Congress of the United States
Washington, DC 20515

June 29, 2022

The Honorable Michael Regan
Administrator
Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, DC 20460

Dear Administrator Regan:

We appreciate the Environmental Protection Agency's (EPA) efforts to undo rollbacks enacted by the previous administration and applaud the agency's efforts to safeguard the health and well-being of all Americans. EPA has significant opportunities to use its existing authorities to slash harmful emissions and ensure that all Americans, no matter their race, ethnicity, or zip code, have access to clean air and clean water.

Low-income communities and communities of color are disproportionately impacted by poor air quality. According to the 2022 American Lung Association's "State of the Air" Report, people of color are over 60% more likely to live in a county with a failing grade for at least one pollutant and 3.6 times more likely to live in a county with failing grades for three pollutants.[1]

We write today to urge EPA to take the following executive actions that would have an immediate and meaningful positive impact on the health and well-being of all Americans.

Particulate Matter (PM)

In June 2021, EPA announced it would reconsider the Trump administration's decision to not strengthen the existing PM National Ambient Air Quality Standards (NAAQS). EPA's Clean Air Scientific Advisory Committee (CASAC) panel, which provides independent scientific advice, recently determined that an annual $PM_{2.5}$ (particulate matter 2.5 microns or less in width) standard between 8 and 10 micrograms per cubic meter ($\mu g/m^3$) and a 24-hour $PM_{2.5}$ standard between 25 and 30 $\mu g/m^3$ would be adequately protective of public health.[2]

Fine particulate matter, or soot, is extremely dangerous, and the 2022 American Lung Association's "State of the Air" Report found that over 63 million Americans experience unhealthy spikes in daily particle pollution, and more than 20 million Americans experience dangerous levels of particle pollution on a year-round basis.[3] Nearly 48,000 premature deaths are caused each year by $PM_{2.5}$, and particle pollution exposure causes a range of respiratory issues,

[1] "State of the Air", American Lung Association, https://www.lung.org/research/sota (April 2022).
[2] "Policy Assessment Updates for the PM NAAQS", 2021 CASAC PM Panel, https://casac.epa.gov/ords/sab/f?p=113:18:12403398443176:::RP,18:P18_ID:2607#report (October 2021).
[3] "State of the Air", American Lung Association, https://www.lung.org/research/sota (April 2022).

as well as is the cause of increased infant mortality, cardiovascular disease, asthma, diabetes, and other cognitive impairments.[4]

As you work on the proposed rule, we urge EPA to:

- Strengthen the annual $PM_{2.5}$ standard to no higher than 8 $\mu g/m^3$ and the 24-hour $PM_{2.5}$ standard to no higher than 25 $\mu g/m^3$, in line with the CASAC recommendation.
- Finalize the rule no later than Spring 2023.

Ozone

At least 122 million Americans live in communities with dangerous ozone pollution.[5] We are pleased that the EPA has initiated a process to reconsider the standard after the previous administration chose to ignore the scientific evidence and retain the outdated and unprotecting standard. The current standard of 70 parts per billion (ppb) does not provide an adequate margin of safety to protect public health.[6] Despite the evidence, on April 28, 2022, an EPA staff draft policy assessment was released recommending no changes to the existing standard.

We urge EPA to:

- Strengthen the primary standard to no higher than 60 ppb (the more protective end of the 2015 CASAC recommended range) and create a separate secondary standard using a biologically relevant form as directed by two court decisions.
- Complete its reconsideration and issue a final rule by the end of 2023.

Cross-State Air Pollution

In March 2022, EPA proposed a strong new transport rule that would tighten nitrogen oxide (NOx) emission limits from electric generating units and, for the first time ever, regulate many additional industries like cement, paper and pulp, and chemical manufacturers. This proposed Good Neighbor Plan would protect communities in downwind states who suffer from poor air quality by reducing pollution generated by facilities in 26 upwind states.

We urge EPA to:

- Avoid weakening the emissions limits or regulated industries as part of any final rule.
- Issue a final rule no later than February 2023 in time for the Summer 2023 ozone season.

