

June 14, 2021

EPA Docket Center
U.S. Environmental Protection Agency
Mail Code 28221T
1200 Pennsylvania Ave., N.W.
Washington, D.C. 20460

Submitted to the docket via regulations.gov

Attn: EPA-HQ-OAR-2020-0044

RE: Rescinding the Rule That Distorted the Assessment of Benefits and Costs Under the Clean Air Act, 86 Fed. Reg. 26,406 (May 14, 2021)

Dear Administrator Regan:

On behalf of our millions of members, supporters, and the communities we serve nationwide, the undersigned ten public health, environmental, good government, and climate and clean air organizations strongly support EPA's interim final rule rescinding the Benefit-Cost Rule.¹ The Benefit-Cost Rule distorted the assessment of benefits and costs in preambles of significant Clean Air Act rulemakings and obstructed clean air protections necessary to save lives in communities across our nation. As the interim rescission correctly states, the Benefit-Cost Rule was "inadvisable, not needed, and untethered to the [Clean Air Act]."² We urge EPA to issue a final rule confirming the rescission.

Over the past fifty years, protections issued by EPA under the Clean Air Act have delivered vital, life-saving public health and environmental benefits. EPA has estimated that, every year, these protections prevent more than 200,000 deaths, 2 million childhood asthma attacks, and 22 million lost school and work days, among many other crucial health benefits.³ EPA has valued these benefits at more than \$2 trillion annually, estimating that benefits between 1990 and 2020 exceeded costs by a factor of at least 30 to 1.⁴

However, these benefits have not been distributed evenly. In its most recent "State of the Air" report, the American Lung Association found that, across the United States, more than 135 million people live in counties with unhealthy levels of ozone or particle pollution, and that people of color are more than three times more likely than white people to be breathing the most polluted air.⁵ As you recently wrote when identifying environmental justice as a top priority,

¹ "Increasing Consistency and Transparency in Considering Benefits and Costs in the Clean Air Act Rulemaking Process," 85 Fed. Reg. 84,130 (Dec. 23, 2020).

² 86 Fed. Reg. at 26,407.

³ See EPA, *The Benefits and Costs of the Clean Air Act from 1990-2020*, 5-25 tbl. 5-6 (Apr. 2011).

⁴ See *id.*; *id.* at 7-1.

⁵ American Lung Association, *State of the Air 2021*, Key Findings, <https://www.lung.org/research/sota/key-findings>; see also Ilhab Mikati et al., *Disparities in Distribution of Particulate Matter Emission Sources by Race and Poverty Status*, 108 Am. J. Pub. Health 480 (Apr. 2018), <https://ajph.aphapublications.org/doi/abs/10.2105/AJPH.2017.304297?journalCode=ajph&>.

“Too many communities whose residents are predominantly of color, Indigenous, or low-income continue to suffer from disproportionately high pollution levels and the resulting adverse health and environmental impacts.”⁶ President Biden has also directed agencies to “make achieving environmental justice part of their missions.”⁷ Rescinding the Benefit-Cost Rule aligns with these priorities by enabling EPA to more fully consider and communicate the ways in which public health protections can benefit every community, which will in turn strengthen and support those protections.

The Benefit-Cost Rule failed to acknowledge either the lifesaving benefits of Clean Air Act protections or the severe health harms from air pollution that overburdened communities continue to experience. Nor did it acknowledge how the rule itself would impede the agency’s statutory mandate to protect the public from dangerous air pollution. For example, the rule required EPA to exclude co-benefits from a presentation of benefits and costs,⁸ which could mean ignoring thousands of deaths and adverse health effects that Clean Air Act protections would prevent—violating established economic principles and longstanding practices by administrations of both parties.⁹ The rule also set arbitrary, unscientific criteria that limited EPA’s consideration of certain types of benefits, without applying comparable restrictions on considering costs.¹⁰ Its requirements would lead to misleading assessments with inaccurately low estimates of benefits, potentially obstructing critically needed public health protections.

