

Congress of the United States
Washington, DC 20515

April 25, 2018

The Honorable Scott Pruitt
Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460

Dear Administrator Pruitt:

We are concerned regarding the health and environmental consequences of a January 25, 2018, Environmental Protection Agency (EPA) memo, which dramatically weakens protections against toxic air pollution by withdrawing the long standing “once in, always in” (OIAI) policy.

As you know, the Clean Air Act requires EPA to limit emissions of hazardous air pollutants (HAPs), including many known to cause cancer, harm development in children, and kill. The lengthy list includes mercury, arsenic, formaldehyde, benzene, asbestos, chlorine, cyanide, and lead.

In the Clean Air Act amendments of 1990, Congress made major changes to the way EPA regulates these toxic emissions because the agency had regulated only seven HAPs in the preceding 20 years. Congress acted out of deep concern that Americans were dying of cancer and facing other serious adverse health effects as a result of exposure to industrial HAPs. Congress was quite prescriptive in its direction to the agency: we required EPA to issue rules limiting emissions of 189 toxic HAPs, from all categories of “major sources” of these pollutants. The law requires the “maximum degree of reduction in [HAP] emissions ... including a prohibition on such emissions, where achievable.” Sources must employ “maximum achievable control technology” or “MACT” to reduce HAP emissions to levels that the top-performing sources in an industry sector already meet. Congressional concern with these carcinogens and neurotoxins was so great that the law also contains *additional* safeguards: periodic reviews for control technology updates; residual cancer risk authorities; strict compliance directives; and anti-backsliding provisions.

From 1995 until this year, sources emitting HAPs were required to meet MACT standards if, on the date that the MACT standard went into effect, they had the potential to emit 10 tons of any one HAP or 25 tons of any combination of HAPs, annually (“10/25 ton per year threshold”). To ensure major sources kept those protections in place, EPA implemented what became known as the “once in, always in” policy, requiring major sources to continue to meet HAP emission limits based on MACT, even as they lowered and maintained emissions at or below MACT limits. EPA recognized that, without this policy, polluting sources could curtail use of MACT and increase their HAP emissions substantially above MACT-based emission limits, all the way up to the 10/25 ton per year threshold.

On January 25, without providing any notice to the public or opportunity for comment on its step, EPA reversed this decades-old understanding. In a four-page memorandum, EPA

announced that sources currently complying with MACT air toxics standards now have the option of getting out of all MACT requirements if their emissions are below the 10/25 ton per year threshold. EPA will permit this even if sources are currently subject to one or more MACT standards that reduces HAPs emissions well below that threshold, and even if that means sources may *increase* their hazardous emissions significantly *and increase* the health hazards to Americans in neighboring communities.

This is not the first time EPA has tried to weaken protections against toxic air pollution so radically. When EPA proposed to take this same step more than 10 years ago, the agency's own regional offices expressed concern that the proposal would allow HAPs to increase, and "would be detrimental to the environment and undermine the intent of the MACT program."¹ The regional offices further argued that many plants would take the opportunity to use the less stringent requirements, and "the cost of the increased [HAP] emissions would be borne by the communities surrounding the sources."² An EPA political appointee claimed at the time that industry would be motivated to be good neighbors and not increase emissions. However, after Congress inquired pointedly, this claim was revealed this to be little more than speculation, with no basis in fact.³ Thanks to the concerns raised during the open and transparent rulemaking process, EPA did not make the mistake of finalizing a proposal that would have jeopardized the health and welfare of the American public.

Now, the current EPA has decided to re-litigate the past, purporting to authorize through mere guidance the approach of the failed 2007 proposed rule, and granting immediate permission to industries to increase HAPs substantially. What's more, we now have a snapshot of the potential toxic impacts this policy would have on communities near, and downwind from, the thousands of major sources subject to MACT.

