"[190] To substantiate these claims, EPA provides links to its own website's general summaries of monitoring techniques.[191] These links are adequate to show that these monitoring techniques exist, but EPA makes no attempt in the rulemaking record to compare these monitoring techniques with PM CEMS. For instance, EPA fails to provide even the most basic information, such as how often sources currently use these techniques, how reliable they are, and whether these indicators are continuously available to the public. That is, EPA has made no attempt to substantiate its claim that these techniques are equally effective as PM CEMS at detecting increased emissions in a timely manner.

EPA's Proposal ignores this data in the rulemaking record on the unreliability of quarterly stack testing, how use of PM CEMS leads to better facility operation and lower PM emissions, and the benefits to the nearby community from certain, continuously updated data. For these reasons, the Proposal is arbitrary and capricious.

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[185] USEPA, 2024 Update to the 2023 Proposed Technology Review for the Coal- and Oil-Fired EGU Source Category Memorandum, Docket No. EPA-HQ-OAR-2018-0794 (Apr. 12, 2024).
[186] 2024 Technical Memo at page 45, figure 9.
[187] *Id*.
[188] *Id*.
[189] *Id*. at page 48.
[190] 90 Fed. Reg. at 25,542.
[191] EPA, Monitoring by Control Technique – Electrostatic Precipitators, *available at* https://www.epa.gov/air-emissions-monitoring-knowledge-base/monitoring-control-technique-electrostatic-precipitators; EPA, Monitoring by Control Technique – Fabric Filters, *available at* https://www.epa.gov/air-emissions-monitoring-knowledge-base/monitoring-control-technique-fabric-filters.

2. The cost of using PM CEMS is low.

The Agency finds changing the compliance demonstration standard is warranted because of the expense to utilize PM CEMS. In the Proposal, the Agency states that it "no longer believes that those advantages outweigh the increased cost of PM CEMS compared to the other compliance options (*i.e.*, PM CPMS and quarterly stack testing)[.])"[192] The Proposal "estimates a cost savings of $2.8 million per year related to the proposed repeal of the PM CEMS requirement."[193]

But looking at EPA's data on per-unit costs shows that PM CEMS are not expensive. In its RIA, EPA compared estimated annualized costs for quarterly stack testing at $73,000 per emissions unit to estimated annualizes costs of $87,000 per emissions unit for PM CEMS.[194] EPA presents these values notwithstanding the Agency's acknowledgement of the "uncertainty associated with the estimated costs for the PM CEMS requirement."[195]

In other words, EPA's own estimates in its 2025 analysis show that the incremental cost of PM CEMS compared to quarterly stack testing is $14,000 per emissions unit. According to data from the U.S. Energy Information Administration, average operating expenses at a fossil steam power plant (primary coal plants) is $0.04267 per kWh, including operation, maintenance, and fuel cost.[196] So, a theoretical 250 MW EGU, that generates 250,000 kWh by operating one hour incurs $10,667.50 in operating expenses; the incremental cost of using PM CEMS for one year is less than the cost to operate a hypothetical 250 MW EGU for two hours.

The Agency should choose the approach that provides the best assurance that the promulgated emissions limits are being met.[197] This is particularly true when, as here, not all benefits are being monetized.[198] As explained by both the Agency and this comment, PM CEMS are far more effective than stack testing at providing the best representation of emissions, and PM CEMS does so at a negligible cost.

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[192] 90 Fed. Reg. at 25,542.
[193] *Id*.
[194] Proposal RIA at 2-5.
[195] *Id*. at 5-5.
[196] U.S. Energy Information Administration, Electric Power Annual 2024, Table 8.4, https://www.eia.gov/electricity/annual/html/epa_08_04.html.
[197] The 2024 MATS Rule required use of PM CEMS under both its 112(d)(6) authority, because they allow owners and operators to "promptly address any problems with emissions control equipment," thereby reducing emissions. 89 Fed. Reg. at 38,535. The 2024 MATS Rule also cited additional authority from CAA section 114(a)(1)(C), which authorizes EPA to require use of monitoring equipment on a continuous basis. *Id*.
[198] 89 Fed. Reg. at 38,529.

3. PM CEMS data informs and improves state regulatory programs.

States also frequently use PM CEMS data in their own regulatory proceedings on HAP emissions. Importantly, PM CEMS data both helps improve compliance with existing federal and state air toxics regulations and provides important data informing state implementation of delegated section 112 air toxics program and the development of new state regulations.

For instance, the Illinois Pollution Control Board—an administrative body that adopts environmental regulations for Illinois—recently relied on PM CEMS data in promulgating emissions limits for industrial facilities, including coal-fired power plants, during periods of "start-up, malfunction, or breakdown."[199] This analysis would have been difficult to perform if using data from quarterly stack testing, which would not comprehensively capture emissions levels during atypical start-up, malfunction, or breakdown periods.

