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


Municipal solid waste incinerators frequently contribute to these elevated levels of pollution by emitting significant amounts of air pollutants created by burning waste. 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.

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. 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. The limits are supposed to be reviewed and revised every five years. 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. The courts have noted this mistake, and EPA has admitted that the emissions limits for large incinerators were not up to standards required by Congress. However, this admission was made 15 years ago, and corrective action has yet to be taken.

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 They have therefore exceeded their 30-year useful lives, yet they continue to operate with outdated technology and insufficient pollution control devices. For example, many are not using more up-to-date technology such as baghouses and


4. Ibid.
7. Supra, note 5.
9. Ibid.
10. EPA Motion for Voluntary Remand, Sierra Club v. EPA, No. 06-1250 (D.C. Cir. Nov. 9, 2007).
11. Ibid.
selective catalytic reduction, 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. Expeditiously 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