Startup, Shutdown, Malfunction (SSM)

Startup, shutdown, and malfunction loopholes exist across Clean Air Act regulations and allow industrial facilities and power plants to emit huge quantities of harmful and toxic pollution, including soot, nitrous oxides, sulfur dioxide, acid gases, and other carcinogens and neurotoxins, into fenceline communities with no consequences. These illegal loopholes disproportionately affect communities of color and low-income communities, who often are not informed of the

[4] Ibid.
[5] Ibid.
[6] Ibid.

releases until days or weeks later, if ever. While the Obama administration established a SSM state implementation plan (SIP) rule in 2015 to remove states' exemptions for violations of air pollution limits, in 2020, the Trump administration withdrew this rule and issued a new rule explicitly allowing states like Texas, Iowa, and North Carolina to implement SSM SIPs with clear legal loopholes such as coverage exemptions "director's discretion" provisions that allow state air agency directors to ignore violations.[7] On September 30, 2021, EPA revoked Trump administration guidance that allowed these illegal SSM loopholes in state implementation plans (SIPs) and reinstated a 2015 policy ensuring all states have SIPs that require sources across the country to abide by air pollution rules during periods of SSM. EPA also committed to reconsider the Texas, Iowa, and North Carolina rollback rules that the Trump administration explicitly permitted in 2020 under its Withdrawal Rules.

In January 2022, EPA determined that 12 state and local air pollution control districts failed to submit SIPs that meet the standards of the 2015 policy to close all illegal SSM loopholes. EPA's January 2022 determination triggered a 24-month deadline for states to submit updated SIPs. If these are not approved by EPA, the agency would finalize Federal Implementation Plans addressing SSM provisions. For the states who did submit SIPs pursuant to the 2015 rule, EPA is also in the process of taking action on those submissions and is in the process of finalizing a consent decree with deadlines to act. Additionally, EPA has reissued a proposed rule from 2016 that would eliminate SSM loopholes found in the Title V operating permits program.

However, these loopholes still exist throughout regulations for sections 111 (new source performance standards) and 112 (air toxics) of the Clean Air Act. According to environmental nongovernmental organizations, loopholes exist for at least 97 industrial sectors that allow polluters to emit huge amounts of pollution with little to no consequences.

We urge EPA to:

- Quickly issue a new rulemaking to reverse the three Trump administration SIP call withdrawals in Texas, North Carolina, and Iowa, and include any other state with unlawful loopholes that were not addressed in the 2015 rule.
- Quickly address all SIPs within the proposed time frame and issue a final rule on the Title V loopholes without delay.
- Act expeditiously to close all remaining loopholes across regulations for sections 111 and 112 of the Clean Air Act.

Mercury and Air Toxic Standards

In February 2022, EPA began confirming the scientific and legal basis of the Mercury and Air Toxic Standards (MATS), which limit the emissions of mercury, arsenic, and other toxic pollutants from power plants. Specifically, EPA proposed reinstating the legal finding that it is "appropriate and necessary" (A&N) for the agency to regulate toxic emissions from power plants

[7] "Petition for Reconsideration and Rulemaking Addressing Startup, Shutdown, and Malfunction Loopholes in State Implementation Plans", Sierra Club, https://www.sierraclub.org/sites/www.sierraclub.org/files/Petition%20for%20Reconsideration%20and%20Rulemaking%20Addressing%20SSM%20Loopholes%20in%20SIPS%20&%20Exhibits_Final_04_12_2021.pdf (April 12, 2021).

under the Clean Air Act (CAA). The Agency also requested comment as to whether the standards should be strengthened.

MATS has a strong track record of reducing toxic air pollutants. By 2017, under MATS, mercury emissions from power plants were reduced by 86%, acid gas emissions were reduced by 96%, and non-mercury metal emissions were reduced by 81% compared to pre-MATS levels in 2010.[8]

We urge EPA to:

- Issue a final rule reinstating the A&N finding without delay by end of summer 2022.
- Strengthen the standards to reflect developments in pollution controls and avoid residual risks to public health.

