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EPN Comments on EPA's Repeal of Amendments to
National Emission Standards for Hazardous Air Pollutants:
Coal- and Oil-Fired Electric Utility Steam Generating Units (MATS Standards)
Docket No.: EPA-HQ-OAR-2018-0794
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The Environmental Protection Network (EPN) harnesses the expertise of more than 700 former Environmental Protection Agency (EPA) career staff and confirmation-level appointees from Democratic and Republican administrations to provide the unique perspective of former regulators and scientists with decades of historical knowledge and subject matter expertise.

EPN welcomes this opportunity to comment on this proposal. We believe it is seriously flawed for all the reasons detailed below and we urge EPA to withdraw the proposal.

Mercury Emissions Limits for Existing Lignite-burning Plants

In 2012, EPA finalized the Mercury and Air Toxics Standards (MATS) requiring coal- and oil-fired power plants to achieve standards limiting emissions of mercury, and other hazardous air pollutants (HAPs). Notably, lignite coal is incredibly dirty, releasing numerous harmful toxic pollutants when burned, and is an inefficient energy source — *more* lignite fuel must be burned to generate power compared to other types of coal, creating greater and more hazardous emissions. While MATS requires that most coal-fired plants need to control mercury emissions, at the time it was considered unreasonably expensive to control mercury from plants that burn lignite to the same degree that plants burning other types of coal are required. Therefore, EPA issued a mercury emissions limit of 4.0 pounds per trillion British thermal units of heat input (4.0 lb/TBtu), which is less stringent than the limit, 1.2 lb/TBtu, required to be met by plants burning other types of coal.

In 2024, the Biden administration, following a technology review of the MATS rule, updated it with a more stringent mercury standard for lignite burning plants that is consistent with the limit set for other coal plants. This decision was based on information that brominated activated carbon can be used to effectively control mercury emissions at these plants at less cost than EPA had previously thought, with no negative environmental impacts.

Now, EPA proposes to repeal the 1.2 lb/TBtu emission limit for lignite burning plants and restore the original MATS emissions limit of 4.0 lb/TBtu. It maintains that there are insufficient data demonstrating that lignite can meet a 1.2 lb/TBtu emission limit for the full range of boiler types and variable combinations of fuels. While the proposal does solicit comment on other technologies that could provide the basis for a 1.2 lb/TBtu emission limit,[1] it does not reflect consideration of whether an alternative standard between 1.2 and 4.0 lb/TBtu may be achievable across lignite-fired plants. *EPN, therefore, recommends before finalization of any rule repealing the 1.2 lb/TBtu limit that EPA evaluate available information regarding the range of these alternative emission limits and then issue a supplementary proposal for public comment.*

[1] 90 FR 25545

EPA proposes to remove the revised mercury standard for lignite-fired EGUs because the agency claims that not all units can achieve the revised, lower standard, in spite of the fact that many units can meet and are meeting it. This proposed relaxation is inconsistent with the Clean Air Act (CAA) section 112 and with the D.C. Circuit's decision in *Sierra Club v. EPA* (No. 03-1202, 2007). EPA does not explain how the less stringent standard it is proposing satisfies the criteria of section 112(d)(2).

Filterable Particle Emission Limits for Existing Coal-Fired Plants

The 2024 rule also set a more stringent standard for emissions of filterable particles (fPM) from all coal-fired plants, which serves as a surrogate for emission of non-mercury hazardous metals. Thus, the 2024 rule lowered the emission limit from 0.030 pounds per million British thermal units of heat input (lb/MMBtu) to 0.010 lb/MMBtu. Now EPA proposes to eliminate that more stringent requirement too, and restore the original MATS limit. It argues that the cost of meeting the lower fPM standard is not justified. EPA claims that the ratio of cost of meeting the standard to the benefits is far out of line for similar air toxic rules.

Again, section 112 does not authorize EPA to relax maximum achievable control technology (MACT) standards. In fact, section 112 was clearly adopted as a directive to EPA to ensure that the most current and best-performing pollution-reduction technologies are used by all sources in a source category, and there is nothing in section 112 that envisions backsliding by EPA or by polluting sources. Moreover, each rule stands on its own facts and its own record, so prior cost-effectiveness decisions by EPA are not relevant to this action. Finally, EPA is incorrect that section 112(d)(6) permits the agency to consider risk when determining whether an emissions standard should be revised under that provision. As the D.C. Circuit has recognized, section 112(f)(2) residual risk analysis and section 112(d)(6)'s technology review requirement represent "two distinct" analyses.[2] EPA may not import consideration of risk from a different statutory provision into its analysis of available technologies when determining whether to revise an emissions standard under section 112(d)(6).

fPM Emissions with Continuous Emissions Monitors (CEMS) for Coal- and Oil-fired Plants

In addition, the 2024 rule required that all of the regulated plants monitor fPM emissions with continuous emissions monitors (CEMs), which are considered best practice, to ensure that the standards would be met. In this proposal the requirement is to be removed. EPA argues that the cost of the continuous monitoring is out of line with the benefit.