4. Reinstating the low emitting EGU program compounds the inconsistency and unreliability of stack testing

EPA's Proposal to reinstate the LEE program for fPM and non-Hg HAP metals would even further compound the problems with stack testing.[200] The LEE program, as mentioned above, would allow facilities that have demonstrated emissions under 50% of the corresponding emissions limit for three consecutive years to less frequently test—qualifying facilities need only demonstrate once every three years that their emissions remain under 50% of the corresponding limit. But, as described above, EPA's own data demonstrates that quarterly stack testing, even done on a regular basis, is unreliable and a poor indicator of a facility's emissions even during normal operations.[201] Because the LEE program would make it even more difficult to ensure that facilities' emissions remain low, we oppose this proposed regulatory change.

D. EPA's purported section 112(d)(6) technology review is arbitrary and capricious.

1. EPA misconstrues the section 112(d)(6) technology review process and failed to consider technology developments.

In addition to EPA's first purported basis—inherent agency authority to reconsider prior decisions—for reevaluating the 2024 MATS Rule, EPA also claims authority to revert to the

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[199] *See* Illinois Pollution Control Board, Second Notice Order in R23-18(A) (July 11, 2024) https://pcb.illinois.gov/documents/dsweb/Get/Document-110788.
[200] *See* 90 Fed. Reg. at 25,542.
[201] *See supra* note 189.

2012 regulation under CAA section 112(d)(6). Under this provision, EPA proposes "to find that the 2024 changes were not 'necessary'."[202]

As described above, section 112(d)(6) of the Clean Air Act states that "[t]he 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."[203] EPA's statutory duty is to periodically update technology-based standards that it originally established under section 112(d)(2). The initial technology-based standard-setting process established by section 112(d)(2) aims to "eliminate" hazardous emissions "where achievable."[204]

Likewise, when EPA conducts a section 112(d)(6) technology review of its emission standards, the Agency is directed to tighten or improve existing standards when "developments in practices, processes, and control technologies" make it possible to do so[205] and to assess "whether standards should be tightened in view of developments in technologies and practices since the standard's promulgation or last revision."[206] The terms "revise as necessary" and "developments" are interpreted with reference to section 112(d)(2)'s focus on the "maximum" emissions reductions that are "achievable."[207]

The Proposal fundamentally misconstrues the technology review process under section112(d)(6) and fails to apply the best reading of the statute.[208] EPA must review any new developments in control technologies and explain why those new developments make it necessary to adopt new standards. However, the Proposal does not review any new developments in control technology. In fact, the Agency has identified developments that it has explicitly chosen *not* to review.[209] In this way, EPA's section 112(d)(6) review "entirely failed to consider

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[202] 90 Fed. Reg. at 25,544.
[203] 42 U.S.C. § 7412(d)(6). Additionally, because EPA's proposed technology review is arbitrary and capricious, it does not reset the Agency's obligation to review emission standards no less often than every 8 years under this provision. This obligation continues to run from EPA's 2024 MATS Rule. *See id.*
[204] 42 U.S.C. § 7412(d)(2).
[205] 42 U.S.C. § 7412(d)(6).
[206] *Nat'l Ass'n for Surface Finishing v. EPA*, 795 F.3d 1, 5 (D.C. Cir. 2015).
[207] *See LEAN*, 955 F.3d 1088, 1097–98 (D.C. Cir. 2020) ("Congress' requirement that EPA must periodically review and revise as necessary its 'emission standards' is a mandate to address the adequacy of each emission standard on the books against the statutory demand of section 112(d)(2) for an 'emission standard' for each source category.")
[208] *See Loper Bright Enterprises v. Raimondo*, 603 U.S. 369, 400 (2024).
[209] Proposal RIA, *supra* note 11, at 1–3 (EPA says in its Regulatory Impact Analysis for the Proposal that is has "not updated the baseline for this proposed action to reflect . . . regulatory and other subsequent changes since [the 2024 MATS Rule] was promulgated in 2024. Rather, we

an important aspect of the problem" that Congress directed the Agency to consider.[210] Nor does the Agency provide any reasoning explaining why developments now require reverting to its 2012 regulations. Furthermore, EPA sought comment on whether it should consider health risks during its technology review, which would even further undermine its section 112(d)(6) review process.

EPA's section 112(d)(6) technology review rescinding the 2024 MATS standards is arbitrary and capricious because EPA failed to consider any developments in practices, processes, and control technologies in finding that rescission is necessary. The Agency stated that "[g]iven the high costs and potential feasibility concerns with implementing the revised standards . . . the 2024 changes were not 'necessary' under CAA section 112(d)(6)."[211] However, EPA has added essentially no new information or analysis concerning developments in practices, processes, and control technologies—the rulemaking record is essentially identical to that underlying the 2024 MATS Rule, as EPA recognized in its 2025 RIA.[212]

In this way, EPA fails to properly conduct the technology review process mandated by the best reading of statute—the Proposal fails to consider *technology* developments or other relevant developments since 2024 as part of its *technology review*—adding no new information or analysis of control technology. Instead, in a conclusory manner, EPA determines the 2024 changes were not "necessary."[213] The only "developments" cited by the Proposal are the changes in the Administrator's policy preferences at EPA, rather than any factual developments in practices, processes, or control technologies at emissions sources.[214]

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rely on the 2024 MATS RTR RIA policy case analysis as the baseline for this action. Similarly, there may be other regulatory changes before the promulgation of this proposed repeal that are not accounted for in the baseline for this action. These factors introduce *important uncertainties* in the analysis within this RIA.") (emphasis added).

