MEMORANDUM

To: ICAC Members

From: ICAC Staff

Date: January, 2018

Re: EPA Mercury Air Toxics Rule: Current Status/Potential Outcomes/Possible Actions

I. Introduction

The following memorandum:

1) summarizes the current regulatory and litigation status of EPA's Mercury Air Toxics Standard (MATS)(also known as the utility air toxics rule);
2) outlines some possible legal and regulatory options that EPA may consider shortly and;
3) suggests some possible actions for ICAC and its members to take in the months ahead to both monitor and possibly influence EPA's actions regarding MATS.

II. Summary

Although MATS has largely been implemented already, its legal status remains uncertain in the wake of the Supreme Court decision invalidating EPA's methodology for setting MATS.

The Obama Administration's attempt to fix the issues raised by the Supreme Court were challenged in court. The Trump Administration has successfully put that litigation on hold.

An underlying issue in the litigation results from the fact that the calculated benefits from mercury reductions alone amount to less than 10 million dollars per year. Additional benefits from the rule that result from reductions in particulate matter amount to more than 30 billion dollars per year, justifying the annual rule cost of 9.6 billion dollars per year. These additional benefits are referred to as "co-benefits."

The co-benefits issue has wide implications beyond MATS and it is likely that EPA will want to address these issues during the Trump Administration.

Sooner or later, EPA will need to address the issues raised in the litigation and there are a number of options that EPA could consider, which range from leaving the MATS rule largely unchanged to determining that EPA regulation of mercury is not "appropriate and necessary" and revoking the MATS rule entirely.

ICAC staff will continue to develop intelligence regarding EPA's plans for MATS and strategize with interested members regarding possible ways in which to influence the outcome at EPA in ways that benefit ICAC.

III. Background: Statutory Basis, Rulemakings and Litigation History

A. Statutory Background

In 1990, Congress enacted a comprehensive set of amendments to the Clean Air Act, updating all of the existing sections and adding several new titles. This new law, the Clean Air Act Amendments (CAA) of 1990, required reductions in air pollution from nearly all major sources of air pollution, including the two largest emitting sectors, vehicles and power plants. The new law included an innovative market-based program for power plants (the Title IV acid rain program) and a new, technology-based program under Section 112 addressing toxic air pollutants from sources of 189 listed toxic air pollutants.

In order to avoid the problem of imposing both the acid rain and toxic air pollutant programs on power plants at the same time (which could have necessitated conflicting and overlapping requirements), and because of a relative lack of information regarding the public health and environmental impacts of toxic air pollutant emissions from electricity generating units, Congress enacted a compromise provision under section 112 for powerplants in the 1990 Clean Air Act Amendments. Under the compromise, power plants would **not** immediately and automatically become subject to regulation under the enhanced section 112 toxics program, unlike other major toxic air pollutant emitting sectors.

Instead, the compromise provision, Section 112(n), states that:

> *The Administrator shall perform a study of the hazards to public health reasonably anticipated to occur as a result of emissions by electric utility steam generating units of pollutants listed under subsection (b) of this section after imposition of the requirements of this Act. The Administrator shall report the results of this study to the Congress within 3 years after November 15, 1990. The Administrator shall develop and describe in the Administrator's report to Congress alternative control strategies for emissions which may warrant regulation under this section.*

Further, upon completion of the study,

> *The Administrator shall regulate electric utility steam generating units under this section, if the Administrator finds such regulation is necessary and appropriate, after considering the results of the study required by this subparagraph.*

Thus the regulation of mercury and other toxic air pollutants from powerplants would depend on completion and evaluation of the section 112 study.

B. EPA Mercury Rulemakings and Litigation Overview

As set forth below, the history of EPA's implementation of section 112(n) is a chronicle of delay, uncertainty, and unpredictable fluctuations in regulatory approaches. Competing approaches developed by different administrations have alternated between prescriptive "command and control" approaches and flexible market-based systems, based on divergent legal interpretations. The courts have both accepted and rejected various aspects of these approaches, and litigation regarding section 112(n) continues to this day.