On the contrary, as EPA demonstrated in promulgating the fPM CEMs requirements in 2024, CEMs will provide the invaluable benefit of helping to ensure compliance, and, therefore, the achievement of the full measure of fPM emissions reductions:

- PM CEMS confer significant benefits, including increased transparency regarding emissions performance for sources, regulators, and the surrounding communities; and real-time identification of when control technologies are not performing as expected, allowing for quicker repairs. Updated information on the costs for quarterly performance testing compared to the costs of PM CEMS and the measurement capabilities of PM CEMS, as well as the many benefits of using PM CEMS, the

[2] *Nat'l. Ass'n. for Surface Finishing v. EPA* (No. 12-1459, 2016).

benefits amply justify any incremental cost of CEMs.

- As the EPA itself stated when finalizing the CEMs requirements in 2024, "the transparency provided by PM CEMS and the increased ability to quickly detect and correct potential control or operational problems using PM CEMS furthers Congress's goal to ensure that emission reductions are consistently maintained and makes PM CEMS the best choice for this rule's compliance monitoring for all EGUs."[3]
- EPA also found that "over 80 percent of EGUs using PM CEMS for compliance purposes have already been able to achieve and are reporting and certifying consistent achievement of fPM rates below 0.010 lb/MMBtu,"[4] which refutes any claim that neither the CEMs requirement nor the fPM emission standard are workable; in fact, the applications of CEMs to variable emissions rates alleviates sources' need to "overcomply" to meet the emissions standard as might be the case when they rely on stack testing. Notably, as EPA's proposal indicates, over a third of power plants today use CEMs.
- CEMs reinforce emissions reduction performance by ensuring transparency for communities and the public; just as in the case of CEMs requirements for NOx and SO2, the data recorded and reported by CEMs incentivize operators to ensure emissions control compliance on a continuous basis.

EPA's Residual Risk Assessment Did Not Account for Mercury Hotspots

EPA's 2020 Residual Risk Assessment[5] indicates that because of MATS, no coal- or oil-fired power plant results in exceedances of EPA's Oral Reference Dose (RfD) for methylmercury. But EPA's RfD for methylmercury is old, last updated in 2001, and more recent analysis leaves open the likelihood of human health effects occurring *below* the RfD. As noted in EPN's comments on the 2024 MATS RTR rule,[6] we recommend that EPA update the RfD.

As we pointed out in our comments on the 2024 rule, a team of researchers at Harvard recently mapped mercury deposition from power plants.[7] The researchers identified remaining mercury hotspots next to lignite burning power plants. In these areas the plants accounted for up to 8% of total mercury deposition. Assuming proportionality of deposition to fish concentrated, *it is reasonable to conclude that the deposition of mercury accounts for exposures of mercury that exceed the RFD for methylmercury for the most highly exposed persons. Most of these exposures are in North Dakota and Texas, home of most of the lignite burning power plants.* (We note that the Harvard study points out that there is a negative correlation between income and education level with mercury exposure.)

EPN recognizes that EPA's proposal results from a technology review and that the proposed standard is based only on technology considerations without consideration of risk. Thus, we are offering the above only

[3] 89 FR 38527
[4] 89 FR 38528
[5] 85 FR 31315, Residual Risk Assessment for the Coal- and Oil-Fired EGU Source Category in Support of the 2019 Risk and Technology Review Proposed Rule
[6] https://www.environmentalprotectionnetwork.org/wp-content/uploads/2023/06/EPN-comments-on-Review-of-MATS-RTR.pdf
[7] Sociodemographic Disparities in Mercury Exposure from United States Coal-Fired Power Plants, Mona Q. Dai, Benjamin M. Geyman, Xindi C. Hu, Colin P. Thackray, and Elsie M. Sunderland. Environmental Science & Technology Letters 5 June 2023, https://pubs.acs.org/doi/10.1021/acs.estlett.3c00216.

as informative information, not as the basis for proceeding.

Conclusion

In sum, EPN strongly supported the 2024 standards as they reflected what we had come to know about the capability, costs, and health benefits of control technologies at these facilities. Now EPA is proposing to ignore all that had been learned and jettison the improved standards. Doing so would be a willful failure to follow the requirements of the CAA and betray the factual record, with the result that the proposed rule is unsupportable and flawed from both public policy (protect public health) and legal perspectives.