

August 11, 2025

Ms. Sarah Benish
Office of Air Quality Planning & Standards
U.S. Environmental Protection Agency
P.O. Box 12055
Research Triangle Park, NC 27711

Submitted via Regulations.gov

Re: National Emission Standards for Hazardous Air Pollutants: Coal- and Oil-Fired Electric Utility Steam Generating Units (Docket No. EPA-HQ-OAR-2018-0794)

Dear Ms. Benish,

The Chicago Environmental Justice Network (CEJN) respectfully submits the following comments in opposition to the Environmental Protection Agency's (EPA) proposed revisions to the Mercury and Air Toxics Standards (MATS) for coal- and oil-fired electric utility steam generating units.¹ The proposed rule would undo several specific portions of the 2024 National Emission Standards for Hazardous Air Pollutants (NESHAP): Coal- and Oil-Fired Electric Utility Steam Generating Units Review of the Residual Risk and Technology Review.

CEJN represents a coalition of community organizations and advocates dedicated to advancing environmental justice and protecting vulnerable populations from disproportionate environmental harms. CEJN's membership comprises residents and community groups predominantly located in Chicago and surrounding areas, many of whom belong to communities historically overburdened by pollution and socio-economic disadvantage.² CEJN's mission is to ensure that environmental policies equitably protect all communities, especially those burdened with the highest cumulative pollution and the most challenging social determinants of health.³ We advocate for regulatory approaches that recognize and address how environmental rollbacks disproportionately exacerbate harms in vulnerable communities.

We write to express our strong objection to the proposed rollbacks of the 2024 MATS, including the relaxation of filterable particulate matter limits, the weakening of mercury emission standards, and the elimination of mandatory continuous emissions monitoring requirements. CEJN urges EPA not to finalize the rule, which would unjustifiably increase toxic emissions and disproportionately harm the very communities the Clean Air Act is meant to protect.

CEJN' members have long suffered from the pollution that the types of facilities regulated by the MATS. The currently operating oil-fired power plants within city limits significantly affect our air quality

¹ *Mercury and Air Toxics Standards (MATS)*, U.S. Env'tl. Prot. Agency, <https://www.epa.gov/stationary-sources-air-pollution/mercury-and-air-toxics-standards>

² *Members*, Chi. Env'tl. Just. Network, <https://www.chicagoejn.org/members>

³ *About*, Chi. Env'tl. Just. Network, <https://www.chicagoejn.org/what-we-do>

and public health.⁴ The community is aware of the harms and burdens of coal- and oil-fired plants, which have caused asthma, bronchitis, emergency room visits, and premature deaths amongst Chicagoans.⁵ After an extensive period of advocacy from community members, led by one of CEJN's member organizations, LVEJO, in 2012 two of the nation's oldest and dirtiest coal power plants, which were poisoning residents for over a century, were finally shut down.⁶ Today, while no coal-fired power plants operate within Chicago's immediate vicinity, emissions from coal and oil-fired plants in the broader Midwest region continue to affect the quality of our health and air.⁷ Mercury and particulate matter emitted from these sources travel long distances, depositing toxins that pollute air, soil, and waterways in our communities.⁸ Mercury is also known to bioaccumulate in fish, endangering local communities that more frequently fish and consume fish from Chicago waterways.⁹ Mercury is a ubiquitous contaminant whose potent neurotoxicity poses a serious and potentially fatal threat to those that consume it.¹⁰ Atmospheric deposition is a "primary source of mercury in most aquatic ecosystems."¹¹

EPA justifies its proposed rollback of the 2024 MATS with two bases, asserting: 1) EPA possesses the administrative power of review; and 2) a flawed new Regulatory Impact Analysis (RIA), created in 2025, demonstrates that the changes are necessary.¹²

The rollbacks that would be accomplished through the Proposed Rule undermine both public health and social equity.¹³ EPA's June 2025 Proposed Rule would revise three key elements of the 2024 NESHAP:

1. Relaxation of Filterable Particulate Matter (fPM) Standards:

The proposed rule increases the fPM emission limit from 0.010 to 0.015 lb/MMBtu.¹⁴ This rollback would permit increased emissions of fine particulates, a known carrier of toxic metals

⁴ *Interactive Map of U.S. Power Plants*, Synapse Energy, <https://www.synapse-energy.com/tools/interactive-map-us-power-plants>

⁵ Jonathan I. Levy et al., *Using CALPUFF to Evaluate the Impacts of Power Plant Emissions in Illinois: Model Sensitivity and Implications*, 36 *Atmospheric Env't* 1063 (2002).

⁶ *Coal Plant Shutdown*, Little Village Env'tl. Just. Org. (LVEJO), <https://www.lvejo.org/coal-plant-shutdown>

⁷ Levy et al., *supra* note 5.

⁸ *What You Should Know About the Mercury and Air Toxics Standards*, Earthjustice, <https://earthjustice.org/feature/what-you-should-know-about-the-mercury-and-air-toxics-standards>

⁹ Chicago is one of the largest Urban Native communities in the United States, representing hundreds of tribal nations, many of which have cultural practices regarding fishing. (*A Guide to Indigenous People Who Call Chicago Home*, Indigenous Chi. <https://indigenous-chicago.org/storymap/a-guide-to-indigenous-people-who-call-chicago-home/>)

¹⁰ U.S. Geological Survey, *Mercury Contamination of Aquatic Environments – Implications for Ecological and Human Health*, <https://www.usgs.gov/water-science-school/science/mercury-contamination-aquatic-environments>

¹¹ *Id.*

¹² National Emission Standards for Hazardous Air Pollutants: Coal- and Oil-Fired Electric Utility Steam Generating Units – Review of the Residual Risk and Technology Review, 89 Fed. Reg. 51,742 (proposed June 17, 2025)(to be codified at 40 C.F.R. pt. 63), <https://govinfo.gov/content/pkg/FR-2025-06-17/pdf/2025-10992.pdf>

¹³ Compl. At 1, *Sierra Club v. EPA*, No. 25-cv-01852 (D.D.C. filed June 12, 2025), https://earthjustice.org/wp-content/uploads/2025/06/ecf-1_25-cv-01852_complaint_06-12-25.pdf;

¹⁴ U.S. Env'tl. Prot. Agency, *Regulatory Impact Analysis for the Proposed Repeal of Certain Revisions to the Mercury and Air Toxics Standards*, § III.A.2 (2025), <https://www.epa.gov/system/files/documents/2025-06/ria-for-mats-rtr-repeal-proposal.pdf> [hereinafter 2025 EPA RIA].

such as arsenic, nickel, and selenium, each linked to serious health risks including respiratory diseases and cancer.¹⁵

2. Weakening of Mercury Emission Standards:

The 2024 MATS established a uniform mercury standard aligned with the best available technology across all subcategories of electric utility steam generating units (EGUs) defined by EPA. There are eight total subcategories: three for coal-fired EGUs, one for integrated gasification combined cycle (IGCC) EGUs, one for solid oil-derived fuel-fired EGUs and three for liquid oil-fired EGUs.¹⁶ The proposed rule would revert to less stringent, subcategory-specific mercury limits, effectively allowing more mercury pollution to enter the environment, reversing years of progress in reducing this potent neurotoxin.¹⁷

3. Elimination of Continuous Emissions Monitoring Systems (CEMS):

The Proposed Rule seeks to remove the mandatory use of CEMS for pollutants regulated under MATS, replacing continuous, real-time data collection with intermittent or less rigorous monitoring. This change would significantly reduce the ability of EPA, the public, and the facilities themselves to detect emission spikes, enforce compliance, and protect communities from harmful exposures.¹⁸

Together, these proposed revisions represent a significant weakening of federal air pollution standards, undermining both public health protections and the technological progress achieved through prior EPA rulemakings. EPA attempts to justify its repeal of the 2024 revisions to the MATS using threefold reasoning.¹⁹ First, EPA asserts that the revised fPM limit of 0.010 pounds per million British thermal units is not cost effective, citing an estimated cost of approximately 2.3 million dollars per ton of particulate matter reduced.²⁰ The agency states that this alleged cost exceeds the typical thresholds determinative of cost effectiveness in past rulemakings.²¹ Second, EPA also argues that the uniform

¹⁵ U.S. Env'tl. Prot. Agency, *Fact Sheet: EPA's Final Rule to Strengthen and Update the Mercury and Air Toxics Standards for Power Plants* 4 (Apr. 2024), https://www.epa.gov/system/files/documents/2024-04/fact-sheet_mats-rtr-final_rule_2024.pdf; see also Am. Lung Ass'n, *State of the Air 2025* (2025), <https://www.lung.org/research/sota>; National Emission Standards for Hazardous Air Pollutants: Coal- and Oil-Fired Electric Utility Steam Generating Units – Revocation of the 2020 Reconsideration and Affirmation of the Appropriate and Necessary Supplemental Finding, 88 Fed. Reg. 13,956 (Mar. 6, 2023).