Coal Ash

The Coal Combustion Residuals (CCR) rule provides national safety regulations for the management and disposal of ash from coal-fired power plants. In 2018, electric utilities were required to publicly report groundwater monitoring data. Almost all of them reported groundwater contamination with toxins above levels EPA deems safe for drinking water.

In January 2022, EPA took its first steps toward enforcement of the CCR rule when it proposed to deny requests by utilities to delay cleanup and closure of their leaking coal ash ponds (Part A applications). EPA is set to finalize these decisions requiring cleanup in early summer 2022, and. additional denials are expected by late summer 2022. In addition, EPA is expected to respond to requests by electric utilities for approval to use alternate liners at coal ash ponds by the end of the year. Finally, we understand that EPA may propose new regulations governing legacy ash ponds (i.e., ponds at closed coal plants).

We urge EPA to:

- Require that cleanup and closure of all coal ash sites be protective of the environment.
- Require that polluters remove coal ash contamination from groundwater when conducting corrective action.
- Propose new regulations governing legacy ash ponds and inactive landfills.

Lead and Copper Rules

In December 2021, EPA published the results of its review of the Leader and Copper Rule Revisions (LCRR). As a result of this review, EPA announced that it would begin developing a Lead and Copper Rule Improvements (LCRI) regulation to prevent lead exposure in drinking water.

As part of the LCRI, we urge EPA to:

[8] "EPA Reaffirms Scientific, Economic, and Legal Underpinnings of Limits on Toxic Emissions", U.S. Environmental Protection Agency, https://www.epa.gov/newsreleases/epa-reaffirms-scientific-economic-and-legal-underpinnings-limits-toxic-emissions (February 1, 2022).

- Mandate a full and equitable removal of lead service lines from all regulated public water systems across the country within 10 years at no cost to property owners.
- Set a Maximum Contaminant Level (MCL) for lead of no more than 5 ppb as measured at the tap. If the agency finds that an at-the-tap MCL is infeasible, EPA should issue a much stronger treatment technique.
- Increase lead testing in water systems to ensure compliance with relevant regulations, expand protections for people served by small systems, and use a "filter first" approach for daycares and schools.

Methane Standards

In the U.S., the oil and gas industry is the largest industrial source of methane emissions, emitting more methane than the total greenhouse gas emissions of 164 other countries combined.[9] Methane has a global warming potential nearly 80 times greater than carbon dioxide over 20 years, and human-caused emissions of methane currently represent one-third of all warming from greenhouse gases.[10]

In November 2021, EPA proposed updated methane standards for new and existing oil and gas operations. The rule is anticipated to reduce methane pollution by 41 million tons, smog- and soot-forming compounds by 12 million tons, and hazardous air toxins by 480,000 tons by 2035. We applaud EPA for offering a proposed rule with such impressive ambition. However, EPA must go further in its final rule to achieve a 65% reduction in methane pollution from all new and existing oil and gas operations by 2025.

We urge EPA to:

- Retain the proposal's zero-emission standard for all new and existing pneumatic controllers.
- Not provide an exemption from regular Leak Detection and Repair (LDAR) for wells with a potential to emit below three tons per year.
- Strengthen the final rule to prohibit routine flaring of associated gas at oil wells.
- Release the methane supplemental proposal that is expected in August without further delay.

Light-Duty Vehicles

Last December, EPA finalized updated light-duty vehicle greenhouse gas standards covering vehicles through Model Year (MY) 2026 and replacing weakened standards for many of these model years promulgated by the previous administration. While these standards incorporate modest expectations about the increase in zero emission electric vehicles (EVs), they assume a

[9] "U.S. to Sharply Cut Methane Pollution that Threatens the Climate and Public Health", U.S. Environmental Protection Agency, https://www.epa.gov/newsreleases/us-sharply-cut-methane-pollution-threatens-climate-and-public-health (November 2, 2021).
[10] Ibid.

trajectory below what automakers are publicly announcing that is not reflective of the hundreds of billions of dollars automakers are investing in the shift to EVs.