[210] *Motor Vehicle Mfrs. Ass'n of the U.S., Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983).

[211] 90 Fed. Reg. at 25,544.

[212] EPA's 2025 Regulatory Impact Analysis largely recapitulates analysis from the 2024 RIA: "significant market and regulatory changes that have occurred since the 2024 MATS RTR RIA . . . are *not reflected* in this analysis." (RIA at ES-1, 2, emphasis added); "*In the absence of updated modeling*, the compliance cost estimates [and] projected emission changes presented in the 2024 MATS RTR RIA are the EPA's best available estimate." (*Id*., emphasis added); "estimates of energy market impacts . . . [are] based upon the results presented in the 2024 MATS RTR RIA." (ES-4). EPA, Regulatory Impact Analysis for the 2025 MATS RTR Repeal Proposal (June 17, 2025), https://www.regulations.gov/document/EPA-HQ-OAR-2018-0794-6996.

[213] 90 Fed. Reg. at 25,544.

[214] *Id*. at 25,541–44. *See also Loper Bright* at 603 U.S. 403–404. (holding that EPA must implement the "best reading" of a statute, not its "policy preferences.")

EPA cites *Ass'n of Battery Recyclers v. EPA* and *Nat'l Ass'n for Surface Finishing v. EPA* to argue that it can consider costs in deciding to revise a standard under section 112(d)(6) review.[215] Neither decision, however, held that the Agency's changed policy view of the cost-effectiveness of previously evaluated control technologies constituted a "development" showing that it was "necessary" to revise a standard under section 112(d)(6). Indeed, the EPA has identified no precedent holding that such a changed policy view may provide a sufficient basis to repeal or otherwise relax promulgated standards under section 112(d)(6). Rather, *Battery Recyclers* addressed a 2012 rulemaking where EPA conducted a section 112(d)(6) technology review that led to strengthened emissions standards for secondary lead smelting facilities, originally promulgated in 1995, including by reducing emissions standards by 90%.[216] Although the court held that, EPA had properly considered the cost-effectiveness of developments in control technology occurring in the 17 years since the original MACT in declining to adopt even more stringent standards, EPA's decision was also based on its analysis of "the feasibility, utility, cost-effectiveness, and adverse collateral environmental impacts associated with this technology." [217] And in *Surface Finishing*, EPA in 2012 updated and tightened standards for chromium electroplating and anodizing facilities that were promulgated in 1995 based on new data on developments in control technology providing "feasible, cost-effective options to further limit emissions."[218] EPA has not identified precedent where a changed policy view of the cost-effectiveness of previously evaluated control technology constitutes a "development" that is "necessary" under 112(d)(6). By considering the cost of control technology alone and explicitly ignoring any developments in actual control technology, EPA has failed to consider an important aspect of its technology review.

2. EPA failed to adequately explain why it is necessary under section 112(d)(6) to revert to 2012 regulations.

In addition, the Proposal is arbitrary and capricious because EPA has failed to give any reasoned explanation why the developments it reviewed make it necessary to revert to its 2012 emissions standards under section 112(d)(6), rather than adopt intermediate standards more stringent than the 2012 standards and less stringent than the Proposal's standards. When reversing regulations, EPA must provide "good reasons for the new policy" and show that "the new policy is permissible under the statute."[219] Failing to supply this analysis "renders the

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[215] 90 Fed. Reg. at 25,544 (citing *Ass'n of Battery Recyclers v. EPA and Nat'l Ass'n for Surface Finishing v. EPA*, 716 F.3d 667 (D.C. Cir. 2013).
[216] *See Battery Recyclers*, 716 F.3d, at 670 (citing 77 Fed. Reg. 556 (Jan. 5, 2012)).
[217] *Id*. at 673–74.
[218] *Surface Finishing*, 795 F.3d at 5–7, 11–12 (citing 77 Fed. Reg. 58,220 (Sept. 19, 2012)).
[219] *Fox*, 556 U.S. at 515.

agency's action arbitrary and capricious."[220] However, EPA completely ignored the significant improvements in control technology since 2012, even though these technologies were analyzed in detail when EPA promulgated its 2024 Final Rule.[221]

Congress directed EPA to revise emissions standards "as necessary (taking into account developments in practices, processes, and control technologies)."[222] The terms "revise as necessary" and "developments" are interpreted with reference to section 112(d)(2)'s focus on the "maximum" emissions reductions that are "achievable."[223] Section 112(d)(6) directs EPA, through its technology review, to ensure that standards are "compliant with the law and on pace with emerging developments that create opportunities to do even better."[224]

First, it is the Agency's duty to assess "whether standards 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."[225] Thus, EPA must explain why it is necessary under 112(d)(6) to simply erase prior rulemakings, especially when its determination is based on a policy reevaluation instead of new data or information on developments in technologies and practices. But EPA identifies no precedent for the Agency finding it necessary to reverse or otherwise relax promulgated emissions standards in a 112(d)(6) technology review.