¹⁶ 40 C.F.R. § 63.10000(2)(b)(1) (2024), <https://www.federalregister.gov/d/2024-09148/p-159>.

¹⁷ *Id.*; see also Martin R. Risch & Donna M. Kenski, *Spatial Patterns and Temporal Changes in Atmospheric Mercury Deposition for the Midwestern USA, 2001-2016*, 9 *Atmosphere* 29 (2018), <https://doi.org/10.3390/atmos9010029>; Gabriel Filipelli, *How Poisonous Mercury Can Get from Coal-Fired Power Plants into the Fish You Eat – Trump's EPA Plans to Weaken Emissions Rules Meant to Lower the Risk*, *The Conversation* (Feb. 13, 2020), <https://theconversation.com/how-posionous-mercury-can-get-from-coal-fired-power-plants-into-the-fish-you-eat-trumps-epa-plans-to-weaken-emissions-rules-meant-to-lower-the-risk-176434>; *EPA Rollback of Mercury Limits Threatens Public Health*, *Earthjustice* (June 13, 2025), <https://earthjustice.org/press/2025/epa-rollback-of-mercury-limits-threatens-public-health>.

¹⁸ *Continuous Emission Monitoring Systems (CEMS)*, U.S. Env'tl. Prot. Agency, <https://www.epa.gov/emc/emc-continuous-emission-monitoring-systems>.

¹⁹ *2025 EPA RIA*, *supra* note 14, at 2.

²⁰ *Id.* at 9

²¹ *Id.* at 9-10.

mercury standard may not be technically achievable for all facilities, particularly lignite-fired units, which has an average higher mercury content.²² Third, EPA asserts that requiring CEMS for all affected units is not justified because the newly reassessed costs outweigh the reassessed benefits, particularly because many facilities currently rely on alternative monitoring methods, which EPA now asserts are sufficient for compliance assurance.²³

Our reasons for opposing the Proposed Rule fall into three categories. First, EPA has not provided a reasonable or evidence-based justification for reversing course on the 2024 MATS, rendering the Proposed Rule arbitrary and capricious. On the contrary, a proper reading of the CAA affirms that emissions standards must reflect the maximum degree of reduction achievable through the application of the best available emissions control technologies, taking into account cost and feasibility, with the central aim of protecting public health. Second, the reassessment of the cost-benefit analysis underlying the Proposed Rule is fundamentally flawed because it fails to fully account for the serious health and societal harms caused by increased exposure to hazardous air pollutants such as mercury and particulate matter, particularly in communities that already bear the heaviest environmental burdens. The compliance costs of coal and oil-fired EGUs cannot represent all societal costs of weaker pollution protections because they in no way include the environmental, public health, and economic costs to our communities and society at large from breathing the air these EGUs poison. EPA relies solely on the 2024 RIA as its baseline without updating to account for regulatory or market developments (despite significant changes, such as the Inflation Reduction Act and exemptions under Presidential Proclamation 10914).²⁴ Third, the rollback of continuous emissions monitoring and other inarguably feasible compliance measures will facilitate regulatory evasion and expose vulnerable populations to greater environmental and health risks, undermining the core public health purpose of the Clean Air Act.

I. Rolling Back MATS is Unnecessary and Unsupported by Scientific Research.

The Proposed Rule undermines public health protections and fails to satisfy the Clean Air Act's statutory requirements. Under § 112(d)(6) of the Clean Air Act, EPA must review emission standards periodically and revise them "as necessary."²⁵ The burden lies with EPA to demonstrate, based on the administrative record, that a revision is in fact necessary and appropriate.²⁶ This obligation cannot be satisfied by general policy disagreement, unsubstantiated cost concerns, or regulatory convenience.²⁷ It

²² *Id.* at 6-7; *see also* U.S. Env'tl. Prot. Agency, *Proposed Rule: Repeal of Certain Revisions to the Mercury and Air Toxics Standards*, EPA Docket No. EPA-HQ-OAR-2018-0794 (June 10, 2025), https://www.epa.gov/system/files/documents/2025-06/6716.4-01-oar_2060-aw68_matsrtrepeal_proposal_fr_20250610_signature-review-1.pdf.

²³ 2025 EPA RIA, *supra* note 14, at 7-8

²⁴ *Id.* at ES-2

²⁵ 42 U.S.C. § 7412(d)(6) (requiring EPA to review and revise emission standards "as necessary" at least every eight years).

²⁶ *See Motor Vehicle Mfrs. Ass'n of U.S., Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983) ("an agency changing its course... [must] supply a reasoned analysis"); *FCC v. Fox Television Stations, Inc.*, 556 U.S. 502, 515 (2009) (an agency must "show that there are good reasons" for a policy change).

²⁷ *See State Farm*, 463 U.S. at 52 (holding that an agency cannot simply discard prior factual findings without explanation).

requires a reasoned determination grounded in reliable scientific evidence and technological feasibility. Yet, EPA's justification for repealing the 2024 revisions to the MATS lacks substantial evidentiary support. The agency identifies no new data showing that the prior standards were unworkable or inappropriate. It proposes instead to retreat from scientifically-backed protections on the basis of assertions regarding cost-effectiveness and implementation burden that do not constitute a legally sufficient, evidence-based finding of necessity for the proposed changes.²⁸

A. Statutory and Regulatory Framework: Technology-Forcing Standards and the Requirement of Reasoned Decision-making

The Clean Air Act requires EPA to set and periodically review emissions standards for hazardous air pollutants based on the “maximum achievable control technology,” ensuring public health protection “with an ample margin of safety.”²⁹ The Clean Air Act also requires EPA to set technology-based standards that reflect the “best demonstrated technology” available to reduce hazardous air pollutants to protect public health.³⁰ The 2024 MATS embodied this mandate by adopting stringent emissions limits “taking into account” the “latest control technologies” and comprehensive continuous monitoring to ensure compliance.³¹ Any subsequent change to those standards under § 112(d)(6) must also meet that “as necessary” standard, which courts have interpreted to mean based on a reasoned and evidence-based justification tied to the administrative record.³²

EPA's Proposed Rule to roll back these standards is unsupported by any new evidence showing that the 2024 limits are unworkable or unjustified. The compliance date for the 2024 standards has been extended to 2029 and with four years left to comply, no evidence exists in the administrative record demonstrating that the 2024 requirements have imposed unreasonable burdens or caused systemic problems.³³ EPA also offers no new emissions testing data or industry feasibility reports to suggest that the continuous emissions monitoring system (CEMS) requirement or the uniform mercury standard are technically or economically infeasible.³⁴

Considering the lack of new data and evidence, EPA has offered no reason for its change in judgment. Under administrative law principles, EPA must provide a “reasonable basis” for any reversal of course in rulemaking, especially where changes reduce public health protections.³⁵ “Changes in agency priorities” are not a sufficient basis for course reversal in matters concerning public health and “toxic

²⁸ See *Clean Air Council v. Pruitt*, 862 F.3d 1, 9–10 (D.C. Cir. 2017) (vacating EPA's attempt to delay emissions standards because the agency lacked justification based on the administrative record).