EPA has stated its plans to propose a rule by March of 2023 to limit greenhouse emissions from light-duty vehicles starting in MY 2027. However, between automaker EV commitments and investments, increased state-level ambition including California's Advanced Clean Cars II proposal, the multi-state adoption of Advanced Clean Cars I, and federal investments from the Infrastructure Investment and Jobs Act (IIJA) in electric vehicles and electric vehicle charging infrastructure, failing to act expeditiously on ambitious light-duty standards federally would represent a missed opportunity.

We urge EPA to:

- Highlight the urgency of further action on light-duty vehicles by proposing post-MY 2026 standards by September 2022 and finalizing them before the end of 2023.
- Develop light-duty vehicle standards that achieve at least a 60% reduction in greenhouse gas (GHG) emissions by MY 2030, compared to MY 2021.

Heavy-Duty Trucks

EPA has recognized that more than 13 million people (including 3.5 million children) live near major marine and inland ports or rail yards, and that these individuals are disproportionately low-income communities of color and susceptible to increased health risks from air pollution.[11] An additional 45 million individuals live within 300 feet of a highway or close to large distribution centers where diesel emissions are particularly dangerous.[12]

EPA must aggressively pursue decarbonization of the truck sector. While heavy-duty vehicles make up only 10% of all vehicles on the road in the U.S., they contribute 45% of the transportation sector's nitrogen oxide pollution, 57% of its fine particulate matter pollution, and 28% of global warming emissions.[13]

In August 2021, EPA announced its proposed heavy-duty vehicle requirements to limit greenhouse emissions and other harmful air pollutants from heavy-duty trucks. The first rulemaking, which we hope will be finalized in 2022, will apply to heavy-duty vehicles starting in MY 2027.

We urge EPA to promulgate a final rule that:

- Provides pollution reduction levels that are at least as protective as the reductions codified in California's recent Heavy-Duty Omnibus Rule. This means, at a minimum,

[11] "Regulatory Impact Analysis: Control of Emissions of Air Pollution from Locomotive Engines and Marine Compression Ignition Engines Less than 30 Liters Per Cylinder", U.S. Environmental Protection Agency, https://nepis.epa.gov/Exe/ZyPDF.cgi/P10024CN.PDF?Dockey=P10024CN.PDF (May 2008).
[12] "Research on Near Roadway and Other Near Source Air Pollution", U.S. Environmental Protection Agency, https://www.epa.gov/air-research/research-near-roadway-and-other-near-source-air-pollution (December 16, 2021).
[13] "Ready for Work", Union of Concerned Scientists, https://www.ucsusa.org/sites/default/files/2019-12/ReadyforWorkFullReport.pdf (December 2019).

EPA should meet California's Heavy-Duty Omnibus program by setting a standard that achieves a greater than 90% reduction in NOx emissions by 2027.

- Builds on the success of the Advanced Clean Trucks (ACT) rule adopted by six states, by setting standards reflecting substantial zero-emission deployment and which drive additional zero-emission deployment in light of current and rapidly increasing feasibility of zero-emissions technologies across a range of heavy-duty applications, putting the U.S. on track for all new truck sales to be zero-emission by 2035.
- Offers a unified national program that will provide needed equity and ensure cleaner air for all communities.

Greenhouse Gas Pollutants

Section 111 of the CAA directs EPA to identify "air pollution which may reasonably be anticipated to endanger public health or welfare"—known as the "endangerment finding"—and to list categories of industrial sources that the Administrator finds cause or contribute significantly to that pollution.[14] Once EPA lists a source category, Section 111(b) of the CAA directs EPA to set maximum emissions levels for certain pollutants for new and modified facilities. Once EPA has set emission guidelines for existing sources under CAA Section 111(b), Section 111(d) requires states to develop plans that establish performance standards for existing sources in their jurisdiction.[15]

In 2015, under the Obama administration, EPA set national performance standards for new and modified fossil fuel-fired power plants under Section 111(b) and promulgated the Clean Power Plan (CPP), which established emissions guidelines for existing power plants under Section 111(d).[16] The CPP was litigated and never went into effect due to a stay issued by the Supreme Court in February 2016.

