UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

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OFFICE OF CONGRESSIONAL
AND INTERGOVERNMENTAL RELATIONS

The Honorable Diana DeGette
Chair
Subcommittee on Oversight and Investigations
Committee on Energy and Commerce
U.S. House of Representatives
Washington, D.C. 20515

Dear Madam Chair:

On behalf of the U.S. Environmental Protection Agency, I am writing in response to your letter dated January 28, 2019, to Administrator Andrew Wheeler, in which you sought information related to the Agency's work to address air pollution.

Over the past year, the Trump Administration has continued to deliver on its promises to the American public. Not only are the economic prospects of Americans brighter and improving by the day, but so are the environmental and public health conditions. Under President Trump, the United States is on a path to a stronger, safer, and cleaner future. We are proud of the work we are doing to address air pollution, within the lawful scope of the EPA's authority under the Clean Air Act. We expect virtually all of the EPA's recent Clean Air Act proposed and final actions would result in continued reductions of air pollution, including hazardous air pollutants, criteria pollutants like ozone and particulate matter, as well as greenhouse gases.

Many of the documents and information requested relate to a pending action by the Agency and are therefore deliberative and pre-decisional. Relevant decisional documents will be made publicly available in the administrative record at the time future final action is taken, to the extent required under the Clean Air Act and the Administrative Procedure Act, and we can supply the final version at that time.

With respect to the Mercury and Air Toxics Standard (MATS) rule, you should be aware that the EPA has not proposed to repeal or revise the existing Maximum Achievable Control Technology (MACT) standards that apply to hazardous air pollutants (HAPs), including mercury, emitted from fossil fuel-fired electric generating units (EGUs). You will therefore be pleased to learn that the EPA has not, as you stated, "recently released a proposal to weaken human health protections against mercury."

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On February 7, 2019, the EPA published in the *Federal Register* a proposed revised Supplemental Cost Finding for the Mercury and Air Toxics Standards, as well as the Clean Air Act required "risk and technology review." The EPA held a public hearing on the proposed National Emission Standards for Hazardous Air Pollutants: Coal- and Oil-Fired Electric Utility Steam Generating Units—Reconsideration of Supplemental Finding and Residual Risk and Technology Review (MATS proposed rule) on March 18, 2019, in Washington, DC and extended the comment period by nine days to April 17, 2019. The MATS proposed rule, were it to be finalized as proposed, leaves the existing mercury emission reduction standards and other requirements of the MATS rule in place.

The EPA's understanding of the human health impacts of mercury exposure and risks posed to the food supply chain are described and publicly available on the EPA website (https://www.epa.gov/mercury/health-effects-exposures-mercury), as well as in the MATS proposed rule (84 FR at 2677–2698). How someone's health may be affected by an exposure to mercury depends on a number of factors: the form of mercury (for example, methylmercury or elemental (metallic) mercury); the amount of mercury in the exposure; the age of the person exposed (the fetus is the most vulnerable); how long the exposure lasts; how the person is exposed—breathing, eating, skin contact, etc.; and the health of the person exposed. More current information on mercury emissions can also be found in the EPA's National Emissions Inventory, which is publicly available on the EPA website (https://www.epa.gov/air-emissions-inventories). The EPA has also compiled information on state, territorial, and tribal fish and shellfish advisories, which is publicly available on the EPA website (https://www.epa.gov/choose-fish-and-shellfish-wisely/fish-and-shellfish-advisories-and-safe-eating-guidelines).

It is the EPA`s understanding that numerous coal-fired units shut down in whole or in part because of the costs of MATS compliance. Of those that remain operational, certain units firing eastern bituminous coal refuse may have received extensions of state requirements until early 2019. The MATS proposed rule requested comment on several important issues related to these units.

Public information on MATS enforcement is available on the EPA website (https://www.epa.gov/enforcement/enforcement-response-policy-mercury-and-air-toxics-standard-mats). Evaluation of public health and economic impacts of MATS are included in the MATS proposed rule and its supporting documents. The Agency will include your letter among the many comments to consider as part of the rulemaking effort. For further information, enclosed is an accompanying factsheet and memorandum on compliance costs, hazardous air pollutant benefits, and ancillary co-pollutant benefits.

