



April 11, 2022

The Honorable Michael Regan
Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Ave, NW
Washington, DC 20460

Re: Revocation of the 2020 Reconsideration, and Affirmation of the Appropriate and Necessary Supplemental Finding for EPA's Mercury and Air Toxics Standards

Dear Administrator Regan:

The Environmental Protection Agency (EPA or Agency) has proposed a *Revocation of the 2020 Reconsideration, and Affirmation of the Appropriate and Necessary Supplemental Finding for EPA's Mercury and Air Toxics Standards*. 87 Fed. Reg. 7,624 (Feb. 9, 2022). EPA's 2016 Supplemental Finding followed the Supreme Court's decision in *Michigan v. EPA*, which held that EPA must consider costs in evaluating whether it is appropriate and necessary to regulate EGUs. EPA is correct to restore the "appropriate and necessary" determination underpinning the Mercury and Air Toxics Standards (MATS) given the industry's full implementation of MATS. Such a restoration provides critical regulatory and business certainty to the industry regarding regulation under Clean Air Act (CAA or Act) section 112.

Driven by several factors—including customer demands, declining costs for renewable energy, technology developments, and federal and state regulatory obligations—the electric power industry is in the midst of a transition of its electric generating fleet that will continue over the next decade and beyond. Concurrent with this transition, electric companies, public power utilities, and electric cooperatives are making significant investments to make the energy grid smarter, cleaner, more dynamic, more flexible, and more secure in order to integrate and deliver

a balanced mix of central and distributed energy resources reliably and provide resilient electricity to customers.

Since MATS became effective in 2012, it is estimated that the owners and operators of coal- and oil-based electric generating units (EGUs) have spent more than \$18 billion to comply through the installation of new emission controls and the enhancement of existing controls. These capital investments into control technology were coupled with the retirement of significant amounts of existing EGU generating assets and the investment in new, cleaner, replacement generation. These actions have resulted in significantly reduced mercury as well as other hazardous and conventional air pollutants—and resulted in significant reductions in carbon dioxide emissions from the sector. Restoring the appropriate and necessary determination—which serves as the legal underpinning of MATS and is a unique statutory provision of no enduring precedential value¹—responds to the Supreme Court’s decision in *Michigan* that EPA must consider costs in evaluating whether it is “appropriate and necessary” to regulate and enables electric companies to remain focused on getting the energy we provide as clean as we can as fast as we can, while maintaining the reliability and affordability that our customers value.

EPA has also requested information regarding whether it should reevaluate its final decisions on the residual risk and technology review (RTR) under section 112 of the CAA. Should EPA move forward with any reconsideration of the RTR, it should ensure that any new standards are consistent with the ongoing transition of the power sector and allow for companies to make holistic decisions as they deploy additional clean energy resources. We therefore look forward to working with you on this issue as EPA continues to gather information about the performance of today’s generating fleet.

Sincerely,

The Edison Electric Institute
The American Public Power Association
The National Rural Electric Cooperative Association
The Class of '85 Regulatory Response Group
The U.S. Chamber of Commerce
The Large Public Power Council
The International Brotherhood of Electrical Workers
The International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers & Helpers

¹ CAA section 112(n)(1)(a) is a unique provision of the Act whose phrase “appropriate and necessary” exists nowhere else across the rest of the CAA or *all other* environmental statutes. EPA proposes several different rationales—including a traditional benefit-cost analysis and a novel “totality of circumstances” judgement-based approach for its restoration of the “appropriate and necessary” determination here. Whichever final rationale is chosen by the Agency, EPA’s decision to restore the “appropriate and necessary” determination will have no precedential value given the unique terms and narrow regulatory context of CAA section 112(n)(1)(a).

The Edison Electric Institute (EEI) is the association that represents all U.S. investor-owned electric companies. Our members provide electricity for about 220 million Americans, and operate in all 50 states and the District of Columbia. As a whole, the electric power industry supports more than 7 million jobs in communities across the United States. In addition to our U.S. members, EEI has more than 60 international electric companies, with operations in more than 90 countries, as International Members, and hundreds of industry suppliers and related organizations as Associate Members.

The American Public Power Association is the voice of not-for-profit, community-owned utilities that power 2,000 towns and cities nationwide. We represent public power before the federal government to protect the interests of the more than 49 million people that public power utilities serve, and the 96,000 people they employ. Our association advocates and advises on electricity policy, technology, trends, training, and operations. Our members strengthen their communities by providing superior service, engaging citizens, and instilling pride in community-owned power.

The National Rural Electric Cooperative Association (NRECA) is the national service organization for more than 900 not-for-profit electric utilities that provide electricity service to approximately 42 million consumers. NRECA members own and maintain 2.6 million miles, or 42 percent, of the nation's electric distribution lines and account for 11 percent of the total kilowatt-hours in the U.S. each year. With a commitment to contribute to the vitality and prosperity of the communities served by our members, electric cooperatives are dedicated to a healthy environment, building vibrant rural communities, and providing reliable and affordable electricity to our cooperative consumer.

The Class of '85 Regulatory Response Group is a voluntary ad hoc coalition of approximately 40 electric generating companies from around the country that has been actively involved in the development of Clean Air Act rules affecting the electric generating industry for over 30 years. The Class of '85 has written comments on all major stationary source regulations since the early 1990s, and members of the Class of '85 own and operate EGUs in approximately 35 states throughout the United States.

The U.S. Chamber of Commerce is the world's largest business federation representing the interests of more than 3 million businesses of all sizes, sectors, and regions, as well as state and local chambers and industry associations. The Chamber is dedicated to promoting, protecting, and defending America's free enterprise system.

The Large Public Power Council (LPPC) is comprised of 27 of the nation's largest public power systems in 21 states from Washington to Florida and California to New York as well as the Commonwealth of Puerto Rico that serve 30 million Americans, about 10 percent of the U.S. population. LPPC members are locally governed and directly accountable to consumers. We are not-for-profit and committed to reliability, affordability, and environmental stewardship for the consumers and communities we serve. LPPC advocates for policies that allow public power systems to build infrastructure, invest in communities, and provide reliable service at affordable rates. LPPC member utilities own and operate more than 80,000 MW of generation and over

35,000 circuit miles of high-voltage transmission lines. Together, LPPC members control 90 percent of the public agency owned, non-federal transmission investment in the nation.

The International Brotherhood of Electrical Workers (IBEW) represents approximately 775,000 members and retirees who work in a wide variety of fields, including construction, utilities, manufacturing, telecommunications, broadcasting, railroads and government.

Established in 1880, the International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers & Helpers is a diverse union representing workers throughout the United States and Canada who are employed in industrial construction, maintenance and repair; ship building; manufacturing; railroads; cement; mining and related industries.