The history can be summarized as follows:

- Following enactment of the 1990 Clean Air Act Amendments, during the Clinton Administration, EPA did not issue the required study until the year 2000, seven years after it was due, but did ultimately find that regulation was "appropriate and necessary."
- Thereafter, under the administration of George W. Bush, EPA withdrew that finding and attempted to institute a mercury cap and trade system, known as the Clean Air Mercury Rule (CAMR).
- The U.S. Court of Appeals for the D.C. Circuit vacated the legal basis for the CAMR rule in 2008[1] and directed EPA to write a utility air toxics rule.
- The incoming Obama Administration did not act on the issue for another two years, when it reversed all of the Bush Administration decisions (including reinstating the "appropriate and necessary" finding) and adopted a source-specific command and control approach," the MATS rule.
- MATS was upheld by the D.C. Circuit, only to be overturned by the Supreme Court in *Michigan v. EPA* (2014) on the basis that EPA's approach to its original "appropriate and necessary" finding improperly failed to consider costs.
- Notably the Supreme Court rejected requests to stay the effect of the rule and to "vacate" (eliminate) the rule. Therefore MATS implementation proceeded even after the Supreme Court invalidated the process used to set the rule. Implementation proceeded and was largely complete in 2015-2016.
- EPA attempted to address the cost consideration issue prior to the end of the Obama Administration by issuing a "supplemental finding" in which it justified the original "appropriate and necessary finding" using the cost benefit analysis it had developed for the MATS rule.
- The Obama EPA "supplemental finding" was challenged in court and was under review in the D.C. Circuit until that court stayed the proceeding in that case at the request of the Trump Administration in April, 2017. The case continues to be stayed, with status reports due every 90 days.

C. The Supreme Court's Opinion in *Michigan v. EPA*

[1] New Jersey v. EPA, 517 F. 3rd, 574 (D.C. Cir 2008)

In *Michigan v. EPA*[2], the Supreme Court overruled the D.C. Circuit and determined that EPA should have considered costs in determining under Section 112(n) that regulation was "appropriate and necessary."

In a 5-4 decision delivered by Justice Scalia, the Supreme Court explained that "[r]ead naturally in the present context, the phrase 'appropriate and necessary' requires at least some attention to cost ... EPA strayed well beyond the bounds of reasonable interpretation in concluding that cost is not a factor relevant to the appropriateness of regulating power plants."[3]

In its Regulatory Impact Analysis for MATS, EPA had acknowledged the $9.6 billion annual compliance cost of MATS and the fact that the benefits of reducing hazardous air pollutants alone (mostly mercury) was valued at just $4 to $6 million per year. In Justice Scalia's words, "One would not say that it is even rational, never mind "appropriate," to impose billions of dollars in economic costs in return for a few dollars in health or environmental benefits."[4]

However, the Court did not require EPA to conduct a formal cost-benefit analysis on its "appropriate and necessary" finding, deferring to the agency instead to decide how to account for cost. Importantly, the court also did not address the question of whether it was appropriate to consider co-benefits in a cost benefit analysis.

D. State and Industry Requests to Vacate MATS

After the Michigan opinion, state and industry petitioners requested that the D.C. Circuit vacate MATS.[5] This request was denied by the D.C. Circuit, based on assurances that EPA would release its cost findings by April 15, 2016.[6] On appeal, the Supreme Court also declined to vacate MATS on June 13, 2016.[7]

E. Industry Requests to Stay the MATS Rule

On Feb. 23, 2016, 20 states petitioned the Supreme Court to stay MATS until resolution was reached on the EPA's cost-benefit analysis. Chief Justice John Roberts denied this request, just weeks after granting an unprecedented stay of EPA's Clean Power Plan.[8]

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[2] *Michigan v. EPA*, 576 U.S. __, No. 14-46, *slip op*. 2 (June 29, 2015)
[3] *Michigan v. EPA*, 576 U.S. __, slip op. at 6-7.
[4] *Michigan v. EPA*, 576 U.S. __, slip op. at 7.
[5] *White Stallion Energy Ctr., LLC v. EPA*, 748 F.3d 1222 (D.C. Cir. 2014). On December 15, 2015, D.C. Circuit Court declined to vacate the MATS rule, leaving MATS in place. The Court decided that the EPA could continue to enforce MATS while it conducted a cost benefit analysis in response to the Supreme Court's ruling.
[6] *Id*.
[7] *Michigan v. EPA*, 576 U.S. __, No. 15-1152, *cert. denied* (June 13, 2016), available at http://www.supremecourt.gov/orders/courtorders/061316zor_h31i.pdf. A petition for certiorari was filed in the Supreme Court by challengers. The Supreme Court declined to review the D.C. Circuit court's decision not to vacate MATS while EPA worked to comply with *Michigan's* order to analyze the rule's costs.
[8] See *West Virginia, et al. v. EPA*, U.S. Court of Appeals for the D.C. Cir., No. 15-1277; No. 15-1363; No. 14-1146, Application by 29 States and State Agencies for Immediate Stay of Final Agency Action during Pendency of Petitions for Review," States and industry requested a stay of the Clean Power Plan, citing the economic impact

F. EPA Issues its Supplemental Cost Finding

On April 16, 2016, EPA finalized its supplemental finding.[9] In its supplemental finding, EPA confirmed that it is appropriate and necessary to regulate toxic air emissions from powerplants.

