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August 13, 2018

Ms. Elizabeth Kopits
National Center for Environmental Economics
Office of Policy, Mail Code 1809T
Environmental Protection Agency
1200 Pennsylvania Avenue NW
Washington, DC 20460

Dear Ms. Kopits:

Subject: Advance Notice of Proposed Rulemaking: Increasing Consistency and Transparency in Considering Costs and Benefits in Rulemaking Process (Docket ID No. EPA-HQ-OA-2018-0107)

On behalf of the California Public Employees' Retirement System (CalPERS), I submit the following comments in response to the above-referenced Advance Notice of Proposed Rulemaking regarding EPA's proposed rule captioned, "Increasing Consistency and Transparency in Considering Costs and Benefits in the Rulemaking Process" (the Proposed Rule).

CalPERS is the largest public, defined-benefit pension fund in the United States, with approximately \$359 billion in global assets as of July 2018. CalPERS manages investment assets on behalf of more than 1.9 million public employees, retirees, and beneficiaries, with most of our investments in US-based companies. In addition, we are the second-largest purchaser of public employee health benefits in the nation, after the federal government. We purchase health benefits for about 1.4 million active and retired members and their families on behalf of the State of California, and approximately 1,200 public agencies and schools.

As a long-term investor, CalPERS is concerned about how environmental factors — both those that affect companies within our portfolio and those that may be caused by companies within our portfolio — can impact our investment returns. CalPERS believes that a company's long-term value creation requires effective management of environmental risks and opportunities. Our Governance and Sustainability Principles (Principles)¹ guide us to focus on "material environmental risks and opportunities."

CalPERS prefers stable and transparent regulation, which considers scientifically-accurate cost accounting of potential environmental and social impacts. Short-term or temporary regulatory changes create challenges to businesses by increasing

¹ See, <https://www.calpers.ca.gov/docs/forms-publications/governance-and-sustainability-principles.pdf>, dated June 18, 2018

uncertainty within the market environment and regulatory context in which strategies are devised and investments are made. Such changes also increase a portfolio's financial risk posed by under-regulated environmental externalities. Conversely, US Environmental Protection Agency's (EPA's) long-standing process of stakeholder consultation limits the liability risk, particularly for our portfolio companies.

This comment letter also notes a concern regarding the potential environmental impacts on the health of CalPERS' membership along with the related costs. A well-functioning environmental regulatory framework should continue to consider such public health impacts.

Environmental protection has historically been a bipartisan issue. In 1970, President Richard Nixon created the EPA,¹ and in that same year, signed the landmark Clean Air Act (the CAA), which passed Congress by an overwhelming margin.² In 1990, Congress passed an expansive revision of the CAA, again by an overwhelming margin, which President George H. W. Bush signed into law.³ This bipartisanship led to other landmark laws including the Clean Water and Safe Drinking Water Acts, as well as the Resource Conservation and Recovery Act and Superfund. Environmental protection and safeguarding public health are important foundations for sustained economic growth. CalPERS opposes changes that will lead to weaker environmental standards and disclosures, uncertainty, confusion, and/or litigation, which we believe is possible if EPA moves forward with the Proposed Rule.

Since economic analysis demonstrates the positive benefits of existing environmental rules, we do not see beneficial reasons for the Proposed Rule. The White House Office of Management and Budget (OMB) concluded in its *2017 Draft Report to Congress on the Benefits and Costs of Federal Regulations and Agency Compliance with the Unfunded Mandates Reform Act* that across the federal government the rules with the highest estimated benefits come from EPA. In their review of 39 EPA rules, OMB estimated that the rules have over \$700 million in annual benefits and \$65 million in costs⁴ or a 10 to 1 benefit cost ratio. In its most recent report *U.S. EPA, The Benefits and Costs of the Clean Air Act from 1990 to 2020*,⁵ EPA estimated that the benefits (\$2 trillion) from CAA regulations far exceeded the costs (\$65 billion) over the period 1990 to 2020. The Proposed Rule would substantially reduce previously-noted benefits, given the strong benefits identified from existing environmental regulation.

Key Issues

In addition to our overarching observations, CalPERS offers the following specific issues with the Proposed Rule.

First, the Proposed Rule challenges EPA's long-standing, and widely accepted, cost-benefit approach. The Proposed Rule asks a series of questions on how to make cost-benefit analysis more consistent, and suggests adopting uniform definitions of specific terms. These questions seem to ignore the fact that EPA rulemaking as required by Executive Order (E.O.) 12866,⁶ OMB Circular A-4⁷ and EPA Guidelines for Preparing

Economic Analysis⁸ (Guidelines) already provides consistency in cost-benefit procedures and methodologies and includes standard definitions and widely-accepted terms. These directives also provide transparency and require opportunity for public comment of economically significant rules. They are the gold standard for conducting regulatory impact analysis and, as stated on EPA's website, "*establish a sound scientific framework for performing economic analysis of environmental regulations and policies.*"⁹

Thus, there is no need for the wholesale change contemplated by the Proposed Rule. Rather, the Proposed Rule represents an indirect way of substantially weakening existing regulations.

