United States Senate
WASHINGTON, DC 20510

March 2, 2020

The Honorable Andrew Wheeler
Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue NW
Washington, D.C. 20460

RE: Document EPA-HQ-OAR-2018-0746

Dear Administrator Wheeler:

We write to raise concerns with the U.S. Environmental Protection Agency's (EPA) Notice of Proposed Rule Making (NPRM) on Miscellaneous Organic Chemical Manufacturing: National Emission Standards for Hazardous Air Pollutants (MON NESHAP).

As you know, EPA is required to review hazardous air pollutant regulations (HAPs) every eight years after issuing such standards. This review is supposed to ensure that rules are sufficiently protective and based on developments in health science and technology. Unfortunately, EPA routinely misses these deadlines and is now under court-order to update dozens of national emission standards for HAPs. Of all updates to HAPs EPA must conduct, the MON NESHAP is one of the most impactful; it regulates a large number of polluters and is of critical importance to environmental justice communities that EPA identifies as being disproportionately impacted by the pollution covered in this proposed rule. This disproportionate exposure led the National Environmental Justice Advisory Council to send EPA a letter on ethylene oxide that called for stronger protection from chemical plants in this rulemaking.[1]

EPA last issued standards for the MON NESHAP nearly seventeen years ago. Since then, the available science on the public health risk posed by these pollutants has matured, especially for children's health, as has technology's ability to mitigate emissions and monitor for pollution. It has also become clear how important it is for EPA to finally recognize and reduce the injustice of disproportionate toxic exposure based on race and income. That is why we believe that best available science and technology should be the foundation of this rule and why we are concerned this proposed rule fails to do enough to protect public health.

In our view, there are several problems with proposed rule that must be addressed before it is finalized. First, the proposal maintains a number of exemptions that allow industry to make uncontrolled releases of ethylene oxide and other toxic air pollutants through pressure relief devices and flares during malfunctions. We urge EPA to reject this policy in its final rule and require compliance with Clean Air Act standards even during periods of malfunction, as is

[1] National Environmental Justice Advisory Council Letter to EPA *available at* https://www.epa.gov/sites/production/files/2019-08/documents/nejac-letter-ethylene_oxide-may-3-2019-final.pdf

consistent with the decision in *Sierra Club vs. EPA*, 551 F.3d 1019 (D.C. Cir.2008). Communities need protection all the time, not just some of the time, and operations should not be exempted from pollution requirements during any type of malfunction. Instead, EPA must require facilities to prevent emissions through safer design, regular preventive maintenance and equipment upgrades and effective storm shutdown and startup planning as advised by the Chemical Safety Board.[2]

Second, in the proposed rule, EPA states that ethylene oxide releases pose an "unacceptable" public health threat, but the proposed rule would allow highly elevated risks of cancer to persist.[3] EPA estimates that the facilities covered under this proposed rule currently cause one new case of cancer every 2.5 years in exposed communities, and that there are approximately 2.9 million people exposed to such health risks. Under EPA's proposed rule, however, the remaining cancer risk is as high as 2,000-in-1 million from breathing air near a MON source, and 3,000-in-1 million from breathing near a MON facility. This value is twenty to thirty times as high as EPA's presumptive benchmark for 'acceptable' cancer risk of 100-in-1 million – which is already far too high. These outcomes are due to the fact that the proposed rule does not apply your Agency's own best available science when determining the level of pollution emission reductions required to protect public health, and makes several questionable assumptions when assessing risk to exposed individuals.

For example, EPA's proposal fails to include an accurate assessment of the cancer risk by taking the unprecedented approach of using a risk factor for cancer that is five times weaker than EPA's own science recommends.[4] Rather than adopting this proposed approach, EPA should apply the 2016 final, peer-reviewed Integrated Risk Information System cancer risk value and require further emission reductions to protect public health. Additionally, EPA estimates in the proposed rule that the acute health risk from short-term exposure to ethylene oxide for areas near these sources, known as a hazard quotient, is 7. That is seven times EPA's acceptable harm threshold of a hazard quotient of 1.[5]

If finalized as written, this proposed rule will leave some communities at cancer risk levels as high as 200 to 300-in-1 million, which is two to three times EPA's presumptive benchmark for 'acceptable' risk.[6] In our view, more must be done to protect public health because this approach will *still* leave some communities exposed to an intolerably high cancer risk. Failing to address

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[2] CSB Press Release on Arkema Final Report, published May 24, 2018, *available at* https://www.csb.gov/csb-releases-arkema-final-report/.

[3] Proposed MON Rule

[4] Proposed National Emission Standards for Hazardous Air Pollutants: Miscellaneous Organic Chemical Manufacturing Residual Risk and Technology Review, 84 Fed. Reg. 69,182, 69,213 (Dec. 17, 2019), [hereinafter Proposed MON Rule]. *Available at* https://www.federalregister.gov/documents/2019/12/17/2019-24573/national-emission-standards-for-hazardous-air-pollutants-miscellaneous-organic-chemical

[5] Table 4 showing that facility-wide risk comes in part from Synthetic Organic Chemical Manufacturing and Polyether Polyols Production sources. Proposed MON Rule

[6] Proposed MON Rule at 217-19.

this risk is inconsistent with the requirements of the Clean Air Act, which requires EPA to set limits to control all emitted hazardous air pollutants.[7]

Finally, we urge EPA to take stronger action to better monitor for and limit releases of pollution. EPA should include stronger leak detection and repair requirements in its proposed rule, as well as fence-line monitoring for ethylene oxide and other appropriate toxic air pollutants such as 1,3-butadiene, formaldehyde, and benzene. Monitoring is the only way to ensure that the control technology a facility is employing is reducing pollution as required under the Clean Air Act. Since 2015, EPA, local governments, and some facilities have already implemented effective fence-line monitoring for petroleum refineries and chemical plants. These developments represent important innovations that improve community understanding of emissions exposure and offer potential solutions for pollution reduction. Since 2015, EPA has had a regulatory monitoring protocol ready that it can and must apply here.

As written, the proposed rule is inadequate and EPA must take additional measures to fulfill its legal obligation and responsibility to protect public health, especially to protect the public from getting cancer, in the final rule. Although we applaud EPA for taking action on this long-awaited rule, without these critical changes, we are concerned that communities will not be confident public health is being protected to the full extent possible under, and required by, the law. This is especially true for communities of color and low-income communities, which EPA observes are disproportionately impacted by this rule.

Thank you for your consideration of these comments.

Sincerely,

Tammy Duckworth
United States Senator

Tom R. Carper
United States Senator

Cory A. Booker
United States Senator

Richard J. Durbin
United States Senator

[7] 42 U.S.C. §7401 et seq. (1970)

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