

Attorneys General of Massachusetts, Connecticut, Delaware, Illinois, Iowa, Maine, Maryland, Minnesota, Nevada, New Jersey, New York, North Carolina, Oregon, Rhode Island, Vermont, Virginia, and Washington, and the Cities of Chicago and New York

March 18, 2019

Via First Class Mail and Electronic Filing

Andrew R. Wheeler
Administrator
Environmental Protection Agency
Office of the Administrator Code 1101A
1200 Pennsylvania Avenue, NW
Washington, D.C. 20460

**Re: Request for Additional Public Hearings for Proposed Rule: *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*, 84 Fed. Reg. 2670 (Feb. 7, 2019)
Docket ID No. EPA-HQ-OAR-2018-0794**

Dear Administrator Wheeler:

The undersigned State Attorneys General and City Attorneys (together “States and Cities”) respectfully request that the Environmental Protection Agency (“EPA”) hold at least two additional public hearings on its February 7, 2019 proposal to reconsider its finding related to the Mercury and Air Toxics Standards, 84 Fed. Reg. 2670 (Feb. 7, 2019). EPA has currently committed to hold only one public hearing, in Washington, D.C. 84 Fed. Reg. 6739 (Feb. 28, 2019). Such a significant rulemaking requires more opportunity for public input. Given the risks to public health and the environment posed by the proposal—and the complex, region-specific issues it raises—EPA should hold multiple public hearings, particularly in geographic areas of the country most vulnerable to mercury and air toxics pollution from the power sector. We request that one of those additional hearings be held in Chicago to address the specific concerns of mercury pollution to the Great Lakes region, and at least one be held in the Northeast region (for instance, Boston or New York City), where mercury pollution, particularly from out-of-region sources, continues to be a serious environmental and public health problem.

Additional public hearings would allow more of our residents to attend in-person to provide input to EPA on the important matters at issue in the proposal. Mercury and other hazardous air pollution from power plants is a source of continuing and substantial harm to our residents’ health, our natural resources, and state and local economies. Power plants are the

Nation's largest source of mercury emissions,¹ which research shows are deposited into the local and regional environment, including water bodies.² Mercury causes birth defects and other health harms. Sensitive and exposed populations, such as children and subsistence fishing communities, are especially vulnerable to the health harms of mercury emissions. The primary exposure route for most Americans is eating mercury-contaminated fish. Mercury fish consumption advisories are in effect in all fifty states, reducing the profitability of commercial and recreational fisheries and our tourism industries, and harming our residents' recreational and cultural interests.³ Children are particularly vulnerable to mercury pollution and other hazardous air pollution from power plants, including emissions of mutagenic carcinogens and acid gases.

In 2012, EPA made a finding reaffirming that regulation of power-plant hazardous air emissions is appropriate and necessary under section 112 of the Clean Air Act, 42 U.S.C. § 7412(n)(1)(a). In the same action, EPA adopted the Mercury and Air Toxics Standards, which require coal- and oil-fired power plants nationwide to install emission-control technologies to reduce mercury and other toxic pollutants.⁴ The standards required most plants to comply by 2015, and those controls have been successfully reducing hazardous air pollution for over three years. Because the controls also reduce other pollutants, such as fine particles which cause heart and lung disease, the standards provide dual health benefits.

Now, EPA is proposing to reverse the critical finding that is the basis of the Mercury and Air Toxics Standards, on the grounds that the costs to industry outweigh the benefits to public health and the environment. *See* 84 Fed. Reg. at 2676. If finalized, the proposal would threaten the ongoing viability of the Mercury and Air Toxics Standards and their important health and environmental benefits, as well as the significant investments made by power plants across the country to comply with the standards. And without the standards, power-plant mercury emissions throughout the country would rise, increasing costly health risks to our residents—particularly those who consume fish caught in affected regions.