EPA provided two independent bases for its appropriate and necessary finding, only one of which relied on monetization of co-benefits.

First, EPA evaluated various categories of cost incurred by powerplants complying with the rule and concluded that the costs justified regulating mercury from powerplants as "appropriate and necessary."

EPA's second and alternative approach used the Regulatory Impact Analysis for the MATS rule, including its co-benefits calculation to demonstrate that the benefits outweighed the costs by a factor of 9.

EPA's first and preferred approach considered four metrics to evaluate whether compliance with MATS is reasonable for the power sector: revenues, capital expenditures, retail electricity rates, and potential impact on reliability.

- EPA examined annual compliance costs as a percent of power sector sales and found that the projected annual cost of MATS is a small fraction compared to overall sales in the power sector -- between just 2.7 and 3.5 percent of annual electricity sales from the years 2000 to 2011.

- EPA also reviewed annual compliance capital expenditures compared to the power sector's annual capital expenditures and found that the capital costs to comply with MATS are also a small fraction of capital expenditures in a historical context - - representing between 3.0 and 5.9 percent of total annual power sector capital expenditures over a 10-year period. EPA noted that this amount falls within the range of historical variability for such capital expenditures and that the capital and production costs to comply with MATS are still a small fraction of the historical capital and production costs of the power sector.

- EPA considered the impact on the retail price of electricity and concluded that the projected impact on electricity rates of 0.3 cents/kWh represents a national average increase of 3.1 percent, well within the range of retail price fluctuations over a 10-year period.

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that MATS compliance had on the power industry. Perhaps mindful of the MATS example in which compliance with an invalid rule nonetheless imposed large costs on industry, the Supreme Court granted the stay. Supreme Court Order available at https://www.supremecourt.gov/orders/courtorders/020916zr3_hf5m.pdf

[9] See 80 Fed. Reg. 75,025 (Dec. 1, 2015). On December 1, 2015, in response to *Michigan*, EPA published a proposed supplemental finding that a consideration of cost did not alter the EPA's previous determination that it is "appropriate and necessary" to regulate emissions from power plants. EPA solicited public comment on the proposal.

- EPA looked at the impact on power sector resource capacity and its analysis showed that any retirements resulting from MATS would not adversely impact the ability of the power sector to meet demands for electricity.

EPA's second independent approach to support the appropriate and necessary finding was based on the results of an extensive benefit-cost analysis that was conducted at the time MATS was issued in 2012. This analysis found that the benefits of MATS are substantial, and that for every dollar spent to reduce toxic pollution from power plants, the American public would see up to $9 in health benefits.[10] However, EPA acknowledged that the benefits numbers that form the basis for this conclusion are derived almost entirely from co-benefits, as previously discussed.

G. Legal Challenge to the Supplemental Finding

The supplemental finding was challenged in the U.S. Court of Appeals for the D.C. Circuit in 2016 and the case proceeded to the briefing phase of the litigation with oral argument scheduled for May of 2017.

H. EPA Request to Hold Litigation in Abeyance

On April 18, 2017, the Trump Administration requested that the D.C. Circuit hold the litigation regarding the MATS rule and the supplemental finding in abeyance and that the date for oral argument be continued indefinitely. The court granted this motion on April 27th, 2017, with a requirement that status reports be filed with the court every 90 days. That order continues to govern the proceedings in that case and EPA has issued no official further proceedings regarding the MATS rulemaking.

I. MATS Implementation/Cost Benefit Analysis

MATS implementation is largely complete, with most facilities complying in 2015 and the rest being required to comply by April of 2016. MATS was a transformative regulatory event that that irrevocably changed the entire power sector. Although MATS was nominally aimed at mercury emissions from powerplants, its impact went well beyond the small amount of public health benefit to be obtained from preventing exposure of children to mercury from recreationally caught freshwater fish. The high end RIA estimate of 90 billion dollars of benefits reflects the enormous conventional pollutant reductions produced by MATS. However, the level of benefits from toxic reductions, amounting to 4-6 million dollars, is a small fraction of that level and is also a very small fraction of the 9.6 billion dollar annual cost.