²⁹ Clean Air Act §§ 112(d)(2), 42 U.S.C. § 7412(d)(2); §§ 112(f)(2).

³⁰ *Id.* at §§ 7412(d)(2), (f) (2018).

³¹ *Id.* at §§ 112(d)(6) (1963) (mandating that administrators “shall review, and revise as necessary (taking into account developments in practices, processes, and control technologies)).

³² *State Farm*, 463 U.S. 29.

³³ *National Emission Standards for Hazardous Air Pollutants: Coal- and Oil-Fired Electric Utility Steam Generating Units*, Proposed Rule, 90 Fed. Reg. 35,320 (June 17, 2025).

³⁴ 2025 EPA RIA, *supra* note 14, at 2–4 (noting that the repeal RIA relies entirely on prior modeling and baseline assumptions, without presenting new emissions test results or feasibility assessments to support proposed changes).

³⁵ *State Farm*, 463 U.S. at 60

materials or harmful physical agents.”³⁶ Moreover, judicial precedent cautions against agency “flip-flops” absent compelling justification and adequate explanation in the administrative record.³⁷ The current Proposed Rule fails these standards, as the agency has not demonstrated that the previous findings were erroneous or that the rollback serves statutory objectives. While the Proposed Rule asserts the notion that an administrative reassessment is within EPA’s power, it fails to provide any reasonable explanation for this reassessment. It follows that EPA’s proposed rescission of the 2024 MATS, lacking any new scientific evidence indicating that the existing protections are infeasible or unnecessary, does not satisfy the legal requirements of the Clean Air Act and Administrative Procedures Act. The rollback appears to be a policy-driven retreat from health-protective standards under the guise of compliance “burden” reduction, despite the absence of record evidence suggesting that compliance burdens associated with the 2024 standards are unattainable or unjustified.³⁸ Such a reversal contravenes EPA’s statutory duty to advance air quality protections based on the best available technology and undermines the Clean Air Act’s core objective of safeguarding public health from hazardous pollution.³⁹

B. Scientific Research on the Health and Environmental Impacts of Mercury and fPM Demonstrate the Necessity of Upholding the Current MATS, Particularly to Protect Vulnerable Communities like those in Chicago

A “rational connection between the facts found and the choices made [must be offered by the agency] and... whatever reason it offers, that reason cannot run counter to the evidence before the agency.”⁴⁰ The evidence before EPA irrefutably indicates that broad environmental protections in general, and the 2024 MATS in particular, are critical safeguards for communities facing: 1) the greatest pollution burdens; and 2) the most challenging social determinants of health.⁴¹

While there are no coal-fired plants in Chicago, regional transport of mercury and particulate matter from coal- and oil-fired plants across Illinois, Indiana, and other neighboring states results in elevated toxic exposures for many Chicago-area communities represented by CEJN.⁴² A few coal plants near Chicago that had upcoming scheduled retirement dates, such as the Baldwin Generating Plant in southern Illinois, have recently extended operations.⁴³ While financial analyses indicate that reopening fully decommissioned coal-fired units in the region would be economically unsound in general, there are

³⁶ *Int’l Union, United Mine Workers of Am. v. United States DOL*, 358 F.3d 40, 41-42 (D.C. Cir. 2004) (internal quotations omitted).

³⁷ *FCC v. Fox Television Stations*, 556 U.S. 502, 514 (2009).

³⁸ *National Emission Standards for Hazardous Air Pollutants: Coal- and Oil-Fired Electric Utility Steam Generating Units*, Proposed Rule, 90 Fed. Reg. 35,320 (June 17, 2025).

³⁹ Clean Air Act § 101(b), 42 U.S.C. § 7401(b).

⁴⁰ *New York v. United States HHS*, 414 F. Supp. 3d 475, 541 (S.D.N.Y. 2019) (internal quotations omitted).

⁴¹ About, Chi. Env’tl. Just. Network, <https://www.chicagoejn.org/what-we-do> (last visited July 8, 2025).

⁴² *Mercury Rules*, Ill. Env’t Prot. Agency, <https://epa.illinois.gov/topics/forms/air-permits/mercury-rules.html> (last visited July 8, 2025).

⁴³ *Reopening Closed Coal Plants Makes No Economic Sense*, Institute for Energy Econ. & Fin. Analysis (Apr. 10, 2025) (noting that of 102 recently closed U.S. coal units, “few, if any” appear viable candidates for restart), <https://ieefa.org/articles/reopening-closed-coal-plants-makes-no-economic-sense>.

a few plants that could be candidates for re-opening.⁴⁴ Meanwhile, any expansion or continuation of coal-fired generation, even at existing facilities, poses serious risks, discussed in detail below. The proximity to neighboring coal plants is especially pertinent because 50 to 75 percent of pollution from coal plants crosses state lines within 12 hours. In fact, many counties receive up to 90% of emissions from out-of-state sources.⁴⁵ The impacts are severe: Chicago's Cook County experiences 61 deaths per year related to coal-fired plant pollution, despite no coal plants operating within the county.⁴⁶

⁴⁴ *Id.*

⁴⁵ Matthew Wibbenmeyer, *Downwind and Out: The Strategic Dispersion of Power Plants and Their Pollution*, The CGO (Apr. 18, 2024), <https://www.thecgo.org/research/downwind-and-out-the-strategic-dispersion-of-power-plants-and-their-pollution>.

⁴⁶ Naveena Sadasivam, *Coal Plant Pollution Can Be Deadly — Even Hundreds of Miles Downwind*, Grist (Apr. 18, 2024), <https://grist.org/climate-energy/coal-plant-pollution-can-be-deadly-even-hundreds-of-miles-downwind>.