An important part of the rulemaking process is the opportunity for those who stand to be most directly affected by a proposed rulemaking to share their concerns in person with EPA. As you recognized in the “fishbowl memo” you issued to EPA staff shortly after becoming Acting Administrator, “EPA must provide for the fullest possible public participation in [its] decision making” and must “take affirmative steps to seek out the views of those who will be affected by the decisions, including . . . the governments of states, cities and towns.”⁵ Given the nationwide concern over mercury and other hazardous air pollution, the severe impacts our States and Cities

¹ EPA, 2014 National Emissions Inventory Data, <https://www.epa.gov/air-emissions-inventories/2014-national-emissions-inventory-nei-data>.

² *See, e.g.,* White et al., *Spatial Variability of Mercury Wet Deposition in Eastern Ohio: Summertime Meteorological Case Study Analysis of Local Source Influences*, 43 ENVIRON. SCI. TECHNOL. 4946–53 (2009).

³ *See* 65 Fed. Reg. 79,825, 79,827 (Dec. 20, 2000); EPA, 2011 NATIONAL LISTING OF FISH ADVISORIES 4 (2013), <https://www.epa.gov/sites/production/files/2015-06/documents/technical-factsheet-2011.pdf>.

⁴ 77 Fed. Reg. 9304, 9306 (Feb. 16, 2012); *see also* 81 Fed. Reg. 24,420 (Apr. 25, 2016) (reaffirming again EPA's “appropriate and necessary” finding).

⁵ *See* <https://www.epa.gov/sites/production/files/2018-08/documents/wheeler-messageontransparency-august022018.pdf> (last visited Mar. 15, 2019).

are experiencing from mercury and hazardous air emissions, and the potential significant consequences of the proposal, as described above, a single hearing is inadequate to afford the public a meaningful opportunity to comment. Moreover, the location of the single scheduled hearing in Washington, D.C. is virtually inaccessible to many of the people most impacted by hazardous air emissions from power plants. During the 2011 proposal phase for the Mercury and Air Toxics Standards, EPA held three hearings in Chicago, Philadelphia, and Atlanta. Residents of our States and Cities should at least be afforded equivalent opportunities to evaluate and weigh in on EPA's current proposal as they were in 2011.

Consistent with the requirements of the Clean Air Act, we request that the record for public comments be held open for 30 days after the conclusion of any additional public hearing. *See* 42 U.S.C. § 7607(d)(5)(iv).

If we can provide additional information that would be helpful in considering this request, or if you wish to discuss this request with us, please contact Jillian Riley, Assistant Attorney General, Massachusetts Attorney General's Office, at (617) 963-2424.

Sincerely,



MAURA HEALEY
Attorney General of Massachusetts



WILLIAM TONG
Attorney General of Connecticut



KATHLEEN JENNINGS
Attorney General of Delaware



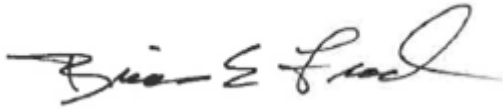
KWAME RAOUL
Attorney General of Illinois



TOM MILLER
Attorney General of Iowa



AARON FREY
Attorney General of Maine



BRIAN FROSH
Attorney General of Maryland



KEITH ELLISON
Attorney General of Minnesota



AARON D. FORD
Attorney General of Nevada



GURBIR S. GREWAL
Attorney General of New Jersey



LETITIA JAMES
Attorney General of New York



JOSHUA H. STEIN
Attorney General of North Carolina



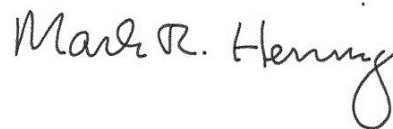
ELLEN F. ROSENBLUM
Attorney General of Oregon



PETER NERONHA
Attorney General of Rhode Island



THOMAS J. DONOVAN, JR.
Attorney General of Vermont



MARK R. HERRING
Attorney General of Virginia



BOB FERGUSON
Attorney General of Washington



EDWARD N. SISKEL
Corporation Counsel of the City of Chicago



ZACHARY CARTER
Corporation Counsel of New York City

Cc:

Via First Class Mail
U.S. Environmental Protection Agency
EPA Docket Center
Docket ID No. EPA-HQ-OAR-2018-0794
Mail Code 28221T
1200 Pennsylvania Avenue, NW
Washington, DC 20460