

Written Summary of Oral Comments of Earthjustice to the Office of Information and Regulatory Affairs, Office of Management and Budget

E.O. 12866 Meeting of October 29, 2019

Re: NESHAP: Coal- and Oil-Fired Electric Utility Steam Generating Units—  
Reconsideration of Supplemental Cost Finding and Residual Risk and Technology Review; Final Rule Stage

**Cost-Benefit Analysis.** Repeal of EPA’s finding that it is “appropriate and necessary” to limit hazardous air pollution from coal- and oil-fired power plants would make a mockery of sound cost-benefit analysis. First, EPA’s decision to discard or dramatically discount the massive benefits associated with the MATS rule’s reductions in particulate matter, including avoided heart attacks and strokes, hospitalizations, and premature deaths, is a transparent ploy to reach a pre-determined deregulatory result. EPA’s stated rationale is that these massive benefits are not the statutory purpose, and therefore should not be counted, but this is contrary to Circular A-4’s requirement that “[t]he same standards of information and analysis quality that apply to direct benefits and costs should be applied to ancillary benefits and countervailing risks.” It’s also at odds with EPA’s own cost-benefit handbook, which prescribes equal treatment of “all identifiable costs and benefits” and makes no distinction between intended and unintended effects. The bottom line is that it’s deeply irrational to refuse to take account of the known consequences of a governmental action merely because they’re unintended.

EPA claims that this decision should be based on a comparison of the hazardous air pollution (HAP)-related benefits of the standards versus compliance costs, but EPA hasn’t done its homework on the HAP benefits. EPA has never attempted to estimate the full HAP benefits of MATS, doesn’t know how large they are, and has no basis to conclude they are outweighed by the cost. EPA never did a full assessment of the HAP benefits under the Obama administration – because it wasn’t logically necessary to do so either in the rule or the RIA. Now that EPA has decided that everything comes down to HAP benefits versus costs, it is logically necessary to fully assess the HAP benefits. But EPA hasn’t done so. In fact, EPA expressly denies that this rulemaking involves any science.

**Peer review.** An assessment of the health and environmental benefits of reducing power plants’ hazardous air pollution is fundamentally and unavoidably a scientific assessment that requires scientific peer review. To conclude that the benefits of reducing HAP are outweighed by the compliance costs, EPA must determine what the HAP benefits are, and these range from reductions in neurodevelopmental disorders and cardiovascular disease to healthier fish and mammals, among many

others. Both OMB's peer review bulletin and EPA's own peer review manual require any assessment of these benefits to undergo peer review "before dissemination."

Science Advisory Board Chair Michael Honeycutt confirmed in August that this review is ongoing and predicted that a draft review would be released for public comment in late October. *See* E&E News article & email of Dr. Michael Honeycutt to the SAB, submitted to the docket. OMB must ensure that SAB has the opportunity to complete its review before EPA issues a final rule. Further, OMB's rules permit EPA to issue this rule without peer review only if the Administrator waives the requirement based on a compelling reason, such as an urgent public health need. EPA doesn't – and can't – claim any compelling need here. EPA claims this rulemaking has no practical effect.

**Risk Analysis.** The other part of this rulemaking is the section 112(f) risk analysis, which asks whether unacceptable health risks remain after the major pollution reductions achieved by the rule. SAB is also reviewing the science supporting the section 112(f) risk analysis, and OMB should ensure that EPA does not issue any final determination that the health risks from power plants are acceptable before the SAB can complete its review. Two major problems with the risk review merit particular attention. First, with regard to organic hazardous air pollutants – like formaldehyde, benzene, and dioxins – EPA's risk analysis assumes that the entire power plant category emits 3 tons of organic HAP per year. But EPA's own data – including the very data sources it used in this rule – show that power plants actually emit more than 3000 tons of organic HAP each year. Second, EPA's risk analysis assigns zero risk to pollutants for which EPA lacks dose-response information, including manganese and hydrogen fluoride (cancer risk) and polycyclic organic matter (non-cancer risk). The health risk from exposure to these highly toxic pollutants does not depend on whether EPA has information, and the assumption that they pose zero risk is unsupported and arbitrary.

**In Closing.** The only possible real world effect of finalizing this rule would be to undermine the MATS standards, causing increases in highly toxic pollution, illness, and death, with virtually no countervailing benefit (because the costs are sunk). This rulemaking is dangerous and irresponsible, and EPA will only make things worse if it rushes a final decision before the completion of the SAB's scientific peer review.