

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

COMMITTEE ON ENERGY AND COMMERCE

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Minority (202) 225-3641

July 23, 2019

Mr. Michael A. Livermore
Associate Professor of Law
University of Virginia School of Law
580 Massie Road
Charlottesville, VA 22903

Dear Professor Livermore:

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 me and Rep. DeGette, Subcommittee Chair. 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). 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,



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. Michael A. Livermore, Associate Professor of Law, University of Virginia School of
Law**

The Honorable Frank Pallone, Jr. (D-NJ)

1. At the hearing, Representative Griffith asked Mr. Gustafson whether the EPA had considered ancillary costs, or co-costs, in evaluating the costs and benefits of regulating mercury and other air toxics 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.” Mr. Gustafson replied that the EPA did not. However, in a response to a question from Mr. Sarbanes later in the hearing, you disagreed and stated that the EPA did consider co-costs as part of the Mercury and Air Toxics Standards and as part of this current proposal to rescind the “appropriate and necessary” finding.
 - a. Can you explain how the EPA considered co-costs in support of its 2016 Supplemental Finding?
 - b. Can you explain how the EPA considers co-costs as part of its recent proposal to rescind the “appropriate and necessary” finding?
 - c. How does the EPA’s treatment of co-costs in its current proposal compare to its treatment of co-benefits in the proposal?
 - d. In your opinion, is it appropriate for the EPA to consider co-costs but not co-benefits?
 - e. What is the impact of considering co-costs but not co-benefits?
2. Section 112 of the Clean Air Act regulates air toxic emissions such as mercury. Sections 108, 109 and 110 of the Act regulate criteria pollutants such as particulate matter (“PM”). At the hearing, Mr. Gustafson suggested that the EPA’s reliance on PM co-benefits in the 2016 Supplemental Finding violates an express prohibition in Section 112 against regulating criteria pollutants.

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- a. Does Section 112 of the Clean Air Act either expressly or implicitly prohibit the EPA from considering co-benefits in deciding whether regulation of mercury and other air toxics from power plants is “appropriate and necessary”?
- b. Does the Supreme Court’s decision in *Michigan v. EPA* expressly or implicitly prohibit the EPA from considering co-benefits in deciding whether regulation of mercury and other air toxics from power plants is “appropriate and necessary”?

The Honorable Diana DeGette (D-CO)

1. In its current proposal, the EPA claims that the 2016 Supplemental Finding erred in using a “cost reasonableness” approach based on compliance costs relative to the size of industry. The EPA asserts that such an approach does not satisfy the EPA’s obligations under section 112(n)(1)(A) of the Clean Air Act, as informed by *Michigan v. EPA*; 135 S. Ct. 2699 (2015). 84 Fed. Reg. 2670, 2674-2675 (Feb. 7, 2019).

In your opinion, does the “cost reasonableness” approach that EPA took in its 2016 Finding meet the requirements of the Clean Air Act and appropriately respond to the Supreme Court’s direction in *Michigan v. EPA*? Why or why not?