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# United States Senate

COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS

WASHINGTON, DC 20510-6175

May 14, 2026

Benjamin Gagnon  
Chief Executive Officer  
Keel Infrastructure  
129 Broadway, Suite 1075  
New York, NY 10271

Dear Mr. Gagnon,

On March 28, 2025, your company sought<sup>1</sup> and received presidential exemptions<sup>2</sup> from compliance with the 2024 Mercury and Air Toxics Standard (MATS) rule. The exemption represents an extraordinary form of relief that had never been granted in the history of the statute before this administration.<sup>3</sup>

The 2024 MATS rule was in force until February 2026, when the Trump Administration repealed it.<sup>4</sup> The repeal was quickly challenged; if that litigation is successful, the 2024 MATS rule would spring back into place. The rule requires coal plants to reduce mercury pollution by 70 percent and emissions of nickel, arsenic, lead, and other toxic metals by two-thirds, and is projected to deliver an estimated \$430 million in total benefits—including substantial health care benefits—through 2037.<sup>5</sup> Your decision to seek an exemption under Section 112(i)(4) means

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<sup>1</sup> Panther Creek Power, “Exemption Request” (FOIA records obtained by Environmental Defense Fund), PDF document linked from the *Environmental Defense Fund Trump EPA Pollution Pass Map*, <https://library.edf.org/AssetLink/w55g0d1887163836m2vep68lox1k2200.pdf>; Scrubgrass Reclamation Co., “Exemption Request” (FOIA records obtained by Environmental Defense Fund), PDF document linked from the *Environmental Defense Fund Trump EPA Pollution Pass Map*, <https://library.edf.org/AssetLink/e7u50q3m32w8of2k6x4qpi3x8v7b6q41.pdf>.

<sup>2</sup> U.S. Environmental Protection Agency, Regulatory Relief for Certain Stationary Sources to Promote American Energy: Annex I, April 2025, <https://www.epa.gov/system/files/documents/2025-04/regulatory-relief-for-certain-stationary-annex-1.pdf>.

<sup>3</sup> The Biden Administration did announce a plan in January 2025 for the orderly implementation of Air Toxics Standards for Ethylene Oxide Commercial Sterilizers, which included a detailed process for presidential exemptions, but it was never used during the Biden Administration, and President Trump did not follow any similar process. See The White House, *Memorandum on the Orderly Implementation of Air Toxics Standards for Ethylene Oxide Commercial Sterilizers* (Jan. 16, 2025), <https://bidenwhitehouse.archives.gov/briefing-room/presidential-actions/2025/01/16/memorandum-on-the-orderly-implementation-of-the-air-toxics-standards-for-ethylene-oxide-commercial-sterilizers/>.

<sup>4</sup> “National Emission Standards for Hazardous Air Pollutants: Coal- and Oil-Fired Electric Utility Steam Generating Units: Final Repeal,” 91 Fed. Reg. 36 (Feb. 24, 2026), <https://www.federalregister.gov/documents/2026/02/24/2026-03638/national-emission-standards-for-hazardous-air-pollutants-coal--and-oil-fired-electric-utility-steam>.

<sup>5</sup> U.S. Environmental Protection Agency, “Biden-Harris Administration Finalizes Suite of Standards to Reduce Pollution from Fossil Fuel-Fired Power Plants,” Press Release, April 25, 2024, <https://www.epa.gov/newsreleases/biden-harris-administration-finalizes-suite-standards-reduce-pollution-fossil-fuel>.

that your company could delay or avoid installing and/or operating pollution controls, effectively shifting the costs of continued operation of dirty power plants onto the public while preserving your own short-term financial interests.

CAA Section 112(i)(4) grants the President narrow authority to exempt a stationary source from compliance with a National Emissions Standard for Hazardous Air Pollutants (NESHAP standard) only if two criteria are met: (1) “the technology to implement such standard is not available”; and (2) “it is in the national security interests of the United States to do so.”<sup>6</sup> The technology necessary to implement NESHAP standards exists, as the NESHAP Maximum Achievable Control Technology (MACT) standard is defined under the CAA as the standard that has been *already achieved* by the top 12 percent of sources.<sup>7</sup> Furthermore, EPA standards under Section 112 are based on control technology that is demonstrably available,<sup>8</sup> so any assertion that technology is “not available” is demonstrably false.

As to national security interests, President Trump’s April 8, 2025, proclamation granting exemptions to the 2024 MATS rule noted that the United States would be left “vulnerable to electricity demand shortages, increased dependence on foreign energy sources, and potential disruptions of our electricity and energy supplies, particularly in times of crisis.”<sup>9</sup> This, too, is demonstrably false. The MATS rule largely applies to coal-fired power plants, which generated only 16 percent of electricity in 2024.<sup>10</sup> Moreover, the installation and operation of already available pollution control technologies would not meaningfully reduce power generation, even from the coal-fired plants required to do so.

Notably, this is not an isolated executive action purporting to waive the required installation and operation of pollution control technologies. Indeed, President Trump has issued seven proclamations under Section 112(i)(4), which in total exempt over 180 sources from seven NESHAP rules protecting the public from exposure to dozens of hazardous air pollutants. Each proclamation contains the exact same conclusory “determinations” that the requisite “technology does not exist in a commercially viable form,” and that “[i]t is in the national security interests of the United States to issue the Exemption.” This cookie-cutter approach reduces the Section 112(i)(4) exemption process to farce. It is plainly at odds with the way Congress designed the Clean Air Act to work and the statute’s goal of protecting Americans from the most dangerous air pollutants.