EPA tersely states that "high costs and potential technical feasibility concerns" show that "the 2024 changes were not 'necessary' under CAA section 112(d)(6)."[226] However, even under this new statutory interpretation of the term "necessary," EPA's duty is not complete—it must also explain why it is necessary to return to the 2012 emissions standards in light of Section 112's directive to focus on the maximum achievable emissions reductions.[227]

Even if the 2024 Final Rule was not "necessary," EPA must also explain how it determined what standards are in fact necessary in its section112(d)(6) review—its review must ensure "that, over time, EPA maintains source standards compliant with the law and on pace with emerging developments that create opportunities to do even better[.]"[228] The terms "revise as

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[220] *Lone Mountain Processing, Inc. v. Secretary of Interior*, 709 F3.d 1161, 1164 (D.C. Cir. 2013).
[221] *See*, *e.g.*, 89 Fed. Reg. 38,508 at 38,521–49 (May 7, 2024).
[222] 42 U.S.C. § 7412(d)(6).
[223] *See LEAN*, 955 F.3d at 1097–98.
[224] *Id*. at 1093, 1097.
[225] *Surface Finishing*, 795 F.3d at 5 (citing 42 U.S.C. § 7412(d)(6) and *Battery Recyclers*, 716 F.3d at 673–74).
[226] 90 Fed. Reg. 25,535 at 25,544.
[227] *See LEAN*, 955 F.3d at 1088.
[228] *Id*. at 1093.

necessary" and "developments" are both interpreted broadly, with reference to section 112(d)(2)'s focus on the "maximum" emissions reductions that are "achievable[.]"[229]

Moreover, with respect to the 2024 MATS Rule's fPM emission standard, rather than provide a reasonable explanation to repeal the 2024 standards, the Agency turns the intent of section 112(d)(6) on its head by relying on the costs for the worst performing facility to repeal emissions standards for the industry at large.[230] In setting the technology-based MACT floor, section 112(d)(3) requires that "EPA set the MACT floor at the level achieved by the best performing source, or the average of the best performing sources," in a category or subcategory.[231] Thus, the MACT floor mandates that all sources in the category or subcategory "clean up their emissions to the level that their best performing peers have shown can be achieved."[232] Although section 112(d)(6) does not require revisions based solely on the best-performing sources, it requires a technology review to determine whether developments in technologies and practices render it necessary to tighten and improve emission standards.[233] In proposing to repeal the 2024 fPM emission standard, however, EPA relies primarily on the compliance costs on a single underperforming plant to reevaluate cost-effectiveness of that standard.[234] As described above with respect to data from the Colstrip power plant, EPA's failure to explain why it ignored any alternative standards perverts the "technology-forcing" purpose of section 112(d) technology standards.[235]

Where it is clear the vast majority of units are achieving emissions rates well below the 2012 emissions standards, EPA's burden to explain its choice to revert to those standards is put in stark relief. The Agency has failed explain why the existing rulemaking record supports reverting to the 2012 emissions standards—that is, why the 2012 emissions standards are the maximum achievable emissions standards given major developments in control technology. This failure renders EPA's review under section 112(d)(6) arbitrary and capricious.

3. EPA mistakenly introduces residual risk review in its section 112(d)(6) technology review.

EPA also requests comment "on whether a technology review conducted under CAA section 112(d)(6) should take into consideration whether any meaningful risk reduction would be

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[229] *Id.* at 1097–98.
[230] 90 Fed. Reg. at 25,541.
[231] *U.S. v. Sugar Corp.*, 830 F.3d 579, 631 (D.C. Cir. 2016); 42 U.S.C. § 7412(d)(3)(A), (B).
[232] *Sierra Club v. EPA*, 353 F.3d 976, 980 (D.C. Cir. 2004).
[233] *Surface Finishing*, 795 F.3d at 5.
[234] 90 Fed. Reg. at 25,541.
[235] *Sierra Club v. Env't Prot. Agency*, 884 F.3d 1185, 1190 (D.C. Cir. 2018).

obtained from further reducing HAP emissions under the technology review[.]"[236] These statutory factors are not "exclusive determinants", and the statute's list of factors is "non-exhaustive."[237] However, the structure of section 112 as well as case law makes clear that EPA may not conflate its section 112(d)(6) technology review process with its section 112(f)(2) risk review process. EPA's technology review cannot rely on factors determined irrelevant by Congress; to rely on risk reduction in its section 112(d)(6) analysis in its final rule would render the Agency's decision arbitrary and capricious.

