

ONE HUNDRED SIXTEENTH CONGRESS  
**Congress of the United States**  
**House of Representatives**

COMMITTEE ON ENERGY AND COMMERCE

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July 23, 2019

Mr. Adam R.F. Gustafson  
Partner  
Boyden Gray & Associates PLLC  
801 17th Street NW, Suite 350  
Washington, DC 20006

Dear Mr. Gustafson:

Thank you for appearing before the Subcommittee on Oversight and Investigations on Wednesday, May 21, 2019, at the hearing entitled “Undermining Mercury Protections: EPA Endangers Human Health and the Environment.” We appreciate the time and effort you gave as a witness before the Subcommittee on Oversight and Investigations.

Pursuant to Rule 3 of the Committee on Energy and Commerce, members are permitted to submit additional questions to the witnesses for their responses, which will be included in the hearing record. Attached are questions directed to you from members of the Committee. In preparing your answers to these questions, please address your responses to the member who has submitted the questions using the Word document provided with this letter.

To facilitate the publication of the hearing record, please submit your responses to these questions by no later than the close of business on Tuesday, August 6, 2019. As previously noted, this transmittal letter and your responses, as well as the responses from the other witnesses appearing at the hearing, will all be included in the hearing record. Your responses should be transmitted by e-mail in the Word document provided with this letter to Jourdan Lewis with the Committee staff ([jourdan.lewis@mail.house.gov](mailto:jourdan.lewis@mail.house.gov)). A paper copy of your responses is not required. Using the Word document provided for submitting your responses will also help maintain the proper format for incorporating your answers into the hearing record.

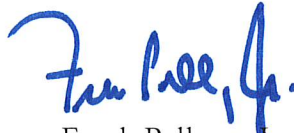
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Thank you for your prompt attention to this request. If you need additional information or have other questions, please contact Ms. Lewis at (202) 225-2927.

Sincerely,

A handwritten signature in blue ink that reads "Frank Pallone, Jr." in a cursive style.

Frank Pallone, Jr.  
Chairman

Attachment

cc: Hon. Greg Walden, Ranking Member  
Committee on Energy and Commerce

Hon. Diana DeGette, Chair  
Subcommittee on Oversight and Investigations

Hon. Brett Guthrie, Ranking Member  
Subcommittee on Oversight and Investigations

**Committee on Energy and Commerce  
Subcommittee on Oversight and Investigations**

**Hearing on  
“Undermining Mercury Protections: EPA Endangers Human Health and the  
Environment”**

**May 21, 2019**

**Mr. Adam R.F. Gustafson, Partner, Boyden Gray & Associates PLLC**

**The Honorable Brett Guthrie (R-KY)**

1. During the hearing, Representative Griffith asked you questions about ancillary costs, or co-costs, of a proposal and whether an Agency should consider co-costs when the Agency considers the co-benefits of a proposal. You answered that it is important for an Agency to consider corresponding co-costs when the Agency is considering co-benefits of a proposal, and that the EPA did not consider co-costs in the 2016 Supplemental Finding entitled “Supplemental Finding That It Is Appropriate and Necessary to Regulate Hazardous Air Pollutants From Coal- and Oil-Fired Electric Utility Steam Generating Units.” Is that correct?
  - a. Were co-costs for the Mercury and Air Toxics Standards (MATS) rule evaluated at any point during the rule-making process, such as in the Regulatory Impact Analysis (RIA) for the MATS rule?
  - b. Why, in your opinion, should corresponding co-costs be considered by an Agency if the Agency is considering co-benefits?
  - c. If co-benefits are used to justify a rule, is it typical for co-costs to also be considered when justifying the rule? Why or why not?
  - d. In your opinion, when should co-costs and co-benefits be used to justify a proposal and when should they not be used to justify a proposal?

**The Honorable Michael C. Burgess, M.D. (R-TX)**

1. Everyone at the hearing acknowledged the severe impact many mercury compounds can have on public health. As a licensed obstetrician, I am acutely aware of the damage mercury can have on pregnant mothers and infants. Furthermore, no one at the hearing claimed that the Environmental Protection Agency (EPA) does not have the authority to regulate Hazardous Air Pollutants, as outlined by Section 112 of the Clean Air Act. What *is* at question is the ability of a federal agency to regulate industry without properly evaluating the cost-to-benefit of such regulations.

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- a. The EPA estimates that the benefits of reductions in hazardous air pollutants to be up to \$6 million dollars annually and the costs of this regulation is up to \$9.6 billion dollars annually. How often do federal agencies enforce regulations greater than a thousand times costlier than its benefits?
- b. Do you know of any other instances when a federal agency was able to claim that ancillary benefits (co-benefits) gave them the authority to skirt the law giving that agency the ability to promulgate such rules?
- c. If the EPA was willing to consider the ancillary benefits of its regulations, shouldn't it also have to consider the ancillary costs to the same regulations?
- d. In your opinion, is this good governance?