

August 3, 2020

EPA Docket Center
Environmental Protection Agency, Mail Code 28221T
1200 Pennsylvania Ave, NW
Washington, D.C. 20460

Submitted to the docket via regulations.gov

Attn: EPA-HQ-OAR-2020-00044

RE: Increasing Consistency and Transparency in Considering Benefits and Costs in the Clean Air Act Rulemaking Process, 85 Fed. Reg. 35,612 (June 11, 2020)

Dear Administrator Wheeler:

On behalf of our millions of members and the communities we serve nationwide, the undersigned 15 public health, environmental justice, racial justice, and environmental organizations strongly urge EPA to withdraw this harmful and unnecessary proposal, which threatens to distort the agency's assessment of benefits and costs of all significant Clean Air Act protections going forward. If finalized, this proposal would undermine the agency's statutory mission to protect public health and would jeopardize clean air protections that save hundreds of thousands of lives.

As your recent remarks suggest,¹ this proposal could lead EPA to disregard a wide array of public health benefits when issuing protections under the Clean Air Act. The disastrous impacts of such a change were on full display earlier this year when EPA attacked the Mercury and Air Toxics Standards—reversing a legal finding that this rule is appropriate and necessary by dismissing public health benefits valued at \$37 billion to \$90 billion each year, including the annual avoidance of 11,000 premature deaths, 4,700 heart attacks, 130,000 asthma attacks, and 540,000 lost work days.² This blinkered approach to weighing the benefits of clean air protections would damage the health of families and communities across America and risk thousands of lives.

Nowhere does EPA's proposal acknowledge the immensely harmful impacts of restricting the agency's ability to issue public health and environmental protections that fully consider costs and benefits. In its most recent "State of the Air" report, the American Lung Association found that 150 million people live in counties in the United States with unhealthy ozone or particle

¹ Coral Davenport & Lisa Friedman, "Trump, Citing Pandemic, Moves to Weaken Two Key Environmental Protections," N.Y. Times (June 4, 2020), <https://www.nytimes.com/2020/06/04/climate/trump-environment-coronavirus.html>.

² EPA, *Regulatory Impact Analysis for the Final Mercury and Air Toxics Standards*, EPA-452/R-11-011, ES-3, ES-5—ES-6, Tables ES-3, ES-4 (Dec. 2011), <https://www.epa.gov/sites/production/files/2015-11/documents/matsriafinal.pdf>.

pollution—a nearly nine million-person increase over the previous year’s findings.³ A disproportionate share of this pollution burden is borne by Black, Hispanic, and low-income communities.⁴ The Covid-19 pandemic underscores the urgency of addressing these disparities: recent research from Harvard University found that those who live in U.S. regions with high levels of air pollution are more likely to die from Covid-19 if they contract the disease than those who live in areas with less air pollution.⁵ Yet in this proposal, the agency fails to evaluate the environmental justice impacts on communities of color and low-income communities, flouting its obligations under Executive Order 12,898 and perpetuating these unjust, disparate harms.

Nor has EPA identified a problem that this proposal would solve. EPA has long utilized (and is currently reviewing) Guidelines for Preparing Economic Analyses, and the proposal offers no compelling rationale for promulgating an overlapping regulation. The proposal also suggests, with absolutely no support, that the agency has historically underestimated costs or overestimated benefits. But the evidence shows that the benefits of Clean Air Act protections have, if anything, been underestimated⁶ and costs frequently overestimated.⁷ Even so, EPA has estimated that the Clean Air Act’s benefits between 1990 and 2020 would exceed costs by a factor of at least 30 to 1.⁸ A regulation that solves no problem, and proceeds from a fundamentally mistaken premise, is arbitrary and violates administrative law.

Like EPA’s equally unlawful and defective proposal to censor the agency’s use of health science, this Proposal would also undermine EPA’s ability to rely on the best available science when issuing clean air protections. Among other things, the Proposal would require EPA to disregard rigorous health studies based on unjustified criteria, impose arbitrary requirements that could lead EPA to underestimate the benefits of pollution reduction, and establish burdensome disclosure requirements that could constrict EPA’s use of essential models and data.

In addition to its many other flaws, this proposal cites no legitimate source of legal authority. It claims authority under Clean Air Act Section 301(a)(1), but that provision only empowers the Administrator to take actions necessary to carry out the functions of the Act. A regulation that compels EPA to devalue evidence of how future actions could save lives, prevent illness, and protect the environment is not necessary to implement the Clean Air Act. To the contrary, it undercuts the statute’s core objective of protecting the public health and welfare.

EPA’s unnecessary and unlawful proposal would distort future cost-benefit analyses for Clean Air Act rulemakings, imperiling human lives and public health. That EPA would pursue such an

³ American Lung Association, *State of the Air 2020* (Apr. 2020), <http://www.stateoftheair.org/key-findings/people-at-risk.html>.

⁴ Ilhab Mikati et al., *Disparities in Distribution of Particulate Matter Emission Sources by Race and Poverty Status*, 108 Am. J. Pub. Health 480 (Apr. 2018), <https://ajph.aphapublications.org/doi/abs/10.2105/AJPH.2017.304297?journalCode=ajph&>.

⁵ Xiao Wu et al., *Exposure to Air Pollution and COVID-19 Mortality in the United States: A Nationwide Cross-Sectional Study* (Apr. 2020), <https://projects.iq.harvard.edu/covid-pm>.

⁶ See e.g., EPA, *The Benefits and Costs of the Clean Air Act from 1990-2020*, 6-42, 7-12 (Apr. 2011), https://www.epa.gov/sites/production/files/2015-07/documents/fullreport_rev_a.pdf. See generally *id.* at Ch. 5-7.

⁷ See e.g., National Center for Environmental Economics, *Retrospective Study of the Costs of EPA Regulations: A Report of Four Case Studies*, 4-5 Table 1.1; 7, Textbox 1.1 (2014).

⁸ EPA, *supra* n.6, at 7-1.

action during a pandemic that has already taken more than 150,000 lives in the United States is unconscionable. We strongly urge EPA to withdraw this ill-conceived proposal.

Respectfully submitted,

CALSTART

Conservation Law Foundation

Environmental Defense Fund⁹

Environmental Integrity Project

Environmental Law & Policy Center

Environmental Protection Network

Green For All, a program of Dream Corps

Green Latinos

Institute for Policy Integrity

League of Conservation Voters

The Michael J. Fox Foundation for Parkinson's Research

Moms Clean Air Force

Natural Resources Defense Council

Southern Environmental Law Center

Union of Concerned Scientists

⁹ Questions about this submission may be addressed to Ben Levitan at (202) 572-3318 or blevitan@edf.org.