Last month, the Environmental Integrity Project released a brief analysis of the current HAP emissions of 12 major sources in the Midwest, and their potential emission increases without longstanding protections from HAPs. Combined, these facilities released over 121,000 pounds of HAPs annually in 2016, including neurotoxins like lead and carcinogens like benzene. Without the safeguards preserved in EPA's 1995 policy, the report found that "the total emissions from these major sources could more than quadruple to a total of 540,000 pounds a year, because the new exemption allows such facilities to save money by cutting back on their pollution controls."⁴ Furthermore, the report highlighted the danger in relying on corporations to report their emissions to prove their HAP emissions are below the 10/25 ton per year threshold

¹ Memorandum to EPA Office of Air Quality Planning and Standards from EPA Regional Offices, *Regional Comments on Draft OIAI Policy Revisions*, at 3 (Dec. 13, 2005).

² Memorandum to EPA Office of Air Quality Planning and Standards from EPA Regional Offices, *Regional Comments on Draft OIAI Policy Revisions*, at 3-4 (Dec. 13, 2005).

³ Letter from Chairman John D. Dingell, Committee on Energy and Commerce, to William Wehrum, Acting Assistant Administrator, EPA Office of Air and Radiation (Feb. 23, 2007); Response Letter from William Wehrum, Acting Assistant Administrator, EPA Office of Air and Radiation, to Chairman John D. Dingell, Committee on Energy and Commerce (Mar. 30, 2007).

⁴ Environmental Integrity Project, *Toxic Shell Game: EPA Reversal Opens Door to More Hazardous Air Pollution* (Mar. 26, 2018) (www.environmentalintegrity.org/wp-content/uploads/2017/02/Toxic-Shell-Game.pdf).

and will remain there. The report noted major sources “seldom actually measure their hazardous emissions” on their own volition, so monitoring requirements were created in scores of MACT standards to keep them honest. But EPA’s reversal of an essential protection against toxic air pollution would allow industrial emitters to no longer meet the monitoring, recordkeeping, or reporting requirements in MACT standards. This is in addition to letting polluting facilities evade the emission limits that protect Americans from increased HAPs.⁵

The Environmental Defense Fund released a second report assessing the toxic air pollution impacts on the Houston-Galveston region from EPA’s new loophole, focusing on at least 18 potentially eligible facilities.⁶ The report found that if all these facilities took advantage of the loophole to the maximum extent allowed by EPA’s January rollback, the “total annual emissions of hazardous air pollutants from these facilities would increase by almost 146 percent over 2014 levels, to a total of 900,000 pounds.”⁷ Moreover, the report identified eight more facilities that appear eligible for the loophole; adding these facilities would increase emissions by 400,000 more pounds. EPA’s new loophole would allow a total increase of an astonishing 1.3 million pounds of HAPs from just these 26 industrial facilities in the Houston-Galveston region.⁸

We share the serious concerns of those who opposed past attempts to undermine legal protections against HAP increases. The Environmental Integrity Project and Environmental Defense Fund analyses make our concerns far more pressing. This alarming information demands your immediate attention.

The American public needs and deserves clean air and protection from hazardous air pollution. This is a matter of critical human health and safety. We ask you to reverse your decision to rescind the “once in, always in” policy, in order to safeguard future generations from harmful air pollutants. Thank you in advance for considering this timely and important request.

Sincerely,


DEBBIE DINGELL
Member of Congress


DONALD S. BEYER JR.
Member of Congress

⁵ Environmental Integrity Project, *Toxic Shell Game: EPA Reversal Opens Door to More Hazardous Air Pollution* (Mar. 26, 2018) (www.environmentalintegrity.org/wp-content/uploads/2017/02/Toxic-Shell-Game.pdf).

⁶ Environmental Defense Fund, *Pruitt’s New Air Toxics Loophole: An Assessment of Potential Air Pollution Impacts in the Houston-Galveston Region* (Apr. 10, 2018) (www.edf.org/sites/default/files/documents/OIAI-Houston%20case%20study%20FINAL.pdf).

