

Congress of the United States
Washington, DC 20515

July 18, 2023

The Honorable Michael Regan
Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, DC 20004

Administrator Regan,

We write to urge the withdrawal or substantial revision of the proposed regulation known as the Mercury and Air Toxics Standards (MATS) (Docket ID No. EPA-HQ-OAR-2018-0794). As members of the North Dakota Congressional delegation who serve on the Senate Environment and Public Works Committee and House Energy and Commerce Committee which have jurisdiction over the Environmental Protection Agency (EPA), we are particularly concerned about the consequences this regulation would have on North Dakota's lignite coal fleet. Unfortunately, North Dakota regulators and stakeholders who work day in and day out to deliver clean, affordable, and reliable electricity to our citizens have relayed the EPA completely omitted them from the process of formulating a new rule. Ignoring cooperative federalism ignores the U.S. Constitution, the Clean Air Act, and robs the EPA of the ability to develop better regulations. Continuing to propose regulations in this nature conflicts with your stated intent for "durable" rules and injects further regulatory uncertainty and public distrust in the federal government.

Lack of engagement with North Dakota on this rulemaking is particularly egregious given its elimination of the lignite subcategory, which EPA has long recognized and deemed warranted in the 2012 MATS regulation. North Dakota has more lignite electric generating units than any other state in the nation, all of which have installed state-of-the-art mercury control equipment, and is uniquely qualified to work with the EPA on this specific fuel source.

North Dakota's leadership outlined a number of failures in the proposed regulation. The EPA did not provide any scientific justification for the proposed regulation and even admits current exposure associated with mercury is well below levels of concern from a public health perspective. The operators of North Dakota's lignite power plants outlined substantial flaws in EPA's methodology and datasets while identifying a number of consequential technical errors, including no new technological developments and underestimating the cost of additional mercury removal by more than three times. These and other flaws within the proposal make for a regulation that is not technically or legally justified.

Our nation is undergoing a rapid transition in the power sector as dispatchable resources retire at an alarming rate without similarly capable resources to replace them. This has sparked reliability concerns among power providers, grid operators, and independent monitors alike. This regulation, along with the plethora of other EPA actions targeting coal-fired power plants,

illustrates explicit bias in accelerating a preferred transition without health or economic justification. The American public is already paying more and more for less and less reliable electricity with no appreciable human or environmental health benefits to show for it.

We urge you to withdraw this rule or substantially revise it in accordance with North Dakota's Department of Environmental Quality and stakeholder comments.

Sincerely,



KEVIN CRAMER
U.S. Senator



KELLY ARMSTRONG
U.S. Congressman