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August 16, 2022

The Honorable Brenda Mallory, Chair
Council on Environmental Quality
Executive Office of the President
Washington, DC 20500

RE: Air pollution emissions limits for Incinerators

Dear Chair Mallory:

Disproportionate amounts of pollution too often plague communities of color and low-income communities¹ (i.e., environmental justice communities) and are implicated in health disparities in our country that are rooted in race and income.²

1. Several studies have found locally unwanted land uses are disproportionately sited in environmental justice communities, included among the most prominent are *Toxic Wastes and Race in the United States: A National Report on the Racial and Socioeconomic Characteristics of Communities with Hazardous Waste Sites* (New York: United Church of Christ Commission for Racial Justice, 1987); *Siting of Hazardous Waste Landfills and Their Correlation With Racial and Economic Status of Surrounding Communities* (Washington, DC: U.S. General Accounting Office, 1983); Robert D. Bullard et al., *Toxic Wastes and Race at Twenty 1987–2007: Grassroots Struggles to Dismantle Environmental Racism in the United States* (Cleveland, OH: United Church of Christ Justice and Witness Ministries, 2007); and Paul Mohai & Robin Saha, *Racial Inequality in the Distribution of Hazardous Waste: A National-Level Reassessment*, *Social Problems* 54, no. 3, (2007): 343–370.

A number of studies have also found elevated levels of exposure to air pollution in environmental justice communities. See C.W. Tessum et al., “PM_{2.5} Polluters Disproportionately and Systemically Affect People of Color in the United States,” *Science Advances* 7, no. 18 (2021) eabf4491; C.W. Tessum et al., “Inequity in Consumption of Goods and Services Adds to Racial–Ethnic Disparities in Air Pollution Exposure,” *Proceedings of the National Academy of Sciences of the U.S.* 116, no. 13, (2019): 6001–6006; Michael Ash et al., *Justice in the Air: Tracking Toxic Pollution from America’s Industries and Companies to Our States, Cities, and Neighborhoods*, (Political Economy Research Institute, University of Massachusetts Amherst, 2009); Manuel Pastor et al., “The Air Is Always Cleaner on the Other Side: Race, Space, and Ambient Air Toxics Exposures in California,” *Journal of Urban Affairs* 27, no. 2 (2005): 127–148; Douglas Houston et al., “Structural Disparities of Urban Traffic in Southern California: Implications for Vehicle-Related Air Pollution Exposure in Minority and High-Poverty Neighborhoods,” *Journal of Urban Affairs* 26, no. 5 (2004): 565–592; Manuel Pastor et al., “Waiting to Inhale: The Demographics of Toxic Air Release Facilities in 21st-Century California,” *Social Science Quarterly* 85, no. 2 (2004): 420–440; Michael Jarrett et al., “A GIS–Environmental Justice Analysis of Particulate Air Pollution in Hamilton, Canada,” *Environment and Planning A: Economy and Space*, 33, no. 6 (2001): 955–73; D. R. Wernette and L. A. Nieves, “Breathing Polluted Air; Minorities are Disproportionately Exposed,” *EPA Journal* 16 (1992).

2. See the following articles for information on health disparities: National Center for Health Statistics, *Health, United States, 2012: With Special Feature on Emergency Care*, NCHS (May 2013); Rachel Morello Frosch et al., “Understanding the Cumulative Impacts of Inequalities in Environmental Health: Implications for Policy,” *Health Affairs* 30, no. 5 (2011): 880–881; N. E. Adler & D. H. Rehkopf, “U.S. Disparities in Health: Descriptions, Causes, and Mechanisms,”

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Municipal solid waste incinerators frequently contribute to these elevated levels of pollution by emitting significant amounts of air pollutants created by burning waste.³ Incineration is particularly problematic from an environmental justice perspective because 79 percent of large municipal waste incinerators in the United States, including many of the dirtiest and highest emitting facilities, are located in environmental justice communities.⁴

Congress recognized that incineration was a problem and attempted to address it through the adoption of Section 129 (Solid Waste Combustion) to the 1990 Clean Air Act, which required EPA not only to set emissions limits for incinerators, but also to review and revise these limits on an established timeline.⁵ EPA has never met the mandated timelines. The first emissions limits for large incinerators were created four years late; its initial review was six years late; and the current required review is 11 years behind schedule. Similarly, the required emissions limits revision and review for small incinerators was due 16 years ago.⁶ The limits are supposed to be reviewed and revised every five years.⁷ Compounding the detrimental impacts to communities that can be attributed to extremely delayed revisions of health harming incinerator air pollutant limits is the fact that current limits appear to have been set incorrectly since they are not pegged to actual emissions.⁸ The courts have noted this mistake,⁹ and EPA has admitted that the emissions limits for large incinerators were not up to standards required by Congress.¹⁰ However, this admission was made 15 years ago, and corrective action has yet to be taken.¹¹