In 2019, under the Trump administration, EPA officially repealed the CPP and replaced it with their Affordable Clean Energy (ACE) rule. In reality, the ACE rule would only have required limited efficiency improvements at coal-fired power plants, which would have created perverse incentives for power plants to burn more fossil fuels like coal and may have resulted in higher overall climate pollution from the power sector. The Trump EPA's own analysis acknowledged the rule could cause up to 1,400 more deaths per year because of increased emissions.[17]

In January 2021, the D.C. Circuit invalidated the ACE rule. Even as the ACE rule was invalidated, EPA has no plans to enforce the CPP, explaining that the CPP is outdated and that it intends to draft a new rule on a clean slate. Even though neither the ACE rule nor the CPP is in effect, the Supreme Court agreed to review the D.C. Circuit's decision and held oral arguments

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[14] 42 U.S. Code § 7411

[15] "Congress's Delegation of "Major Questions": The Supreme Court's Review of EPA's Authority to Regulate Greenhouse Gas Emissions May Have Broad Impacts", Congressional Research Service, https://www.crs.gov/Reports/LSB10666?source=search&guid=aadd3b5cad7b45c592dd365a8f9e9111&index=0 (December 7, 2021).

[16] Ibid.

[17] Lisa Friedman, "Cost of New E.P.A. Coal Rules: Up to 1,400 More Deaths a Year," *New York Times*, August 21, 2018, https://www.nytimes.com/2018/08/21/climate/epa-coal-pollution-deaths.html.

in the case (*West Virginia v. EPA)* in February 2022 to consider EPA's authority to regulate emissions from power plants. The Court is expected to release its decision in the coming weeks.

While the case has significant implications for EPA's executive authorities, by enacting the Clean Air Act, Congress gave EPA broad authority to regulate air pollution like carbon dioxide (CO_2) and other greenhouse gases.

Even as EPA awaits the decision, we urge the agency to consider:

- Issuing CO_2 performance standards for new gas plants, which are directly binding on affected sources.
- Issuing CO_2 emission guidelines for existing coal and gas plants, and then requiring states to issue binding CO_2 performance standards, which must be "no less stringent" than EPA's guidelines, for individual units within their borders.

Nothing is more fundamental than ensuring access to clean air and clean water for all Americans. By taking these executive actions, EPA can save lives. We thank you for your consideration of these priorities and stand ready to work alongside you to safeguard the health and well-being of all Americans.

Sincerely,

Mike Levin
Member of Congress

Katie Porter
Member of Congress

Nanette Diaz Barragán
Member of Congress

Earl Blumenauer
Member of Congress

Eleanor Holmes Norton
Member of Congress

Kathy Castor
Member of Congress

Alan S. Lowenthal
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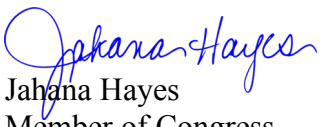

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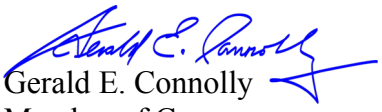

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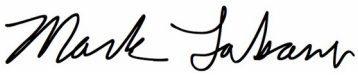

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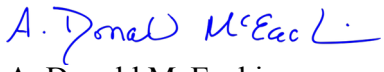

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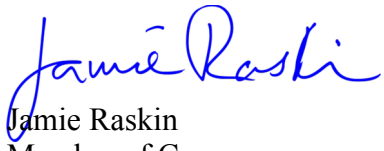

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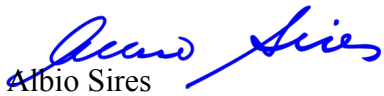

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