The exemption granted is not only lacking in any analysis or rationale but also advances a policy that hurts consumers—particularly where it encourages uneconomic plants to delay retirement. Analyses show that federal actions that keep uncompetitive coal units online increase electricity

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<sup>6</sup> See 42 U.S.C. § 7412(i)(4).

<sup>7</sup> U.S. Environmental Protection Agency, *Development of Maximum Achievable Control Technology Standards*, Report No. 6100140, October 1995, <https://www.epa.gov/sites/default/files/2015-10/documents/mactsrep.pdf>.

<sup>8</sup> U.S. Environmental Protection Agency, “Setting Emissions Standards for Major Sources of Toxic Air Pollutants,” EPA, accessed Apr. 10, 2025, <https://www.epa.gov/clean-air-act-overview/setting-emissions-standards-major-sources-toxic-air-pollutants>.

<sup>9</sup> See Proclamation, *supra* note 3.

<sup>10</sup> Associated Press. “FACT FOCUS: Trump Misrepresents Facts About Coal as He Signs Executive Orders to Boost Its Use.” *AP News*, April 8, 2024. <https://apnews.com/article/trump-coal-industry-mining-fact-check-69bc9919c2899a87c65c4c89a84a973e>.

costs for households and businesses.<sup>11</sup> Electricity bills could increase collectively by over \$3.1 billion per year, and potentially by as much as \$5.9 billion per year if federal intervention were to prop up all aging coal plants scheduled to retire by 2028.<sup>12</sup>

The underlying economics are getting worse for coal: the average cost of coal-fired electricity increased from about \$36/MWh in 2021 to roughly \$46/MWh in 2024—a 28 percent increase in just three years. Most coal plants now cost more to operate than the cost of replacing their output with new wind or solar generation.<sup>13</sup>

Taken together, the circumstances surrounding your company's exemption raise serious questions about whether this extraordinary relief was sought and granted for reasons unrelated to the narrow statutory criteria established in the Clean Air Act. The exemption allowed your company to delay installing and/or operating pollution-control technology that EPA had determined to be available and economically justified, and in some cases delay retirement of otherwise uneconomic units. At the same time, the exemption introduces additional regulatory risk by allowing facilities to defer compliance investments that may ultimately be required if courts overturn EPA's recent rulemaking. The American public is forced to pay for these exemptions and this additional risk, with their health and with their wallets. In light of these concerns, please respond to the following questions and requests for production of documents by no later than May 28, 2026:

1. Produce all communications, including but not limited to emails and email attachments, text messages on any messaging platform, memoranda, meeting materials, and presentations between and among representatives of your company, the Trump Transition Team, the White House, or any executive branch agency dated between November 5, 2024, and March 6, 2025, concerning the potential use or extension of Clean Air Act Section 112(i)(4) Presidential exemption authority.
2. Produce all communications, including but not limited to emails and email attachments, text messages on any messaging platform, memoranda, meeting materials, and presentations between and among representatives of your company, the Trump Transition Team, the White House, or any executive branch agency dated between November 5, 2024, and February 19, 2026, concerning the MATS rule. If your company submitted a public comment, please include that submission.

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<sup>11</sup> Michael Goggin, *The Cost of Federal Mandates to Retain Fossil-Burning Power Plants* (Grid Strategies LLC, August 2025), prepared on behalf of Earthjustice, Environmental Defense Fund, Natural Resources Defense Council, and Sierra Club, [https://earthjustice.org/wp-content/uploads/2025/08/grid-strategies\\_cost-of-federal-mandates-to-retain-fossil-burning-power-plants.pdf](https://earthjustice.org/wp-content/uploads/2025/08/grid-strategies_cost-of-federal-mandates-to-retain-fossil-burning-power-plants.pdf).

<sup>12</sup> Alex Brown, "Trump's Bid to Support Coal Could Cost Ratepayers Billions, Report Finds," *Stateline*, August 15, 2025, <https://stateline.org/2025/08/15/trumps-bid-to-support-coal-could-cost-ratepayers-billions-report-finds/>.

<sup>13</sup> Energy Innovation: Policy and Technology and Silvio Maracchi, "Coal Power Costs Soar 28% Since 2021, Rising Faster Than Inflation," *Forbes*, June 8, 2025, <https://www.forbes.com/sites/energyinnovation/2025/06/08/coal-power-costs-soar-28-since-2021-rising-faster-than-inflation/>.

3. Provide a complete copy of the materials your company submitted to the EPA mailbox<sup>14</sup> established to receive Presidential exemption requests under Clean Air Act Section 112(i) (4), including your exemption request and any supporting materials, as well as any and all subsequent communications between representatives of your company and the EPA concerning the exemption request, whether through that mailbox or another communication channel.
4. Identify any determination by the RTO that the exempted unit(s) is/are necessary for grid reliability. Produce all communications with your RTO in which you disclosed any reliability, compliance, or operational concerns.
5. Describe any alternatives that your company considered before seeking a presidential exemption, including installing pollution-control technology, repowering the unit, replacing the unit with other generation resources, or retiring the unit.
6. Describe any analysis your company conducted regarding how the continued operation of the coal-fired unit subject to the MATS exemption could affect wholesale electricity markets in the RTO in which the unit operates. Provide all documents evaluating the potential effects on wholesale energy prices, capacity market outcomes, out-of-market reliability payments, or investment signals for new generation resources.

Sincerely,



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Sheldon Whitehouse  
United States Senator  
Ranking Member  
Committee on Environment  
and Public Works

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<sup>14</sup> U.S. Environmental Protection Agency, “Clean Air Act Section 112 Presidential Exemption Information,” last updated April 14, 2025, <https://www.epa.gov/stationary-sources-air-pollution/clean-air-act-section-112-presidential-exemption-information>.