There can be little doubt that MATS, taken together with the low price of natural gas and other environmental rules aimed at powerplants, played a major role in widespread retirement of coal fired units. EPA predicted that MATS would cause retirements, and its predictions proved to be correct, although substantially understated.

[10] See EPA Regulatory Impact Analysis for the Final Mercury and Air Toxics Standard, EPA-452/R-11-011 (December 2011), available at https://www3.epa.gov/ttnecas1/regdata/RIAs/matsriafinal.pdf.

Following MATS finalization in 2012, there was a large spike in retirements, which was exceeded only by an even larger spike in retirements in the first MATS compliance year of 2015 as confirmed by the Energy Information Agency. These retirement costs are not included in the EPA cost benefit analysis, based on the controversial position that retirement of a unit cannot be considered a compliance cost of the regulation.

IV. Assessment: Current Situation and Risk of Change

A. Political Context

It is perhaps not surprising that the Trump administration has yet to make an official pronouncement on its plan for the MATS rule. With MATS implementation complete and the litigation in abeyance, numerous other rulemakings, such as the Clean Power Plan, the Steam Electric Effluent Limitation Guideline, Coal Combustion Residue, the Renewable Fuels Standard and the vehicle rules for greenhouse gases have demanded more immediate attention.

Furthermore, William (Bill) Wehrum was only recently confirmed as the Assistant Administrator for Air and Radiation and, presumably, given his participation in past mercury issues at EPA, his involvement will be critical in planning strategy related to the MATS rule, and the supplemental finding (assuming he is cleared by EPA ethics to participate in all of the litigation and rulemaking activities).

It is clear that the co-benefit issue associated with the MATS rulemaking raises an important question that the Trump Administration may want to address. In fact, EPA's proposed repeal of the Clean Power Plan (CPP) adopts an aggressive approach toward co-benefits in which co-benefits from criteria pollutant reduction are not counted as benefits for the CPP. Industry has long criticized the counting of co-benefits, particularly co-benefits due to criteria pollutant reductions, as an illegitimate form of double counting.

It seems likely that the EPA will want to pursue the co-benefits issue that remains open as a result of the MATS rulemaking and the Supreme Court opinion in *Michigan v. EPA*, particularly given the large disparity between the monetized value of the mercury benefits alone, and the monetized value of the co-benefits resulting from criteria pollutant reductions, which is far greater than a simple order of magnitude.

However, revisiting the co-benefits issue could jeopardize the MATS rule as a whole, and eliminating the MATS rule would create significant complications for the electric power industry that has already spent billions complying with the rule. We understand that, at least informally, discussions within the Edison Electric Institute[11] have centered around the view that MATS should be left in place. Reports are that this viewpoint has been shared with EPA at the political level.

[11] Although there may be one or two outliers from this viewpoint, the majority of the EEI membership, including members such as AEP, Southern and Duke, are in accord with this viewpoint.

The reasons for this position are largely based on the fact that MATS compliance has already occurred. As a result, the following considerations are relevant:

- Even if MATS were removed as a matter of federal law, all states would retain the ability to impose MATS as a matter of more stringent state law, an option that some states might exercise. This would likely create additional, unhelpful fragmentation in power markets.
- MATS repeal or replacement would be subject to further litigation and add additional uncertainty to the planning process. Some form of federal utility air toxics regulation could be put in place by a future administration, further whipsawing the power industry.
- Turning off controls would pose operational and maintenance challenges and also raise public relations issues. Removal of MATS would place those units that have complied at risk of having MATS compliance costs removed from the rate-base.
- In general, the focus of utilities has shifted from preserving coal fired generation to building gas fired power and adjusting to an updated grid that includes intermittent renewable generation and distributed generation as future challenges.
- Shutting off controls could trigger other Clean Air Act requirements such as New Source Review, if such actions increase emissions of criteria pollutants such as particulate matter. That would be an enormous problem.
- Re-litigating MATS is not a high priority for most EEI members and is unlikely to produce an especially productive result, even if successful.

However, because the matter is subject to ongoing litigation, EPA will be forced at some point to deal with the MATS issue. It is unlikely to want to abandon the possibility that the MATS litigation, particularly under a more favorable Supreme Court, would provide an excellent vehicle for obtaining a desirable decision regarding the co-benefits issue.

