

Committee on Energy and Commerce
Opening Statement as Prepared for Delivery
of
Subcommittee on Oversight and Investigations Ranking Member Brett Guthrie
Undermining Mercury Protections: EPA Endangers Human Health and the Environment
May 21, 2019

Thank you, Chair DeGette, for holding this important hearing.

The Mercury and Air Toxics Standards (MATS) was created to regulate mercury levels, and I think it's important to today's conversation to discuss where mercury comes from and how we, in the United States, are primarily exposed to it.

Mercury can be released through human activity, such as burning materials which contain mercury. It is also released into the atmosphere naturally, through events such as volcanic eruptions, forest fires, or the normal breakdown of minerals in rocks and soil. Mercury levels in certain areas can vary depending not only on how much mercury is released locally, but can also come from regional, national, and even international sources due to wind and weather patterns.

Once released into the atmosphere, mercury will eventually deposit into bodies of water or onto land—where it also will ultimately be transported into water. In the water, microorganisms can change the mercury into methylmercury, and the methylmercury will accumulate up the food chain into fish and shellfish. While exposure to mercury takes several forms, nearly all human exposure to methylmercury in the United States occurs through fish and shellfish consumption.

The regulation we are discussing here today—MATS—was intended to help reduce the amount of mercury created from human activity, specifically mercury emitted from coal- and oil-fired electric utility steam generating units, or “EGUs.”

The creation of MATS dates back to the 1990 Clean Air Act amendments where the Environmental Protection Agency (EPA) was required to conduct studies on coal- and oil-fired EGUs to inform the EPA's decision whether it was “appropriate and necessary” to regulate EGUs under section 112 of the Clean Air Act. After conducting multiple studies, in 2000 the Clinton administration found that it was ‘appropriate and necessary’ to regulate coal- and oil-fired EGUs under the Clean Air Act section 112 and added EGUs to the Act's 112(c) list of source categories that must be regulated.

MATS has had a lengthy and complex history, across multiple administrations involving studies, proposed rules, final rules, cases before the D.C. Circuit, and a case before the Supreme Court in 2015 where the Supreme Court told EPA they had to consider cost when determining whether this regulation was ‘appropriate and necessary,’ which EPA had not previously done.

Most recently, in December, the EPA issued a proposed rule relating to the National Emission Standards for Hazardous Air Pollutants, or NESHAP, for EGUs. In the rule, EPA makes four proposals:

(1) to determine that it is not “appropriate and necessary” to regulate Hazardous Air Pollutant emissions from coal- and oil-fired EGUs plans under section 112 of the CAA;

(2) to keep coal- and oil-fired EGUs as a source category on the Clean Air Act Section 112(c) list of sources that must be regulated under section 112(d) of the Act, thereby keeping the emission standards and other requirements of the MATS rule in place for coal- and oil-fired power plants;

(3) to solicit comment on whether the Agency has the authority and/or obligation to delist EGUs from section 112(c) of the Act and rescind the NESHAP for coal- and oil-fired EGUs; and

(4) to propose the results of the residual risk and technology review of the NESHAP for coal- and oil-fired EGUs.

Contrary to what my colleagues on the other side of the aisle might think, this proposed rule does not remove the standard, it only proposes to remove the ‘appropriate and necessary’ finding that almost entirely justified the cost of the MATS regulation by the co-benefits of regulating particulate matter, which by Congress’ design, is regulated under a different section of the Act.

Today’s conversation examines a lot of very complex policy questions that I believe have potential significances beyond MATS. For example – was the ‘appropriate and necessary’ finding that justified MATS sound, was this regulation made under the right section of the Act, how should a regulatory body weigh co-benefits in crafting future regulations, etc. All of these questions are important, and I hope that we can have a thorough and honest discussion to inform future rule making.

I thank our witnesses for being here today. While it is unfortunate that EPA could not be here today to testify as well, I hope the Chair schedules a second hearing soon to hear the agency’s perspective on these important issues.