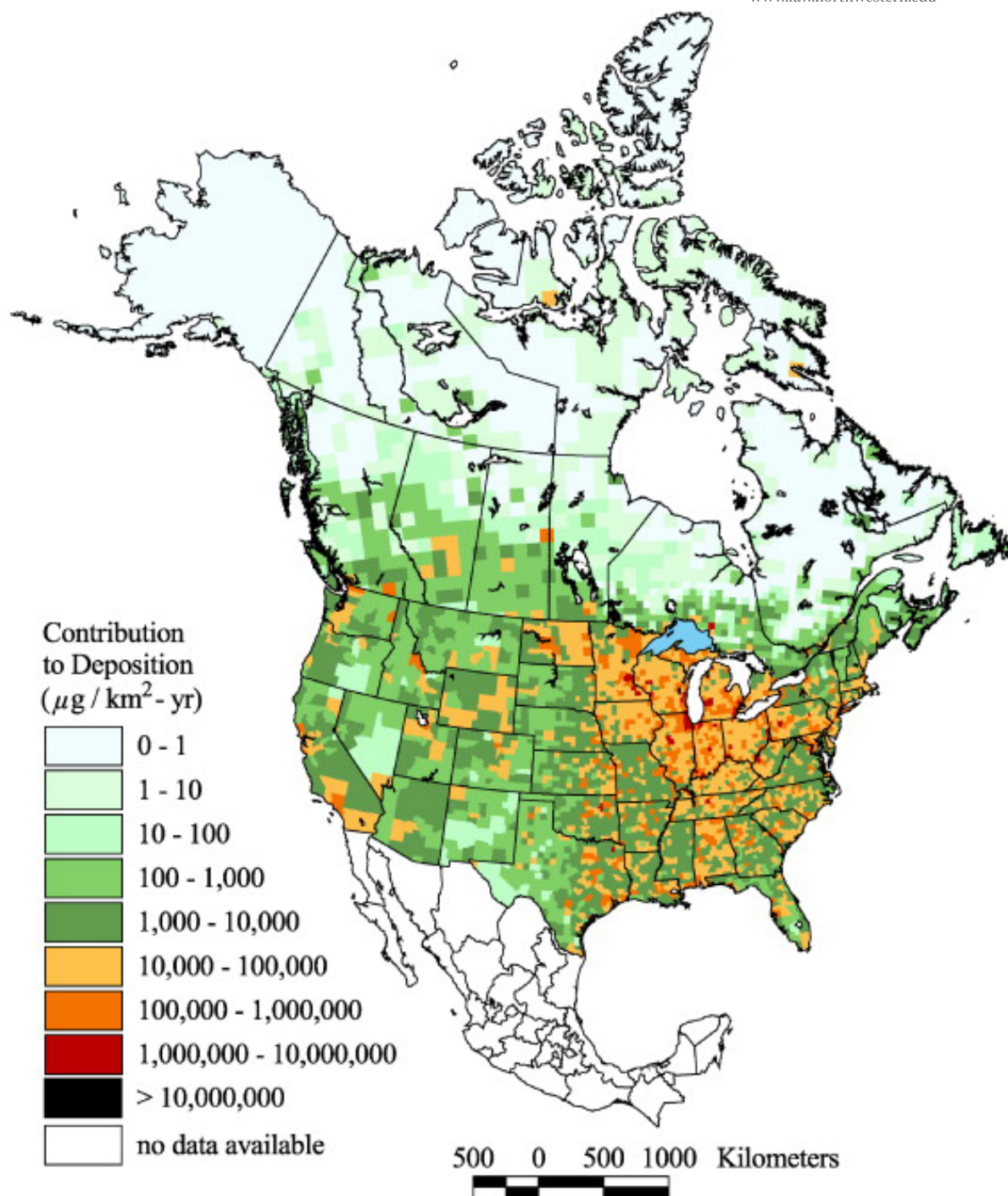


Figure 1: Geographic distribution of contributions to atmospheric deposition of mercury to Lake Superior ($\mu\text{g}/\text{km}^2\cdot\text{year}$); from “Modeling the atmospheric transport and deposition of mercury to the Great Lakes”

The pollutants at issue, mercury and fine particulate matter (fPM), have distinct but interconnected health impacts that disproportionately affect our communities. Both fPM and mercury have established health issues that affect vulnerable communities in Chicago, justifying the controls required under the 2024 MATS.

Fine Particulate Matter

Fine particulate matter consists of complex mixtures of metals, organic compounds, and other toxins, all contributing to respiratory and cardiovascular morbidity. PM_{2.5} concentrations are consistently higher in low-income urban neighborhoods, where baseline health conditions and access to care worsen pollution impacts.⁴⁷ Empirical studies link fPM exposure to increased asthma exacerbations and premature mortality, disproportionately affecting minority communities.⁴⁸

Particulate matter is a complex mixture, and fPM refers to the portion captured on a filter during sampling, typically consisting of solid particles and some liquid droplets. Controlling fPM is critical because these particles transport toxic metals including arsenic, nickel, and selenium, which cause cancer, respiratory illnesses, and other systemic harms.⁴⁹ The 2024 limit of 0.010 lb/MMBtu reflects the achievable performance of best available control technology (BACT), primarily fabric filters or electrostatic precipitators optimized for maximum efficiency.⁵⁰ The proposed relaxation to 0.015 lb/MMBtu would permit a 50% increase in particulate emissions, undermining progress in reducing community exposure.

Scientific air quality modeling and exposure studies corroborate that emissions from coal- and oil-fired power plants contribute significantly to regional mercury deposition and elevated particulate levels in Chicago-area communities, compounding existing health risks.⁵¹ The geographic patterns of pollutant deposition and measured environmental concentrations align with the locations of vulnerable communities, underscoring the disproportionate burden of pollution.⁵² This is substantiated by the overlap of high Social Vulnerability Index (SVI) scores, a measure created by the federal Centers for Disease

⁴⁷ *Disparities in the Impact of Air Pollution*, Am. Lung Ass'n, <https://www.lung.org/clean-air/outdoors/who-is-at-risk/disparities> (last visited July 8, 2025).

⁴⁸ *Id.*

⁴⁹ *State of the Air*, American Lung Ass'n, *supra* note 15

⁵⁰ *National Emission Standards for Hazardous Air Pollutants: Coal- and Oil-Fired Electric Utility Steam Generating Units—Final Rule*, 89 Fed. Reg. 38,508, 38,529–30 (May 7, 2024) (noting that the revised 0.010 lb/MMBtu filterable particulate matter standard is achievable with existing fabric filters or electrostatic precipitators).

⁵¹ L.E. Gratz et al., *Airborne Observations of Mercury Emissions from the Chicago/Gary Urban/Industrial Area during the 2013 NOMADSS Campaign*, 145 *Atmospheric Env't* 415 (2016), <https://doi.org/10.1016/j.atmosenv.2016.09.051>; see also Ahmad Bin Thaneya & Arpad Horvath, *Exploring Regional Fine Particulate Matter (PM_{2.5}) Exposure Reduction Pathways Using an Optimal Power Flow Model: The Case of the Illinois Power Grid*, 57 *Env'tl. Sci. & Technol.* 7989 (2023), <https://ncbi.nlm.nih.gov/pmc/articles/PMC10233793/>.

⁵² Chad Milando, Lei Huang & Stuart Batterman, *Trends in PM_{2.5} Emissions, Concentrations, and Apportionments in Detroit and Chicago*, 129 *Atmos. Env't* 197 (2016), <https://pmc.ncbi.nlm.nih.gov/articles/PMC5603263/>.

Control and Prevention (CDC), indicating vulnerable communities, and high PM pollution.⁵³ Over 60% of Chicago's industrial facilities, which contribute significantly to PM pollution, are located in neighborhoods with the highest Social Vulnerability Index (SVI) scores ($r^2 = 0.94$).⁵⁴

Mercury

Mercury is a well-established neurotoxin with no safe level of exposure.⁵⁵ It crosses the placental barrier and damages fetal brain development, causing lifelong cognitive and behavioral impairments.⁵⁶ Prenatal and early childhood exposure is associated with irreversible cognitive deficits, attention disorders, and delayed motor development.⁵⁷ The CDC and National Institutes of Health (NIH) emphasize the need to minimize mercury emissions to protect children's neurodevelopment, especially in vulnerable communities.⁵⁸ These neurodevelopmental harms are particularly damaging in communities with under-resourced schools and limited healthcare access, where children already face significant obstacles to educational achievement and developmental support.⁵⁹

Air quality models show that mercury emitted from coal- and oil-fired power plants in the Midwest travels hundreds of miles, depositing in water bodies and urban areas, including Chicago. Mercury is found in the sediment of the Chicago River and Lake Michigan, endangering and exposing the public to its potent neurotoxin.⁶⁰ The North and South Branches of the Chicago River were both categorized by the Illinois EPA as medium priority concerns for mercury contamination after failing to meet safe thresholds for fish consumption.⁶¹ Mercury is a persistent environmental contaminant that can bioaccumulate in food webs, exposing consumers to harmful concentrations of mercury.⁶² Food web and environmental exposure occurs when atmospheric mercury pollutants from coal- and oil-fired EGUs

⁵³ Tara Illgner & Nikita Lad, *Data to Improve Air Quality Environmental Justice Outcomes in South Chicago*, 10 *Frontiers in Public Health* 97798 (Sept. 6, 2022), <https://doi.org/10.3389/fpubh.2022.977948>.

⁵⁴ *Id.*

⁵⁵ U.S. EPA, *Mercury Study Report to Congress*, EPA-452/R-97-003 (1997)

⁵⁶ Frodi Debes et al., *Cognitive Deficits at Age 22 Years Associated with Prenatal Exposure to Methylmercury*, 74 *Cortex* 329 (2016), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4670285/>; *see also* Igor Prpić et al., *Prenatal Exposure to Low-Level Methylmercury Alters the Child's Fine Motor Skills at the Age of 18 Months*, 152 *Env't Res.* 419 (2016), <https://doi.org/10.1016/j.envres.2016.10.011>

⁵⁷ *Id.*

⁵⁸ Stephan Bose-O'Reilly et al., *Mercury Exposure and Children's Health*, 40 *Curr. Probs. Pediatric & Adolescent Health Care* 186 (2010), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3096006/>.