Our intelligence to date does not indicate that EPA has activated a workgroup or task force regarding the MATS rulemaking. Our informal contacts to date with career and political staff have not indicated the EPA is actively engaged in the process of replacing or revoking MATS.

On December 12th, 2017, Bill Wehrum attended the Clean Air Act Advisory Council meeting and addressed EPA's Clean Air Act priorities. According to a December 12th article in Inside EPA, Wehrum "indicated he is torn about what action to take over the Obama EPA's mercury and air toxics standards (MATS) rule for power plants." Regarding reopening MATS, Wehrum asked: "Can you unring that bell? Should you unring that bell?" Wehrum noted that although much has already been spent on implementing MATS, "there is a lot of money left to be spent in this program" by utilities to comply. Wehrum also mentioned that EPA cannot ignore Supreme Court decisions critical of the agency's statutory interpretations on such matters.

Wehrum said that although MATS is not as pressing as other issues, such as the CPP, "we are not going to wait around forever" to address the issue.

B. Possible EPA Options

There are a number of options and legal pathways for EPA to follow toward a resolution (or lack of resolution) of the MATS issue. At this point, an outline of such options must be considered

speculative and any list of such options should be regarded as such. It is also possible that within such a list, different elements of each option could eventually be part of a proposed or final outcome. It is also worthwhile keeping in mind that EPA might well finalize its repeal of the Clean Power Plan and be in litigation regarding the co-benefits issue at the same time that it is attempting to resolve the MATS co-benefits issue. That could also influence EPA's strategy going forward.

However, it remains worth attempting to outline the principal types of outcomes that could be considered during any such process.

1) Retain the Appropriate and Necessary (A&N) Finding, but Exclude Co-Benefits Analysis

EPA could redo the supplemental finding to exclude co-benefits, but continue to rely on its primary economic analysis related to utility industry costs, to justify the finding that it remains "appropriate and necessary" to regulate toxic air emissions from powerplants.

The effect of this on the MATS rule is hard to predict, but it would certainly leave open the possibility that MATS could remain largely or entirely unchanged. EPA could continue to maintain that co-benefits are not appropriate for consideration in a formal Cost Benefit Analysis (CBA), but could decide that such a position should apply pro-actively and not retroactively.

It seems likely that the bulk of the utility industry might support such an approach, but there would likely be legal challenges arguing that the underlying rule would need to be revised in accordance with the new cost benefit approach.

Environmentalists would likely challenge the exclusion of co-benefits.

This approach might allow EPA to obtain a favorable opinion justifying its changed position on co-benefits from either the D.C. Circuit or the Supreme Court, without requiring a complete revocation of MATS.

2) Determine that Regulation Is Not "Appropriate and Necessary"

EPA could discard the A&N finding and determine that regulation is not appropriate and necessary. That would involve rejecting the economic analysis that was the primary basis for the supplemental finding and determining that consideration of co-benefits is also not appropriate.

It is hard to see how such a finding would not lead to the conclusion that the MATS rule would need to be revoked entirely. The A&N finding is the legal basis for MATS and finding that regulation is not appropriate and necessary would seem to require revocation.

Needless to say, this approach would be subject to litigation and the EPA attorneys would need to contend with the existing record showing that MATS compliance costs are reasonable on an industry basis, which has also now been borne out in reality. However, EPA could simply insist that the monetized air toxics benefits are on the order of 4-6 million dollars per year and that

such a risk simply does not justify regulation. EPA might well lose such a litigation but it could nonetheless obtain a favorable opinion on co-benefits and the worse result would be that MATS would be left in place. However, EPA might also be able to obtain a favorable decision that gives it the ability to revoke MATS entirely.

It is not clear how EEI or its members would respond in the litigation or policy context to such an approach but they can be expected to generally discourage it in the informal, pre-rule context.

3) Other Approaches

There are a number of other approaches that might allow EPA to adjust or substantially amend the MATS rule and its implementation framework or timing without either fully revoking the rule or leaving it virtually unchanged. These types of approaches would most likely involve a determination that regulation of utility air toxics was to some extent, necessary and appropriate.[12]

All of these options would involve substantial litigation and thus the possibility of seeking additional judicial stays or delays of compliance for specific sources. Such options might also allow utilities to seek stays or delays in other contexts, such as the cross state or haze rules based on uncertainty surrounding MATS.