Section 112's risk and technology reviews proceed on two "distinct, parallel analyses" that are undertaken "[s]eparately."[238] Unlike in the paragraph 112(f)(2) residual risk review, Congress did not direct EPA to consider "public health objectives or risk reduction achieved by additional controls" in its section 112(d)(6) technology review.[239]

EPA asserts that its 2020 Residual Risk Review found "inhalation cancer risk to the individual most exposed [to HAP emissions from facilities in the source category] was well below 100-in-1 million, which is the EPA's presumptive limit of acceptability.[240] However, an assessment of whether lowering emission standards through a technology review would provide a "meaningful risk reduction" conflates EPA's two statutory duties.[241]

Under section 112(f)(2), EPA must ensure the standards provide an "ample margin of safety," while, under section 112(d)(6), EPA must consider developments in practices, processes, and control technologies to ensure the technology-based standards are keeping pace.[242] There is thus no inconsistency in EPA's determination that, while the standards continue to meet the "ample margin of safety" threshold under section 112(f)(2), "developments in practices, processes, and control technologies" now make revisions to those technology-based standards necessary under section 112(d)(6). Risk reduction is an irrelevant factor in a section 112(d)(6) technology review, so considering it in this context would be arbitrary and capricious.

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[236] 90 Fed. Reg. at 25,544.
[237] *LEAN*, 955 F.3d at 1097.
[238] *Surface Finishing*, 795 F.3d at 5.
[239] *Battery Recyclers*, 716 F.3d at 672; *see also Portland Cement Ass'n v. EPA*, 665 F.3d 177, 189 (D.C. Cir. 2011).
[240] 90 Fed. Reg. at 25,544.
[241] *Id*.
[242] *See Surface Finishing*, 795 F.3d at 1, 5.

IV. EPA's Proposal is procedurally flawed.

A. EPA failed to provide analysis and data supporting its Proposal that is necessary to afford a meaningful opportunity to comment.

The Clean Air Act requires EPA to publish in the Federal Register a notice of proposed rulemaking, including a summary of:

> (A) the factual data on which the proposed rule is based;
> (B) the methodology used in obtaining the data and in analyzing the data; and
> (C) the major legal interpretations and policy considerations underlying the proposed rule.[243]

The general purpose of "notice and comment requirements are '(1) to ensure that agency regulations are tested via exposure to diverse public comment, (2) to ensure fairness to affected parties, and (3) 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.'"[244] An agency "must disclose in detail the thinking that has animated the form of a proposed rule and the data upon which that rule is based."[245] "[A]n agency proposing informal rulemaking has an obligation to make its views known to the public in a concrete and focused form so as to make criticism or formulation of alternatives possible."[246]

Section 317(c) of the Clean Air Act requires preparation of an economic impact assessment that contains an analysis of, among other things, the costs of compliance and the effects of the regulation on consumer costs and energy use.[247] The economic impact assessment must be as "extensive as practicable."[248] The notice of rulemaking must also include a notice of availability of the economic impact assessment "together with an explanation of the extent and manner in which [EPA] has considered the analysis contained in such economic impact

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[243] 42 U.S.C. § 7607(d)(3).
[244] *Prometheus Radio Project v. FCC*, 652 F.3d at 449 (quoting *Int'l Union, United Mine Workers of Am. v. Mine Safety & Health Admin.*, 407 F.3d 1250, 1259 (D.C. Cir. 2005)); *see also Connecticut Light & Power Co. v. Nuclear Regulatory Com.*, 673 F.2d 525, 530 (D.C. Cir. 1982) ("The purpose of the comment period is to allow interested members of the public to communicate information, concerns, and criticisms to the agency during the rule-making process.").
[245] *Home Box Office, Inc. v. FCC,* 567 F.2d 9, 35–36 (D.C. Cir. 1977).
[246] *Id.*
[247] 42 U.S.C. § 7617(c)(1), (4), (5).
[248] *Id.* § 7617(d).

assessment in proposing the action."[249] This explanation must also be a part of the statement of basis and purpose required under section 307(d)(3).[250]

EPA has curtailed the ability of the public to meaningfully comment by failing to provide fundamental information—including up-to-date data—in the economic impact analysis required under CAA section 317.[251] As stated in the Proposal RIA, the Agency relies on the 2024 MATS Rule's RIA baseline (business-as-usual) scenario despite acknowledging "important uncertainties" related to the "significant market and regulatory changes" that have occurred since then:

> We have not updated the baseline for this proposed action to reflect these regulatory and other subsequent changes since the RTR was promulgated in 2024. Rather, we rely on the 2024 MATS RTR RIA policy case analysis as the baseline for this action. Similarly, there may be other regulatory changes before the promulgation of this proposed repeal that are not accounted for in the baseline for this action. These factors introduce *important uncertainties* in the analysis within this RIA.[252]

Moreover, EPA specifically acknowledges that the Proposal RIA does not reflect "certain regulatory changes that have occurred since the promulgation of the 2024 MATS RTR [Rule]," namely, Presidential Proclamation 10914 titled *Regulatory Relief for Certain Stationary Sources to Promote American Energy*.[253] The Proclamation exempts 47 facilities, some with multiple EGUs, from the 2024 MATS Rule's requirements through July 8, 2029, during which time the sources are subject to pre-2024 MATS Rule requirements. EPA states that modeling the effects of the Proclamation "would likely result in different projected compliance costs and emissions changes, and the overall magnitude of the costs and benefits would be lower."[254] Additional sources have also been exempted by proclamation since EPA published the Proposal: six more sources were exempted on July 17, 2025,[255] and any number of future proclamations could be made before EPA finalizes its Proposal.