⁵⁹ Agency for Toxic Substances & Disease Registry, *Toxicological Profile for Mercury*, ch. on *Health Effects* (Mar. 1999), <https://www.ncbi.nlm.nih.gov/books/NBK611012/>.

⁶⁰ Ryan Moreau, *Comprehensive Guide to Water Quality in Chicago: Contaminants, Issues, and Water Filtration Solutions*, Wataverse (updated Feb. 13, 2025) <https://wataverse.org/chicago-water-quality-guide/>; Ill. Env'tl. Prot. Agency, *2024 Integrated Report and Section 303(d) List* (2024), <https://epa.illinois.gov/content/dam/soi/en/web/epa/topics/water-quality/watershed-management/tmdls/documents/2024-ir/2024> (fish consumption in particular was flagged for both areas as unsafe due to mercury contamination).

⁶¹ Ill. Env'tl. Prot. Agency, *Illinois 2024 NPDES Individual Permit Decision Document – Appendix 1 Sections A-1-50 & A-1-55* (Dec. 11, 2024), https://www.epa.gov/system/files/documents/2024-12/il_2024_decision-doc_appendix-1_20241211_508.pdf.

⁶² Risch & Kenski, *supra* note 17

enters the biosphere through wet depositions, or precipitation.⁶³ Mercury has “been the primary contaminant of concern in fish” harvested by tribal members.⁶⁴ Harvesting Walleye from inland lakes near Chicago, a historic tribal practice, has become a serious contamination concern due to high concentrations of mercury in Walleye and a large number of inland lakes in the Chicago proximity (see Figure 2).⁶⁵

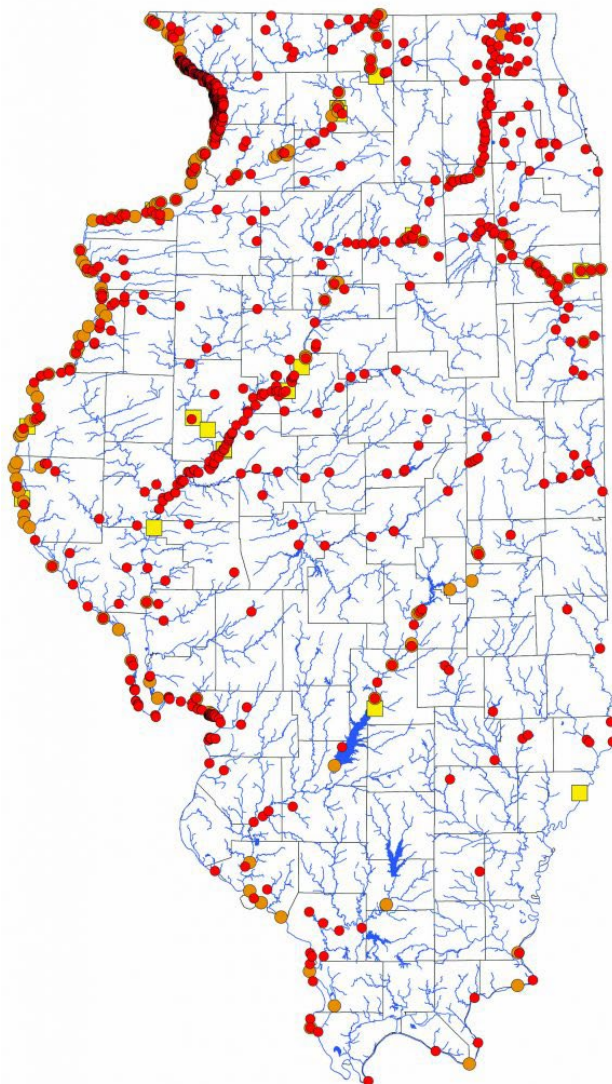


Figure 2: Walleye Habitats in the State of Illinois, from *An Atlas of Illinois Fishes: 150 Years of Change*

⁶³ *Id.*

⁶⁴ *Contaminants in Our Environment: Mercury*, Great Lakes Indian Fish & Wildlife Comm’n, <https://glifwc.org/stewardship/contaminants-our-environment#mercury> (last visited July 15, 2025).

⁶⁵ *Id.*; see also James L. Knight et al., *An Atlas of Illinois Fishes: 150 Years of Change* (Ill. Nat. Hist. Surv. ed., 2014).

Mercury emissions from coal combustion arise primarily in vapor phase and bind to particulate matter. Control technologies include activated carbon injection and scrubbers, capable of reducing emissions by over 90%.⁶⁶ The 2024 MATS harmonized mercury limits across subcategories based on demonstrated control capabilities, reflecting modern plant operations. Rollback to less stringent subcategory-specific limits ignores advances in technology and scientific understanding of mercury's dangers. Such a move risks increasing mercury deposition in sensitive ecosystems and vulnerable communities, as well as elevating human exposure through inhalation and contaminated fish consumption.⁶⁷ The cumulative environmental impacts extend beyond human health. Mercury deposition disrupts aquatic ecosystems and food chains, while particulates contribute to environmental degradation through acidification and reduced visibility.⁶⁸

II. EPA's Current Reassessment of the 2024 Regulatory Impact Analysis Ignores Critical Costs and Provides No Reasonable Explanation Reconsideration of the 2024 NESHAP.

Rollbacks of the 2024 MATS will worsen entrenched health disparities and environmental injustices. The re-assessment of the Regulatory Impact Analysis fails to fully account for these disproportionate impacts, resulting in regulatory decisions that undervalue the true costs borne by marginalized populations.⁶⁹ CEJN urges EPA to recognize and integrate these equity considerations in its maintenance of robust protection standards by refraining from proceeding with the current Proposed Rule.

EPA's 2025 reassessment of the 2024 Regulatory Impact Analysis underpinning the proposed MATS rollback substantially underestimates the true costs of increased pollution and overestimates purported economic savings. The 2024 rule was based on rigorous emissions modeling, health risk assessment, and timely cost-benefit calculations that incorporated advances in pollution control technologies.⁷⁰ EPA now seeks to reverse these standards, using the exact same 2024 data to come to an opposite conclusion in 2025 without identifying any concrete failures in the 2024 RIA's analytical foundation. The agency's new approach employs outdated assumptions and neglects significant health, environmental, and social costs. There are three key flaws in the 2025 RIA's cost-benefit analysis: 1) it ignores nonmonetized costs from the harmful effects of mercury and fPM; 2) it neglects the steep cost and

⁶⁶ Industrial Coal Ash Coalition, *Technical Briefing for EPA on Mercury Control Related to ELG* (Mar. 2019), <https://icac.com/wp-content/uploads/2024/06/Technical-Briefing-for-EPA-on-Mercury-Control-Related-to-ELG.March-2019.pdf>.

⁶⁷ Risch & Kenski, *supra* note 17

⁶⁸ U.S. Env'tl. Prot. Agency, *Biden-Harris Administration Finalizes Suite of Standards to Reduce Pollution from Fossil Fuel-Fired Power Plants* (Apr. 25, 2024), <https://www.epa.gov/newsreleases/biden-harris-administration-finalizes-suite-standards-reduce-pollution-fossil-fuel>.

⁶⁹ Environmental Organizations Challenge Trump's Mercury Rule Pass for Coal Plants, *Law360* (July 15, 2025), <https://www.law360.com/articles/2352935/enviro-orgs-challenge-trump-s-mercury-rule-pass-for-coal-plants>; U.S. Env'tl. Prot. Agency, *Regulatory Impact Analysis for the Final National Emission Standards for Hazardous Air Pollutants: Coal- and Oil-Fired Electric Utility Steam Generating Units Review of the Residual Risk and Technology Review* (Apr. 2024), <https://www.epa.gov/system/files/documents/2024-04/2024-mats-rtr-final-ria-final.pdf> [herein after 2024 EPA RIA]

⁷⁰ *Id.*

disproportionate burden low-income communities will face under the proposed rollback; and 3) it grossly overestimates the economic benefit rollbacks might deliver based on conjecture.

