September 24, 2019

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

Submitted via Email to A-and-R-Docket@EPA.gov

Attn: EPA-HQ-OAR-2019-0282

RE: Reclassification of Major Sources as Area Sources Under Section 112 of the Clean Air Act, 84 Fed. Reg. 36,304 (July 26, 2019).

Dear Administrator Wheeler:

On behalf of our millions of members and the communities we serve nationwide, the undersigned thirty-five (35) public health, environmental justice, labor, and environmental organizations strongly oppose EPA's July 26, 2019, proposal withdrawing the long-standing "once in, always in" policy for major sources of hazardous air pollution.

EPA's proposed "air toxics loophole" would formally overturn protections that have been in place since 1995, allowing potentially thousands of large industrial facilities to opt out of rigorous clean air protections limiting discharges of dangerous pollutants such as mercury and benzene. Contrary to EPA's claims, this action is not compelled by the Clean Air Act—and in fact undermines the protections that Congress intended to provide against toxic air pollutants. We urge EPA to withdraw this reckless and unlawful proposal.

The proposed loophole would radically reinterpret section 112 of the Clean Air Act, which requires EPA to regulate sources of 187 dangerous pollutants—including highly toxic and carcinogenic pollutants that are harmful even at low levels of exposure. In section 112, Congress expressly directed EPA to issue stringent pollution limits, based on "maximum achievable control technology" (or "MACT"), for "major" sources that are capable of emitting above certain specified thresholds. In addition, Congress made clear that these standards must minimize—and, where feasible, eliminate—hazardous air pollution.

EPA established the "once in, always in" policy in 1995 to ensure that section 112 fulfills this vital purpose. As EPA recognized at the time, MACT standards are often so effective that they can cause emissions of hazardous air pollution at individual facilities to fall below the major source thresholds. Without the "once in, always in" policy, these facilities could reclassify themselves as

smaller "area" sources that are frequently subject to less stringent federal standards for hazardous air pollution—or even exempt themselves from section 112 entirely.

Almost twenty-five years later, EPA's new proposed loophole would allow major sources to circumvent the protections of section 112. Not only would this proposal undermine the basic purpose of MACT standards, it would also threaten the ability of communities to access information about air pollution from nearby facilities—and to hold those sources accountable—by allowing major sources to opt out of the monitoring, recordkeeping, and reporting requirements that are associated with MACT standards.

This proposal would, according to EPA's own analysis, result in extensive and harmful impacts. EPA estimates that over 3,900 major sources across the country could be eligible to take advantage of this new pollution-increasing loophole. In just three of the industrial source categories EPA examined for this proposal – representing a small fraction of these thousands of potentially eligible facilities—EPA estimated the potential for an additional 2.4 million pounds per year of hazardous air pollution. Independent analyses released in 2018 by Environmental Defense Fund and Environmental Integrity Project also found the potential for this loophole to increase pollution at dozens of facilities in the Midwest and the Houston-Galveston region—many of them located in populated areas with disproportionately high numbers of low-income and minority residents.

Even more outrageous, EPA has been implementing the policy described in this proposal for over a year and a half under a January 2018 memorandum signed by former Assistant Administrator Bill Wehrum—issued without any opportunity for public comment or any analysis of air pollution and health impacts. As the proposal indicates, thirty-four major sources already availed themselves of the loophole before EPA even opened the comment period for this rulemaking. EPA's "act first, take comments later" approach to this rulemaking has thwarted the required rulemaking process under the Clean Air Act and shortchanged the public's right to comment on a radical policy change with sweeping and dangerous impacts.

EPA must withdraw this unlawful and harmful proposal—and immediately cease implementing the January 2018 Wehrum memo.

Respectfully submitted,

350.org
Acadia Center
ACTS
Air Alliance Houston
Anthropocene Alliance
Breast Cancer Prevention Partners
Center for Environmental Policy and Management

Dominican Sisters of Houston
Earth Ethics, Inc.
Earthjustice
Elders Climate Action
Endangered Species Coalition
Environment Texas
Environmental Defense Fund
Environmental Integrity Project
Extinction Rebellion Houston
Farmworker Association of Florida
Franciscan Action Network
Friends of the Earth
Houston Region Concerned Citizens
Interfaith Power & Light
International Center for Technology Assessment
League of Conservation Voters
Moms Clean Air Force
Mormon Environmental Stewardship Alliance
National Parks Conservation Association
New Mexico Interfaith Power and Light
Nontoxic Certified / MADE SAFE
Physicians for Social Responsibility Pennsylvania
Public Citizen
Rachel Carson Council
Science and Environmental Health Network
Texas Environmental Justice Advocacy Services
The CLEO Institute
Utah Moms for Clean Air