

**Committee on Energy and Commerce**  
**Opening Statement as Prepared for Delivery**  
**of**  
**Subcommittee on Oversight and Investigations Vice Chair Joseph P. Kennedy, III**  
***Undermining Mercury Protections: EPA Endangers Human Health and the Environment***  
**May 21, 2019**

Thank you, Madame Chair.

Over the last two and a half years, the Trump Administration has upheld its promise time and again to roll back critical environmental protections. Nearly every day, families and communities are at greater risk of losing access to clean air and clean water at the expense of political convenience.

Since 2012, the EPA has written a success story for public health and the environment through its implementation of mercury and toxic air standards (MATS). One analysis by the EPA estimated a reduction level of 86% of mercury emissions from 2010 to 2017.

Despite the success, the EPA is now proposing to reverse its own findings and perhaps the entire MATS regulatory structure.

Mercury can be highly toxic to infants, children, and adults, including severe consequences to heart, kidney, and immune system functions. Prenatal exposure can cause severe neurological damage that lasts a lifetime.

Over the years, the EPA has taken steps to limit emissions of mercury from industrial sources like waste incinerators and cement and brick production.

In 2012, after extensive consultation with the power sector and other stakeholders, EPA finalized standards under the Clean Air Act to reduce emissions of mercury and other toxic air pollutants from coal-fired power plants.

The final rule was quickly challenged in federal court by the coal industry, which argued that EPA made a flawed determination that it was “appropriate and necessary” to limit mercury emissions from power plants. The case made its way to the Supreme Court, which held that the EPA should have considered cost when making its determination.

In response to the Supreme Court’s ruling, in 2016 the EPA issued a supplemental finding which determined that the consideration of cost confirmed its prior determination that the regulation of mercury emissions was still “appropriate and necessary.”

Throughout the legal challenges, the electric generating industry pursued regulatory compliance, spending billions of dollars on technologies to limit mercury and other toxic emissions, contributing to a nearly 90 percent decrease in mercury emissions in the past decade. According to a July 2018 letter from the electric industry to the EPA, all covered plants had implemented the regulation and were operating pollution controls.

Unfortunately, this past December, despite all the successes and reductions of mercury emissions, the Trump EPA issued a stunning reversal by proposing it is no longer “appropriate and necessary” to limit mercury emissions from power plants under the Clean Air Act.

EPA reached this conclusion by redoing the Agency’s cost-benefit analysis. In its new calculation, the Agency disregarded the health and other benefits from reducing pollutants not directly targeted by MATS, also known as “co-benefits.” With those benefits out of the picture, the EPA determined costs of the rule greatly outweighed its benefits.

The Trump EPA and its supporters claim this new approach is reasonable, and perhaps even legally required. But the former head of EPA’s air and radiation office, who helped finalize this rule during the Obama Administration, is here today and will say just the opposite: By doing what they are doing, the Trump EPA is [quote] “choosing to paint itself into this corner.”

The Trump EPA argues that its policy approach is rational because the pollutant reductions it ignores for purposes of the MATS rule are regulated under a different provision of the Clean Air Act. But as you will hear today from one expert on cost-benefit analysis, the Trump EPA approach is [quote] “irrational,” and further, will result in a [quote] “biased and misleading estimate of costs and benefits.”

Beyond its wrong-headed and unjustified approach to the cost-benefit analysis, the Trump EPA’s proposed determination relies on an out-of-date record from 2011. We now know that the costs of the MATS rule are lower, and the direct benefits from mercury and air toxic reductions are much higher than indicated in the 2011 record.

The Trump EPA conveniently disregards this information.

Administrator Wheeler is now working to justify this decision by claiming the EPA is required to act by the Supreme Court. However, in truth, the EPA in the prior administration already responded to the Supreme Court’s concerns.

The new proposal is opposed by parents, doctors, nurses, tribes, faith leaders, and even the regulated industry itself.

Unfortunately, the EPA declined an invitation to attend this hearing to offer much need explanation on its decision.

For an Agency under this Administration that has demonstrated time and time again that it’s not serious about its mission, this dangerous and misleading proposal to undermine mercury

and air toxics protections is a new low and unnecessarily creates new risks to both public health and the environment.

Thank you, I yield.