What makes matters even more dire is the reality that most of today's incinerators were built in the 1980s, with only one constructed after 1995. They have therefore exceeded their 30-year useful lives, yet they continue to operate with outdated technology and insufficient pollution control devices.¹² For example, many are not using more up-to-date technology such as baghouses¹³ and

Annual Review of Public Health 29 (2008): 235–252; William Dressler, “Race and Ethnicity in Public Health Research: Models to Explain Health Disparities,” *Annual Review of Anthropology* 34 (2005): 231–252; Roberta Spalter-Roth et al., “Race, Ethnicity, and the Health of Americans,” *American Sociological Association Sydney S. Spivack Program in Applied Social Research and Social Policy* (July 2005); George Mensah et al., “State of Disparities in Cardiovascular Health in the United States,” *Circulation* 111, no. 10 (2005): 1233–1241.

3. Ana Isabel Baptista et al., *U.S. Municipal Solid Waste Incinerators: An Industry in Decline* (The New School Tishman Environment and Design Center, May 2019). https://www.no-burn.org/wp-content/uploads/2021/03/CR_GaiaReportFinal_05.21-1.pdf.

4. *Ibid.*

5. 42 U.S. Code § 7429 (1990).

6. New Source Performance Standards for New Small Municipal Waste Combustion Units, 65 Fed. Reg. 76,350 (Dec. 6, 2000); Emission Guidelines for Existing Small Municipal Waste Combustion Units, 65 Fed. Reg. 76,378 (Dec. 6, 2000).

7. *Supra*, note 5.

8. *Northeast Maryland Waste Disposal Authority v. EPA*, 358 F.3d 936, 953–54 (D.C. Cir. 2004); *Cement Kiln Recycling Coal. v. EPA*, 255 F.3d 855, 861–66 (D.C. Cir. 2001).

9. *Ibid.*

10. EPA Motion for Voluntary Remand, *Sierra Club v. EPA*, No. 06-1250 (D.C. Cir. Nov. 9, 2007).

11. *Ibid.*

12. Baptista et al., *supra* note 3, pp. 8, 22; Ted Michaels and Karunya Krishnan, *2018 Directory of Waste-to-Energy Facilities*, (Arlington, VA: Energy Recovery Council), accessed July 28, 2022. <http://energyrecoverycouncil.org/wp-content/uploads/2019/10/ERC-2018-directory.pdf>.

13. Eastern Research Group Memo to EPA, “2000 National Inventory of Large Municipal Waste Combustion (MWC) Units” (June 2002).

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selective catalytic reduction,¹⁴ which would reduce particulate matter and nitrogen oxide emissions, respectively.

The Biden Administration has said that environmental justice would be a centerpiece of EPA activities.¹⁵ Expediently revising incinerator emissions standards would be a step forward in fulfilling that promise. Congress ordered EPA to fix the problem of incinerator pollution by the early 1990s, but 30 years later, environmental justice communities are still waiting for these needed protections. The cost of delay in revising municipal waste incineration emissions standards that would presumably lower dangerous emissions can be measured in illness and death in environmental justice and other communities. Inaction and delay also perpetuate environmental racism. In this instance, communities are not even requesting that new protective laws be created, only that EPA's regulations meet the standards Congress required. If EPA requires more capacity to fulfill this important obligation, then it must make this need known, and the Administration must address it.

The White House Environmental Justice Advisory Council asks CEQ to direct EPA to revise incinerator air pollution emissions limits as quickly as possible and move forward as if lives were at stake, because they are.

Sincerely,



Richard Moore, WHEJAC Co-chair



Peggy M. Shepard, WHEJAC Co-chair

cc: Members of the WHEJAC
Michael S. Regan, EPA Administrator
Jalonne White Newsome, Senior Director for Environmental Justice, CEQ
White House Environmental Justice Interagency Council
Victoria Robinson, Designated Federal Officer

14. Ibid.; Babcock & Wilcox Power Generation Group, Inc., *Palm Beach Renewable Energy Facility No. 2*, accessed July 28, 2022. <https://www.swa.org/DocumentCenter/View/1607/REF2-Info-and-Specs/>.

15. EPA, Exec. Order No. 13985, 86 FR 7009 (April 2022), see *E.O. 13985 Equity Action Plan: U.S. Environmental Protection Agency*, (April 2022). https://www.epa.gov/system/files/documents/2022-04/epa_equityactionplan_april2022_508.pdf/.