

**AIR ALLIANCE HOUSTON \* COALITION OF COMMUNITY ORGANIZATIONS \*  
EARTHJUSTICE \* ENVIRONMENTAL DEFENSE FUND \* ENVIRONMENTAL  
INTEGRITY PROJECT \* ENVIRONMENT TEXAS \* HOUSTON REGION  
CONCERNED CITIZENS \* PUBLIC CITIZEN \* SIERRA CLUB \* TEXAS  
ENVIRONMENTAL JUSTICE ADVOCACY SERVICES**

August 19, 2019

**SUBMITTED VIA REGULATIONS.GOV**

Administrator Andrew Wheeler  
U.S. Environmental Protection Agency  
1200 Pennsylvania Avenue, NW  
Washington, DC 20004

**ATTN: Docket No. EPA-HQ-OAR-2019-0282**

**RE: *Request for additional public hearings for Proposed Rule: 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:

Air Alliance Houston, Coalition of Community Organizations, Earthjustice, Environmental Defense Fund, Environmental Integrity Project, Environment Texas, Houston Region Concerned Citizens, Public Citizen, Sierra Club, and Texas Environmental Justice Advocacy Services respectfully request that the Environmental Protection Agency (“EPA” or “the Agency”) hold at least three additional public hearings for the proposed rule, *Reclassification of Major Sources as Area Sources Under Section 112 of the Clean Air Act*, 84 Fed. Reg. 36,304 (July 26, 2019), including at least one hearing in Houston, TX. EPA announced the sole public hearing for this rulemaking in Washington, DC with only slightly more than two weeks’ notice, a disturbing choice that reinforces the Agency’s troubling pattern of minimizing public input on actions that stand to harm the health and welfare of communities nationwide.<sup>1</sup> Given the deeply harmful implications of this proposal for Houston, and for countless other communities across the country, a single hearing is clearly inadequate to afford the public a meaningful opportunity to

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<sup>1</sup> See, e.g., 83 Fed. Reg. 45,588 (Sept. 10, 2018) (announcing only public hearing for proposed “Affordable Clean Energy” rule); 83 Fed. Reg. 65,617 (Dec. 21, 2018) (announcing only public hearing for proposed weakening of carbon pollution standards for new coal-fired power plants).

comment. We therefore call on EPA to conduct additional hearings and give voice to those most affected by the Agency's proposed action.

EPA's proposal threatens to undermine section 112 of the Clean Air Act and put communities across the country at risk of exposure to higher levels of hazardous air pollution. The proposal would allow facilities currently regulated as "major" sources of hazardous air pollutants to reclassify themselves as smaller "area" sources, thereby escaping applicability of rigorous maximum achievable control technology ("MACT") standards and becoming subject to less stringent standards or even no standards at all. In addition, EPA's proposal also undermines the ability of communities to access information about air pollution from nearby sources by allowing major sources to opt out of the monitoring, recordkeeping, and reporting requirements that are associated with MACT standards.

It is critical that EPA afford the public additional opportunities to be heard before rolling back a policy that has protected against increases in hazardous air pollution for almost a quarter-century. If finalized, this proposal would impact thousands of facilities across the country. According to EPA's own analysis of the proposal, nearly four thousand major sources across the country emit hazardous air pollutants at levels that make them potentially eligible to reclassify as area sources. Such reclassification, EPA acknowledges, could allow some of these sources to discharge millions of additional pounds of hazardous pollutants into the air each year, in cities and towns across the country.<sup>2</sup> The people and families that live and work and breathe in these places deserve more than a single hearing in Washington, DC. They deserve to have their circumstances seen; their input considered; their voices heard.

Additional public hearings are also necessary because of the Agency's abject failure to provide adequate notice of its only scheduled hearing. On Wednesday, July 31, 2019, EPA announced that it would hold its only scheduled public hearing a mere 15 calendar days later in Washington, DC.<sup>3</sup> For reasons unknown, the Agency gave affected communities almost no time to make travel, lodging, and other arrangements, much less prepare remarks on a proposal published only five days prior. What is more, many communities affected by this Proposal are located far from the nation's capital and do not have the means or ability to appear at the public hearing. This sole public hearing opportunity is clearly inadequate to satisfy the agency's duty to actually "provide interested parties the opportunity to present data, views, or arguments concerning the proposed action."<sup>4</sup>

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<sup>2</sup> See 84 Fed. Reg. 36,304, 36,332 (July 26, 2019) (Table 3).

<sup>3</sup> 84 Fed. Reg. 37,193 (July 31, 2019).

<sup>4</sup> *Id.*

The Houston-Galveston region presents a sobering and stark example of why—and where—additional public hearings are necessary. Last year, after then-EPA Administrator Scott Pruitt unilaterally rescinded the “once in, always in” policy,<sup>5</sup> EDF analyzed the potential impact of the policy change in the Houston-Galveston region. Home to the fourth most populous city in the nation, the Houston-Galveston region has a heavy concentration of industrial facilities. EDF’s analysis identified as many as 26 major industrial facilities that could escape MACT standards under the new policy, resulting in a potential increase in hazardous air pollution of 152 percent—an additional 784,000 pounds—from these facilities.<sup>6</sup> What’s worse, vulnerable communities will be hit especially hard by the sickness, hospitalization, and death that this pollution would cause, as half of these facilities are located in areas where more than one in five people live in poverty and where people of color make up at least 30 percent of the population.<sup>7</sup> This would be an environmental injustice, and families in this region and similar regions across the country deserve the opportunity to weigh in on a proposal with such harmful and disproportionate impacts.

For the foregoing reasons, we respectfully request that EPA provide at least three additional hearings, including one in Houston, to allow for meaningful public engagement.

Respectfully submitted,

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<sup>5</sup> William L. Wehrum, Assistant Administrator, U.S. Environmental Protection Agency, Memorandum: Reclassification of Major Sources as Area Sources Under Section 112 of the Clean Air Act (Jan. 25, 2018).

<sup>6</sup> See Tomás Carbonell, Rama Zakaria, & Surbhi Sarang, *Pruitt’s New Air Toxics Loophole*, Environmental Defense Fund at 8 (Apr. 10, 2018), <https://www.edf.org/sites/default/files/documents/OIAI-Houston%20case%20study%20FINAL.pdf>.

<sup>7</sup> *Id.* at 2, 9-10.

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