Second, the Proposed Rule threatens to exclude the indirect, ancillary, or co-benefits of regulations, thus ignoring real regulatory benefits. For example, the Proposed Rule asks for direction on how to weigh the benefits from reductions in pollutants that were not directly regulated, often called co-benefits or ancillary benefits. This question directly conflicts with OMB Circular A-4 and EPA Guidance, both of which clearly recognize that regulatory analysis should consider all possible effects of a rule including the ancillary benefits of reducing other pollutants not directly regulated by the rule being proposed or promulgated. In fact, OMB Circular A-4 specifically states that the "*analysis should look beyond the direct benefits*" and provides as an example of an ancillary benefit "*the reduced refinery emissions due to more stringent fuel economy standards for light trucks.*"¹⁰ Accordingly, we believe that such indirect, ancillary, or co-benefits of regulations should be considered. In our view, benefits should be counted whether direct or indirect. Cleaner air and water inputs for one of our portfolio companies positively impacts its business model and should be counted. A healthier environment benefits US citizens and should be counted.

Third, the Proposed Rule considers a systematic retrospective review of existing regulations and asks for direction on how and when it should be done. This is puzzling, since EPA is already required by law to review certain existing rules. For example: section 109(d) of the CAA requires EPA to periodically review and, if appropriate, revise the National Ambient Air Quality Standards every five years; section 112(d) of the CAA directs EPA to review and as appropriate revise its National Emissions Standards for Hazardous Air Pollutants no less often than every eight years; section 211(o)(11) of the CAA directs EPA to conduct periodic reviews of certain aspects of the Renewable Fuel Standards Program; and section 1412(b)(9) of the Safe Drinking Water Act requires that EPA review and as appropriate revise each national primary drinking water regulation at least every six years. Establishing another systematic retrospective review as the Proposed Rule does is unnecessary and will only serve to create confusion and uncertainty.

Fourth, the Proposed Rule must be viewed in the context of two recent EPA actions. First, EPA in its proposal to repeal the Clean Power Plan (CPP) dramatically reduced the social cost of carbon used in the regulatory impact analysis thereby lowering regulatory benefits of the CPP. Secondly, EPA's proposed rule entitled *Strengthening*

Transparency in Regulatory Science would create bureaucratic red tape before certain critical data such as epidemiological studies could be used to support new rules. Each of these developments erodes environmental regulations and creates additional regulatory uncertainty while damaging the health of our members. There should be a robust examination of what might happen to the environment and the corresponding potential decline in health of Americans with the Proposed Rule.

Conclusion

For more than a quarter century, EPA has conducted cost-benefit analysis of major environmental rules pursuant to established frameworks, methodologies, and definitions for consistency and transparency. The directives provide a common-sense, reliable basis to formulate environmental regulations, and also provide the opportunity for public review and comment. These reasons, along with statutory directives requiring EPA to periodically review certain key rules, unequivocally show that the Proposed Rule is both unnecessary and counterproductive to long-term economic growth and health of the US population.

We believe that altering the current cost-benefit analysis in the rule-making process will inappropriately weaken environmental regulations, undermine regulatory certainty, and harm our portfolio as well as the health of our members. We need objective, stable, effective, and scientifically-based environmental regulations, not regulatory uncertainty and increased litigation. For these reasons, we respectfully urge EPA to withdraw the Proposed Rule.

If you would like to discuss any of these points or should you have any questions, please do not hesitate to contact me at (916) 795-3818.

Sincerely,

MARCIE FROST
Chief Executive Officer

Endnotes

- ¹ See <http://uscode.house.gov/view.xhtml?req=granuleid:USC-prelim-title5a-node84-leaf178&num=0&edition=prelim>
- ² See https://www.washingtonpost.com/news/the-fix/wp/2014/06/02/support-for-the-clean-air-act-has-changed-a-lot-since-1970/?utm_term=.c8f47ff649d9 and <https://timesmachine.nytimes.com/timesmachine/1970/09/23/78168774.pdf>
- ³ See <https://www.epa.gov/clean-air-act-overview/1990-clean-air-act-amendment-summary>
- ⁴ See https://www.whitehouse.gov/wp-content/uploads/2017/12/draft_2017_cost_benefit_report.pdf
- ⁵ See <https://www.epa.gov/sites/production/files/2015-07/documents/summaryreport.pdf>
- ⁶ See <https://www.archives.gov/files/federal-register/executive-orders/pdf/12866.pdf>
- ⁷ See <https://www.whitehouse.gov/sites/whitehouse.gov/files/omb/circulars/A4/a-4.pdf>
- ⁸ See <https://www.epa.gov/sites/production/files/2017-08/documents/ee-0568-50.pdf>
- ⁹ See <https://www.epa.gov/environmental-economics/guidelines-preparing-economic-analyses>
- ¹⁰ See page 26 at <https://www.whitehouse.gov/sites/whitehouse.gov/files/omb/circulars/A4/a-4.pdf>