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[249] *Id.* § 7617(b).
[250] *See id.*
[251] 42 U.S.C. § 7617.
[252] Proposal RIA, *supra* note 11, at 1–3 (emphasis added).
[253] *Id.* at 2–8, *citing* 90 Fed. Reg. 16,777 (Apr. 21, 2025) (first presidential proclamation).
[254] *Id.* at 2–9.
[255] Presidential Proclamation, *Regulatory Relief for Certain Stationary Sources to Further Promote American Energy* (July 17, 2025), *available at* https://www.whitehouse.gov/presidential-actions/2025/07/regulatory-relief-for-certain-stationary-sources-to-further-promote-american-energy/.

An agency must "identify and make available technical studies and data that it has employed in reaching the decisions to propose particular rules," and failure to "reveal portions of the technical basis for a proposed rule in time to allow for meaningful commentary" constitutes "serious procedural error."[256]

Thus, EPA itself has admitted that its baseline for the Proposal is outdated, depriving the public of the ability to understand the Proposal's full economic impact. Without understanding the Proposal's full economic impact, commenters are deprived of the ability to provide adequate critique or alternatives and, ultimately, of meaningful participation.[257] It is insufficient to point to a prior analysis (2024 MATS Rule and accompanying record) that the current Proposal itself criticizes as outdated, yet never give the public any chance to comment on an as-yet-uncompleted analysis that the Agency itself may deem sufficient to finalize a rule. It also mocks the notice-and-comment process, and is unlawful, to use that process to solicit analyses from commenters that the Agency then may cite and point to as the cure for obvious analytical deficiencies in this Proposal. Such a process prevents meaningful comment on agency modeling, or any other aspect of the basis for the proposed rule.[258]

This Proposal is part of a broader set of actions the current administration is simultaneously taking to weaken pollution standards for coal-fired power plants, such as the repeal of greenhouse gas standards[259] or the administration's use of Federal Power Act section 202(c) to force coal plants to stay online after their planned retirement date,[260] which will increase pollution and the attendant burdens on U.S. communities. Because it is undertaking these actions simultaneously, it must account for the combined impacts of these rollbacks to public health and welfare. To ignore those combined impacts in the baseline for the Proposed Rule is a "failure to consider an important aspect of the problem."[261]

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[256] *Conn. Light & Power v. NRC*, 673 F.2d 525, 530–31 (D.C. Cir. 1982).
[257] *See Home Box Office, Inc.,* 567 F.2d 9 at 35–36.
[258] *Conn. Light & Power* , 673 F.2d at 530–31; *see also Am. Radio Relay League, Inc. v. F.C.C.*, 524 F.3d 227, 240 (D.C. Cir. 2008) (APA section 553 "require[s] agencies to release for comment the technical studies and data or staff reports on which they rely during a rulemaking").
[259] EPA Press Release (June 11, 2025), https://www.epa.gov/newsreleases/epa-proposes-repeal-biden-harris-epa-regulations-power-plants-which-if-finalized-would.
[260] *See, e.g.,* U.S. Dept. of Energy, Order No. 202-24-3 (order preventing retirement of J.H. Campbell power plant in West Olive, MI), https://www.energy.gov/sites/default/files/2025-05/Midcontinent%20Independent%20System%20Operator%20%28MISO%29%20202%28c%29%20Order_1.pdf, *citing* 16 U.S.C. § 824a(c).
[261] *State Farm*, 463 U.S. at 42, 46–48, 51; *see, also Appalachian Power Co. v. EPA*, 251 F.3d 1026, 1034 (D.C. Cir. 2001) (finding arbitrary and capricious agency's failure to use IPM analysis it had conducted in its baseline without a reasoned explanation); *Ctr. for Auto Safety v. Peck*, 751 F.2d 1336, 1391 (D.C. Cir. 1985); *Mayo v. Jarvis*, 177 F. Supp. 3d 91, 138–39 (D.D.C. 2016); *accord S. Yuba River Citizens League v. Nat. Marine Fisheries Serv.*, 723 F. Supp. 2d

Failure to account for the combined effects of its simultaneous rollbacks prevents meaningful comment on agency reasoning and any other aspect of the basis for the proposed rule. Failure to take into account the combined effects of its rollbacks also means EPA cannot adequately consider an important aspect of the problem—one that affects the health and welfare of the American public.[262] EPA must ensure that when it estimates the additional pollutants from one rollback (*e.g.*, the rollback of greenhouse gas standards), it is taking account of the potential for greater utilization of polluting sources created by another rollback (i.e., this Proposal). And when it is considering the ability of States to attain National Ambient Air Quality Standards (for example, under the Good Neighbor Program), it must similarly take into account the effect of its rollbacks on the existence and utilization of polluting sources.