First, the analysis largely omits or discounts non-quantifiable harms, particularly neurological damage in children caused by mercury exposure. The Proposed Rule's RIA fails to monetize or otherwise adequately account for the long-term societal costs of neurodevelopmental harm from mercury and respiratory diseases from particulate matter.⁷¹ If anything, the figures from the both the 2024 and 2025 RIAs underestimate the severe costs of neurological damage on children. Although mercury's neurotoxicity leads to lifelong cognitive deficits, reduced IQ, and lost productivity, EPA's cost models assign minimal monetary value to these outcomes or exclude them entirely due to difficulties in precise quantification.⁷² This problem has persisted and worsened throughout multiple RIAs, including the 2024 RIA which only minimally mentions neurodevelopment – though does still recognize the “measurable IQ loss” associated with mercury contamination.⁷³ In contrast, the 2025 RIA compounds the trending neglect of this serious public health issue. It mentions the term “neurodevelopment” only once, and in passing, failing to consider entirely child IQ loss as a serious cost to society.⁷⁴ The RIA falls short of accounting for the inept miscalculation of ignoring the cost of child IQ diminishment. This omission results in an incomplete and misleading assessment of benefits.

Second, the analysis fails to consider the disproportionate burden of mercury and PM pollution borne by low-income communities. Cost-benefit frameworks often assume a “one size fits all” valuation of health benefits, ignoring that the same pollutant level can cause more severe health and social consequences in communities facing systemic disadvantages.⁷⁵ The 2025 RIA admits that “compliance costs reported in this RIA are not social costs,” after which the RIA proceeds to “use compliance costs as a proxy for social costs” regardless.⁷⁶ Children in under-resourced schools, for example, suffer greater educational and developmental harms from neurotoxic exposure than their counterparts in well-resourced communities, amplifying lifetime costs beyond standard monetary valuations.⁷⁷ These greater harms are amplified by a lack of reliable healthcare, which delays diagnosis and intervention of neurodevelopmental

⁷¹ Earthjustice, *What You Should Know About the Mercury and Air Toxics Standards*, supra note 8

⁷² U.S. Envtl. Prot. Agency, *Regulatory Impact Analysis for the Final Mercury and Air Toxics Standards* at ES-1 (Dec. 2011), <https://www.epa.gov/sites/default/files/2015-11/documents/matsriafinal.pdf>. (EPA's 2011 MATS Regulatory Impact Analysis (RIA) quantified and monetized avoided IQ loss in children from freshwater recreational anglers by estimating annual benefits at just \$4 to \$6 million. The 2011 RIA explicitly recognized that these monetary values represented only a “small subset” of mercury benefits and that “a whole host of ‘important’ mercury-related benefits . . . were not quantifiable.”)

⁷³ 2024 EPA RIA, supra note 69, at 4-4

⁷⁴ 2025 EPA RIA, supra note 14, at 3-2.

⁷⁵ Lisa A. Robinson & James K. Hammitt, *Skills of the Trade: Valuing Health Risk Reductions in Benefit-Cost Analysis*, 4 J. Benefit-Cost Anal. 107 (2013), <https://www.cambridge.org/core/journals/journal-of-benefit-cost-analysis/article/skills-of-the-trade-valuing-health-risk-reductions-in-benefit-cost-analysis/69DC1C4F8DD9430A99701CA729351167>.

⁷⁶ 2025 EPA RIA, supra note 14 at ES-3

⁷⁷ Devon C. Payne-Sturges et al., *Disparities in Toxic Chemical Exposures and Associated Neurodevelopmental Outcomes*, 131 Environ. Health Perspectives 96001, <https://ehp.niehs.nih.gov/doi/10.1289/EHP11750> (2023) (finding that socioeconomic disadvantage frequently modifies health responses to neurotoxic exposures including mercury).

issues, and poor nutrition, which exacerbates the toxicity of pollutants like mercury and PM.⁷⁸ Similarly, respiratory diseases exacerbated by particulate matter impose heavier burdens on populations with limited access to healthcare and higher baseline disease prevalence.⁷⁹ A lack of reliable access to physicians and compounded economic stressors again contributes to these health problems, too (see Figure 3).⁸⁰

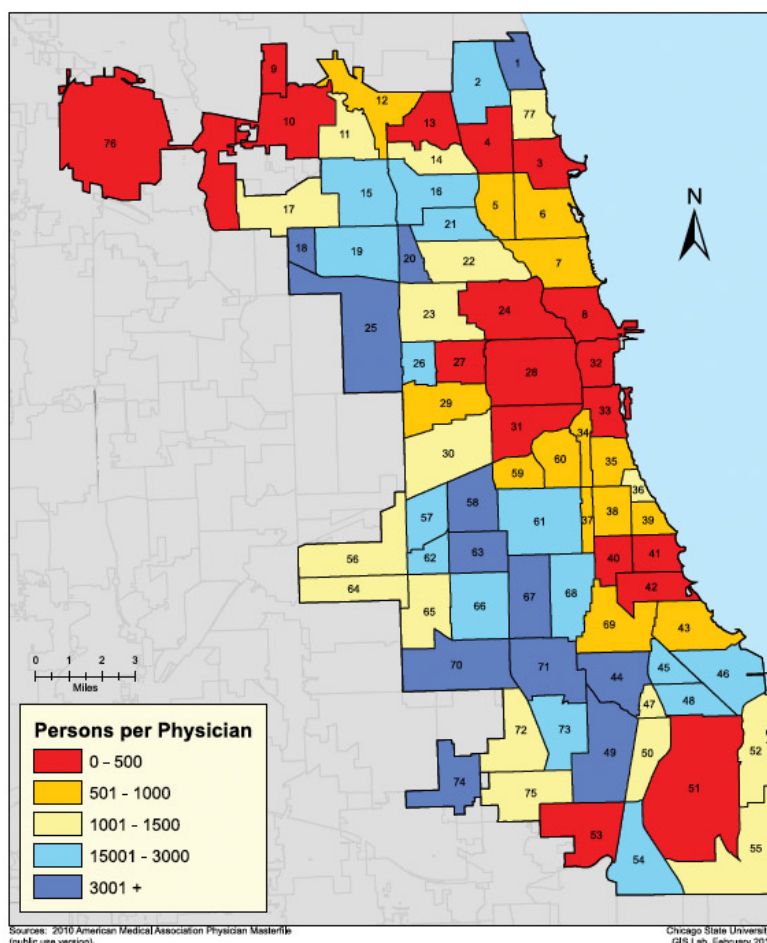


Figure 3: Persons per Physician in Chicago, Illinois, from “Health Care, Access, and Outcomes In Chicago (and Throughout Chicago)”

⁷⁸ Devon C. Payne-Sturges et al., *Disparities in Toxic Chemical Exposures and Associated Neurodevelopmental Outcomes: A Scoping Review and Systemic Evidence Map of the Epidemiological Literature*, 131 *Envtl. Health Persp.* 96001 (2023), <https://doi.org/10.1289/EHP11750>; see also Allison Eatough, *Review Finds Deep Disparities in Childhood Exposure to Neurotoxins*, *Medical Xpress* (Sept. 27, 2023), <https://medicalxpress.com/news/2023-09-deep-disparities-childhood-exposure-neurotoxins.html>

⁷⁹ *Id.*

⁸⁰ Chicago Magazine, *Health Care, Access, and Outcomes in Chicago (and Throughout Chicago)*, (last visited July 15, 2025), <https://www.chicagomag.com/city-life/april-2012/health-care-and-access-in-chicago-and-throughout-chicago/>; Illinois Dep’t of Human Servs., *Health Outcomes Disparities Report 2024* (Mar. 28, 2024), https://witnessslips.ilga.gov/reports/ReportsSubmitted/4867RSGAEmail10314RSGAAttachDHS_ILHealthDisparitiesReport_Memo%2020240328.pdf.

