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

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

1. The 2011 Regulatory Impact Analysis estimated $37-90 billion annually in health benefits from the MATS rule, a great majority of which would come from estimated reductions in particulate matter emissions. Specifically, the estimates included health benefits of reducing particulate matter at levels below the standard of 12 micrograms/cubic meter set by the National Ambient Air Quality Standards (NAAQS). It has been suggested that health benefits that accrue from reductions below the NAAQS standard for particulate matter should not be counted because the standard is already set to be sufficiently protective of human health.

   Is it appropriate to include in health benefit estimates those benefits that accrue from reducing particulate matter emissions below the current NAAQS level? Why or why not?

   Response to Question 1 (Rep. Pallone)
   It is appropriate, and consistent with longtime practice of the EPA, to include in health benefit estimates the health benefits that accrue from reducing particulate matter emissions below the current NAAQS level. In fact, it would be contrary to science and inconsistent with EPA's mission to protect human health to not include such benefits.

   EPA has articulated in many National Ambient Air Quality Standards (NAAQS) rulemakings that the level ultimately established by the EPA Administrator as the national public health standard does not represent the level at which there is no public health risk. See the discussion in the final 2015 Ozone Rule at 80 FR 65295, October 26, 2015. No threshold has been established by the scientific or medical communities below which there are no health impacts from exposure to PM, and the federal courts have itself affirmed numerous times that the NAAQS are not required by law to represent a zero-risk standard. It inevitably follows, therefore, that there are health impacts below the level of the standard—some people, in some locations, suffer some amount of health impact at levels below the standard. Air modeling and public health analytical methodologies can be used to estimate, with appropriate cautions about uncertainty, the harm associated with those expected exposure. OMB Circular A-4, which provides OMB's guidance to federal

agencies for their implementation of Executive Order 12866 regarding cost-benefit analysis of significant federal actions, is clear that agencies should consider the full range of benefits that can be identified for a proposed regulatory action. EPA's analytical approach is fully explained in the final Regulatory Impact Analysis for the 2012 Fine Particle Final Rule.

The Honorable Diana DeGette (D-CO)

1. 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 EPA's reliance on PM co-benefits in the 2016 Supplemental Finding violates an express prohibition in Section 112 against regulating criteria pollutants.

   Does Section 112 of the Clean Air Act either expressly or implicitly prohibit EPA from considering co-benefits in deciding whether regulation of mercury and other air toxics from power plants is "appropriate and necessary"?

   Response to Question 1 (Rep. DeGette)
   The argument that the full range of public health benefits resulting from a rule promulgated under Section 112, including those from reductions in pollutants other than those directly regulated by the rule, cannot be considered is illogical and without basis in the law or common sense.

   Section 112 does not explicitly prohibit consideration of health benefits from criteria pollutants. EPA follows OMB Circular A-4 in assessing the costs and benefits of rules promulgated under Section 112, as it does for all significant actions. Circular A-4 is clear that the full range of benefits should be considered.

   An indication that Congress intended EPA to consider the full range of benefits is found in Section 112(k)(2), which calls for a research program between EPA and the states regarding area (i.e. small) sources of air toxics. It states that the research program should include:

   > consideration of atmospheric transformation and other factors which can elevate public health risks from such pollutants.
   >
   > Health effects considered under this program shall include, but not be limited to, carcinogenicity, mutagenicity, teratogenicity, neurotoxicity, reproductive dysfunction and other acute and chronic effects including the role of such pollutants as precursors of ozone or acid aerosol formation. Section 112(k)(2)(C).

   Reference to ozone and acid aerosol formation, and the use of the phrase "shall include, but not be limited to," both indicate that Congress was aware that reductions in toxic air pollutants could have ancillary benefits via reductions in other types of pollution that have their own effects on public health.