B. EPA has prejudged the outcome of its rulemaking

The EPA's decision to rescind MATS under Administrator Zeldin was not the product of reasoned agency decision-making, but rather the result of a predetermined agenda to dismantle critical environmental protections. From the outset of Administrator Zeldin's tenure, public statements, internal memoranda, and procedural shortcuts reveal a clear intent to reverse the MATS Rules irrespective of scientific evidence or stakeholder input. This predetermined course of action violated the Administrative Procedure Act's requirement that agency decisions be based on a fair consideration of relevant data and public comments.[263] The agency's failure to engage in genuine deliberation—opting instead for a foregone conclusion driven by ideological motives—renders the withdrawal arbitrary and capricious under established legal standards.

While the bar for prejudgment is high, an administrator's statements and actions may show he is "unable to consider meaningfully" the evidence presented in a rulemaking.[264] In such cases, "[a]llowing the public to submit comments to an agency that has already made its decision is no different from prohibiting comments altogether."[265] Where a senior political official definitively announced a "dramatic change" in the agency's position prior to the conclusion of administrative proceedings, "these comments … indicate[d] a prejudged political conclusion."[266]

1247, 1261 (E.D. Cal. 2010); *Defs. of Wildlife v. Babbitt*, 130 F. Supp. 2d 121, 130–31 (D.D.C. 2001).

[262] *See State Farm*, 463 U.S. at 42, 46–48, 51.

[263] *See Ass'n of Nat'l Advertisers v. Fed. Trade Comm'n*, 627 F.2d 1151, 1170 (D.C. Cir. 1979).

[264] *Id.* at 1171.

[265] *Nehemiah Corp. of Amer. v. Jackson*, 546 F. Supp. 2d 830, 847 (E.D. Cal. 2008).

[266] *Int'l Snowmobile Mfrs. Ass'n v. Norton*, 340 F. Supp. 2d 1249, 1260–61 (D. Wyo. 2004) (predetermined political decision to ban snowmobiles shown by statements that "there will be no future for these antiquated polluting vehicles in the National Park System").

Administrator Zeldin's heated, unequivocal statements promising dramatic departures from past EPA practice indicate a prejudged political conclusion. Zeldin characterized EPA's ostensible initiation of reconsideration proceedings as itself an immediate, dramatic change: "today is the greatest day of deregulation our nation has seen," "the greatest and most consequential day of deregulation in U.S. history".[267] The next day, his *Wall Street Journal* opinion piece declared, "Yesterday was the most consequential day of deregulation in American history." To characterize EPA's actions as deregulatory commits the agency to one direction: less stringent standards. But to characterize the initiation of reconsideration proceedings—before even the release of an NPRM—as the "greatest and most consequential day of deregulation in U.S. history"—commits EPA to an extreme scale of deregulation before any consideration of the public's input.

On March 12, 2025, the same day the agency moved to reconsider the MATS Rules, Administrator Zeldin described his deregulation agenda as "driving a dagger straight into the heart of the climate change religion to drive down cost of living for American families, unleash American energy…."[268] "That was the intended consequences [of the Biden EPA's power-plant regulations]," he declared, explicitly acknowledging that reversing environmental protections—including mercury safeguards—was deliberate, not accidental.

At a press conference, Administrator Zeldin emphasized that the action will not eliminate the MATS rule entirely, but roll back specific components, which he called "gratuitous requirements added by the Biden administration in 2024."[269] In his June announcement, he framed the rollback of MATS (alongside GHG standards) as a crucial step in combating overregulation and lowering costs: "Today is a historic day for the EPA… We are proposing to repeal Obama and Biden rules that have been criticized as regulating coal, oil and gas out of existence."[270]

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[267] EPA, Press Release (Mar. 12, 2025), https://www.epa.gov/newsreleases/epa-launches-biggest-deregulatory-action-us-history.

[268] *Id.*

[269] Matthew Glasser and Daniel Peck, *EPA proposes rolling back clean air rules for power plants: What to know*, ABC News (June 12, 2025), https://abcnews.go.com/US/epa-proposes-rolling-back-clean-air-rules-power/story?id=122772357.

[270] Leigh Krietsch Boerner, *EPA aims to roll back greenhouse gas and mercury emission rules*, Chemical and Engineering News (June 12, 2025), https://cen.acs.org/policy/EPA-aims-roll-back-greenhouse/103/web/2025/06.

C. EPA has not adequately considered reliance interests of States and Local Governments.

The EPA's decision to rescind MATS also fails to account for the significant reliance interests of states, municipalities, and utilities that have invested considerable resources in complying with and building upon the standards. For over a decade, jurisdictions across the country have adopted complementary measures to reduce mercury, arsenic, and other hazardous air pollutants, based on the expectation that federal protections under MATS would remain in force. The Supreme Court has repeatedly emphasized that when an agency changes course, it must "provide a more detailed justification when its prior policy has engendered serious reliance interests".[271] Yet, in its withdrawal of MATS, the EPA offered no serious consideration of these entrenched efforts or the economic and environmental disruption that would follow from undermining them. This omission renders the agency's action arbitrary and capricious under the Administrative Procedure Act.