In the January 2018 memorandum entitled "Reclassification of Major Sources as Area Sources Under Section 112 of the Clean Air Act" (MM2A memorandum), the EPA explained that the Agency's so-called "once in/always in" (OI/AI) policy, which dated from 1995, was contrary to the plain language of the Clean Air Act. Prior to issuing the MM2A memorandum, the EPA had received input about the OI/AI policy from stakeholders, including input about the legal basis of the policy, in comments associated with several 2017 Executive Orders and in a docket for a 2007 EPA proposal to rescind the OI/AI policy. In that 2007 proposed rule, the EPA projected that rescinding the OI/AI policy would provide incentives that could result in an overall reduction in emissions. Documents informing the development of MM2A memorandum generally can be found at https://www.regulations.gov by searching for the dockets listed below:

- Docket ID: EPA-HQ-OAR-2004-0094 – EPA Proposed Rule: National Emission Standards for Hazardous Air Pollutants: General Provisions;
- Docket ID: EPA-HQ-OA-2017-0190 – Executive Order 13777, Enforcing the Regulatory Reform Agenda; and
- Docket ID: EPA-HQ-2017-001-0062 – Information Regarding the Impact of Federal Regulations on Domestic Manufacturing.

The EPA currently has underway a rulemaking to implement, through changes made to 40 C.F.R. Part 63, Subpart A, the reading of the statute discussed in the MM2A memorandum. The proposal is expected to be published in the *Federal Register* by mid-year. As part of that rulemaking process, we are preparing appropriate analyses, including expected emission consequences in support of the action, and will provide details about the length of the public comment period and location of any public hearing. The Agency looks forward to considering your comments as part of the rulemaking effort.

With respect to glider trucks, the EPA continues to seek an effective solution. The Agency is focusing on establishing an emission standard that is not predicated on the industry going out of business or substantially reducing economic growth potential, while also using the appropriate source of authority. Enclosed please find a set of documentation responsive to your request. We anticipate producing additional information and documentation as they become available.

As you may be aware, the Clean Air Scientific Advisory Committee (CASAC) is a seven-member committee, required under section 109 of the Clean Air Act, which provides critical advice related to National Ambient Air Quality Standards (NAAQS). The Agency believes the current CASAC has the experience and expertise needed to serve in this capacity as well as to complete the reviews for the particulate matter and ozone NAAQS. The chartered CASAC is filled with qualified, independent experts who have decades of experience working on ozone and particulate matter issues and a diverse

set of backgrounds in fields like toxicology, engineering, medicine, and atmospheric science. The EPA also has the ability to seek advice from other experts to assist CASAC as needed for these reviews.

Tasking the chartered CASAC with overseeing these reviews ensures the early engagement of the advisors who ultimately provide advice to the EPA, and this action is consistent with the Clean Air Act, regulations implementing the Federal Advisory Committee Act, and CASAC's charter. In May 2018, the EPA issued a memorandum outlining a "Back-to-Basics" process for NAAQS under the Clean Air Act. This memorandum ensures that the EPA and its independent science advisors follow a transparent, timely, and efficient process in reviewing and revising public health- and welfare-based NAAQS. Consistent with the memorandum, the EPA intends to finalize any necessary revisions to the ozone and particulate matter NAAQS by the end of 2020. The EPA welcomes feedback during all stages of these reviews from members of the scientific community and public. In addition to the "Back-to Basics" memorandum, enclosed please find a set of documentation responsive to your request.

Additionally, please note that portions of the responsive documents may contain internal deliberations and may contain attorney-client communications or attorney work product of an Executive Branch agency, the EPA, and, as such, raise a confidentiality interest We have added a header and footnote to these documents that reads "Deliberative or Privileged Document of the U.S. EPA; Disclosure Authorized Only to the House Committee on Energy and Commerce for Oversight Purposes." By the release of these documents to the Committee, the EPA does not waive these privileges and would consider such release as inadvertent disclosure.

The EPA respectfully requests that the Committee and staff protect the documents and the information contained in them from further dissemination. Should the Committee determine that its legislative mandate requires further distribution of this confidential information outside the Committee, we request that such need first be discussed with the EPA to help ensure the Executive Branch's confidentiality interests are protected to the fullest extent possible.

The EPA recognizes the importance of the Committee's need to obtain information necessary to perform its legitimate oversight functions and is committed to continuing to work with your staff on how best to accommodate the Committee's interests. We will continue to produce information responsive to your oversight inquiries on a rolling basis as it becomes available.

If you have further questions, you may contact me, or your staff may contact Travis Voyles in the EPA's Office of Congressional and Intergovernmental Relations at Voyles.Travis@epa.gov or (202) 564-6399.

Sincerely,

Troy M. Lyons
Associate Administrator

cc: The Honorable Brett Guthrie, Ranking Member