In addition to its many other flaws, the rule never clearly articulated any problem that it would solve. Its apparent premise was that EPA had historically overcounted benefits and undercounted costs, but the rule provided no supporting evidence, other than vague and unsubstantiated assertions from unidentified commenters. EPA’s benefit-cost assessments have long been rigorous and transparent, relying on the peer-reviewed *Guidelines for Preparing Economic Analyses*, as well as best practices from the White House Office of Management and Budget.¹¹ This has allowed EPA to assess costs with clarity and consistency, while also utilizing the approach best suited to each rulemaking and incorporating improved methodologies as they are developed. The Benefit-Cost Rule, by contrast, arbitrarily subjected all significant Clean Air Act rulemakings to damaging, rigid requirements. The rule could not demonstrate any way in which it would improve EPA’s assessments of benefits and costs compared to existing procedures and guidance.

⁶ EPA News Release, “EPA Administrator Announces Agency Actions to Advance Environmental Justice” (Apr. 7, 2021), <https://www.epa.gov/newsreleases/epa-administrator-announces-agency-actions-advance-environmental-justice>.

⁷ Exec. Order No. 14,008, “Tackling the Climate Crisis at Home and Abroad” § 219, 86 Fed. Reg. 7619 (signed Jan. 27, 2021).

⁸ 85 Fed. Reg. at 84,156 (former 40 C.F.R. § 83.4(b)).

⁹ See, e.g., Exec. Order No. 12,866 “Regulatory Planning and Review” § 6(a)(3)(C)(i), 58 Fed. Reg. 51,735, 51,741 (signed Sept. 30, 1993); White House Office of Management & Budget, Circular A-4, at 2-3 (Sept. 17, 2003), <https://www.whitehouse.gov/sites/whitehouse.gov/files/omb/circulars/A4/a-4.pdf>.

¹⁰ See 86 Fed. Reg. at 26,412-13 (“The Benefit-Cost Rule did not justify this disparity between setting highly specific and very stringent requirements for assessing benefits and substantially less stringent requirements for assessing costs.”).

¹¹ EPA, *Guidelines for Preparing Economic Analyses*, <https://www.epa.gov/environmental-economics/guidelines-preparing-economic-analyses>; Circular A-4, *supra* n.9.

Given the Benefit-Cost Rule’s lack of any purpose and harmful interference with EPA’s Clean Air Act obligations, it is unsurprising that the agency failed to cite a legitimate source of legal authority to issue the rule. The rule relied on Clean Air Act Section 301(a)(1), but that provision only empowers the Administrator to take actions “necessary” to carry out EPA’s functions under the Act.¹² A regulation that conceals and distorts information about how agency actions could save lives, prevent illness, and protect the environment is not necessary to implement the Clean Air Act. To the contrary, it undermines the statute’s core objective of protecting public health and the environment.

EPA now faces the urgent task of ensuring that the protections required under the Clean Air Act benefit communities across America—especially those communities that have experienced disproportionate harm from air pollution. The Benefit-Cost Rule was an unlawful and arbitrary obstacle to the agency’s ability to fulfill its crucial statutory mission. EPA should follow up its interim action with a final rule permanently rescinding this dangerous and unnecessary measure.

Respectfully submitted,

CLEAN AIR TASK FORCE
CONSERVATION LAW FOUNDATION
ENVIRONMENTAL DEFENSE FUND¹³
ENVIRONMENTAL LAW & POLICY CENTER
ENVIRONMENTAL PROTECTION NETWORK
INSTITUTE FOR POLICY INTEGRITY
LEAGUE OF CONSERVATION VOTERS
MOMS CLEAN AIR FORCE
SIERRA CLUB
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¹² 42 U.S.C. § 7601(a)(1).

¹³ Questions about this submission may be addressed to Ben Levitan at (202) 572-3318 or blevitan@edf.org.