Minnesota, for example, has long been a national leader in reducing mercury pollution and firmly relied on federal protections like MATS to reinforce its proactive policies. Since the early 1990s, the state enacted aggressive mercury laws—most notably a 2006 mandate requiring a 90% reduction in emissions from its largest coal-fired power plants, including Xcel's Becker and Boswell Units—years ahead of federal deadlines.[272] Minnesota rules further require coal-fired electric-generating units to meet strict mercury controls by 2018 and to continuously monitor emissions.[273] Additionally, Rochester Public Utilities' Silver Lake Plant installed mercury control mechanisms in 2009, in direct preparation for MATS compliance.[274] Municipalities and utilities across Minnesota—including Duluth, St. Paul, Cohasset, and Rochester—have built infrastructure, reporting systems, and community protections based on the expectation that federal standards would remain in place. By rescinding MATS without grappling with these reliance interests, the EPA acted arbitrarily and capriciously under the Administrative Procedure Act—failing the Supreme Court's requirement that a "more detailed justification" be provided when prior policies have engendered significant reliance.[275]

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[271] *Fox*, 556 U.S. at 515 (2009).
[272] Lorna Benson, *Deal reached on reducing mercury emissions*, MPR News (April 27, 2006), https://www.mprnews.org/story/2006/04/27/mercury.
[273] Minn. R. 7011.0561.
[274] Before the United States Senate Subcommittee on Clean Air and Nuclear Safety, "Oversight: Review of the Environmental Protection Agency's Mercury and Air Toxics Standards (MATS) for Power Plants," Testimony of Vickie Patton, General Counsel, Environmental Defense Fund, p.12 (March 20, 2012), *available at* https://www.edf.org/sites/default/files/EDF_VickiePatton_Senate_Testimony_Mercury_and_Air_Toxics_Standards_3-20-2012.pdf.
[275] *Fox,* 556 U.S. at 515.

D. The Agency must disclose, explain, and subject to public comment the use of artificial intelligence in the decision-making process.

"[I]n the informal rulemaking context, … the most critical factual material that is used to support the agency's position on review must have been made public *in the proceeding* and exposed to refutation."[276] Not only the substance of the agency's decision, but also the methods used to reach it, must be made available for public comment. Although agencies may utilize computer models—including artificial-intelligence models—in the course of decision-making, that use must be disclosed and subjected to comment. Among other things, "[w]hen an agency uses a computer model, it must explain the assumptions and methodology used in preparing the model and, if the methodology is challenged, must provide a complete analytic defense."[277]

The Proposal and accompanying documents that the Agency placed in its rulemaking docket neither assert nor, insofar as commenters have been able to discern to date, reveal any role of artificial intelligence or other computer models in the proposed rule's formulation. If, at any point during the rulemaking process, the agency used or will use artificial intelligence or other computer models, the Agency must disclose—and solicit comment on—why a model was used; which model was selected and why, whether, and how the model has been validated; all prompts or inputs to the model (and how and why those prompts or inputs were selected); and how the Agency has considered or may consider the model's outputs or other incidents in decision-making. If the outputs or other incidents of a computer program play a role in EPA's decision, then the program itself should be disclosed to commenters. In any instance where the program is not made available to commenters, or its results are not reproducible, the Agency must explain why the program's public availability or reproducibility is unnecessary to comply with the Clean Air Act, Information Quality Act, and other pertinent statutes, as well as applicable regulations, policies, and procedures concerning information management, information quality, and peer review. The Agency must disclose also any persons and entities not employed by the agency who developed, modified, provided access to, or used a computer program in the course of the Agency's decision-making process.

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[276] *Air Transp. Ass'n v. Fed. Aviation Admin.*, 169 F.3d 1, 7 (D.C. Cir. 1999).
[277] *U.S. Air Tour Ass'n v. Fed. Aviation Admin.*, 298 F.3d 997, 1008 (D.C. Cir. 2002) (quotations and citations omitted); *See also* Admin. Conf. of the U.S., Statement 20, Agency Use of Artificial Intelligence, 86 Fed. Reg. 6616 (Jan. 22, 2021).

V. The States and Local Governments oppose EPA's unlawful Proposal, which would weaken MATS regulations and increase exposure to HAPs in our jurisdictions.

For the reasons above, the States and Local Governments oppose EPA's Proposal to repeal the 2024 MATS Rule. Mercury and other HAPs emitted by power plants regulated under this rule continue to harm our citizens and our environment, and the proposed repeal would exacerbate these harms. Furthermore, EPA has ignored huge parts of this rulemaking record demonstrating that most power plants can easily comply with the 2024 MATS Rule, and in many cases already are not only complying but reporting emissions far below existing standards. These facts show that EPA's Proposal is arbitrary and capricious, and we urge the Agency to not adopt its Proposal.

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