February 5, 2025

Via Email

The Honorable Lee Zeldin
Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Ave. NW
Washington, DC 20460
Dear Administrator Zeldin:

Congratulations on your confirmation as the Administrator of the U.S. Environmental Protection Agency ("EPA"). Strong, thoughtful, and clear-eyed leadership is needed for EPA to fulfill its mission of protecting public health and the environment while promoting economic prosperity. Your longstanding commitment to public service equips you to be an exceptional EPA Administrator.

This letter is submitted on behalf of the Air Advocacy Coalition. The coalition is an ad-hoc group that comprises the American Chemistry Council, the American Coke and Coal Chemicals Institute, the American Forest & Paper Association, the American Fuel & Petrochemical Manufacturers, the American Iron and Steel Institute, the American Petroleum Institute, the American Wood Council, the Brick Industry Association, the Cement Kiln Recycling Coalition, the National Lime Association, and the U.S. Chamber of Commerce. The purpose of the Air Advocacy Coalition is to advocate for sensible and effective federal emissions standards under Sections 111 and 112 of the Clean Air Act ("CAA"). Coalition members employ millions of Americans in core domestic manufacturing sectors and contribute hundreds of billions of dollars to the national economy.

We write to offer our suggestions on the CAA § 112 air toxics program. Under that program, EPA is required to regulate emissions of nearly 200 hazardous air pollutants ("HAPs"). EPA does so primarily through a phased regulatory process. In the first phase, EPA sets technology-based emissions standards that require all sources in a given industry sector to achieve the level of emissions control attained by the better-controlled sources in that sector. Such standards are often called "maximum achievable control technology" standards, or "MACT" standards. In the second phase, within eight years after a MACT standard is issued, EPA must make a one-time determination of whether there is any remaining unacceptable risk to public health or the environment due to HAP emissions from the given sector. If unacceptable "residual risk" remains, EPA must adjust the MACT

standard to address that risk. EPA also is required at least every eight years to conduct a technology review of existing standards to determine if new emissions control developments warrant an update of the standards, considering cost and other factors.

Since enactment of those statutory requirements in 1990, EPA has issued dozens of MACT standards covering the breadth of American industry. EPA also has completed a residual risk review for virtually all of those standards and, when needed, imposed more stringent standards to reduce health risks. As a result, HAP emissions have plummeted, along with risks associated with those emissions. By all accounts, the program has been a great success.

But the regulatory momentum that has driven the air toxics program for the last three decades now threatens to push the program to the point where incrementally smaller reductions in emissions are exponentially more costly or technically infeasible. In recent years, EPA has issued additional air toxics standards without adequate attention to effectiveness, feasibility, or cost – turning a blind eye to whether further regulation is objectively needed or legally warranted. That approach puts the ability of American manufacturers to meet growing consumer demand at risk and jeopardizes the good paying jobs they support in a global marketplace where competitors do not face the same regulatory burdens.

A fundamental problem is EPA's refusal to consider all relevant factors – and applicable Supreme Court caselaw – when conducting mandatory periodic technology review of existing air toxics standards.[1] The D.C. Circuit instructed EPA that it must consider the need to conduct "gap filling" (i.e., to set standards for HAP emissions not regulated) when the Agency conducts periodic technology reviews.[2] But at the same time, Clean Air Act § 112(d)(6) requires EPA to revise a standard only "as necessary" – a broad decision-making criterion that necessarily requires consideration of cost. EPA has ignored that obligation by mistakenly interpreting the court decision as overriding a plain statutory directive. A rule that achieves no meaningful public health benefits and imposes significant costs can hardly be deemed "necessary." That surely is not the best interpretation of the law.[3]

Another example is the recent set of standards for commercial sterilizers, where EPA claimed discretionary authority to impose new, exceedingly stringent emissions

---

[1] Clean Air Act § 112(d)(6).
[2] *Louisiana Environmental Action Network v. EPA*, 955 F.3d 1088 (D.C. Cir. 2020).
[3] *Loper Bright Enters. v. Raimondo*, 144 S. Ct. 2244, 2263 (2024) (courts must ensure an agency adopts the "best reading" of the statute and engages in "reasoned decisionmaking" – the consideration of all relevant factors, including cost); *Michigan v. EPA*, 752 U.S. 743, 750, 752 (2015) (EPA was arbitrary in misconstruing "capacious" statutory authority to regulate as "appropriate and necessary" to prohibit the agency from considering the cost of regulation).

standards without due regard for the impacts on the ability to sterilize medical devices used to prevent infections in patients and administer medical treatments.[4] By EPA's own estimates, the tighter air standards will cost more than $125 million per cancer case avoided, but will reduce projected nationwide cancer incidence by only a fraction of a case per year. By any reasonable measure, that is not a necessary or effective regulation. Yet EPA forged ahead with a rule that risks disrupting supply chains and increasing costs for critical medical devices, instead of pursuing smart regulations that would have still achieved additional emissions reductions. EPA has taken similar actions in connection with regulation of the chemical manufacturing sector, threatening numerous supply chains and, indeed, just proposed other rules taking the same unreasonable and illegal approach.[5]

Similarly, in the recently revised standards for lime production, coke ovens, and coke oven batteries, EPA chose to impose onerous and costly new emissions standards despite its own scientific findings that the previously existing emissions standards already provided an ample margin of safety against risks to public health and the environment.[6] EPA also overstepped its statutory authority by establishing overly stringent limits and work practice standards that it claims are based on "new" developments in technology. However, those new standards are often not based on new developments or on technology that would work for those sectors. The rules will affect not just the industries covered by the rules, but also will add costs in the many industries that use the products manufactured by those industries.