For example, asthma hospitalizations in Chicago's low-income neighborhoods remain significantly higher than city averages, directly correlating with higher particulate pollution exposures.⁸¹ Additionally, mercury contamination poses particular risks to communities that rely on subsistence fishing for cultural and dietary needs, further exacerbating environmental injustices.⁸² These factors call for a refined equity-centered valuation approach, which EPA's current analysis fails to adopt. While the 2025 RIA ignores them, the 2024 RIA extensively analyzed and accounted for these disproportionate costs, especially with PM pollution.⁸³ The Proposed Rule fails to explain its intentional backtracking of the more thorough and reasoned analysis of the 2024 RIA, electing to inexplicably disregard these significant costs in its analysis.⁸⁴

Third, the agency overstates the economic costs of maintaining the 2024 standards by assuming unsubstantiated technological and financial burdens on the regulated industry. The body of the 2025 RIA admits that:

[T]here are significant market and regulatory changes that have occurred since the 2024 MATS RTR RIA was developed, including changes that affect both the baseline and policy that are not reflected in this analysis. Further, this RIA does not reflect the exemptions granted under *Presidential Proclamation 10914 titled Regulatory Relief for Certain Stationary Sources to Promote American Energy*.⁸⁵

Rather than account for these changes or collect up to date data that accurately reflects these real-world market and regulatory conditions, the 2025 RIA instead relies on "best available estimates."⁸⁶ EPA thereby cites no data that shows pollution control technologies mandated under the 2024 rule are well-established and that many power plants have already begun investing in or implementing compliant controls.⁸⁷ Forty-two percent of the total estimated compliance costs from the 2024 RIA, for example, came from only two coal plants, because 90% of coal-fired plants already demonstrated the ability to meet the new 2024 standard of 0.010 lb/MMBtu with their existing technology.⁸⁸ EPA's own technical support documents confirm the feasibility and cost-effectiveness of continuous emissions monitoring and stricter pollutant limits.⁸⁹

⁸¹ Katie Labgold, Amanda C. Bennett & Kristen M. Wells, *Cluster Analysis and Cluster Ranking for Asthma Inpatient Hospitalizations Among Children, Adolescents, and Adults Aged 0 to 19 Years in Cook County, Illinois, 2011–2014*, *Prev. Chronic Dis.* Vol. 17: 190265 (2020), https://www.cdc.gov/pcd/issues/2020/19_0265.htm

⁸² *Special Report: The Mercury and Air Toxics Standards*, Earthjustice (June 2024), <https://earthjustice.org/features/mercury-air-toxics-standards-report-people-stories>.

⁸³ 2024 EPA RIA, *supra* note 69 at ES-18-19.

⁸⁴ 2025 EPA RIA, *supra* note 14.

⁸⁵ *Id.* at ES-2

⁸⁶ *Id.*

⁸⁷ *Technical Support Document for the Proposed Toxics Rule*, EPA (Nov. 2015), https://www.epa.gov/sites/default/files/2015-11/documents/proposed_toxics_rule_main.pdf.

⁸⁸ EPA, *Response to MATS Rule*, at 11 (2024), https://www.supremecourt.gov/DocketPDF/24/24A178/325938/20240913145217224_24a178%20EPA%20resp%20MATS%20rule-%20file.pdf

⁸⁹ *Id.*

The fundamental purpose that EPA purports to serve through the 2025 Proposed Rule is to save on consumer costs and reduce regulatory “burden[s].”⁹⁰ Not only are CEMS feasible, but EPA cannot substantiate that requiring CEMS will result in increased costs to consumers. The 2025 RIA makes no suggestion that higher compliance costs will be passed onto consumers, nor does it explain how or to what extent compliance costs would result in higher energy prices. It does not even attempt to estimate what these consumer costs may be.⁹¹ It merely states: “the extent of the price changes [from higher compliance costs] depends on if and how producers pass-through those costs (or cost savings..) to consumers.”⁹² By its own language, the 2025 RIA acknowledges that its not certain whether or “if” these costs will even be passed on to consumers.⁹³

Moreover, EPA’s newfound cost rationale for rolling back MATS emphasizes consumer electricity cost savings by reducing regulations on the supply of power, while fundamentally overlooking the growing and largely unchecked consumer price impacts arising from changes in electricity demand, particularly from the rapid expansion of artificial intelligence and data center development.⁹⁴ U.S. data centers accounted for approximately 4% of national electricity demand in 2023, with projections reaching up to 12% by 2030.⁹⁵ This is unevenly concentrated in urban markets like Chicago, which now ranks as the third-largest data center hub in the country.⁹⁶ The additional power generation needed to meet this demand often comes from fossil fuel sources like coal- and oil-fired plants, increasing greenhouse gas emissions and particulate pollution.⁹⁷ Without attention to far larger demand-side drivers of electricity prices like data center growth, EPA cannot justify its MATS rollback as a means to meaningfully reduce consumer costs by reducing compliance costs on the electricity supply side.

The result here is a skewed calculus that prioritizes unsubstantiated short-term industry savings over the long-term societal costs of increased illness, environmental degradation, and lost productivity.

⁹⁰ *National Emission Standards for Hazardous Air Pollutants: Coal- and Oil-Fired Electric Utility Steam Generating Units*, Proposed Rule, 90 Fed. Reg. 35,320 § III(A)(2) (June 17, 2025).

⁹¹ 2025 EPA RIA, *supra* note 14, at 2-6

⁹² *Id.*

⁹³ *Id.*

⁹⁴ McKinsey & Co., *Artificial Intelligence Power Demand in Charts*, McKinsey & Co. (Nov. 6, 2024), <https://www.mckinsey.com/featured-insights/sustainable-inclusive-growth/charts/ais-power-binge>.

⁹⁵ *Id.*

⁹⁶ *Chicago*, Data Ctr. Market Overview, Cloudscene, <https://cloudscene.com/market/data-centers-in-united-states/chicago> (last visited July 21, 2025) (noting that “after New York and the Bay Area, the city also ranks as the third largest market for data centers ... in the US”)

⁹⁷ Data centers also place significant stress on local resources, particularly water. Many facilities require millions of gallons of water daily for evaporative cooling systems, drawing from already-stressed municipal supplies. In Chicago, where aging infrastructure and environmental justice concerns already challenge public health, this can deepen inequities in communities overburdened by pollution and underinvestment and increase resource scarcity citywide. Lacking clear oversight, local impacts of data center operations may compound costs in both the broader Midwest and historically marginalized Chicago communities. International Energy Agency (IEA), *Electricity 2024: Analysis and Forecast to 2026*, at 38–40 (Jan. 2024), <https://www.iea.org/reports/electricity-2024>; Jessica Robinson, *The Midwest and Great Plains Are Gearing Up for Water Fights Fueled by Climate Change*, NPR Illinois (Sept. 3, 2024), <https://www.nprillinois.org/2024-09-03/the-midwest-and-great-plains-are-gearing-up-for-water-fights-fueled-by-climate-change>; *see also* U.S. Env’tl. Prot. Agency, *Integrated Science Assessment for Particulate Matter* (Dec. 2019), <https://www.epa.gov/isa/integrated-science-assessment-isa-particulate-matter>.

This imbalance is particularly troubling given the ongoing challenges faced by vulnerable communities and the undeniable health and economic benefits of stricter pollution controls.

III. The Reconsideration of the 2024 NESHAP Protections Undermines the Core Purpose of the Clean Air Act by Eliminating the Requirement of Continuous Emissions Monitoring.