⁷ *Id.*, at 2.

⁸ *Id.*



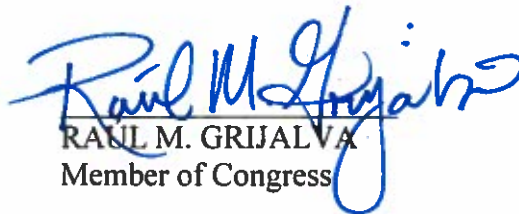
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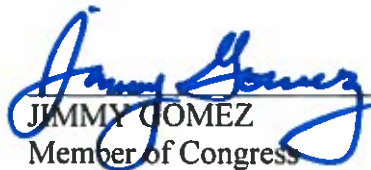
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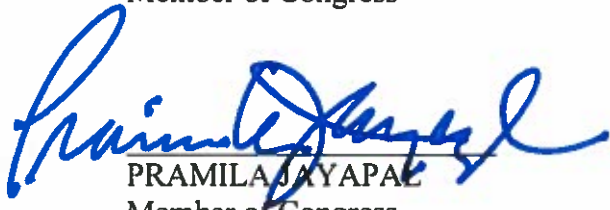
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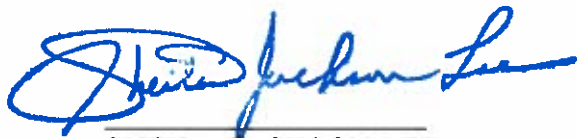
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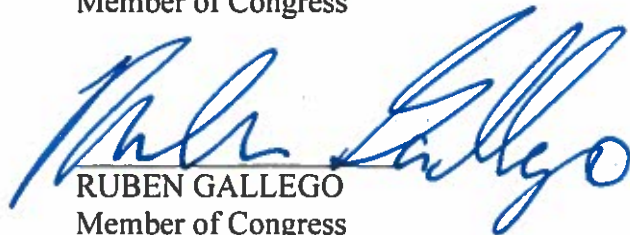
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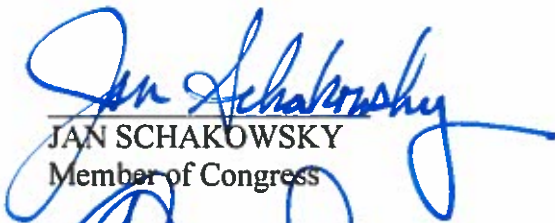
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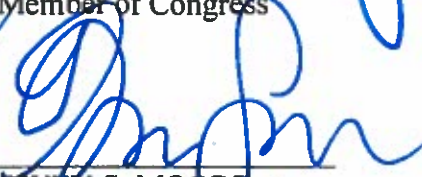
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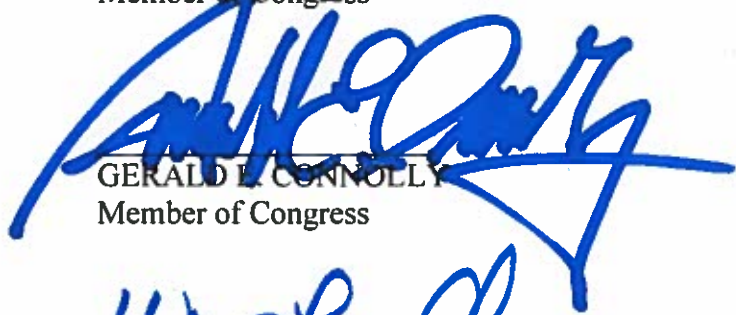
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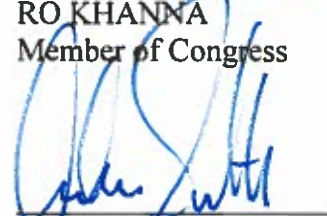
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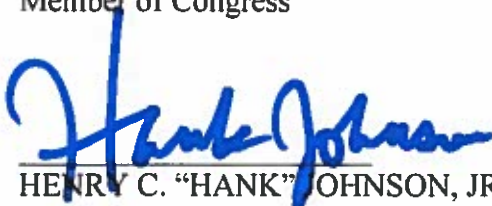