Some possible examples of alternative or compromise approaches might include:

- Determine that regulation is appropriate and necessary, but that a formal Cost Benefit Analysis (CBA) aimed only at the toxics rule portion justifies a very weak regulation;

- Determine that regulation is appropriate and necessary, and use both the industry economic analysis and a toxics only CBA to set a moderate rule, perhaps addressing issues such as start-up and shutdown[13] in a more industry friendly fashion

- Determine that regulation is not appropriate and necessary, but that, in light of the ongoing rule implementation, seek judicial permission to unwind the MATS rule in a phased and flexible fashion;

[12] It is conceivable that the EPA could determine that utility regulation was not "appropriate and necessary" and repudiate the Obama Administration A&N finding without revoking the rule in its entirety, thereby creating a framework for unwinding or substantially weakening the MATS rule going forward. EPA could possibly use other authorities (as it did for the Clean Air Mercury Rule) to justify some other framework for mercury regulation. However, such an approach would be more complicated and involve greater legal risk.

[13] SSM issues in both the MATS and other contexts continue to be an significant issue for EPA, particularly in light of the differing dispatch profile that has resulted from the combination of MATS, increased natural gas generation, renewable generation and substantial retirement of coal fired units. These issues may well warrant further examination by both EPA and ICAC going forward.

- Determine that regulation is not appropriate and necessary but that in light of the ongoing rule implementation, credit could be given under programs such as New Source Review or the Clean Power Plan for MATS compliance.

4) Defend Obama Administration Supplemental Finding

In light of the receptivity of the utility industry toward leaving MATS in place, there is at least a theoretical possibility that the EPA could decide to re-initiate the defense of the Obama Administration supplemental finding. EPA could do that on its own or wait until the court required it to act. This possibility seems highly unlikely, given the affirmative action the Trump Administration took to hold the case in abeyance, but it remains an hypothetical option for consideration by EPA.

Such an action might become more attractive (to the Trump Administration) if a favorable opinion regarding co-benefits is an outgrowth of litigation regarding repeal of the Clean Power Plan.

V. Strategic Overview: Next Steps for ICAC Members

A. ICAC General Monitoring and Notification

ICAC staff will continue to monitor the MATS situation for further official developments, via the trade press, the Federal Register and relevant court pleadings. As ICAC learns of relevant information and developments, ICAC will notify its members via the newsletter, alerts and other means. ICAC will poll its members to determine those members who would like to receive targeted emails or phone calls as developments warrant and notify these members either individually or via list serve. ICAC will provide the opportunity for additional conference calls or webinars relevant to MATS as appropriate.

B. Informal Intelligence Gathering

ICAC will check informally on a regular basis for information from EPA regarding MATS, with both career and political staff. ICAC will do the same with key interested stakeholders including industry trade associations such as EEI, EPRI and NRECA and others. ICAC will also develop intelligence from other interested stakeholders including environmental groups, environmental regulators and knowledgeable Congressional staff. This intelligence effort will form the basis for any coalition building effort that is or becomes necessary.

ICAC can provide the results of this effort to interested members via email and phone and other means. As necessary or desirable, ICAC will include information relevant to MATS at the Clean Air Summit.

C. Participation in Regulatory Development

As EPA develops its proposals to resolve the MATS situation, ICAC will track, analyze and explain such proposals to ICAC members and make recommendation regarding possible course

of action, including the need for development of appropriate technical analyses, white papers and formal ICAC comments. ICAC staff will work with the membership to develop such materials under the direction of the board and appropriate technical divisions, including the domestic and measuring and monitoring divisions.

VI. Advocacy

Although ICAC cannot engage in policy advocacy, ICAC can provide technical material to relevant stakeholders (including to EPA through formal or informal comments). Development of such information and sharing with relevant stakeholders outside EPA can be a key element of a coalition building strategy.

Part of such an education and information sharing effort should include an analysis of relevant market conditions and the economic impact of any actions (especially repeal) that EPA may consider taking with regard to MATS. This information can be shared with EPA and DOE political staff, Congressional allies and other key governmental decisionmakers, including those with the Executive Office. It can also be shared with other coalition partners who can transmit it through additional channels in order to influence the outcome.

As desirable, ICAC will build and participate in coalitions with the entities above that ICAC members determine advance ICAC's interests regarding MATS.

Finally, to the extent that ICAC determines that an actual advocacy campaign is necessary or desirable, AJW can provide the ability to develop and implement a targeted full scale advocacy campaign that leverages the ICAC work already underway and takes advantage of AJW's full regulatory and legislative capabilities.