Recent rules under the air toxics program have also been marked by an irrational insistence on rushing through new standards and other regulatory changes when the agency does not understand what it is regulating and even when doing so is highly inefficient. For example, EPA inexplicably bifurcated its risk and technology review of the Hazardous Waste Combustor standard. The Agency recently proposed a rule to remove a malfunction provision from the standard, while deferring other aspects of the risk and technology review for later action. The decision to rush one narrow revision instead of looking at the entire standard holistically makes for disjointed and poorly integrated rules.[7]

Also, as part of the ongoing risk and technology review for the Hazardous Waste Combustor standard, EPA is in the process of determining whether it should set emissions

---

[4] 89 Fed. Reg. 24090 (Apr. 5, 2024).
[5] https://www.epa.gov/system/files/documents/2024-12/pepo_proposed-rule-preamble.pdf
[6] *National Emission Standards for Hazardous Air Pollutants: Lime Manufacturing Plants Technology Review,* 89 Fed. Reg. 57738 (July 16, 2024); *National Emission Standards for Hazardous Air Pollutants for Coke Ovens: Pushing, Quenching, and Battery Stacks, and Coke Oven Batteries; Residual Risk and Technology Review, and Periodic Technology Review*, 89 Fed. Reg. 55684 (July 5, 2024).
[7] *National Emission Standards for Hazardous Air Pollutants From Hazardous Waste Combustors Malfunction and Electronic Reporting Amendments*, 89 Fed. Reg. 59867 (July 24, 2024).

standards for certain pollutants for which there are no known emissions control technologies. Time for additional testing to better understand the formation of these pollutants is crucial. Yet, EPA has been pushing forward in a rush to set technology-based standards for pollutants without a known control technology, resulting in standards that are impossible to meet by many affected facilities, threatening both cement production and management of hazardous wastes through energy recovery at cement facilities. These plants play a significant role in the implementation of our country's hazardous waste management program and capacity assurance. This includes EPA's Land Disposal Restrictions program, which is directed at reducing the quantities and effects of hazardous waste constituents that are land-based.

Unfortunately, those are not isolated examples. Just as industry has begun trying to reshore manufacturing and jobs, over the last several years EPA has made a concerted push in many cases to set ineffective and legally tenuous regulations that touch almost every corner of American industry (and a correspondingly large portion of the GDP) – from sourcing and processing of basic raw materials (such as production of taconite, coke, lime, and cement), to the production of commodity industrial products to energy production (combustion turbines, fossil steam units, industrial boilers), and to commercial and consumer products (paper, pulp, lumber, wood products, iron and steel). Disfavoring American industry in this fashion will drive production of essential energy, materials, and products overseas, without providing a countervailing environmental benefit that warrants this massive cost.

Furthermore, among the unprecedented slate of emissions standards are many where EPA unilaterally decided to "redo" the reviews that were completed as recently as 2020 under the prior Trump administration. In many cases, EPA has wrongly claimed it has found updated technologies where none actually exist. For example, EPA has imposed fenceline monitoring for certain source categories where the requisite monitoring technology has not yet been developed.[8]

As EPA Administrator, you have the opportunity to correct past regulatory overreach and put this program on a better path for the future – one that protects public health and the environment while promoting American prosperity. We respectfully suggest that action is quickly needed because of the looming compliance deadlines and pending litigation flowing from the numerous recent rules.

For example, as soon as April 2025 the steel industry will face material adverse economic impacts from three rules promulgated on aspects of the industry which impose

[8] *National Emission Standards for Hazardous Air Pollutants for Coke Ovens: Pushing, Quenching, and Battery Stacks, and Coke Oven Batteries; Residual Risk and Technology Review, and Periodic Technology Review*, 89 Fed. Reg. 55684 (July 5, 2024).

technically unachievable and economically infeasible requirements.[9] America's integrated steel industry is responsible for producing highly specified grades of steel for advanced manufacturing, national defense applications, and critical supply chains. This industry supports tens of thousands of good-paying, family-sustaining union jobs and countless additional quality jobs in the extensive steel-related supply chain. However, in all three rules, EPA analyses showed that previously adopted MACT standards already provide an ample margin of safety to protect public health and the environment. Despite these low-risk determinations, EPA proceeded beyond its authority under Section 112(d), while committing errors and omissions in establishing the new requirements which, if implemented, would degrade the competitiveness of our critical domestic steel sector and undermine neighboring communities through potential reduction of their tax base and jobs.

We know that you have many important and pressing priorities at EPA. We believe issuing smart regulations that enhance environmental stewardship while balancing economic factors should be a top priority.

We look forward to working with you and your team on this important endeavor.

Sincerely,

The Air Advocacy Coalition

cc: A. Szabo, EPA Office of the Administrator
J. Schwab, EPA Office of the Administrator
A. Tardif, EPA Office of Air and Radiation
A. Dominguez, EPA Office of Air and Radiation
P. Tsirigotis, EPA OAR OAQPS
P. Lassiter, EPA OAR OAQPS

[9] *Id.*; *National Emission Standards for Hazardous Air Pollutants: Taconite Iron Ore Processing,* 89 Fed. Reg. 16408 (March 6, 2024); *National Emission Standards for Hazardous Air Pollutants: Integrated Iron and Steel Manufacturing Facilities,* 89 Fed. Reg. 23,294 (April 3, 2024).