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United States Senate

COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS

WASHINGTON, DC 20510-6175

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July 2, 2015

Hon. Gina McCarthy
Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue NW
Washington, DC 20460

Dear Administrator McCarthy:

As you enter into your final deliberation on the Brick MACT, we request you give full consideration to the proposals on regulating mercury and particulate metal emissions from brick plants provided by the regulated industry. The proposals include either establishing a work practice for mercury emissions or delaying the regulation of mercury from this industry until a reasonable amount of data can be collected that demonstrate that the control of mercury is truly worth the costs that will be incurred. Standards resulting in costly and anticipated control technology must demonstrate that any costs create commensurate benefits. That does not appear to be the case here. Instead, EPA's Brick MACT regulations may shutter numerous brick manufacturing facilities.

EPA's own estimates of the potential mercury reductions from this industry are small – only 118 pounds annually. Data provided to you using Agency models demonstrate that these minimal emissions of mercury are well below EPA's established reference dose. While we are not suggesting that EPA use a full health-based approach to setting the mercury standard for brick plants, we do request that your Agency acknowledge the low impacts in its decision-making, as is allowed under Section 112(d)(4) of the Clean Air Act (CAA). The low potential of emission reduction and EPA's own models show that the benefit from regulation is extremely minor, while each control device will cost approximately \$2 million – controls that have never before been used on a brick plant for mercury.

There is a compelling case and legal justification for establishing work practices instead of numeric emission limits. In their technical comments, the Brick Industry Association highlighted significant limitations that would prevent EPA Method 29 from working on a brick plant, as it was designed for plants that have significantly higher mercury emissions. As it is also a very expensive test, the economic feasibility for a small brick plant to comply with these conditions is uncertain. There is ample justification for EPA to conclude that, in light of technical and economic limitations, it is not feasible under these circumstances for a typical brick plant to demonstrate compliance with a numeric mercury emissions limitation. Such a finding would support establishing work practices standards under Section 112(h) of the CAA.

Should the EPA continue to ignore alternative methods and rely on their proposal with minimal data, roughly one-third of the small businesses that comprise the brick industry could go bankrupt or be forced to consolidate operations, costing countless jobs. Further, the technology required to control mercury emissions is not proven, requiring brick operators to seek financing for a control that may quickly become inefficient. Given the uncertainty of the technology's effectiveness, combined with the cost of the technology itself, it is concerning that the EPA plans to consider this method so readily.

This is not the only opportunity EPA will have to consider regulation of these sources, as reviews of MACT rules are required every 8 years. EPA can establish work practices that ensure data is collected to allow a full evaluation of mercury and appropriate action, if necessary. Any subsequent decision by EPA would be based on more comprehensive data and a better and thorough understanding of the issues.

The brick industry is one of the country's oldest manufacturing industries, creating thousands of jobs across the country for hardworking Americans, and it provides a product that can be seen in virtually every community. A rule that can have such tremendous impact on the brick industry, possibly requiring many brick operators to cease operations, deserves the appropriate time and consideration for all available options, and we implore the EPA to take its due diligence and carefully consider all of the critical points shared in this letter.

Sincerely,



James M. Inhofe
Chairman
Committee on Environment and Public Works



David Vitter
United States Senator



Jeff Sessions
United States Senator