The 2024 MATS represent a culmination of rigorous technological evaluation and environmental science, applying state-of-the-art pollution controls across coal- and oil-fired power plants.⁹⁸ Key among these is the requirement for continuous emissions monitoring systems (CEMS) for mercury, particulate matter, and acid gases, which provide real-time data essential for regulatory compliance and public transparency. Chiefly, the 2025 Proposed Rule 1) overlooks the benefits of CEMS; and 2) fails to explain the basis for repealing the CEMS requirement under the CAA. Ultimately, EPA falls short of its burden of showing necessity of overturning CEMS requirements under the CAA. In short, promulgation of the 2025 Proposed Rule would undermine the purpose of the CAA to employ the best available technology – including CEMS – for the sake of protecting public health and wellbeing.

The 2025 Proposed Rule glosses over significant benefits of CEMS. CEMS represent a critical advancement over periodic stack testing by providing continuous, real-time emissions data with high accuracy.⁹⁹ This system enables facilities, regulators, and communities to detect transient emission spikes and equipment malfunctions that would be missed by scheduled testing, thereby preventing prolonged toxic exposures. Periodic monitoring simply cannot capture operational anomalies with the same efficacy as CEMS, which are more reliable, accurate, and precise.¹⁰⁰ Research suggests that periodic stack tests can understate emissions by as much as fiftyfold because they miss short-term spikes – data that only CEMS consistently capture.¹⁰¹ These transient events may result in acute or cumulative toxic exposures that are particularly hazardous to vulnerable populations located near power plants. The 2024 MATS recognized this reality and concluded that CEMS were necessary to ensure the enforceability and integrity of mercury and particulate matter emissions standards.¹⁰² In the 2024 rule, EPA explicitly found that requiring CEMS for filterable particulate matter emissions from coal-fired units would “accelerate... identification of anomalous emissions,” and provide “increased transparency [and] compliance assurance” with minimal additional cost to industry.¹⁰³ By EPA’s own declaration, CEMS is the best available technology – the kind required under the statutory authority of the CAA.

In stark contrast, the 2025 Proposed Rule would rescind the CEMS requirement, based on the claim that CEMS is “not necessary” for demonstrating compliance and that alternative approaches, such

⁹⁸ EPA, *MATS*, supra note 1

⁹⁹ EPA, *Continuous Emissions Monitoring*, supra note 18

¹⁰⁰ Ben D. Sparrow et al., *Effective Ecosystem Monitoring Requires a Multi-Scaled Approach*, 95 *Biological Reviews* 1377, 1377–1401 (2020), <https://doi.org/10.1111/brv.12636> (PMCID PMC7689690); last visited Aug. 1, 2025.

¹⁰¹ Dioxin and CEMS, Environmental Justice Network, <https://www.ejnet.org/toxics/cems/dioxin.html> (last visited July 15, 2025).

¹⁰² 2024 EPA RIA, supra note 69.

¹⁰³ *Id.* at ES-3

as periodic stack testing or operating parameter monitoring, are “sufficient.”¹⁰⁴ EPA has not identified any evidence that the CEMS requirement in the 2024 MATS standards is unachievable or unjustified. This proposal to eliminate mandatory CEMS weakens enforcement mechanisms and reduces the likelihood of timely intervention in the event of malfunctions or deliberate noncompliance.¹⁰⁵ EPA has not provided a reasoned explanation demonstrating that the 2024 CEMS requirement is no longer necessary under Section 112(d)(6) of the Clean Air Act. The record shows no evidence that the 2024 CEMS requirement has failed in practice or imposes undue hardship on affected units. On the contrary, many facilities already voluntarily use CEMS, and industry commenters during the rulemaking that produced the 2024 rule did not broadly object to its inclusion.¹⁰⁶ Roughly one-third of the existing fleet of coal-fired EGUs already used PM CEMS prior to the 2024 Rule, demonstrating a capability and willingness on behalf of the EGUs.¹⁰⁷ Given the feasibility, cost-effectiveness, and public health benefits of CEMS, EPA has not shown and cannot show that eliminating this requirement is consistent with the CAA’s mandate to protect public health using the maximum achievable control technology.¹⁰⁸

EPA’s proposed rollback would run afoul of statutory mandates and administrative law principles. Under the Clean Air Act, EPA must base its standards on the best available technology and protect public health with an ample margin of safety.¹⁰⁹ The rollback, lacking a reasoned explanation and unsupported by new data demonstrating unworkability or harm from the 2024 standards, would be arbitrary and capricious, in violation of the Administrative Procedure Act.¹¹⁰ EPA’s inadequate new approach to cost-benefit analysis and failure to substantiate the necessity of these rollbacks makes the Proposed Rule legally indefensible.¹¹¹ Accordingly, CEJN asks EPA to abandon this unlawful rulemaking proposal.

Moreover, CEJN urges EPA to adopt an equitable lens that explicitly incorporates the disproportionate impact of hazardous air pollutants on marginalized communities. This entails going beyond traditional cost-benefit analyses or a mere reassessment to factor in cumulative pollution burdens, social determinants of health, and the limited resources available for mitigation in affected populations.¹¹² Failure to do so perpetuates systemic inequities, as communities already experiencing higher asthma

¹⁰⁴ *National Emission Standards for Hazardous Air Pollutants: Coal- and Oil-Fired Electric Utility Steam Generating Units*, Proposed Rule, 90 Fed. Reg. 35,320 § III(A)(2) (June 17, 2025).

¹⁰⁵ *Id.* at § I(A); EPA, *Continuous Emissions Monitoring*, supra note 18

¹⁰⁶ EPA, *MATS Electronic Reporting Comment Summary*, Docket No. EPA-HQ-OAR-2018-0794; see also <https://www.regulations.gov> (last visited July 15, 2025).

¹⁰⁷ *Strengthening the Mercury and Air Toxics Standards for Coal-Fired Power Plants*, EHS Q. 26, 27 (Oct. 2024), <https://media.trinityconsultants.com/view/740954386/26/>.

¹⁰⁸ Earthjustice, *Mercury Air Toxics Standards Report*, supra note 82

¹⁰⁹ Clean Air Act §§ 7412(d)(2), (f) (2018).

¹¹⁰ *Motor Vehicle Mfrs. Ass’n*, 463 U.S. at 42.

¹¹¹ Earthjustice, supra note 8

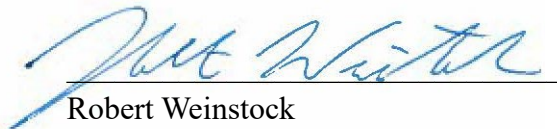
¹¹² U.S. Env’tl. Prot. Agency, *Environmental Justice Strategic Plan* (Dec. 2024),

<https://www.epa.gov/system/files/documents/2024-12/environmental-justice-strategic-plan-december-2024.pdf>.

rates, limited access to healthcare, and economic challenges will face intensified harms from increased emissions.¹¹³

For the foregoing reasons, the Chicago Environmental Justice Network urges EPA to maintain 2024 Mercury and Air Toxics Standards. These standards represent essential, technology-driven protections for public health, particularly for vulnerable communities facing disproportionate pollution burdens. Weakening the filterable particulate matter and mercury emission limits and dismantling continuous emissions monitoring would regress years of environmental progress, exacerbate health disparities, and fail to comply with statutory and administrative law requirements. CEJN respectfully requests EPA to reconsider this proposed rollback in light of the technical, legal, and equity-based critiques presented herein and to uphold strong, science-based standards that protect all communities equitably. Thank you for considering these comments.

Respectfully Submitted,



Robert Weinstock
Director, Environmental Advocacy Center
Clinical Professor of Law
Northwestern Pritzker School of Law
(312) 503-1457
robert.weinstock@law.northwestern.edu

*On behalf of the
Chicago Environmental Justice Network*

¹¹³ Perez, M. F., & Coutinho, M. T., *An Overview of Health Disparities in Asthma*, 94 Yale J. Biol. Med. 497 (2021), <https://pmc.ncbi.nlm.nih.gov/articles/PMC8461584/>.