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ATTORNEY-CLIENT PRIVILEGED AND CONFIDENTIAL

May 20, 2016

To: Lydia Lowe, Director, Chinese Progressive Association

From: Adam Gustafson

Re: Mobile Source Air Toxic (MSAT) Regulatory Project

The Growing Problem of Vehicular Air Toxics. Air toxic pollution from gasoline-powered motor vehicles kills thousands of persons in the United States every year. Most of these mortalities are attributable to aromatic hydrocarbons—volatile organic compounds (VOCs) that are added to gasoline to raise octane. Aromatic hydrocarbons, known as aromatics, make up about 25% of every gallon of gasoline. They are emitted from the tailpipe, and in the atmosphere they combine to form secondary organic aerosol (SOA), including fine particulate matter ($PM_{2.5}$) and other deadly pollutants. Persons who live near busy roadways are particularly vulnerable to respiratory and cardiovascular problems, cancer, adverse birth outcomes, and other health problems as a result of these pollutants.

Although federal regulations are gradually lowering greenhouse gas emissions and improving fuel efficiency, those standards are inadvertently increasing some of the worst air toxic pollution. Gasoline direct injection (GDI) technology improves efficiency, but it also dramatically increases emissions of ultrafine particles (UFPs),[1] which bring highly toxic polycyclic aromatic hydrocarbons (PAHs) into the human body.

EPA's Duty to Regulate. In the Clean Air Act Amendments of 1990, Congress required the U.S. Environmental Protection Agency (EPA) to adopt "and from time to time revise" regulations "to control hazardous air pollutants from motor vehicles and motor vehicle fuels."[2] This duty is mandatory and it is technology-forcing: EPA's required air toxic controls must "reflect the greatest degree of emission reduction achievable through the application of technology which will be available."[3]

EPA's Failure to Regulate. EPA adopted a modest limit on the aromatic hydrocarbon benzene in 2007, but the Agency declined to regulate other aromatics, even though they contribute to benzene formation in the atmosphere after combustion.

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[1] *See* Health Effects Institute Special Committee on Emerging Technologies, *The Future of Vehicle Fuels and Technologies: Anticipating Health Benefits and Challenges* 3 (2011) ("Because of the less complete mixing of fuel vapor and air [in a direct-injection engine] . . . , the particulate emissions of the engine increase, including the number of ultrafine particles.").

[2] CAA § 202(l)(2), 42 U.S.C. § 7521(l)(2).

[3] *Id.*

Nevertheless, EPA admitted in 2007 that "[t]here may be compelling reasons to consider aromatics control in the future, especially regarding reduction in secondary $PM_{2.5}$ emissions, to the extent that evidence supports a role for aromatics in secondary $PM_{2.5}$ formation."[4] That role is now clear, and several of EPA's key factual assumptions no longer hold true.

We have previously communicated with EPA about the health effects of aromatics and the Agency's continuing responsibility to regulate mobile source air toxics (MSATs),[5] but EPA has failed to act on the growing body of scientific evidence that a new air toxics regulation is needed.

A Petition for Rulemaking. Our next step will be to formally petition EPA to conduct an MSAT rulemaking proceeding. For that purpose, we hope to assemble a broad coalition of environmental organizations, citizen groups, States, and other interested parties to join with the Energy Future Coalition and Urban Air Initiative to file an petition.

Organizations like the Chinese Progressive Association and the Chinatown Resident Association would be particularly well suited to petitioning EPA for a vehicular pollution rule, because their members are directly affected by nearby urban vehicle pollution.[6]

If these organizations are interested in working with us, we would need their help identifying individual members who can help us tell compelling stories about how they are personally affected by local vehicular air pollution. These impacts could take the form of adverse health effects as well as decisions to forego daily activities or to avoid high-pollution locations in order to prevent or mitigate those health effects. Aside from the papers we plan to submit to EPA, optional public advocacy on this subject would also be helpful. The Chinese Progressive Association and the Chinatown Resident Association will not be expected to contribute financially to the project.

Potential Litigation. If EPA declines to grant our petition for rulemaking, the petitioners' coalition may decide to file a citizen suit to compel regulation under the Clean Air Act, or a petition for judicial review of any final action by the EPA. In that event, it would be necessary to file declarations explaining how individual members of the petitioner organizations are injured by EPA's failure to regulate mobile source air toxics as the Clean Air Act requires.

We hope you will consider joining our MSAT Regulatory Project. We would welcome the opportunity to discuss it in greater detail.

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[4] 2007 MSAT Rule, 72 Fed. Reg. at 8479.

[5] *See* Comments of the Energy Future Coalition and Urban Air Initiative on the U.S. Environmental Protection Agency's Proposed Rule: Control of Air Pollution from Motor Vehicles: Tier 3 Motor Vehicle Emission and Fuel Standards, Docket ID No. EPA–HQ–OAR–2011–0135, 78 Fed. Reg. 29816 (July 1, 2013).

[6] David Abel, *New Evidence of the Dangers of Living Near Highways*, Boston Globe (April 16, 2016), *available at* http://bit.ly/1OQVwYV.