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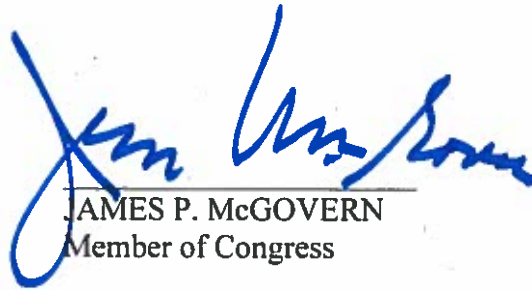
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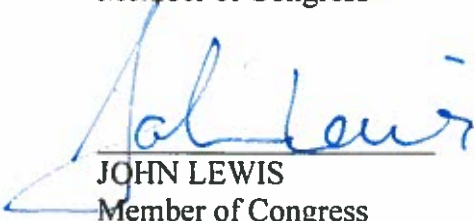
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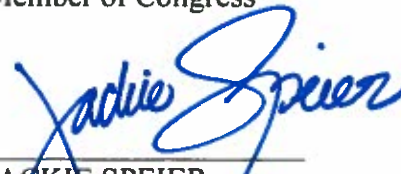
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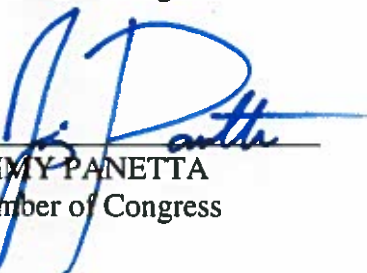
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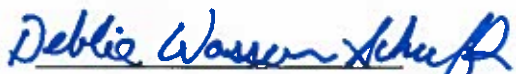
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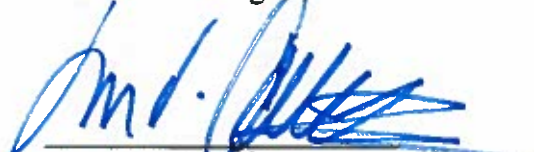
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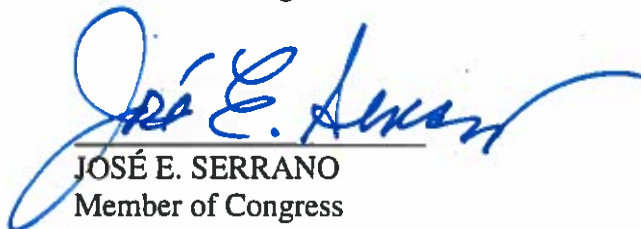
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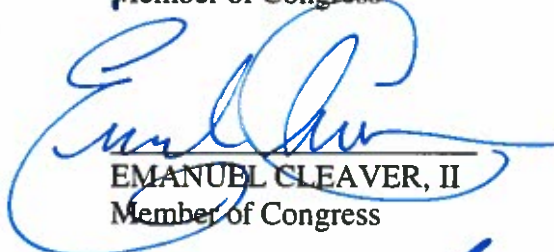
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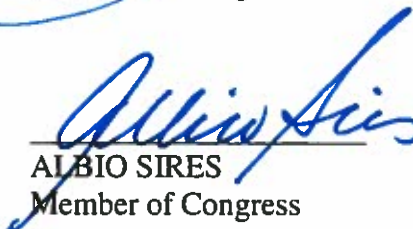
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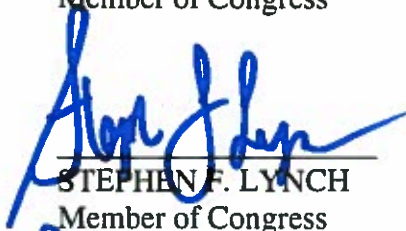
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