

A. EPA Has Not Established a Sufficient Basis for Tightening the fPM Limit.

Existing coal-fired EGUs currently can demonstrate compliance with the emission limits for non-Hg metal HAPs by meeting: (i) the individual emission limits for each of the 10 non-Hg metals; (ii) an emission standard for total non-Hg metals; or (iii) a surrogate fPM emission standard of 0.030 lb/MMBtu.¹³ EPA is proposing to eliminate the non-Hg HAP metals standards, leaving only the surrogate fPM standard. Further, EPA is proposing to tighten the surrogate fPM standard to 0.010 lb/MMBtu, which is comparable to the MATS new source standard of 0.09 lb/MWh fPM (equivalent to a new coal-fired EGU with a heat rate of 9.0 MMBtu/MWh).¹⁴ EPA also is soliciting comment on whether to revise the fPM standard to an even more stringent level of 0.006 lbs/MMBtu.¹⁵

EPA's proposal to tighten the fPM limit is based on its evaluation that "most-existing coal-fired EGUs are reporting fPM well below the current fPM emission limit of 3.0E-02 lb/MMBtu" and that "the fleet is achieving these performance levels at lower costs than assumed during promulgation of the original MATS fPM emission limit."¹⁶ EPA acknowledged that it did not identify any new practices, processes, or control technologies for non-Hg metal HAPs.¹⁷ For the reasons discussed below, this rationale is not a sufficient basis for tightening the fPM limit.

1. EPA exceeds its statutory authority in 42 U.S.C. § 7412(d)(6).

42 U.S.C. § 7412(d)(6) requires EPA to "review, and revise as necessary (taking into account *developments* in practices, processes, and control technologies) emission standards . . . every eight years."¹⁸ Among other considerations, EPA deems "[a]ny *improvements* in add-on control technology or other equipment (that were identified and considered during development of the original MACT [Maximum Achievable Control Technology] standards) that could result in additional emission reductions" as such "development" under § 7412(d).¹⁹ But EPA has identified no such "developments" or "improvements." Rather, EPA is revising the fPM limit because the Agency says it now has more information about the cost and performance of existing technology than it did when promulgating the original MATS rule.²⁰ According to EPA's evaluation of such information, existing controls are cheaper and perform better than anticipated, and as discussed below, EPA's evaluation is flawed.²¹

¹³ See Table 1, Emission Limits for New or Reconstructed EGUs, Subpart UUUUU, 40 C.F.R. Part 63.

¹⁴ 88 Fed. Reg. at 24,856.

¹⁵ *Id.* at 24,857.

¹⁶ *Id.* at 24,868.

¹⁷ *Id.* at 24,867-68.

¹⁸ 42 U.S.C. § 7412(d)(6) (emphasis added).

¹⁹ 88 Fed. Reg. at 24,863.

²⁰ See *id.* at 24,863 fn. 15. See also National Emission Standards for Hazardous Air Pollutants From Coal- and Oil-Fired Electric Utility Steam Generating Units and Standards of Performance for Fossil-Fuel-Fired Electric Utility, Industrial-Commercial-Institutional, and Small Industrial-Commercial-Institutional Steam Generating Units, 77 Fed. Reg. 9304 (Feb. 16, 2012).

²¹ See 88 Fed. Reg. at 24,867-68.