

United States Senate

WASHINGTON, DC 20510

September 23, 2024

Honorable Michael S. Regan
Administrator
Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, DC 20460

Dear Administrator Regan,

We write to express concern about the Environmental Protection Agency's (EPA) proposed rule, *Standards of Performance for New Stationary Sources and Emission Guidelines for Existing Sources: Large Municipal Waste Combustors, Voluntary Remand Response and 5-Year Review* (89 FR 4243), which includes a re-evaluation of the Maximum Achievable Control Technology (MACT) floor determinations issued on January 23, 2024.

Municipal waste combustors, waste-to-energy (WTE) facilities, are a vital waste management technology that communities and businesses in Oklahoma use to divert waste from landfills, recycle metal, and generate renewable energy. Communities and businesses in Oklahoma, and across the country have invested billions of dollars to ensure these facilities are meeting the already stringent environmental standards set by your agency and by states. In January of 2023, the Tulsa Authority for the Recovery of Energy (TARE) and Covanta (now Reworld), a leader in the sustainable materials management industry, established a 15-year agreement with a 5-year renewable option for the continuance of waste-to-energy operations in the city of Tulsa. Consequently, the majority of Tulsan's household trash is now taken to a facility to be combusted and used for energy as opposed to immediately landfilled.

As you know, the Clean Air Act (CAA) Amendments of 1990 established the MACT standards to ensure that all facilities in an industry sector meet the same standards as the top 12% of performing facilities. The EPA set these attainable standards, known as 'MACT floors', for WTE facilities twice, in 1995 and 2006.

Now, your agency is proposing to further tighten the MACT standards for existing WTE facilities, while simultaneously removing startup, shutdown, and malfunction compliance exceptions. We are concerned that the expected result of this proposed rule runs afoul of Sec. 112(d)(2) of the CAA. By imposing dramatically stricter requirements without compliance flexibility, the new standards are likely to impose hundreds of millions of dollars of increased compliance costs without significant benefit. The EPA should be mindful of the fact that imposing standards that WTE facilities will never meet is well beyond EPA's statutory authority. Any final rule that contains these standards is certain to be litigated aggressively. The EPA is wholly aware that it can no longer rely upon the *Chevron* doctrine to defend overly burdensome

regulations in court.¹ Moving forward in this fashion will only waste the government resources to defend a final rule that cannot survive judicial scrutiny. Furthermore, expecting our local governments and businesses to achieve standards that are prohibitively expensive or are scientific outliers is unreasonable. If standards are unachievable, or too expensive to achieve, communities may have no choice but to close WTE facilities. This will result in increased landfilling, forgoing millions of dollars of investment in WTE technology and energy production, making it more difficult to maintain sustainable initiatives in Oklahoma and across the country.

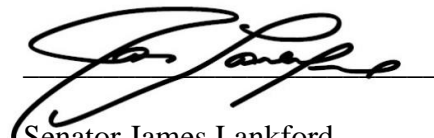
We urge the EPA to reexamine its proposal to ensure that the new standards are set consistent with the actual data provided during the comment period by the industry to the agency.

Thank you for your attention to this important matter for Oklahoma. We look forward to your response and the opportunity to engage further on this critical issue.

Sincerely,



Senator Markwayne Mullin
United States Senator



Senator James Lankford
United States Senator

¹ See *Loper Bright Enterprises v. Raimondo*, Docket No. 22-451, 603 U.S. (July 30, 2024).